

STATE OF MICHIGAN
COURT OF APPEALS

SCOTT STANLEY KAISER

Plaintiff-Appellant,

v

EMILY MARIE SCHREIBER,

Defendant-Appellee.

FOR PUBLICATION

September 9, 2003

9:00 a.m.

No. 244428

Kent County Circuit Court

LC No. 01-006255-DC

Updated Copy

November 7, 2003

Before: Schuette, P.J., and Sawyer and Wilder, JJ.

SCHUETTE, P.J. (*concurring*).

I join the majority opinion of Judge Sawyer and join in the decision to reverse the order of the circuit court granting defendant Emily M. Schreiber summary disposition regarding plaintiff Scott S. Kaiser's child custody action.

This case concerns whether the undisputed father of a daughter born out of wedlock, whose mother is married to another man, will have an opportunity to establish a custodial relationship with his daughter.

The defendant's claims that the answer is no. The correct answer is yes.

In many respects, the facts and circumstances of this case are sad and troubling. Without a doubt, the outcome of this case, unless reversed by this Court, would be even more discouraging.

Maria is the daughter of Scott Kaiser, the plaintiff and Emily Marie Schreiber, the defendant. Both plaintiff and defendant were married to other people when they had an extramarital relationship. Maria was conceived during this extramarital relationship. Both parties acknowledge this fact openly, which was substantiated by a paternity test.

Maria was born in June of 1998 and has resided with defendant. On June 19, 2001, plaintiff filed a complaint seeking custody of his daughter. On August 10, 2001, a temporary court order granting plaintiff and defendant joint legal custody, permitting plaintiff certain visitation rights and granting primary physical custody to defendant was entered by the circuit court. Subsequently, defendant's original attorney withdrew and defendant filed pleadings in

propria persona attempting to terminate the temporary court order. The order was never terminated.

Notwithstanding a paternity test that established that plaintiff is Maria's father and a judicial imprimatur, a temporary court order stipulated by both parties, defendant contends that plaintiff has no standing to maintain a custody action pursuant to the Child Custody Act, MCL 722.21 *et seq.*, and plaintiff cannot amend his pleadings to conform to the Paternity Act, MCL 722.711 *et seq.* Defendant's argument succeeds only if we ignore both the equities of this case and the constitutional underpinnings of equal protection under the law, which surround this case. Were we to adopt defendant's argument, for a plaintiff like Scott Kaiser, the doors to the halls of justice would be locked shut.

This Court is estopped from disregarding the temporary court order outlining the joint custodial arrangement between the parties and the test that substantiates plaintiff's paternity, which both parties freely acknowledge. The defendant argues that plaintiff is but a stray actor, an unidentified shadowy figure who, at best, has a mere biological link with Maria. No, Scott Kaiser is Maria's father.

Similarly, defendant's strained interpretation of the "plain meaning" of the Child Custody Act and the Paternity Act is a tortured journey that leaves plaintiff a bystander on the wayside of Michigan's statutory freeways.

Under our system of law, a plaintiff such as Scott Kaiser, armed with a temporary court order and fortified by a paternity test substantiating his fatherhood, should have standing to establish a custodial relationship with his daughter. Further, plaintiff should be permitted to amend his complaint to conform with the Paternity Act should the trial court deem it necessary.

By pursuing reversal of the trial court's decision in this case, Scott Kaiser picked the lock and opened the doors to the halls of justice. Quite possibly, the equal protection considerations that are embedded in the facts of this case may permanently open the door to similarly situated plaintiffs.

/s/ Bill Schuette