LEXSEE

SEBRINA BRADFORD, Plaintiff, vs. MARCEL RICE, Respondent.

DOCKET NO. 1991 PS 2474

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, FAMILY COURT

2008 D.C. Super. LEXIS 8

May 14, 2008, Decided

CASE SUMMARY:

PROCEDURAL POSTURE: The Government petitioned to establish paternity and provide support. Respondent father acknowledged paternity and was ordered to pay child support. The father filed a motion to vacate the adjudication of paternity and child support order. A magistrate judge in the trial court (District of Columbia) denied the motion. The father timely appealed pursuant to D.C. Super. Ct. Fam. Div. R. D(e).

OVERVIEW: After the father learned that he suffered from a medical condition, previously unknown to him, which rendered him extremely unlikely to have fathered any children, he petitioned to have his child support obligation terminated. The magistrate found that the father's motion was untimely under D.C. Super. Ct. R. Dom. Rel. R. 60(b) and his evidence was insufficient to vacate the adjudication of paternity. The issue on appeal was whether the adjudication of paternity could be vacated many years after its entry on the basis of newly discovered evidence which demonstrated that the litigant was a biological stranger to the child. The family court concluded that because there were both extraordinary circumstances and the danger of resulting manifest injustice if the father were not allowed to present his proof of non-paternity, the father must be permitted to litigate his claim for relief from the adjudication of paternity and the consequent child support orders. The family court found that the trial court abused its discretion when it held that the father's motion was untimely pursuant to Rule 60(b)(6), because it failed to weigh all the specific circumstances surrounding the case.

OUTCOME: The magistrate's order was vacated and the case was remanded for further proceedings.

CORE TERMS: paternity, genetic, extraordinary circumstances, vacate, minor child, notice, best interest, putative, acknowledgment, biological, child support orders, medical condition, reasonable time, mistake of fact, final judgment, vacated, relieve, equitable relief, misrepresentation, non-paternity, adjudicated, justifying, abused, biological father, legal representative, pro se, discovered evidence, putative father, acknowledgement, attendant

LexisNexis(R) Headnotes

Civil Procedure > Judicial Officers > Magistrates > General Overview
Civil Procedure > Appeals > Standards of Review > General Overview
Civil Procedure > Appeals > Standards of Review > Abuse of Discretion
Civil Procedure > Appeals > Standards of Review > De Novo Review
[HN1]In reviewing a magistrate judge's decision pursuant to D.C. Super. Ct. Fam. Div. R. D, a court is required to use the same standard that the District of Columbia Court of Appeals applies in reviewing decisions of associate judges of the Superior Court of the District of Columbia. This standard provides that an order may not be set aside except for errors of law unless it appears that the order is plainly wrong, without evidence to support it, or constitutes an abuse of discretion. D.C. Super. Ct. Fam. Div. R. D. The lower court's factual findings are presumed to be correct unless they are clearly erroneous or are unsupported by the record. The reviewing court reviews legal conclusions de novo.

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

Family Law > Child Support > Procedures
[HN2]See D.C. Super. Ct. Fam. Div. R. D(e)(1).

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion
Civil Procedure > Appeals > Standards of Review > De Novo Review
[HN3]While a family court reviews legal conclusions of a trial court de novo, the grant or denial of a motion made pursuant to D.C. Super. Ct. R. Dom. Rel. R. 60(b) is entrusted to the sound discretion of the trial court and can only be disturbed on appeal if the trial judge abused that discretion.

Civil Procedure > Judgments > Relief From Judgment > Excusable Neglect & Mistakes > General Overview
Civil Procedure > Judgments > Relief From Judgment > Fraud
Family Law > Paternity & Surrogacy > General Overview
[HN4]See D.C. Code § 16-909(c-1).

Family Law > Paternity & Surrogacy > General Overview
Family Law > Paternity & Surrogacy > Establishing Paternity > Father's Acknowledgment
Family Law > Paternity & Surrogacy > Proof of Paternity > Presumptions > General Overview
[HN5]D.C. Code § 16-909(b-1)(1) (2008) provides that conclusive presumption of paternity is created, upon a result and an affidavit from a laboratory of a genetic test. Thus, a party who has had their parentage adjudicated on the basis of a genetic test can, pursuant to D.C. Code § 16-901(c-1), bring a motion under any of the subsections of D.C. Super. Ct. R. Dom. Rel. R. 60(b) seeking relief from the judgment. However, a party who, instead of having paternity determined by a genetic test, chooses to simply acknowledge under oath that they are the parent of a child pursuant to D.C. Code 16-909.01(a)(1), is only permitted to bring a challenge to the consequent adjudication of paternity on the bases of fraud, duress, or material mistake of fact.

Civil Procedure > Judgments > Relief From Judgment > Excusable Neglect & Mistakes > General Overview
Civil Procedure > Judgments > Relief From Judgment > Fraud
Family Law > Paternity & Surrogacy > General Overview
[HN6]See D.C. Super. Ct. R. Dom. Rel. R. 60(b)(3).

Civil Procedure > Judgments > Relief From Judgment > Excusable Neglect & Mistakes > General Overview
Civil Procedure > Judgments > Relief From Judgment > Fraud
Family Law > Paternity & Surrogacy > General Overview
[HN7]See D.C. Super. Ct. R. Dom. Rel. R. 60(b)(1).

Family Law > Paternity & Surrogacy > Establishing Paternity > Father's Acknowledgment
[HN8]See D.C. Code § 16-909.01(a)(1).

Civil Procedure > Judgments > Relief From Judgment > General Overview
Family Law > Paternity & Surrogacy > General Overview
[HN9]See D.C. Super. Ct. R. Dom. Rel. R. 60(b)(6).

Civil Procedure > Judgments > Relief From Judgment > General Overview
Family Law > Paternity & Surrogacy > General Overview
[HN10]An inquiry into what is a "reasonable time" for the purposes of D.C. Super. Ct. R. Dom. Rel. R. 60(b)(6) must, of necessity, include an inquiry into all of the relevant facts of the case.

Family Law > Paternity & Surrogacy > General Overview
[HN11]An adjudication of paternity in the District of Columbia confers a legal obligation to provide material support for one's child. It is silent on whether a person must also be a good parent to their child. Nor does it impose a requirement that a non-custodial parent have a relationship with their child that goes beyond providing them with material support. While a court might certainly hope that anyone adjudicated to be a parent would act at all times in their child's best interest, there is no legal requirement in the statute at issue that the parent do so.

Family Law > Paternity & Surrogacy > General Overview
[HN12]The "best interests of the child" standard generally has no place in a proceeding to reconsider a paternity declaration.

Civil Procedure > Judgments > Relief From Judgment > General Overview
[HN13]Extraordinary circumstances justifying relief from a judgment exist in contexts where fraud, perjury, or misrepresentations of a material issue of fact were involved.

Civil Procedure > Judgments > Relief From Judgment > General Overview
Family Law > Child Support > General Overview
[HN14]Manifest injustice results when a litigant is ordered to continue to pay child support for a child that is not his own, and that the traditional concerns with the finality of judgments must give way in the face of such evident injustice.

Civil Procedure > Judgments > Relief From Judgment > Fraud
[HN15]See D.C. Super. Ct. R. Dom. Rel. R. 60(c).

