

RENDERED: JANUARY 22, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2009-CA-001311-ME

MICHAEL COLES

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE PAULA SHERLOCK, JUDGE  
ACTION NO. 06-J-502952

DENITA ANN JACOBS

APPELLEE

### OPINION & ORDER DISMISSING APPEAL

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BEFORE: MOORE, NICKELL, AND WINE, JUDGES.

MOORE, JUDGE: Michael Coles appeals the Jefferson Circuit Court's judgment in this paternity action. After a careful review of the record, we dismiss this appeal because Coles failed to name an indispensable party in his notice of appeal.

#### **I. FACTUAL AND PROCEDURAL BACKGROUND**

A paternity action, requesting that Coles be declared the father of one of Denita Ann Jacobs's children ("Child"), was filed by the Commonwealth of

Kentucky's Cabinet for Health and Family Services and Jacobs ("Cabinet"). Jacobs's affidavit was filed with the complaint in the paternity action, and in that affidavit, Jacobs declared that she was the mother of the child who was born on November 2, 1995; that Coles was the child's father; and that her "marital relationship with [her] husband ceased more than ten months prior to the birth of the said child." In addition to this affidavit, Jacobs filed a copy of the petition for dissolution of marriage which stated that Jacobs and her ex-husband were married on June 22, 1994, and they separated in June 1995.

After the action was filed, Coles sent a letter to the Jefferson County Attorney, in which he stated that, to his knowledge, Jacobs "lived with her husband in 1995" and Jacobs admitted to him that she had sexual relations with her husband, Coles, and other men during the time period in question. In this letter, Coles stated "I demand a blood test. There are plenty of professional labs here in New Jersey<sup>1</sup> with which I'm sure you will be able to arrange to have my blood drawn for a DNA analysis. Just tell me where and when." (TR at 12). It does not appear that Coles sent this letter to the court, but Jacobs and the Cabinet for Health and Family Services filed the letter with the court.

The court thereafter entered a pre-trial order for the mother, the child, and Coles to submit to genetic testing. The report issued after the test was conducted stated that there was a 99.99% probability that Coles was the father of

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<sup>1</sup> Jacobs apparently moved to New Jersey to find work in or around 1999.

the child. The circuit court then entered its judgment declaring Coles to be the father and ordering Coles to pay child support.

Coles moved for the circuit court to “exclude,” *i.e.*, not consider, Jacobs’s self-serving affidavit in which she attested that the marital relationship between herself and her then-husband had ceased more than ten months before the child was born. Coles argued that Jacobs was still married to her ex-husband at the time the child was born; that she gave birth to another child thirteen months after the child in the present case was born; and that Jacobs did not secure a judgment of paternity until 2006, which was more than ten years after the child was born, and not until the death of her ex-husband. Coles contended that Jacobs permitted her ex-husband “to give the child his last name,” and that she “either intentionally misled her husband to believe that he was truly the child’s father for ten (10) years, or that [her] husband made a conscious decision to act as the child’s father and to take on all responsibilities of that role.” Coles also contended that he lived a mere two miles from Jacobs until 1999, when he moved to New Jersey, and that during the time he lived near Jacobs, she knew where he lived and worked, yet she never informed Coles that the child was his.

The circuit court denied Coles’s motion to exclude Jacobs’s affidavit. Coles moved the court to reduce the amount of child support he owed, but his motion was denied.

Coles now appeals the circuit court’s judgment, contending as follows: (a) the child was not born “out of wedlock”; (b) Jacobs did not overcome

the presumption of paternity; (c) Jacobs had no standing to bring the action against Coles; (d) the circuit court had no authority to order genetic testing; (e) the circuit court responded to an argument that was not made; and (f) the circuit court had no subject matter jurisdiction.

## II. ANALYSIS

Coles argues, *inter alia*, that the circuit court should not have ordered genetic testing without first entering a finding that the child was born out of wedlock. However, we do not need to address the merits of this appeal because the appeal should be dismissed on procedural grounds.

Pursuant to CR<sup>2</sup> 73.03(1),

The notice of appeal shall specify by name all appellants and all appellees (“et al.” and “etc.” are not proper designation of parties) and shall identify the judgment, order or part thereof appealed from. It shall contain a certificate that a copy of the notice has been served upon all opposing counsel, or parties, if unrepresented, at their last known address.

In the present case, the Cabinet filed the complaint in the circuit court and, thus, the Cabinet, as well as Jacobs, were the plaintiffs. However, in his notice of appeal, Coles only named Jacobs in the caption, and he did not name either Jacobs or the Cabinet in the body of the notice of appeal. Furthermore, his certificate of service at the bottom of his notice of appeal states that a copy of the notice of appeal was only sent to Jacobs, not to the Cabinet. No appellee brief was filed in this appeal, either, likely because the Cabinet was not named on the notice of appeal.

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<sup>2</sup> Kentucky Rule of Civil Procedure.

Because the Cabinet filed this action in the circuit court, it is an indispensable party to this appeal. However, the Cabinet was not made a party to this appeal because it was not named in the caption of the notice of appeal or listed in the body of the notice of appeal as a party. *See Clark Equipment Co. v. Bowman*, 762 S.W.2d 417, 419 (Ky. App. 1988). The failure to name an indispensable party in the notice of appeal is grounds for dismissing the appeal. *See R.L.W. v. Cabinet for Human Resources*, 756 S.W.2d 148, 149 (Ky. App. 1988).

Accordingly, this appeal is dismissed.

ENTERED: January 22, 2010

/s/ Joy A. Moore  
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

BRIEF FOR APPELLEE:

Michael Coles, Pro se  
Clifton, New Jersey

N/A