STATE OF MICHIGAN

COURT OF APPEALS

KAREN SUTTON, Next Friend of MINOR J.,

Plaintiff-Appellant,

v

DIANE J.,

Defendant-Appellee,

and

JOHN DOE,

Defendant.

UNPUBLISHED
March 20, 2007

No. 273519
Macomb Circuit Court
LC No. 2006-002342-DP

Before: Markey, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition in favor of defendant Diane J (Diane) in this paternity action premised on constitutional rights, not the Paternity Act, MCL 722.711 *et seq.* Plaintiff, as next friend of Minor J, initiated the action in an attempt to ascertain the identification of Minor J's biological father, ostensibly for the purpose of obtaining vital medical information and history relative to the biological father. The mother of Minor J, Diane, was allegedly not forthcoming regarding the identity of Minor J's biological father, referred to in this suit as defendant John Doe. Minor J was conceived and born in wedlock, and Diane and her husband, Michael J (Michael), eventually divorced. Following entry of the divorce judgment, which reflected that Minor J was an issue of the marriage, deoxyribonucleic acid (DNA) testing revealed that Michael is not Minor J's biological father. The trial court, in granting summary disposition, ruled that plaintiff lacked standing to commence the paternity action. We affirm.

This Court reviews de novo summary disposition rulings, *McClements v Ford Motor Co*, 473 Mich 373, 380; 702 NW2d 166 (2005), issues of statutory interpretation and standing, *Ayar v Foodland Distributors*, 472 Mich 713, 715; 698 NW2d 875 (2005); *Lee v Macomb Co Bd of Commr's*, 464 Mich 726, 734; 629 NW2d 900 (2001), and constitutional questions, *Kampf v Kampf*, 237 Mich App 377, 381; 603 NW2d 295 (1999).

We begin our discussion by acknowledging that plaintiff is not proceeding pursuant to, nor presenting appellate arguments under, the Paternity Act. It is undisputed that Minor J lacks standing under the Paternity Act because he is a child who did not turn 18 years of age between 1984 and 1986 and because he was not born out of wedlock as defined in the act. MCL 722.714(1); MCL 722.711(a) (child is "born out of wedlock" where the child is "begotten and born to a woman who was not married from the conception to the date of birth of the child," or where a "court has determined" that the child was "born or conceived during a marriage but not the issue of that marriage").

Plaintiff argues that there is standing to determine the identity and establish the paternity of the biological father in order to protect Minor J's crucial health interests, and if standing to sue for such a purpose is denied, Minor J's due process and equal protection rights under the United States Constitution, US Const, Am XIV, and the Michigan Constitution, Const 1963, art 1, §§ 2 and 17, would be violated.

In *Spada v Pauley*, 149 Mich App 196, 200; 385 NW2d 746 (1986), a case relied on by plaintiff, this Court held that "an illegitimate child may maintain an independent cause of action to determine parentage and support obligations" outside of the statutory scheme. The *Spada* panel ruled that an illegitimate child can maintain a paternity action based on equal protection guarantees despite being a child and filing beyond the limitation period, both being generally contrary to the Paternity Act. The Court ruled that otherwise the child would be deprived of a judicially enforceable right to support or the opportunity to seek support, which judicially enforceable right or opportunity is enjoyed by legitimate children under our statutory scheme without similar limitation. *Id.* at 204-206. *Spada* is unavailing to plaintiff because Minor J received and receives child support from Michael, given that Michigan's statutory framework provided the mechanism for Minor J to obtain support where he was born in wedlock, with Michael being recognized as the child's legal father.

Plaintiff contends that Minor J is an illegitimate child in light of the DNA testing and, therefore, plaintiff may bring this paternity action to have parentage determined. However, as indicated above, Minor J is deemed born in wedlock and legitimate under the Paternity Act. A "presumption of legitimacy" attaches to a child born into a marriage, and this presumption is deeply rooted in our statutes and case law. *In re KH*, 469 Mich 621, 634; 677 NW2d 800 (2004). Plaintiff counters that this action is not brought under the Paternity Act and that the presumption of legitimacy has been rebutted by conclusive scientific proof. We need not resolve the question because regardless of whether Minor J is deemed legitimate or illegitimate, legally he is accorded rights comparable to a legitimate child for purposes of support, and the distinction ultimately makes no difference with respect to our constitutional analysis of the other asserted rights as reflected later in this opinion.[1]

[1] Although plaintiff in the appellate brief has retreated from the claim for support, a support claim is indeed included in the complaint, and any order of filiation that could potentially be entered would typically give authority to order support.