COUNSEL: [*1] Magistrate Judge Hugh Stevenson.

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Adrianne Day, Esq., Office of the Attorney General, Child Support Services Section, Washington, DC.

JUDGES: J. Michael Ryan, Associate Judge.

OPINION BY: J. Michael Ryan

OPINION

ORDER

This matter is before the Court on the Respondent's Motion to Review Magistrate Judge's Denial of Motion to Vacate Adjudication of Paternity and Child Support Order, and the Petitioner's Opposition thereto. The underlying order from which the Respondent seeks relief is the Memorandum Order Denying the Respondent's Motion to Vacate Adjudication of Paternity and Child Support Order that Magistrate Judge Stevenson entered on March 14, 2005. After giving careful consideration to the issues raised by the parties, the Court concludes that, for the reasons set forth more fully below, the magistrate judge's decision to deny the Respondent's motion must be reversed and the case remanded for further proceedings consistent with this opinion.

I. Background

On July 31, 1991, the government filed a Petition to Establish Paternity and Provide Support on behalf of M.B., a minor child whose date of birth is September 19, 1989, wherein [*2] it was alleged that the Respondent was the biological father of the minor child and thus that he had a legal duty to contribute to the care and maintenance of M.B. *See, e.g.,* *Butler v. Butler*, 496 A.2d 621, 622 (D.C. 1985) (holding that, in the District of Columbia, a parent has a legal duty to support his or her child until they attain the age of twenty-one or are otherwise emancipated by operation of law). Mr. Rice, who was incarcerated on an unrelated criminal matter at the time, was served with a copy of the government's petition in the District of Columbia Superior Court's "lock-up" at 9:45 a.m. on October 9, 1991--the very morning that the initial hearing in this matter was scheduled to take place. Despite the fact that the Notice of Hearing and Order to Appear which was served upon Mr. Rice indicated that, "This notice must be personally delivered to Respondent . . . on or before 10/3/91" (so as, presumably, to give Mr. Rice an adequate amount of time to prepare whatever response he may have had to the allegation that he was M.B.'s father), the paternity hearing went forward as scheduled. On that date, then Commissioner Jerry S. Byrd signed a one page form order captioned as [*3] "Adjudication of Paternity" reflecting that the Respondent had acknowledged under oath that he was the father of M.B. Thereafter, a series of child support orders were issued requiring the Respondent to provide financial support for the care and maintenance of M.B.

The case then proceeded rather unremarkably until January of 2002 when the Respondent learned that he suffers from a medical condition, previously unknown to him, which rendered him extremely unlikely to have fathered any children. Shortly after being diagnosed with this medical condition, the Respondent took M.B. for genetic testing. Based on the results of that DNA analysis which he received on February 14, 2002, he then petitioned the court *pro se* on February 25, 2002 to have his child support obligation terminated because he was, ". . . not the father of the child." Magistrate Judge Stevenson convened a hearing on the Respondent's motion, deemed it to be a motion to vacate the adjudication of paternity that then Commissioner Byrd had entered on October 9, 1991 and, declaring that the Respondent's motion was untimely under Rule 60(b) of the Superior Court Rules Governing Domestic Relations Proceedings and his evidence [*4] insufficient to vacate the adjudication of paternity, [1] denied the Respondent's Motion on June 7, 2002.

1 While Magistrate Judge Stevenson was apparently aware of the existence of the genetic tests procured by the Respondent at the June 7, 2002 hearing (he ordered the "genetic tests (sic) results

herein" to be sealed), the court did not seem to base its insufficiency of the evidence finding on them. To wit, the court found that, "There is no evidence, even assuming the Ct allow hearsay evidence of low sperm ct, that he could not have been the father of the MC conceived in later 1988 or early 1989"; and further that, "the respondent (sic) evidence is . . .insufficient even if accepted to overcome 1991 acknowledgment". This Court is unclear as to what rationale, if any, the magistrate judge used in (conditionally) receiving some of the Respondent's evidence (i.e. the hearsay testimony about his medical condition) and excluding the (hearsay) report from the laboratory containing the DNA results. *But see* D.C. Code § 16-909.01 (2007) (allowing paternity to be established by, "a result and an affidavit from a laboratory of a genetic test of a type generally acknowledged as reliable . . ."). [*5] To the extent (if any) that Magistrate Judge Stevenson's factual findings were based on the court's consideration of the genetic tests, they are clearly erroneous.

On August 20, 2003, Mr. Rice, having obtained counsel to assist him, filed the motion at issue herein, arguing that the Adjudication of Paternity should be vacated pursuant to Super. Ct. Dom. Rel. R. 60(b)(6) because of the extraordinary circumstances presented by his case and for reasons of fundamental fairness. Magistrate Judge Stevenson permitted the matter to be reopened given the important issue of law that was involved, and both the Respondent and the government submitted several additional memoranda of law in response to the court's request for supplemental briefing of the various issues presented by this case. Ultimately, on March 14, 2005, Magistrate Judge Stevenson denied the Respondent's Motion to Vacate the Adjudication of Paternity on three alternate grounds: that D.C. Code § 16-909 (c-1) prevented the Respondent from bringing a challenge to the judgment under Super. Ct. Dom. Rel. R. 60(b)(6); that, even were the Respondent allowed to assert a challenge under Rule 60(b)(6), the Respondent did not file his motion [*6] within the reasonable time required by the rule; and finally that the Respondent's conduct in taking the child for a surreptitious DNA test barred him from being able to receive equitable relief from the court. The Respondent subsequently noted a timely appeal of the magistrate judge's order pursuant to Super. Ct. Gen. Fam. R. D(e) and the parties presented oral arguments on this matter on October 26, 2005.

As set forth more fully below, the reasons articulated by the magistrate judge do not provide an adequate basis for denying the Respondent's motion. Also before the Court is the argument of the government that the Respondent's ability to obtain relief under Rule 60(b)(6) was precluded as time-barred because it was premised on mistake of fact, newly discovered evidence, and fraud or misrepresentation. The government's position is that Rule 60(b) motions premised on such grounds must be made within one year from the date of the judgment, and that the catchall provision of Rule 60(b)(6) cannot be used to avoid that time limitation. While the government has marshaled substantial authority in support of their position, it is not dispositive of the issues raised by the Respondent's motion. [*7] This Court concludes that Mr. Rice is able to proceed under Rule 60(b)(6) given the extraordinary circumstances presented by this case. [2]

2 Super. Ct. Dom. Rel. R. 60(b) contains language that is identical to that found in Super. Ct. Civ. R. 60(b). This language, in turn, duplicates that found in Fed. R. Civ. P. 60(b). For this reason, the Court has looked to cases construing both the federal and local version of Civil Procedure Rule 60(b) for guidance in interpreting Domestic Relations Rule 60(b).

