

SUPREME COURT OF MICHIGAN

In re KH, KL, KL, and KJ, Minors, 469 Mich. 621

677 N.W.2d 800 (2004) · No. 122666 · Decided April 14, 2004

SUMMARY

The Michigan Supreme Court held that a biological father may not participate in a child protective proceeding or seek a paternity determination when the children have a legal father and the presumption of legitimacy has not been rebutted. The court concluded that the Family Independence Agency improperly named multiple men as respondents in the termination petition. It remanded for a determination whether the mother or legal father rebutted the presumption of legitimacy by clear and convincing evidence.

CASE DETAILS

COURT	Supreme Court of Michigan
WRITING FOR THE COURT	Young, J.; Maura D. Corrigan, C.J.; Elizabeth A. Weaver, J.; Clifford W. Taylor, J.; Stephen J. Markman, J.; Michael F. Cavanagh, J.; Marilyn J. Kelly, J.; Robert P. Young, Jr., J.
JURISDICTION	Michigan
DECIDED	April 14, 2004
DOCKET	122666
DISPOSITION	remanded
PROCEDURAL POSTURE	Appeal by respondents from child protective and termination proceedings concerning the trial court's determination that an alleged biological father had standing to establish paternity while the children's mother was married to their legal father.
STANDARD OF REVIEW	Standing presents a question of law reviewed de novo. Construction of a court rule is governed by principles applicable to statutory construction; unambiguous language is enforced according to its expressed meaning.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Michigan
PARTIES	Tina Jefferson, Richard Jefferson, Frederick Herron, Larry Lagrone v. Family Independence Agency

TOPICS

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parental rights

termination of parental rights

statutory interpretation

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether an alleged biological father may participate in a child protective proceeding or seek a paternity determination when the children have a legal father under Michigan's juvenile court rules.
2. Whether a biological father may establish paternity in the child protective proceeding without a prior judicial determination that the children were born out of wedlock or were not the issue of the marriage.
3. Whether the record required remand for the trial court to determine whether the mother or legal father rebutted the presumption of legitimacy by clear and convincing evidence.

HOLDINGS

1. Michigan's court rules do not permit an alleged biological father to participate as a putative father in a child protective proceeding when the child already has a legal father under the rules.
2. A biological father may not obtain a paternity determination in the midst of a child protective proceeding when the child has a legal father and there has been no prior determination that the child was born out of wedlock or was not the issue of the marriage.
3. The presumption that children conceived or born during a marriage are the issue of that marriage may be rebutted by clear and convincing evidence from the mother or legal father, and the case must be remanded for the trial court to make that determination.

KEY QUOTATIONS

"We hold that our court rules do not permit a biological father to participate in a child protective proceeding where a legal father exists." (469 Mich. at 625)

"Nothing in the prior or amended court rules permits a paternity determination to be made in the midst of a child protective proceeding." (469 Mich. at 633-634)

"If the court finds that the presumption of legitimacy was rebutted by clear and convincing evidence from either parent that the children are not the issue of the marriage, the court may take further action in accordance with MCR 5.921(D)." (469 Mich. at 637)

FACTUAL BACKGROUND

Tina Jefferson was legally married to Richard Jefferson during the conception and birth of each child and throughout the child protective proceedings. Tina testified that Frederick Herron was the biological father of one child and Larry Lagrone was the biological father of three others; DNA testing supported Lagrone's biological relationship to three children. Richard Jefferson indicated that he was not the biological father and did not wish

to participate further, but the trial court did not expressly determine that the presumption that the children were issue of the marriage had been rebutted.

PROCEDURAL HISTORY

The Oakland Circuit Court, Family Division, authorized a petition to terminate Tina and Richard Jefferson's parental rights and named Larry Lagrone and Frederick Herron as putative fathers. The trial court found Lagrone to be the biological father of three children and granted his motion to establish paternity, although it did not expressly find that the children were not the issue of the marriage. The Court of Appeals denied interlocutory review, and the Michigan Supreme Court granted leave to appeal after holding the case in abeyance for *In re CAW*.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court must determine whether the mother or legal father rebutted the presumption of legitimacy by clear and convincing evidence that the children were not the issue of the marriage. If the presumption was rebutted, the court may take further action under MCR 5.921(D), including identifying a putative father and permitting the procedures specified by that rule.

CASES CITED

- *In re Montgomery*, 185 Mich. App. 341, 460 N.W.2d 610 (1990)
- *In re CAW*, 469 Mich. 192, 665 N.W.2d 475 (2003)
- *Girard v. Wagenmaker*, 437 Mich. 231, 470 N.W.2d 372 (1991)
- *Lee v. Macomb County Board of Commissioners*, 464 Mich. 726, 629 N.W.2d 900 (2001)
- *CAM Construction v. Lake Edgewood Condominium Association*, 465 Mich. 549, 640 N.W.2d 256 (2002)
- *Veenstra v. Washtenaw Country Club*, 466 Mich. 155, 645 N.W.2d 643 (2002)
- *Perez v. Keeler Brass Co.*, 461 Mich. 602, 608 N.W.2d 45 (2000)
- *Serafin v. Serafin*, 401 Mich. 629, 258 N.W.2d 461 (1977)
- *Wechsler v. Mroczkowski*, 351 Mich. 483, 88 N.W.2d 394 (1958)
- *Bassil v. Ford Motor Co.*, 278 Mich. 173, 270 N.W. 258 (1936)
- *People v. Case*, 171 Mich. 282, 137 N.W. 55 (1912)
- *Hackley v. Hackley*, 426 Mich. 582, 395 N.W.2d 906 (1986)
- *Bunda v. Hardwick*, 376 Mich. 640, 138 N.W.2d 305 (1965)