

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

ANGELA MARIA LOHMAN and
JEREMY LOHMAN,
Petitioners,

v.

THOMAS J. CARNAHAN,
Respondent.

No. 4D07-237

[July 5, 2007]

PER CURIAM.

Angela Maria Lohman (the wife) and Jeremy Lohman (the husband), respondents below, seek review of a non-final order denying their motion to dismiss, for lack of standing, a paternity action filed against them by Thomas Carnahan (Carnahan). Based on the particular facts involved in this case, we deny the petition.

We agree that certiorari lies in this situation. *See Bellomo v. Gagliano*, 815 So. 2d 721 (Fla. 5th DCA 2002) (granting certiorari relief and quashing an order denying the husband and wife's motion to dismiss a petition to establish paternity of a child born into their intact marriage by a man claiming to be the child's biological father). However, we find the trial court did not depart from the essential requirement of the law in denying the motion under the particular facts of this case, including that the child in question was not born into an "intact" marriage.¹ At the time of the child's birth, a petition for dissolution of marriage filed by the husband against the wife remained pending, in which the husband had alleged that the baby his wife was then expecting, the child in question, was not his child.

Although the Lohmans attempted to allay the trial court's concerns

¹ "[A]n intact marriage is defined as the existence of a marriage **without the pendency of divorce proceedings . . .**" *Lander v. Smith*, 906 So. 2d 1130, 1134 (Fla. 4th DCA 2005) (emphasis added), *review dismissed*, 934 So. 2d 450 (Fla. 2006).

for the best interests of the child with an affidavit by the husband, contradicting his earlier allegations, a trial court's ruling on a motion to dismiss for lack of standing is confined to the four corners of the complaint or petition. *See Payne v. City of Miami*, 927 So. 2d 904, 906 (Fla. 3d DCA 2005). Therefore, the trial court did not depart from the essential requirement of the law if it failed to consider the facts stated in the husband's affidavit in ruling on his motion to dismiss.

The petition for writ of certiorari therefore is

Denied.

POLEN, STEVENSON and GROSS, JJ., concur.

* * *

Petition for writ of certiorari to the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Charles E. Burton, Judge; L.T. Case No. 2006DR012687XXXXSBFY.

Lisa Marie Macci of Lisa Marie Macci, P.A., Boca Raton, for petitioners.

Neil B. Jagolinzer of Christiansen & Jacknin, Lawyers, West Palm Beach, for respondent.

Not final until disposition of timely filed motion for rehearing.