II. Standard of Review

Pursuant to Super. Ct. Gen. Fam. R. D(e)(1), this Court has jurisdiction to review the trial court's Memorandum Order denying the Respondent's Motion to Vacate Adjudication of Paternity and Child Support Order. [3][HN1] In reviewing a magistrate judge's decision pursuant to Super. Ct. Gen. Fam. R. D, the Court is required to use the same standard that the District of Columbia Court of Appeals applies in reviewing decisions of associate judges of the Superior Court of the District of Columbia. *See* Comment to Super. Ct. Gen. Fam. R. D (2008); *Weiner v. Weiner*, 605 A.2d 18, 20 (D.C. 1992). This standard provides that an order may not be set aside except for errors of law unless [*8] it appears that the order is plainly wrong, without evidence to support it, or constitutes an abuse of discretion. *See* Super. Ct. Gen. Fam. R. D (2008); *Minor v. Robinson*, 117 Daily Wash. L. Rptr. 1749 (D.C. Super. Ct. 1989). The lower court's factual findings are presumed to be correct unless they are clearly erroneous or are unsupported by the record. *See* *Kramer Assocs. v. Ikam, Ltd.*, 888 A.2d 247, 254 (D.C. 2005). This Court reviews legal conclusions *de novo*. *Id*.

3 In relevant part, Super. Ct. Gen. Fam. R. D(e)(1) states, [HN2]"[w]ith respect to proceedings and hearings under paragraphs (b) and (c) of this Rule, a review of the hearing commissioner's order or judgment, in whole or in part, shall be made by a judge designated by the Chief Judge to act on all motions for review under this Rule upon motion of a party...The judge designated by the Chief Judge shall review those portions of the

> hearing commissioner's order or judgment to which objection is made, and may affirm, reverse, modify, or remand, in whole or in part, the hearing commissioner's order or judgment and enter an appropriate order of judgment."

III. Analysis

The District of Columbia Court of Appeals has never squarely decided [*9] the issue before this Court: whether an adjudication of paternity can be vacated many years after its entry on the basis of newly discovered evidence which demonstrates that the litigant is a biological stranger to the minor child. *See* V.P. v. L.S., 656 A.2d 1157, 1158 (D.C. 1995) (noting that no appeal had been taken from an order entered in 1993 that vacated a 1982 adjudication of paternity on the basis of a genetic test conclusively demonstrating non-paternity). This issue has been, however, the subject of a considerable amount of attention and scholarship in both this court and in tribunals around the country. *See generally W.F. v. K.J.*, No. PS-1322-93p, (opinion by Commissioner Goodbread) (exhaustively cataloguing cases from across the nation dealing with this issue).

In the instant case, the Respondent acknowledged under oath in open court that he was the father of the minor child, M.B., in 1991. He returned to court in 2002 following his discovery that he had a medical condition which cast doubt on his ability to have fathered children, armed with a genetic analysis that apparently indicates that he is not, in fact, M.B.'s father. He filed a motion, pursuant to Rule 60(b)(6) [*10] of the Rules Governing Domestic Relations Proceedings in the Superior Court of the District of Columbia, wherein he sought to have the underlying judgment of paternity set aside. Because his motion was subsequently denied by the magistrate judge assigned to hear it, Mr. Rice continued to have a legal duty to provide financial support for the care and maintenance of M.B though he is a biological stranger to her.

[HN3]While this Court reviews legal conclusions of the trial court *de novo*, the grant or denial of a motion made pursuant to Rule 60(b) is entrusted to the sound discretion of the trial court and can only be disturbed on appeal if the trial judge abused that discretion. *See, e.g.* Oxendine v. Merrell Dow Pharmaceuticals, Inc., 563 A.2d 330, 333 (D.C. 1989). Magistrate Judge Stevenson denied the Respondent's motion on three grounds. He first held that D.C. Code § 16-909 (c-1), a section of the code that narrows the grounds upon which a putative parent may challenge a paternity adjudication, prevented the Respondent from bringing a challenge to the judgment under Super. Ct. Dom. Rel. R. 60(b)(6). Magistrate Judge Stevenson then found in the alternative that, even were the Respondent [*11] able to assert a challenge to the adjudication of paternity under Rule 60(b)(6), the Respondent did not file his motion within a reasonable time and was thus barred from litigating the issue. Finally, the magistrate judge found that the Respondent's conduct in taking the child for a surreptitious DNA test barred him from receiving equitable relief from the Court, and denied his motion on this additional alternative ground as well. This Court is constrained to find that the trial judge committed errors of law and abused his discretion when he denied the Respondent's motion to vacate the adjudication of paternity on these grounds.

While, as set forth in more detail below, none of the aforementioned reasons provide adequate grounds to deny the Respondent's Motion to Vacate, ascertaining whether there is authority for the Respondent to proceed under Rule 60(b)(6) has proven complex. Indeed, the government's argument that allowing this litigation to proceed under Rule 60(b)(6) is precluded by the binding precedents of the District of Columbia Court of Appeals is well argued and supported. Nonetheless, after reviewing cases from this and several other jurisdictions, and upon consideration [*12] of the entire record herein, this Court finds that the scope of Rule 60(b)(6)--while narrow--is not so circumscribed as to prevent a grant of relief when a case presents truly extraordinary circumstances. Here, because there are both the requisite extraordinary circumstances and the danger of resulting manifest injustice were the Respondent not allowed to present his proof of non-paternity to the court, the Court must permit the Respondent to litigate his claim for relief from the Adjudication of Paternity and the consequent child support orders entered in this matter.

A. D.C. Code § 16-909(c-1) Does Not Apply to the Instant Matter

The first of the asserted grounds upon which the trial court based its decision to deny the Respondent's motion to vacate the adjudication of paternity, was Magistrate Judge Stevenson's analysis of the impact that D.C. Code § 16-909 (c-1) had on the Respondent's motion for relief. Because this subsection of the code restricts the possible grounds for bringing a challenge to an adjudication of paternity to "fraud, duress, or material mistake of fact," [4] the judge reasoned that that the Respondent was thus precluded from bringing a challenge under the Rule 60 (b) [*13] catchall provision--i.e. under Super. Ct. Dom. Rel. R. 60(b)(6) which allows a judgment to be set aside for, "any other reason justifying relief." However, because it is undisputed that the Respondent did not receive the procedural protections outlined in the statute that are conditions precedent for D.C. Code § 16-909 (c-1) to apply, this Court cannot agree that the Respondent is prohibited by said statute from bringing a Rule 60(b)(6) challenge to the adjudication of paternity.

4 *See* D.C. Code § 16-909 (c-1) (2008).

The parties have provided this Court with detailed and scholarly analyses of the history of D.C. Code § 16-909, its implementing legislation, and the import of the amendments that have been made to this section of the code over the last fifteen years as several pieces of landmark federal legislation have been incorporated into the statute by the legislature of the District of Columbia. As well developed as many of the legislative intent arguments proffered by the Respondent are, and as intriguing as the issue of the potential retroactive application of the amendments to the statute (both in the context of temporary emergency legislation and in final form) indubitably is, [*14] this Court finds it unnecessary to reach them. As it is undisputed that the Respondent did not receive the benefit of the procedural safeguards which were added to D.C. Code § 16-909.01 to better protect the rights of putative parents, the burden of the restrictions on a respondent's ability to challenge an adjudication of paternity--i.e. the narrowing of the grounds on which a claim can be based that are found in D.C. Code § 16-909(c-1)--cannot be fairly imputed to him.

In its current incarnation D.C. Code § 16-909 (c-1) states as follows:

> [HN4]A parent-child relationship that has been established pursuant to subsection (b-1)(1) of this section may be challenged upon the same grounds and through the same procedures as are applicable to a final judgment of the Superior Court. A parent-child relationship that has been established pursuant to (b-1)(2) of this section or section 16-909.01(a)(1) may be challenged in Superior Court after the rescission period provided by section 16-909.01 (a-1) through the same procedures as are applicable to a final judgment of the Superior Court, but only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenging [*15] party. The legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment of parentage may not be suspended during the challenge, except for good cause shown.

Subsection (b-1)(1) [HN5]of the code provides that conclusive presumption of paternity is created, "upon a result and an affidavit from a laboratory of a genetic test." D.C. Code § 16-909 (b-1)(1) (2008). Thus, a party who has had their parentage adjudicated on the basis of a genetic test can, pursuant to D.C. Code § 16-909 (c-1), bring a motion under any of the subsections of Rule 60(b) seeking relief from the judgment. However, a party who, instead of having paternity determined by a genetic test, chooses to simply acknowledge under oath that they are the parent of a child pursuant to D.C. Code 16-909.01(a)(1), [5] is only permitted to bring a challenge to the consequent adjudication of paternity on the bases of fraud, duress, or material mistake of fact.

> 5 D.C. Code § 16-909 (b-1)(2) provides that paternity is established, "If the father has acknowledged paternity in writing as provided in section 16-909.01(a)(1)."

However, even were this Court to assume *arguendo* that Magistrate Judge Stevenson [*16] was correct in asserting that fraud, duress, and material mistake of fact are all subsumed within the permissible bases for Rule 60(b)(3) [6] or Rule 60(b)(1) [7] challenges to judgments, and were the Court to further assume that the magistrate judge was also correct in asserting that a Respondent who falls within the ambit of D.C. Code § 16-909(c-1)'s narrowing of the grounds upon which to bring a challenge, is thus restricted to bringing Rule 60(b)(1) or (b)(3) motions for relief and is absolutely precluded from filing pursuant to Rule 60(b)(6), that statutorily created limitation would not apply in the instant case. The reason that § 16-909(c-1) simply cannot apply is because the Respondent's paternity was not established pursuant to D.C. Code § 16-909.01(a)(1).

> 6 Super. Ct. Dom. Rel. R. 60(b)(3) provides that, [HN6]"On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . .(3) fraud (whether previously denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party . . ."
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> 7 Super. Ct. Dom. Rel. R. 60(b)(1) provides that, [HN7]"On motion and [*17] upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . ."

The text of D.C. Code § 16-909.01 (a)(1) currently in effect is as follows:

> [HN8](a) Paternity may be established by: (1) A written statement of the father and mother signed under oath (which may include signature in the presence of a notary) that acknowledges paternity; provided that before the parents sign the acknowledgment, both have been given

> written and oral notice of the alternatives to, legal consequences of, and the rights and responsibilities that arise from signing the acknowledgment. (Oral notice may be given through videotape or audiotape.) The acknowledgement shall include the full name, the social security number, and date of birth of the mother, father, and child, the addresses of the mother and father, the birthplace of the child, an explanation of the legal consequences of the affidavit, a statement indicating that both parents understand their rights, responsibilities, and the alternatives and consequences of signing the affidavit, the place the [*18] affidavit was completed, signature lines for the parents, and any other data elements required by federal law. Nothing in this paragraph shall affect the validity of a voluntary acknowledgment of paternity executed before December 23, 1997, or preclude the submission of an acknowledgment of paternity that does not comply with the requirements of this paragraph as evidence of paternity in a judicial or administrative proceeding. . .

It is clear that Mr. Rice signed nothing of the sort contemplated by the statute when, on October 9, 1991, he wrote "I consent" and signed his name to the one page pre-printed Adjudication of Paternity form order that contained no mention of any of the legal consequences that would attend his consent. Even setting aside the assertions the Respondent made in the affidavit affixed to his motion (the most troubling of which being that, in the absence of any notice, Mr. Rice did not know why he was being led into the courtroom on the morning of October 9, 1991 and that he did not understand the nature of the proceedings that day), the Court's own records indicate that the Respondent was served with notice of the hearing on the very morning it took place. He appeared [*19] without a lawyer. He was incarcerated both before and after the hearing was held. There is nothing in the record indicating that the Respondent was ever advised of his rights and responsibilities as a parent, or of the alternatives to and consequences of acknowledging that he was the father of M.B. Nor did the statute in effect on October 9, 1991 require that he be given such notice. [8] But just as, under the statute in effect at the time, there was no defect in the process by which Mr. Rice acknowledged paternity of M.B., there was similarly no restriction on the grounds upon which he could later challenge that adjudication. [9]

8 On October 9, 1991, the comparable section of the D.C. Code was as follows: "(a) Paternity may be established by: (1) A written statement of the father and mother made under oath that acknowledges paternity . . ." D.C. Code § 16-909.01 (a)(1) (1992).

9 On October 9, 1991, the statutory provision most comparable to the current § 16-909 (c-1) was D.C. Code § 16-909 (b) (1992) ("If questioned, a presumption created by section 16-909 (a)(1) through (4) may be overcome upon proof by clear and convincing evidence that the presumed father is not the child's father. The [*20] Superior Court shall try the question of paternity and shall determine whether the presumed father is or is not the father of the child.").

Setting aside all questions of the appropriateness of giving later amendments to the D.C. Code retroactive effect, this Court cannot agree that a subsection of the code that limits the grounds upon which a later challenge to a judgment may be brought, can be construed so as to eclipse the substantial protections that it simultaneously affords to putative parents. Because the adjudication of paternity in this case was not "established pursuant to subsection (b-1)(2) of this section or section 16-909.01(a)(1)" as Mr. Rice received none of the procedural safeguards set forth with such specificity in those sections of the code, D.C. Code § 16-909(c-1)'s restrictions on the available post-judgment remedies for a party cannot apply to this Respondent. There is thus no *statutory* bar to the Respondent's ability to bring a Rule 60(b)(6) challenge to the adjudication of paternity. Therefore, this Court is constrained to conclude that, by holding otherwise, the magistrate judge erred in his application of the governing law.

B. The Respondent's Motion Was Filed [*21] Within a Sufficiently Reasonable Time for Purposes of Rule 60(b)(6)

Magistrate Judge Stevenson held that, even if there were no statutory bar to the Respondent being able to proceed with a claim for relief from the judgment pursuant to Rule 60(b)(6), the Respondent's motion must barred as untimely. The magistrate judge found that the Respondent had unreasonably delayed filing his claim for relief both because he waited nearly eleven years from the date that the adjudication of paternity was entered to file his motion to vacate that judgment in February of 2002, and because the Respondent failed to note a timely appeal of Magistrate Judge Stevenson's June 6, 2002 denial of his *pro se* motion. Because the Memorandum Order fails to address what this Court deems to be a particularly important and relevant circumstance (i.e., the speed with which the Respondent acted once he learned of his medical condition), and because Magistrate Judge

Stevenson himself allowed counsel for the Respondent to "reopen" the record of the June 6, 2002 denial for further briefing, this Court is constrained to conclude that the magistrate judge abused his discretion when he denied the Respondent's motion on this [*22] alternative ground.

