IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA ex rel. THE DEPARTMENT OF ECONOMIC SECURITY (DENISE L. TACKTOR),	)	1 CA-CV 05-0156
	)	DEPARTMENT B
Petitioner/Appellant,	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
v.	)	Rule 28, Arizona Rules
	)	of Civil Appellate
DANIEL W. GRAHAM,	)	Procedure)
	)	
Respondent/Appellee.	)	
	)	**FILED 3-21-06**

Appeal from the Superior Court of Maricopa County

Cause No. DR1996-019288

The Honorable Carolyn K. Passamonte, Commissioner

REVERSED AND REMANDED

Terry Goddard, Attorney General — Phoenix
By Kristin M. Wurr, Assistant Attorney General,
Child Support Enforcement Section
Attorneys for Petitioner/Appellant

Dyer & Ferris LLC — Phoenix
By Khalil C. Saigh
Attorneys for Respondent/Appellee

T H O M P S O N, Judge

¶1 The issue presented in this case is whether the trial court abused its discretion in granting Daniel Graham (Father) relief from a stipulated judgment regarding his past child support obligation. We conclude that Father was not entitled to relief from the judgment pursuant to Arizona Rule of Civil Procedure Rule 60(c).

FACTUAL AND PROCEDURAL HISTORY

¶2 Denise Tacktor (Mother) had a child in 1982. Father did not learn that he had a child until 1996. Mother and child lived in Michigan and received state assistance for many years. For the first time, in 1996, the State of Michigan requested that the State of Arizona, through a Uniform Reciprocal Enforcement of Support Act (URESA) petition, establish an order of paternity and child support. *See* Arizona Revised Statutes (A.R.S.) §§ 12-1651 to 12-1659 (2005)[1] and Michigan Compiled Laws Annotated (M.C.L.A.) §§ 552.1101 to 552.1901 (2005). Michigan intervened because it had paid support to Mother and was seeking reimbursement.

¶3 After genetic testing determined that Father was, in fact, the child's father, the Arizona Department of Economic Security (ADES) and Father stipulated to a child support judgment. The stipulated judgment, entered in April 1997, provided that Father's current child support obligation was $383 per month and that past child support from the child's date of birth in November 1982 to that time totaled $44,268. The payments on past child support plus interest were deferred until the child was emancipated.

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[1]In 1996, Arizona adopted the Revised Uniform Enforcement of Support Act (RUESA). *See* A.R.S. §§ 25-551 to 25-591 (2005). Arizona repealed RUESA in 1997, *see* 1997 Ariz. Sess. Laws, ch. 219, § 27, and adopted the Uniform Interstate Family Support Act (UIFSA), A.R.S. §§ 25-621 to 25-661 (renumbered as A.R.S. §§ 25-1201 to 25-1342 (2005)).

¶4 Father made all current child support payments. A problem arose when Father, a teacher, made multiple child support payments in one month to cover the summer months for which he did not receive paychecks. The child support clearinghouse could not accommodate advance payments, and the overpayments were applied toward the past child support arrearage instead of the future summer child support payments. Such resulted in ADES seeking an arrearage judgment for those summer months. When Father appeared at the hearing on this issue, he also challenged the 1997 stipulated judgment entered for fourteen years of past child support plus interest.

¶5 The commissioner continued the hearing to allow the parties to address the issues in writing. Father filed a motion to set aside the past child support judgment and all arrears pursuant to Rule 60(c). Father argued the past child support judgment created an extraordinary hardship and injustice. ADES responded that the Rule 60(c) motion was untimely and that the judgment did not impose an extreme hardship.

¶6 The commissioner granted the motion, finding that Arizona did not have subject matter jurisdiction to enter the past child support order in 1997 because Michigan's petition did not request past child support or establish that it was entitled to past child support. The commissioner ordered that the 1997 judgment be set aside. ADES filed a motion for new trial seeking relief from this

decision. The commissioner denied the motion, and ADES timely appealed.

DISCUSSION

A. Standard of review

¶7 We review the trial court's decision regarding a motion for new trial for an abuse of discretion. *Delbridge v. Salt River Project Agric. Improvement & Power Dist.*, 182 Ariz. 46, 53, 893 P.2d 46, 53 (App. 1994) (citation omitted). We will not disturb a trial court's decision on a Rule 60(c) motion absent a clear abuse of discretion. *Id.* (citation omitted). "Furthermore, 'we will affirm the trial court's decision if it is correct for any reason.'" *Id.* at 54, 893 P.2d at 54 (quoting *Rancho Pescado v. Nw. Mut. Life Ins.*, 140 Ariz. 174, 178, 680 P.2d 1235, 1239 (App. 1984)).

