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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

COUNTY OF SAN DIEGO, Petitioner, v. Elliot JONES, Respondent.	Case No. DF987654 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES** Date: December 25, 2009 Time: 12:45 p.m. Dept. 42

Respondent Elliot Jones respectfully submits the following Reply Memorandum of Points and Authorities.

STATEMENT OF FACTS

As far back as 2001, Respondent Jones stipulated to genetic testing to determine whether the child, Elliot, was his. At that time, the biological mother was found living out of state.

In 2002, the County acknowledges that Jones filed a copy of independent genetic tests excluding him as Elliot's father. In 2002, the County also acknowledges that Jones provided a copy of an order from Pima County Superior Court in Arizona, holding that the genetic test excluded Respondent as the natural father, and dismissed the case for child support against him.

In 2002, the County had actual knowledge of the genetic test and the order of the Pima County Superior Court, yet the County did nothing to alleviate the injustice. The County told Respondent to file a motion. Respondent respectfully asserts that the County, armed with actual knowledge, had a duty to act for the benefit of both the child and Respondent. A public entity such as the County operates, or should operate for the public good. The County and its counsel had an ethical duty to act upon the knowledge they had. The County did nothing.

LEGAL DISCUSSION

Introduction

In the County's opposing papers, they argue that the underlying judgment should not be set aside, and that no other relief should be granted to Respondent. Respondent contends that the judgment should be set aside, and the other relief he seeks be granted de facto.

A. Setting Aside the Judgment.

Respondent contends that this is a court of equity. Marriage of Plescia, 59 Cal.App.4th 252, 257-8 (1997). A court of equity has the inherent authority to grant relief. Rappleyea v. Campbell, 8 Cal.4th 975 (1994). A court has the inherent authority to reconsider its own judgments. Geddes v. Superior Court, 126 Cal.App.4th 417, 426 (2005). This inherent authority enables the court to ensure the orderly administration of justice. Hays v. Superior Court, 16 Cal.2d 260, 264 (1940).

Even a motion for relief under Code of Civil Procedure §473 may be granted after the six month time limit on equitable grounds. Olivera v. Grace, 19 Cal.2d 570,576 (1942).

While Respondent may have failed to timely file a motion for relief, the County, and its attorneys had actual knowledge of the evidence excluding Respondent as the father as early as 2002. The County and its counsel failed in their ethical duty to act upon the evidence, however provided.

The County relies on County of Orange v. Superior Court, 155 Cal.App.4th 1253 (2007) for the proposition that Respondent's instant motion should not be granted. County's reliance is misplaced as County of Orange in factually inapposite.

In County of Orange, the putative father signed a declaration of paternity acknowledging he was the biological father upon the birth of the child. After a default judgment was entered against him by the County, he then sought an order for a paternity test. Id. At 1255-6.

The County of Orange court denied putative father's motion for relief, holding that Family Code §7646(a) sets forth the time frame for relief regarding the default judgment of paternity. Id. At 1259.

The facts here are quite different. Respondent did not sign a declaration of paternity upon the birth of the child. Moreover, Respondent had a genetic test done in June, 2002. Respondent submitted the results of the test to the Pima County Superior Court in Arizona. The Arizona court then dismissed the child support action against him, citing the genetic test that excluded him as the father of Elliot.

The County's position is that they have the right to ignore the results of the genetic test and the Pima County Superior Court's action, of which they had actual knowledge in June, 2002.

Respondent respectfully submits that despite the enactment of Family Code §7646, the previously enunciated public policy is the better policy in this instance. In County of Los Angeles v. Navarro, 120 Cal.App.4th 246 (2004) [Navarro]. The Navarro court stated:

> The County, a political embodiment of its citizens and inhabitants, must always act in the public interest and for the general good. It should not enforce child support judgments it knows to be unfounded. And in particular, it should not ask the courts to assist it in doing so. Id. At 249-50

Here, the County had actual knowledge that Respondent was not the father of Elliot, but did nothing. The County counsel, as officers of the court, have an ethical duty to act on the evidence, and not wait years to act, legislation to change, and then rely upon newly enacted procedural form over substance.

Respondent asserts that if County had acted on what it knew in 2002, the judgment would have been set aside under the previous legislation. Respondent contends that the County did nothing, essentially lying in wait, for Respondent to take action.

B. County Makes an Improper Collateral Attack Against the Arizona Judgment.

Respondent asserts that the County basically ignores the Arizona judgment of 2002. Respondent contends that California must give full faith and credit to the Arizona judgment excluding Respondent as Elliot's father. A jurisdictionally valid out-of-state judgment must be afforded full faith and credit even if contrary to California's law or public policy. There is no roving public policy exception to the full faith and credit clause. Keith G. v. Suzanne H., 62 Cal.App.4th 853, 861 (1998), citing with approval Baker by Thomas v. General Motors Corp., 522 U.S. 222, 233 (1998).

Respondent also contends that a judgment in a paternity action must also be given full faith and credit in California. It has the same effect as a paternity determination made in California. Family Code §5604; In re Mary G., 151 Cal.App.4th 184, 202-203 (1997).

Respondent asserts that the Pima County Arizona court judgment excluding him as Elliot's father must be given full faith and credit here. Additionally, the County had actual knowledge of the judgment in mid-2002, and did nothing.

CONCLUSION

When viewed in its totality, Respondent contends that the judgment should be set aside. In 2002, The County had actual knowledge of the genetic test and the Arizona court judgment that excluded Respondent as Elliot's father. Yet public policy, statute, and case law then in force in 2002 would have allowed Respondent to be relieved of this injustice. Rather than exercise its ethical duty to act, the County did nothing.

The County could have brought its own motion to correct a judgment it knew to be incorrect. For whatever reason it did not. This wrong should be righted, and the Respondent's motion granted.

Dated: December __, 2009

Respectfully submitted,

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Attorney for Respondent