Super. Ct. Dom. Rel. R. 60(b)(6) provides that, [HN9]"On motion and upon such terms as are just, the Court may relieve a party or party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time . . ." The trial court found that the passage of time between the original adjudication of paternity and the Respondent's challenge to that adjudication--a period of nearly eleven years--was not the requisite "reasonable time" that is required if a Rule 60(b)(6) motion is to be deemed to have been timely filed. However, in so holding, it appears that the judge focused exclusively on the number of years that had passed before the Respondent brought his motion, and thus did not address the rather compelling reasons *why* the Respondent might have failed to act to preserve his rights at an earlier stage and whether these reasons sound in Super. Ct. Dom. Rel. R. 60(b)(6). *See Memorandum Order* at 9.

[HN10]An inquiry into what is a "reasonable time" for the purposes of Rule 60(b)(6) must, of necessity, include an inquiry into *all* [*23] of the relevant facts of the case. *See, e.g., Puckrein v. Jenkins*, 884 A.2d 46, 57-58 (D.C. 2005). The relevant circumstances of this case include the fact that, as soon as he learned that he suffered from a medical condition making it unlikely that he could have biologically fathered children, the Respondent arranged for DNA testing to be done on himself and his putative child. Moreover, within ten days of receiving the results from the genetics lab, the Respondent was in court requesting the disestablishment of his paternity of M.B. These are not the actions of an individual who has chosen to slumber on his rights. As such these are circumstances that the magistrate judge was required to incorporate into his analysis of whether or not the Respondent's motion was time-barred under the reasonableness standard of Rule 60(b)(6).

Similarly, the very nature of what is at issue herein--the paternity of a minor child--creates a somewhat unique scenario that should have been considered by the trial court in its assessment of the reasonableness of the timeliness of the Respondent's motion. Specifically, it may only be Ms. Bradford, but is certainly not Mr. Rice, who was in possession of full [*24] information as to the potential parentage of this child. She, and not the Respondent, had access to the most pertinent details underlying the adjudication of paternity in this case. That the Respondent had insufficient notice and was incarcerated (and so had a more limited opportunity to conduct a factual investigation into M.B.'s paternity or perhaps even to have had his suspicions raised that he was not the child's father) are also facts of some consequence. But most important to this Court are the subsequent additions of the procedural safeguards to the governing statute that were described at length above. *See* D.C. Code § 16-909.01 (a)(1) (2008). There is no question that the Respondent was not the beneficiary of the additional protections set forth in that statute, nor can it be disputed that the legislature of the District of Columbia found it to be of great importance that putative parents be put on notice of the legal consequences flowing from an acknowledgement of paternity. *Id*. Yet it appears that the trial court failed to consider the Respondent's presumed lack of awareness of the consequences attendant to (as well as the rights associated with) his having acknowledged paternity [*25] of M.B., when it weighed whether or not the Respondent had filed his Rule 60(b)(6) motion within a "reasonable time." The cumulative impact of these omitted facts and circumstances (none of which are mentioned or addressed in the judge's order) is significant. An adequate "reasonableness" analysis would, of necessity, have incorporated them. Under the circumstances, this Court is thus forced to conclude that the trial court abused its discretion when it held that the Respondent's motion was untimely pursuant to Rule 60(b)(6) because it failed to adequately weigh *all* of the specific circumstances surrounding this case. *See, e.g., Puckrein* at 60 (noting that, "Generally in determining whether the trial court abused its discretion, consideration is given to 'whether the decision maker failed to consider a relevant factor, whether he [or she] relied upon an improper factor, and whether the reasons given reasonably support the conclusion . . . . Although the trial court need not give detailed reasons for its decision, there should be some indication that the court 'perceived [these] salient factors' when exercising its discretion.'") (internal citations omitted).

The circumstances outlined [*26] above are indeed sufficient to justify the Respondent's delay in filing his motion to vacate the original adjudication of paternity, and serve to bring this case within the parameters of a "reasonable time" for the purposes of a Rule 60(b)(6) motion. Respondent's failure to appeal the judge's initial denial of his motion in June of 2002 does not appreciably change this calculus. Magistrate Judge Stevenson himself allowed the Respondent to re-open this matter in August of 2003, with the assistance of counsel. Furthermore, foreclosing the possibility that a *pro se* Respondent, who had walked into court with scientific evidence supporting his contention that he was not M.B.'s father but had been rebuffed by the Court for having provided insufficient evidence to support his claim, could later challenge that

ruling outside of the thirty day period provided for filing a motion for review pursuant to Family Rule D, [10] is a harsh and unwarranted interpretation of the reasonableness requirement of Rule 60(b)(6). In any event, the Court finds that the Respondent's failure to appeal the denial of his motion in June of 2002 does not sufficiently counterweigh all of the other attendant circumstances [*27] of this case as here set forth. Therefore, the Court concludes that the Respondent's motion is not time-barred under the "reasonable time" requirement of Rule 60(b)(6).

10 *See n*.3 *infra*.

C. The Respondent's Conduct Does Not Bar Him from Obtaining Equitable Relief

Magistrate Judge Stevenson also held that the Respondent's conduct in taking M.B. to a genetics laboratory without the consent of her mother barred him from obtaining "what is essentially equitable relief" from the Court. *Memorandum Order* at 10. It is certainly true that the Respondent could have petitioned the Court for permission to seek a genetic test before subjecting M.B. to one; but it appears that the Respondent was not advised of his right to do so at any point in the earlier proceedings. Had he been so advised, this Court would perhaps have been more inclined to share the magistrate judge's opinion on this issue. In the absence of evidence of such advice, and because his conduct was not otherwise proscribed by law, this one act cannot, in and of itself, bar the Respondent from being able to obtain equitable relief from the court.

Indeed, many of the courts that have grappled with this issue have *required* that a putative [*28] father present some sort of affirmative evidence (such as an exclusionary genetic test) to support his claim that he is not the biological parent of a minor child after having been previously adjudicated as such, before they will consider a motion similar to the one filed by the Respondent. *See, e.g., W.F. v. K.J.*, No. PS-1322-93p, (opinion by Commissioner Goodbread) (suggesting that a motion for relief from a paternity judgment *must* be accompanied by a proffer of persuasive evidence of non-paternity (such as a privately-obtained blood test) if it is to be considered by the court); *accord* *Ferguson v. Alaska*, 977 P.2d 95 (Alaska 1999). Under these circumstances, this Court is again constrained to find that the magistrate judge abused his discretion when he held that because the Respondent took M.B. for a private genetics test, he was barred from being able to obtain equitable relief from the court.

D. While Best Interests of the Child Are Not Relevant to this Analysis, the Court Must Consider Prejudice to the Non-Movant

The magistrate judge also took testimony on whether or not it was in the best interest of the minor child to have the adjudication of paternity in this case vacated. It [*29] appears that the child knows the Respondent as her father and has had meaningful contact both with him and with his family members over the years, and the judge ultimately determined that it would not be in M.B.'s best interest to have the Respondent's paternity legally nullified. *Memorandum Opinion* at 10-11. While the question of whether it is in a child's best interest to have the courts continue to recognize a biological stranger as her biological father is an extraordinarily complicated, deeply individualized, and ultimately fact-intensive one, this Court need not reach it to resolve this matter. [11]

11 There is no question that the psychological, medical, economic, social, and emotional issues raised by such a situation are multi-layered and complex. There are compelling arguments to be made both in support of maintaining the legal fiction of the Respondent's biological paternity or, alternatively, for allowing the biological truth to be revealed to the child. This case's procedural posture, the complexity of the issues presented, and the regrettable passage of time in this case as well make what is in M.B.'s actual best interest speculative at best.

