

STATE OF MICHIGAN
COURT OF APPEALS

HEATHER D. CLOUGH,

Plaintiff-Appellee,

v

KENT J. BALLIET,

Defendant Third-Party
Plaintiff-Appellant,

and

BECKY SUE CLOUGH, LARRY CLOUGH,
and SUZAN CLOUGH,

Third-Party Defendants.

UNPUBLISHED
February 10, 2004

No. 243090
Kent Circuit Court
LC No. 02-000273-DS

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Defendant appeals by leave granted the order denying his motion for summary disposition in this common law action for child support. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was born out of wedlock in 1983. Third-party defendants brought a prior paternity action against defendant, including a claim for retroactive child support. On appeal from the denial of defendant's motion for summary disposition, this Court reversed. *Clough v Balliet*, unpublished opinion per curiam of the Court of Appeals, issued December 21, 2001 (Docket No. 224575). The Court noted that the child was now eighteen and could bring her own common law action for retroactive child support.

Plaintiff filed the instant common law action for support, and the trial court denied defendant's motion for summary disposition, relying primarily on this Court's opinion in the previous case.

MCL 722.3(2) provides that parents' duty of support may be enforced by the minor or child who has reached age 18. MCL 722.1 defines parents as natural parents, if married prior to or after the birth; adopting parents; or the mother, if the child is illegitimate. This Court has held that it is a denial of due process to grant legitimate children a judicially enforceable right to child

support and deny that right to illegitimate children. *Spada v Pauley*, 149 Mich App 196, 203; 385 NW2d 746 (1986). The Paternity Act did not allow an illegitimate child to bring an action, and failed to afford a full and adequate legal remedy. *Id.* at 200. Because there was no other remedy, the traditional equitable jurisdiction of the circuit court may be invoked. *Id.* at 206.

In *Phinisee v Rogers*, 229 Mich App 547; 582 NW2d 852 (1998), the Court held that the plaintiff's common law action for support was not barred where her mother previously had filed an unsuccessful action under the Paternity Act. The plaintiff did not have a cause of action herself under the Paternity Act, but she could pursue a common-law right to support, with the possibility of retroactive support extending prior to the filing of the complaint. *Id.* at 558.

In *Opland v Kiesgan*, 234 Mich App 352, 367; 594 NW2d 505 (1999), this Court held that in addition to a paternity action filed by the mother, the child born out of wedlock could invoke the equitable jurisdiction of the circuit court to bring her own claim. Thus, a putative father may be subjected to claims for support from both the mother and the child, and the prior paternity action by the mother and grandparents does not bar this action.

This Court's opinion in the paternity action is not law of the case because the two actions involved different parties. *Manistee v Manistee Fire Fighters Ass'n*, 174 Mich App 118, 125; 435 NW2d 778 (1989). However, the Court properly found that case law recognizes a common-law support action for children born out of wedlock. *Phinisee, supra*, on which this Court relied, is not an aberration. The court did not err in denying summary disposition.

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood