STATE OF MICHIGAN

COURT OF APPEALS

CANDACE MAE BECKWITH,

Plaintiff-Appellee,

and

ADAM BECKWITH,

Interested Party,

v

DANIEL LOUIS QUINN,

Defendant-Appellant.

UNPUBLISHED
November 17, 2009

No. 292354
Genesee Circuit Court
Family Division
LC No. 08-280313-DP

Before: Hoekstra, P.J., and Murray and M.J. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order, entered in favor of plaintiff and interested party Adam Beckwith ("Beckwith"), dismissing plaintiff's complaint in this paternity action. We affirm.

Defendant argues that the trial court erred by dismissing plaintiff's complaint based on a lack of standing. Whether a party has standing to commence proceedings under the Paternity Act, MCL 722.711 *et seq.*, as well as issues of statutory interpretation, involve questions of law that we review de novo. *Barnes v Jeudevine*, 475 Mich 696, 702; 718 NW2d 311 (2006); *State Farm Fire & Casualty Co v Corby Energy Service, Inc*, 271 Mich App 480, 483; 722 NW2d 906 (2006).

Standing to pursue relief under the Paternity Act, MCL 722.711 *et seq.*, is conferred on (1) the mother of a child born out of wedlock, (2) the father of a child born out of wedlock, or (3) the Family Independence Agency on behalf of a child born out of wedlock who is being supported in whole or in part by public assistance. MCL 722.714(1) and (8); *McHone v Sosnowski*, 239 Mich App 674, 677-678; 609 NW2d 844 (2000). Thus, under the statute, one of the key elements for standing is the determination whether a child is born out of wedlock. A "child born out of wedlock" is defined as "a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has

determined to be a child born or conceived during a marriage but not the issue of that marriage." MCL 722.711(a); *In re KH*, 469 Mich 621, 631-632; 677 NW2d 800 (2004).

In this case, it is indisputable that Beckwith and plaintiff were married during the time the child was conceived and born. Although they were not living together for the time in which defendant and plaintiff engaged in a relationship, neither plaintiff nor Adam ever took any steps to end their marriage. The allegation in plaintiff's complaint, which defendant admitted, was that the child was born out of wedlock. However, the allegation was a complete misrepresentation of the known marital situation of plaintiff and Beckwith. Further, as the trial court stated, there had been no prior judicial determination that the child was not an issue of the marriage.

In *Aichele v Hodge*, 259 Mich App 146, 165; 673 NW2d 452 (2003), this Court noted that a party does not "have standing simply because he so alleges." Rather, standing is a fact, not an allegation. *Id*. The facts are clear in the instant case that the child was not born out of wedlock and there had been no judicial determination that the child was not an issue of the marriage.[1] Therefore, the trial court did not err by dismissing plaintiff's complaint.[2]

Defendant also argues that the complaint should not have been dismissed because he is afforded standing under the Child Custody Act, MCL 722.23. Although plaintiff as a parent of the child is a proper party under the Child Custody Act, she did not bring her action under the Child Custody Act and made no references to this act in her complaint. Further, as stated in *Aichele, supra* at 167:

> A man is a parent under the Child Custody Act only if (1) he is presumed to be a parent by law because the child was born in wedlock, (2) there has been a prior court determination that he is the parent of a child born out of wedlock, or (3) he has acknowledged parenthood of a child born out of wedlock.

Additionally, neither the agreement of the parties nor the admissions in the pleadings can overcome the presumption of legitimacy that the law confers on a child from an intact marriage. *Aichele, supra* at 167. Defendant is not a parent because none of these criteria have been met and the trial court did not make a finding that this presumption was overcome. Therefore, defendant did not have standing to initiate or continue the proceedings under the Child Custody Act.

---

[1] The results from the court ordered paternity test do not affect our conclusion because the trial court did not consider the test and made no judicial determination regarding whether the child was not an issue of the marriage. *Aichele, supra* at 148.

[2] Defendant's argument to the contrary is made with cases decided well before *Aichele*, *McHone*, and other more recent decisions decided under the current version of the paternity act. Indeed, defendant does not even cite to those more recent and controlling decisions. MCR 7.215(J)(1).

Finally, defendant argues that he has standing because he has a constitutionally protected liberty interest due to his biological link to the child and his established relationship with the child. In support of this argument, he relies on language found in *Hauser v Reilly*, 212 Mich App 184, 188; 536 NW2d 865 (1995), which stated:

> [I]f plaintiff in this case had an established relationship with his child, we would hold that he had a protected liberty interest in that relationship that entitled him to due process of law. However, because plaintiff has no such relationship, we hold that the Paternity Act did not deny him his right to due process.

However, this Court has previously characterized this language from *Hauser* as dicta and declined to apply it in *Aichele*, *supra* at 167-168, and *McHone*, *supra* at 678-679. As noted in *Aichele*, this state has yet to hold that a putative father of a child born in wedlock, without a court determination of paternity, has a protected liberty interest with respect to a child he claims as his own. *Aichele*, *supra* at 168. As we held in *Sinicropi v Mazurek*, 273 Mich App 149, 170; 729 NW2d 256 (2006), "[i]t thus appears that the current state of the law in Michigan is that a putative father of a child born in wedlock has no constitutional liberty interest relative to commencing a paternity action and requesting custody or parenting time regardless of a biological connection to the child and the presence of a parent-child relationship." Again, this case involves a child born in wedlock. Therefore, regardless of defendant's biological connection or any parent-child relationship, the trial court's decision not to recognize standing under a theory of a due process liberty interest was not in error.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Christopher M. Murray
/s/ Michael J. Kelly