B. Relief under Rule 60(c)(4)

¶8 The commissioner concluded that Michigan's failure to request past support rendered the judgment void and granted relief under Rule 60(c)(4). As Father correctly admitted in his answering brief, the trial court had subject matter jurisdiction over this issue pursuant to Arizona's RURESA and UIFSA statutes. The lack of a request for past child support would not defeat subject matter jurisdiction but merely limit the scope of any remedy allowed.

¶9 Michigan did not specifically ask for an order for past child support. At the oral argument on Father's Rule 60(c) motion,

ADES admitted that the request for a past child support order was not made at the request of Michigan. ADES stated that the policy of the attorney general's office was to enter past child support judgments. ADES's counsel stated, "In this case, it was not pled or requested by the State of Michigan, but notice was given through that [Arizona] order of paternity." However, at oral argument on the motion for new trial, the same assistant attorney general for ADES argued that Michigan had, in fact, intended to seek past child support, but the form it used did not have a spot to clearly indicate such a request.

¶10 Despite the state's inconsistent positions, we conclude that Father waived any error in Michigan's pleadings when he entered into a stipulated judgment that included past child support. "The law is quite clear that provisions of a consent judgment may be sustained and enforced, even where the relief sought was outside the pleadings, so long as the court has general jurisdiction over the matters adjudicated." *Indus. Park Corp. v. U.S.I.F. Palo Verde Corp.*, 19 Ariz. App. 342, 345, 507 P.2d 681, 684 (1973) (citations omitted); *see also Wall v. Superior Court*, 53 Ariz. 344, 355, 89 P.2d 624, 629 (1939) (stating that a consent judgment "operates a waiver of all defects or irregularities in the pleadings or other proceedings previous to the rendition of the judgment") (citations omitted).

¶11 Thus, any legal error as a result of Michigan's failure to specifically request past support in its petition was waived by Father stipulating to the judgment for past consent. Moreover, Rule 60(c) "is not a device for reviewing or correcting legal errors that do not render the judgment void." *Tippit v. Lahr*, 132 Ariz. 406, 408, 646 P.2d 291, 293 (App. 1982) (citations omitted).

C. Relief under Rule 60(c)(6)

¶12 We turn next to Rule 60(c)(6), the basis for Father's request for relief from the stipulated judgment. "[T]o obtain relief under 60(c)(6), the movant must show 1) extraordinary circumstances of hardship or injustice justifying relief and 2) a reason for setting aside the judgment other than one of the reasons set forth in the preceding five clauses of rule 60(c)." *Davis v. Davis*, 143 Ariz. 54, 57, 691 P.2d 1082, 1085 (1984) (citations omitted). "[T]he determination as to whether there [a]re extraordinary circumstances justifying relief would ordinarily be left to the sound discretion of the trial judge, reversible only for abuse of that discretion." *Id.* However, the commissioner did not consider this subsection. Therefore, we consider whether there are uncontroverted facts in the record to uphold relief under Rule 60(c)(6). *Id.*

¶13 Rule 60(c)(6) "is primarily intended to allow relief from judgments that are unjust due to extraordinary circumstances that cannot be remedied by legal review." *De Gryse v. De Gryse*, 135

Ariz. 335, 338, 661 P.2d 185, 188 (1983) (citing *Tippit*, 132 Ariz. at 409, 646 P.2d at 294). Father contends the extraordinary circumstances warranting relief are Michigan's failure to request past support in its pleadings; the support was owed to the state of Michigan and not Mother personally; Mother had not participated in the proceedings; the petition was not brought until the child was fourteen years old and Father did not know he had fathered a child until that time; shortly after the stipulated judgment was entered, Arizona law changed to limit past support awards to three years from the date of filing the petition; the substantial amount of the judgment in comparison to Father's income; Father has been current with all support since the order was entered; and Father is now married with two other children to support.

¶14 There is a degree of injustice in that Father learned of the child fourteen years after her birth and had no opportunity to honor his support obligation prior to that time. Instead, he was penalized for the delay of Mother and/or the state of Michigan when the arrearage judgment with interest continually accruing was entered. Standing alone, the facts of this case reveal some degree of injustice. Viewed in their full context, however, we find no extraordinary circumstances of injustice.

¶15 These facts, except for the change in Arizona law and Father's timely payments, were all present when Father entered into the stipulation. Any unfairness or injustice was brought about

when Father stipulated to the past support judgment and waived his right to be heard on the unfairness of Mother and Michigan waiting fourteen years to locate Father and demand support. These extraordinary factors could have been raised at that time and may have justified some relief. However, Father voluntarily agreed to the judgment for fourteen years of past support plus interest while represented by counsel. We cannot relieve him of his own voluntary agreement absent other compelling circumstances. *See Craig v. Superior Court*, 141 Ariz. 387, 389, 687 P.2d 395, 397 (App. 1984) (holding that unfairness created by a property settlement agreement was not an extraordinary circumstance that could not have been remedied by legal review and, therefore, relief under Rule 60(c)(6) was not warranted).

