

SUPREME COURT OF KENTUCKY

J.A.S. v. Bushelman

342 S.W.3d 850 (Ky. 2011) · Decided May 19, 2011

SUMMARY

The Kentucky Supreme Court held that Kentucky courts have subject matter jurisdiction to adjudicate a paternity action concerning a child born to a married woman, even when she maintained a sexual relationship with her husband during the relevant period. The Court construed KRS 406.011 as codifying a rebuttable presumption of paternity rather than restricting jurisdiction, held that the putative biological father had standing under KRS 406.021, and overruled J.N.R. v. O'Reilly to the extent it was viewed as binding precedent.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Venters; Venters; Abramson; Cunningham; Minton; Noble; Schroder; Scott; Venter
JURISDICTION	Kentucky
DECIDED	May 19, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal as a matter of right from the Court of Appeals' denial of a petition for a writ of prohibition seeking to prevent a Kenton Family Court judge from adjudicating a paternity action.
STANDARD OF REVIEW	A writ of prohibition is available under the first Hoskins prong when a lower court is allegedly proceeding outside its subject matter jurisdiction. The Supreme Court reviewed the jurisdictional and standing issues in that writ proceeding.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	J.A.S. v. Lisa O. Bushelman, Judge, C.H.E., Real Party in Interest

TOPICS

paternity

subject matter jurisdiction

standing

statutory interpretation

writ of certiorari

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether KRS 406.011 limits subject matter jurisdiction over paternity actions to cases involving a child whose mother's marital relationship ceased more than ten months before birth.
2. Whether a child born to a married woman may be considered a child born out of wedlock when the alleged biological father is not her husband.
3. Whether a putative father may initiate a paternity action concerning a child born to a married woman whose marriage remained intact.
4. Whether the trial court was proceeding outside its subject matter jurisdiction so as to justify a writ of prohibition.

HOLDINGS

1. KRS 406.011 does not define the jurisdictional limits of paternity actions or bar courts from adjudicating the paternity of a child born to a married woman. KRS 406.051 governs subject matter jurisdiction for an action brought under KRS Chapter 406.
2. The husband of a mother is presumed to be the father of a child born during the marriage or within ten months after termination of the marriage or marital relationship, but the presumption is rebuttable and does not make the husband's paternity conclusive.
3. DNA evidence may be used as an evidentiary means to rebut the traditional presumption of paternity when it establishes biological paternity with the required degree of certainty.
4. A birth out of wedlock under KRS 406.180 occurs when a child is born to a woman who, regardless of her marital status, was not lawfully married to the biological father at the time of conception or birth.
5. C.H.E. had standing under KRS 406.021 to initiate the paternity action as a putative father.
6. A writ of prohibition was unavailable because the trial court was acting within its subject matter jurisdiction and had properly denied J.A.S.'s motion to dismiss.

KEY QUOTATIONS

"We do not agree that KRS 406.011 is the jurisdictional turnstile that limits access to court for paternity claims, or that it establishes the definition of "child born out of wedlock." (855)

"It determines only whether or not the burden of proof in a paternity case will be influenced by the presumption of paternity." (856)

"The presumption is rebuttable by any ordinary evidentiary means, but is overcome only by evidence so convincing as to remove the question from the realm of reasonable doubt." (862)

"We hold that a "birth out of wedlock" under KRS 406.180 occurs when a child is born to woman who, regardless of her marital status, was not lawfully married to the biological father at the time of the child's conception or at the time of the child's birth." (864)

FACTUAL BACKGROUND

J.A.S. was married to R.S., and they continued to live together and have regular sexual intercourse throughout the period when J.A.S. had a sexual relationship with C.H.E. J.A.S. gave birth to N.R.S. on September 8, 2008, and a DNA test later indicated a 99.9429 percent probability that C.H.E. was the biological father. C.H.E. sought to establish paternity under KRS Chapter 406, while J.A.S. argued that the court lacked jurisdiction because the child was born during her marriage and because her marital relationship with R.S. had not ceased.

PROCEDURAL HISTORY

C.H.E. filed a paternity action under KRS Chapter 406 concerning a child born to J.A.S. while she was married to R.S. J.A.S. moved to dismiss, arguing that the trial court lacked subject matter jurisdiction and that C.H.E. lacked standing. The Kenton Family Court denied the motion after finding that the marital relationship had ceased more than ten months before the child's birth. The Court of Appeals denied J.A.S.'s writ petition, and the Supreme Court of Kentucky affirmed, although on different grounds.

DISPOSITION

affirmed

CASES CITED

- Hoskins v. Maricle, 150 S.W.3d 1 (Ky. 2004)
- Goss v. Froman, 89 Ky. 318, 12 S.W. 387 (1889)
- J.N.R. v. O'Reilly, 264 S.W.3d 587 (Ky. 2008)
- Wave v. Commonwealth, 47 S.W.3d 333 (Ky. 2001)
- Cornelison v. Commonwealth, 990 S.W.2d 609 (Ky. 1999)
- Bartlett v. Commonwealth ex rel. Calloway, 705 S.W.2d 470 (Ky. 1986)
- Tackett v. Tackett, 508 S.W.2d 790 (Ky. 1974)
- Tarter v. Medley, 356 S.W.2d 255 (Ky. 1962)
- Ratliff v. Ratliff, 298 Ky. 715, 183 S.W.2d 949 (1944)
- Boyers v. Boyers, 283 Ky. 1, 140 S.W.2d 646 (1940)
- Wilson v. Wilson, 174 Ky. 771, 193 S.W. 7 (1917)
- Simmons v. Simmons, 479 S.W.2d 585 (Ky. 1972)
- Gross v. Gross, 260 S.W.2d 655 (Ky. 1953)
- Moore v. Moore, 301 Ky. 14, 190 S.W.2d 689 (1945)
- Sergeant v. North Cumberland Manufacturing Co., 112 Ky. 888, 66 S.W. 1036 (1902)
- Fugate v. Commonwealth, 993 S.W.2d 931 (Ky. 1999)
- Stowers v. Hollis, 83 Ky. 544, 7 Ky. L. Rptr. 544 (1886)
- Scroggin v. Allan, 32 Ky. (2 Dana) 363 (1834)
- Sutton v. Sutton, 87 Ky. 216, 8 S.W. 337 (1888)

- Hehr Adm'r v. Hehr, 288 Ky. 580, 157 S.W.2d 111 (1941)
- Dudley's Adm'r v. Fidelity & Deposit Co., 240 S.W.2d 76 (Ky. 1951)
- Drake v. Drake, 721 S.W.2d 728 (Ky. App. 1986)
- Montgomery v. McCracken, 802 S.W.2d 943 (Ky. App. 1990)
- Lewis v. Schneider, 890 P.2d 148 (Colo. Ct. App. 1994)
- Levy v. Louisiana, 391 U.S. 68, 88 S. Ct. 1509, 20 L. Ed. 2d 436 (1968)
- McAdams v. McAdams, 353 Ark. 494, 109 S.W.3d 649 (2003)

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