[HN11]An adjudication of paternity [*30] in the District of Columbia confers a legal obligation to provide material support for one's child. *Butler*, 496 A.2d at 622. It is silent on whether a person must also be a good parent to their child. Nor does it impose a requirement that a non-custodial parent have a relationship with their child that goes beyond providing them with material support. While we might certainly hope that anyone adjudicated to be a parent would act at all times in their child's best interest, there is no legal requirement in the statute at issue that the parent do so. [12] Thus, while the Court understands the attention paid by the magistrate judge to the "best interests" of the minor child at issue herein (*Memorandum Opinion* at 10-11), no authority placed this inquiry properly before him. [13]

12 The Court notes that this inquiry would be radically different if the putative parent had assumed a custodial role in the child's life. Custody determinations are, of course, governed by the best interest of the child standard. *See* D.C. Code § 16-914 (a)(1)(A) ("In any proceeding between parents in which the custody of a child is raised as an issue, the best interest of the child shall be the primary consideration"). [*31] The record before this Court, however, does not indicate that the child has ever lived (either full or part-time)

with the Respondent, or that the Respondent's relationship with the child has been particularly extensive.

13 *But see W.F. v. K.J.*, No. PS-1322-93p (opinion by Commissioner Goodbread) (finding that the best interest of the child is the dispositive factor in an analysis of whether an adjudication of paternity can ever be vacated).

As the Maryland Court of Appeals articulated in *Langston v. Riffe*, 359 Md. 396, 754 A.2d 389 (Md. 2000), [HN12]"the 'best interests of the child' standard generally has no place in a proceeding to reconsider a paternity declaration." *Id.* at 425; *see generally Solid Rock Church, Disciples of Christ v. Friendship Public Charter School, Inc.*, 925 A.2d 554, 561 (D.C. 2007) (noting that, in the absence of D.C. common law, courts in this jurisdiction should look to Maryland common law for guidance). This is because such considerations have no place in original adjudications of paternity where a legal duty, rooted in biology, [14] is fixed. *Langston* at 425. Indeed such adjudications were historically largely *pro forma* court hearings (as it appears the one in this case was) where [*32] there was no exploration of the parties' circumstances outside of an inquiry into their respective incomes and resources, nor any meaningful consideration given to the non-material needs of the minor children at issue.

14 There may well be (*see supra n.* 12), and most certainly are, cases where a non-biological parent has assumed a custodial role over a child thus rendering the instant analysis inapt. *See K.A.T. v. C.A.B.*, 645 A.2d 570, 572-74 (D.C. 1994) (discussing applicability of paternity by estoppel); *see generally K.H. v. R.H.*, 935 A.2d 328 (D.C. 2007); (discussing whom is considered a parent and their attendant rights and duties within the context of the interplay between the District's laws governing custody and neglect proceedings); *W.D. v. C.S.M.*, 906 A.2d 317 (D.C. 2006) (same).

While it is indubitably incumbent upon this Court to examine the prejudice to the non-moving party when considering whether or not to grant a motion made pursuant to Rule 60(b)(6), [15] there is little support for the proposition that this inquiry can fairly be equated with an inquiry into what is in the best interest of the minor child. Under the circumstances presented here, where it appears that the [*33] minor child is aware of the results of the genetic test and of the Respondent's assertion that those test results belie his paternity of her, and for the reasons outlined in more detail below, the Court finds that any potential prejudice to the non-movant does not outweigh that prejudice which would accrue to the Respondent were he not allowed to proceed with his claim for relief.

15 *See, e.g., Clement v. District of Columbia Department of Human Services*, 629 A.2d 1215, 1219 (D.C. 1993).

E. Sufficiently Extraordinary Circumstances Exist So As to Warrant Allowing the Respondent To Proceed Under Rule 60(b)(6)

The issue left to be addressed is that which has been most troubling throughout consideration of this matter. Simply put, the Respondent is alleging that he is entitled to relief from the 1991 Adjudication of Paternity because of, alternately and collectively, a mistake of fact, newly discovered evidence which by the exercise of due diligence could not have been known to him at the time of the original adjudication, and the Petitioner's misrepresentations to him that he was the father of the minor child. All of these rationales, taken individually or cumulatively, are arguably subsumed [*34] by the grounds set forth in sections (1) through (3) of Rule 60(b) and thus his motion for relief predicated on them must have been made, "not more than one year after the judgment, order, or proceeding was entered or taken." Super. Ct. Dom. Rel. R. 60(b). [16] Over a decade passed before the Respondent filed his motion in this case. And while Rule 60(b)(6) allows the Court to, "relieve a party or a party's legal representative from a final judgment, order, or proceedings for . . . (6) any other reason justifying relief from the operation of the judgment", relief under this subsection is not meant to render meaningless the one-year time limit on motions brought for the reasons set forth in sections (1) through (3) of the Rule. *See, e.g., Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Science, Inc.*, 858 A.2d 457, 464-65 (D.C. 2004) (noting that, "Subsection (b)(6) does not authorize a court to grant relief for reasons that are specified in other subsections of the Rule."); *Cox v. Cox*, 707 A.2d 1297, 1299-1300 (D.C. 1998) (same).

16 The full text of Superior Court Rule 60(b) of the Rules Governing Domestic Relations Proceedings is as follows: "On motion and upon such terms [*35] as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under SCR-Dom. Rel 59(b); (3) fraud (whether previously denominated intrinsic or extrinsic), misrepresentation, or other misconduct of the adverse party; (4) the judgment is void; (5) the judgment

> has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken."

However, this jurisdiction, following the lead of the Supreme Court in *Klapprott v. United States*, 335 U.S. 601, 613, 69 S. Ct. 384, 93 L. Ed. 266 (1949) and many other jurisdictions, has recognized that certain cases present such extraordinary situations--where [*36] an extreme hardship is created by the continued operation of the judgment--that relief under subsection (b)(6) may be warranted even though a motion might have been more properly filed pursuant to subsections (b)(1) through (b)(3) within the one-year window after the entry of a judgment. *See, e.g., Estate of Ethel Starr*, 443 A.2d 533, 538 (D.C. 1982) (noting that such relief may be proper in extraordinary circumstances when a judgment would cause an extreme or undue hardship); *accord* 11 Charles A. Wright et al., *Federal Practice and Procedure* § 2864 at 357 (2d edition 1995) (noting that, "In order to allow relief in deserving cases without generally abrogating time restrictions when relief is sought more than a year after judgment is entered, the courts have developed and applied an 'extraordinary circumstances' test. If the reasons for seeking relief could have been considered in an earlier motion under another subsection of the rule, then the motion will be granted only when extraordinary circumstances are present.").