¶16 A court may relieve a party from a stipulation for good cause shown and upon a timely motion. *See Anonymous v. Anonymous*, 10 Ariz. App. 496, 501, 460 P.2d 32, 37 (1969) (citation omitted); *Town of Gila Bend v. Hughes*, 13 Ariz. App. 447, 449, 477 P.2d 566, 568 (1970); *Higgins v. Guerin*, 74 Ariz. 187, 190, 245 P.2d 956, 958 (1952) (citation omitted). The trial court "may set aside a stipulation entered into through inadvertence, excusable neglect, fraud, mistake of fact or law, where the facts stipulated have changed or there has been a change in the underlying conditions that could not have been anticipated, or where special circumstances exist rendering it unjust to enforce the

stipulation." *Rutledge v. Arizona Bd. of Regents*, 147 Ariz. 534, 550, 711 P.2d 1207, 1223 (App. 1985) (citation omitted).

¶17 As stated above, all the facts Father cites were present when he entered into the stipulation, except for the change in Arizona law and his timely payments of current support. The change in Arizona law may constitute a special circumstance rendering it unjust to enforce the stipulation. However, Father was required to seek relief from the stipulation in a timely manner. Similarly, Father was required to seek relief under Rule 60(c)(6) within a reasonable time. For the reasons explained below, we conclude that he failed to do so.

¶18 "[T]he moving party is 'required to show good reason for his failure to take appropriate action sooner' and should offer 'some explanation of the delay in seeking relief[.]'" *Hilgeman v. Am. Mortgage Sec., Inc.*, 196 Ariz. 215, 220, ¶ 16, 994 P.2d 1030, 1035 (App. 2000). "The trial court has discretion to determine whether the delay in filing the motion to set aside was reasonable." *Id.* at ¶ 15 (citation omitted). Because the trial court did not consider Rule 60(c)(6), it made no findings, implicit or explicit, regarding this factor. Therefore, we consider whether there are uncontroverted facts in the record warranting relief under Rule 60(c)(6). *See Davis*, 143 Ariz. at 57, 691 P.2d at 1085.

¶19 What constitutes a "reasonable time" for purposes of Rule 60(c)(6) is not defined, but "is dependent in large measure on the

underlying facts presented and the absence (or presence) of prejudice to the judgment creditor." *Green Acres Trust v. London*, 142 Ariz. 12, 16-17, 688 P.2d 658, 662-63 (App. 1983), *aff'd in part and vacated in part on other grounds*, 141 Ariz. 609, 688 P.2d 617 (1984).

¶20 In the seven years since the stipulated judgment, Father made two unsuccessful attempts to seek relief. In 1997, a few months after the judgment, Father's attorney sought to settle for a reduced judgment after Arizona law changed to limit past support to three years. No settlement was reached. In 1999, Father went to Michigan to seek relief from the Arizona judgment for past support. The Michigan court advised him to seek relief in Arizona. Father waited four more years until ADES attempted to impose a judgment for arrearages due to the confusion over Father's summer support payments. Only then did he raise the past support issue to the court.

¶21 We conclude that, despite his prior unsuccessful efforts, Father's motion was not brought within a reasonable time. He was told in 1999 that he should seek relief in Arizona courts and failed to act until 2003 and only then after the ADES sought relief on another issue. Father was not entitled to relief under Rule 60(c)(6).

CONCLUSION

¶22 We reverse and remand to the superior court for entry of judgment in accordance with this decision. Father seeks attorneys' fees on appeal. Because we are reversing and remanding, we deny this request.

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JON W. THOMPSON, Judge

CONCURRING:

_____
LAWRENCE F. WINTHROP, Presiding Judge

_____
JEFFERSON L. LANKFORD, Judge

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	)	DEPARTMENT B
Petitioner/Appellant,	)	MARICOPA COUNTY Superior Court
v.	)	No. DR1996-019288
DANIEL W. GRAHAM,	)	O R D E R
Respondent/Appellee.	)	

The above-entitled matter was duly submitted to the Court. The Court has this day rendered its memorandum decision.

IT IS ORDERED that the memorandum decision be filed by the Clerk.

IT IS FURTHER ORDERED that a copy of this order together with a copy of the memorandum decision be sent to each party appearing herein or the attorney for such party and to The Honorable Carolyn K. Passamonte, Commissioner.

DATED this day of March, 2006.

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JON W. THOMPSON, Judge