Thus the issue before this Court is whether or not there are sufficiently extraordinary circumstances presented by this case so as to permit the Respondent's motion [*37] for relief, made pursuant to Rule 60(b)(6), to proceed. The Court is persuaded that this is, in fact, one of these exceptional cases and, further, that it would be manifestly unjust to preclude a Respondent, who has both credible proof of his factual non-paternity and a reasonable and good faith reason for not having obtained such proof until many years after his paternity was originally adjudicated in flawed proceedings, from attempting to relieve himself from a financial obligation to provide support for a child (said obligation having been accrued solely on the basis of his presumed biological relationship to her) to whom he has no biological relationship.

The District of Columbia Court of Appeals has, quite properly, made the scope of this "extraordinary circumstances" exception to Rule 60(b)(6) narrow lest it serve to nullify the more stringent time restrictions specified elsewhere in Rule 60(b). Nonetheless, the Court of Appeals has found that [HN13]extraordinary circumstances justifying relief from a judgment exist in contexts where fraud, perjury, or misrepresentations of a material issue of fact were involved. *See Miranda v. Contreras*, 754 A.2d 277, 281 (D.C. 2000) (finding that, [*38] "a judgment secured by misrepresentations by one counsel to another is an "extraordinary circumstance" warranting relief under Rule 60(b)(6)"); *see also Oxendine v. Merrell Dow Pharmaceuticals, Inc.*, 563 A.2d 330, 333-34 (D.C. 1989) (discussing the impact of perjured testimony on a claim for relief under Rule 60(b)(6)). Other opinions of the Court of Appeals also provide guidance as to when a motion made pursuant to Rule 60(b)(6) may be deemed meritorious. *See generally Puckrein*, 884 A.2d at 59 (discussing availability of alternative remedies as an important consideration in determining whether or not sufficiently "extraordinary circumstances" exist so as to permit a Rule 60(b)(6) motion to proceed); *Tennille v. Tennille*, 791 A.2d 79, 83 (D.C. 2002) (noting that, "a necessary prerequisite to relief under Rule 60(b)(6) is that, 'circumstances beyond the [moving party's] control prevented timely action to protect its interests'") (internal citations omitted); *Partnership Placements, Inc. v. Landmark Insurance Company*, 722 A.2d 837, 843-44 (D.C. 1998) (noting that, "While the scope of Rule 60(b)(6) 'cannot be defined with exactness, its scope does not include those reasons set forth in [*39] [subsections (1) and (3), and by implication (2)]. To warrant relief under [Rule] 60(b)(6) there must be some 'other reason'") (internal citations omitted); *Starling v. Jephunneh Lawrence and Associates*, 495 A.2d 1157, 1161-62 (D.C. 1985) (discussing the impact of counsel's personal problems on a Rule 60 (b)(6) motion); *Estate of Ethel Starr*, 443 A.2d at 538 (discussing the impact on a Rule 60(b)(6) motion of a waiver of a real estate commission that was not made fully knowingly and voluntarily); *L.P. Steuart Inc. v. Matthews*, 329 F.2d 234, 117 U.S. App. D.C. 279 (U.S. App. DC 1964) (upholding the reinstatement of a claim pursuant to Rule 60(b)(6) when a party's attorney had neglected the claim).

These authorities, taken together, have convinced the Court that the extraordinary circumstances which exist in this case justify relieving the Respondent from the judgment in question. While the Respondent's claim for relief is that he made a mistake of fact, that he has newly discovered evidence that casts doubt on his paternity of the child, and that the Petitioner misled him into believing that he was M.B.'s father--all of which are Rule 60(b)(1) -- (3) grounds--it is also true that there are additional circumstances [*40] involved that constitute the "some other reason" that the cases cited above would require before the Respondent could be allowed to proceed with a claim for relief under Rule 60(b)(6). Specifically, the Court is troubled by the absence of any alternative means by which the Respondent might be able to

obtain relief were he not allowed to proceed with the instant motion. Likewise, the Court is troubled by the perfunctory nature of the notice and hearing--apparently common at that time--at which the Respondent's paternity was originally adjudicated, and by the D.C. Council's subsequent statutory amendments requiring that similarly situated individuals be notified, as the Respondent was not, of the rights and responsibilities attendant to an acknowledgment of paternity. The Court also notes the unique nature of the reliance that a putative father might reasonably place on the representations of the mother of the child in these circumstances as she, and not he, is the only party with the potential to have had full access to all of the relevant facts underlying such an adjudication. That the Respondent acted with diligence and with expedience in seeking to protect his rights upon learning [*41] of his medical condition also weighs heavily in this Court's consideration of the surrounding circumstances.

Moreover, courts in this jurisdiction and around the country have found that "extraordinary circumstances" warranting Rule 60(b)(6) relief exist in cases that are quite similar to the one at issue herein. *See generally W.F. v. K.J.*, No. PS-1322-93p, (opinion by Commissioner Goodbread) (exhaustively analyzing cases on this issue from across the nation, and ultimately concluding that a paternity judgment could be reopened pursuant to Rule 60(b)(6) on the basis of extraordinary circumstances so long as the motion was accompanied by a convincing proffer of non-paternity). [17] The common rationale in these decisions is that [HN14]manifest injustice results when a litigant is ordered to continue to pay child support for a child that is not his own, [18] and that the traditional concerns with the finality of judgments must give way in the face of such evident injustice. *See, e.g., Wisconsin ex rel M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 363 N.W. 2d 419 (Wisconsin 1985) (noting that, even in circumstances where relief might be appropriate under subsection (b)(1) through (3) of Rule 60 and more than a year has passed [*42] since entry of the judgment, relief pursuant to (b)(6) is available if extraordinary circumstances exist; and finding that the requisite extraordinary circumstances existed in a case where the respondent had proof that he was not the biological father of a minor child of whom he had previously acknowledged paternity); *see also M.A.S. v. Mississippi Department of Human Services*, 842 So. 2d 527 (Miss 2003) (vacating a paternity order pursuant to Rule 60(b)(6) when a DNA test, conducted ten years after the entry of the judgment, revealed that the putative father was not the child's biological father); *Smith v. Department of Human Resources*, 226 Ga. App. 491, 487 S.E. 2d 94 (Ga.App. 1997) (putative father's failure to demand a blood test at the time of his acknowledgment of paternity did not bar him from seeking relief from that judgment over three years later when he had obtained genetic test results indicating that he was not the child's father).

17 Commissioner Goodbread's extensive research on this subject revealed that, at least as of the date of his opinion, similar motions had been granted in 33 states. *Id*. at 71. Of particular interest to this Court is that both of our neighboring jurisdictions--Maryland [*43] and Virginia--have allowed such challenges to proceed. *Id*. at *n*.52. The Court also notes that such a motion was apparently granted by the trial court in *V.P. v. L.S.*, 656 A.2d 1157 (D.C. 1995), although the Court of Appeals expressly declined to rule on the propriety of the trial court's ruling.

18 There are also significant additional collateral consequences (with lifelong ramifications for the parties) of such an adjudication in such varied contexts as insurance benefits, intestate succession, and estate planning.

The court in *Wisconsin ex rel M.L.B*. paid particular attention to the circumstances surrounding the putative parent's original acknowledgement of paternity and listed several factors that it considered particularly salient in reaching its decision. Among them was whether the putative parent's acknowledgement of paternity was the result of a conscientious and well-informed choice as well as whether the putative parent was represented by counsel at the time he made his waiver. *Wisconsin ex rel M.L.B.*, 363 N.W.2d at 427. [19] While the government correctly points out in its brief that the circumstances surrounding the Respondent's paternity hearing in October of 1991 were by no [*44] means unusual in that many individuals have appeared *pro se* in such matters in D.C. Superior Court and/or been provided notice of the hearing only very shortly before it was scheduled to begin, this Court remains troubled by the factual circumstances surrounding the initial acknowledgment of paternity in this case. Any attempt to find indicia of knowledge of material facts or voluntariness of waiver simply fails in the absence of evidence. *Cf. Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). Thus, on this record, the Court is not able to classify the Respondent's initial acknowledgement of his paternity of M.B. as a product of his deliberate, voluntary, and informed choice. *Compare Klapprott*, 336 U.S. 942, 69 S. Ct. 384, 69 S. Ct. 398, 93 L. Ed. 1099 (finding extraordinary circumstances justifying relief existed where the petitioner had not been represented by counsel and was incarcerated during the relevant time period) *with Ackermann v. United States*, 340 U.S. 193, 71 S. Ct. 209, 95 L. Ed. 207 (1950) (finding no extraordinary circumstances existed where the petitioner, who was represented by counsel, made a conscious, knowing, voluntary, and deliberate choice not to appeal an adverse decision).

19 The Wisconsin court specifically articulated the following criteria [*45] for the lower court's consideration: ". . . the court should consider factors relevant to the competing interests of finality of judgments and relief from unjust judgments, including the following: whether the judgment was the result of the conscientious, deliberate and well-informed choice of the claimant; whether the claimant received the effective assistance of counsel; whether relief is sought from a judgment in which there has been no judicial consideration of the merits and the interest of deciding the particular case on the merits outweighs the finality of judgments; whether there is a meritorious defense to the claim; and whether there are intervening circumstances making it inequitable to grant relief". *Id.*at 427.

This fact, combined with the existence of the other circumstances here set forth, convinces the Court that the Respondent should be permitted to proceed with his motion. Were this Court to rule otherwise, it would leave intact a judgment with far-ranging and permanent implications (for life and health insurance purposes, inheritance purposes, and estate planning purposes, to name just a few) for the Respondent (as well as for M.B.) that he would never be able to change [*46] or amend. Indeed, the Respondent would be left without any remedy available to him at law were the Court to deny this motion. The Court is also persuaded that the resolution of this matter will have far-reaching implications for the parties and thus that the importance of an adjudication on the merits (particularly as it appears that the Respondent would have a meritorious defense) should be given greater value than the traditional interest in the finality of judgments that supports a strict and more narrowly circumscribed interpretation of the reach of relief that is available pursuant to Rule 60(b)(6).

The Court is also impressed by the clear legislative intent evinced by the D.C. Council when it amended D.C. Code § 16-909.01 (a)(1) so as to afford more procedural protections and safeguards to putative parents. It is clear that the Council wanted litigants in the Respondent's position to be better informed as to the rights and responsibilities that are being determined in a paternity case. These enhanced waiver provisions, particularly when read in conjunction with the widespread availability of genetic testing pursuant to D.C. Code § 16-2343, can be fairly interpreted as demonstrating [*47] that the Council wanted to ensure that erroneous paternity adjudications are kept to a minimum given the important interests that are at stake.

Moreover, this is a case where a contrary decision might undermine public confidence in the judicial system. Genetic tests are widely available and well-known to the general public. Indeed, DNA analysis is so routinely discussed not only in civil and criminal courtrooms around the country but also in all news and information media, that it has become part of our communal lexicon. Thus, were the public to learn that the same court system which makes DNA testing available as a matter of right in other civil paternity cases and to criminal defendants charged with certain crimes because of its ability to exclude persons as the source of biological material, [20] ignored the results of such testing in a paternity case, public confidence in the court system may well be undermined to some extent. [21]

20 *See* the Innocence Protection Act of 2001, codified at D.C. Code § 22-4131 et seq.

21 *See, e.g., Wisconsin ex rel M.L.B.*, 363 N.W.2d at 428 (noting that, ". . . a court's adherence to a paternity agreement entered into by an 18-year-old putative father, without [*48] counsel, without a blood test, when a subsequent blood test offered in proof positively excludes the male as the father, might very well undermine the public's faith in our system of justice.")

Given the lack of a knowing waiver, the Respondent's diligence in bringing this matter before the court as soon as he learned of his medical condition, the existence of a presumably meritorious defense to the claim that he is M.B.'s biological father, the unique nature of the judgment at issue herein, and the long-term implications of that judgment for all of the parties, the Court finds that there is the requisite some "other reason" which brings this case within the scope of a Rule 60(b)(6) motion. And for all of the reasons set forth above, this Court finds that sufficiently extraordinary circumstances exist so as to permit Respondent's Rule 60(b)(6) motion to proceed.

F. The Scope of Relief Available to the Respondent in this Proceeding

Rule 60(c) of the Superior Court Rules Governing Domestic Relations Proceedings provides that, ". . . [HN15]This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a [*49] judgment for fraud upon the court." The D.C. Court of Appeals has recognized the right to an independent equitable action in certain highly circumscribed circumstances. *See, e.g., Puckrein*, 884 A.2d at 54. As such an action is not before this Court, no assessment of its potential merits is appropriate. This Court would simply note, however, that it (as well as the magistrate judge to whom this case is assigned upon remand) is precluded from awarding affirmative relief in this matter (i.e. a refund of any child support paid prior to the Respondent's filing his motion to vacate in 2002), but rather is

limited at this juncture to setting aside the adjudication of paternity. *See, e.g.* *V.P. v. L.S.*, 656 A.2d 1157, 1158-59 (D.C. 1995) (noting that, "'Rule 60(b) is available, however, only to set aside the prior order or judgment. It cannot be used to impose additional affirmative relief.'"; and that, "'Claims for affirmative relief beyond the reopening of a judgment cannot be adjudicated on a Rule 60(b) motion, but must be asserted in a new and independent suit.'") (internal citations omitted).

G. The State of the Record and Proceedings on Remand

Because there has been no judicial finding [*50] of the Respondent's non-paternity of the minor child, this Court will not vacate the 1991 Adjudication of Paternity or the attendant child support orders. Instead, this Court vacates both of Magistrate Judge Stevenson's Orders Denying the Respondent's Motions to Vacate the Adjudication of Paternity and will remand this case for a hearing on the Respondent's original *pro se* motion and for further proceedings consistent with this opinion.

IV. Conclusion

For the reasons stated above, and after giving full consideration to the entire record herein, this Court concludes that errors of law and abuse of discretion resulted in the denial of the Respondent's Motion to Vacate Adjudication of Paternity and Child Support Order.

WHEREFORE, it is by the Court this 14th day of May 2008, hereby

ORDERED that Magistrate Judge Stevenson's Orders of March 14, 2005 and of June 7, 2002, dismissing the Respondent's Motion be, and hereby are, **VACATED**; and it is further

ORDERED that this case is **REMANDED** for proceedings consistent with this opinion.

J. Michael Ryan

Associate Judge

Signed in Chambers

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