The most relevant case on the issues posed is *Puffpaff v Hull*, 169 Mich App 688; 426 NW2d 778 (1988). In *Puffpaff*, this Court addressed whether a *legitimate* minor plaintiff had "standing to bring an action to have her parentage determined." *Id.* at 689. This Court held that denying a legitimate child the right to commence a paternity action is permissible state action in order to prevent fraud and protect family units, despite fraud not being a sufficient consideration under the more stringent test in *Spada* given the suspect classification of illegitimacy. The Court stated that a legitimate child under the law can procure support from his or her father regardless of the Paternity Act. *Id.* at 692. Limited to the particular facts and arguments in our case, and while acknowledging advances in science and medicine since *Puffpaff* was decided, we decline plaintiff's invitation to revisit *Puffpaff* at this time, nor are we inclined to ignore the holding despite our ability to do so under MCR 7.215(J)(1). Minor J receives support from Michael under a valid court order.

We note that entry of an order of filiation, which is specifically requested by plaintiff, would lead to legal recognition of two fathers and a mother relative to one child, and plaintiff cites no authority to allow for such a ruling. Our Supreme Court in *In re KH, supra* at 624, stated "where a legal father exists, a biological father cannot properly be considered even a putative father."[2]

If Minor J is deemed legitimate, plaintiff's constitutional arguments would fail to warrant reversal because plaintiff relies on the claim that Minor J is illegitimate in support of the constitutional arguments. But, even were we to accept that Minor J is illegitimate under the law, plaintiff fails to cite any statutory scheme that provides a child deemed legitimate under the law, who may have actually been fathered outside of marriage, a superior right to have a biological father identified. Additionally, in that same vein, plaintiff fails to identify a statutory scheme

---

[2] Generally speaking, an order of filiation is a "[j]udicial determination of paternity," Black's Law Dictionary (7th ed), and rights and obligations flow from such a determination. If John Doe were to be legally recognized as Minor J's father under an order of filiation because of the biological connection, it could be argued that John Doe would then have a right to seek custody or parenting time and have an obligation to pay support, but those rights and obligations are already assigned to Michael as the legally recognized father under the equitable parent doctrine. To the extent that plaintiff is suggesting that Michael's status as a legal parent should be vacated, no legal authority is provided to support this position, and modifying his status would be inappropriate given that he is not a party to this action. And there would also be a res judicata problem considering the divorce judgment and the order denying Michael's motion to set aside the support order, which continued to recognize him as the father but now under the equitable parent doctrine. Additionally, in the context of the factual circumstances involved here, giving rights to a biological father, where the litigation is actually the child proceeding pursuant to a paternity action in order to protect the "child's rights," could call into question the motivations behind the litigation. This would create an end run around the case law that has consistently found that biological fathers lack standing to initiate paternity actions under these conditions, even where the biological father has claimed constitutional violations. See generally *Barnes v Jeudevine*, 475 Mich 696; 718 NW2d 311 (2006); *In re KH, supra*; *Aichele v Hodge*, 259 Mich App 146; 673 NW2d 452 (2003); *McHone v Sosnowski*, 239 Mich App 674; 609 NW2d 844 (2000); *Hauser v Reilly*, 212 Mich App 184; 536 NW2d 865 (1995).

that provides a legitimate child a superior right to obtain or access the medical history and information of a biological parent. Therefore, plaintiff has failed to show any discrimination against illegitimate children as claimed. Accordingly, plaintiff's equal protection arguments as made to this Court fail. See US Const, Am XIV; Const 1963, art 1, § 2; *Clark v Jeter*, 486 US 456, 461; 108 S Ct 1910; 100 L Ed 2d 465 (1988); *Doe v Dep't of Social Services*, 439 Mich 650, 661-662; 487 NW2d 166 (1992). Furthermore, plaintiff fails to cite any relevant, controlling authority for the argument that Minor J's asserted right to obtain or access the medical history and information of John Doe constitutes a fundamental constitutional right.[3] Under the particular facts of the case before us today,[4] and limited to the arguments presented and the authority cited, we conclude that constitutional guarantees are not offended in denying plaintiff an opportunity to pursue a paternity action.

While we are sympathetic to a child being able to access and obtain the medical history and information of biological parents, and while we do understand that medical advances in genetics and other fields of medicine have been occurring at a staggering pace, we are not prepared at this time to find constitutionally protected interests under the facts presented, such that this "paternity" action may proceed. The issues presented relate more to social policy, and the making of social policy is generally for the Legislature, not this Court. *Van v Zahorik*, 460 Mich 320, 327; 597 NW2d 15 (1999). "The responsibility for drawing lines in a society as complex as ours – of identifying priorities, weighing the relevant considerations and choosing between competing alternatives – is the Legislature's, not the judiciary's." *O'Donnell v State Farm Mut Automobile Ins Co*, 404 Mich 524, 542; 273 NW2d 829 (1979).[5]

---

[3] For a discussion on fundamental rights and substantive due process see *Troxel v Granville*, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000) (O'CONNOR, J.); *Washington v Glucksberg*, 521 US 702, 719-720; 117 S Ct 2258; 138 L Ed 2d 772 (1997); *Whalen v Roe*, 429 US 589, 599; 97 S Ct 869; 51 L Ed 2d 64 (1977); *People v Sierb*, 456 Mich 519, 522-526; 581 NW2d 219 (1998). Aside from Minor J's interests, there are other competing interests here as well, i.e., Diane's privacy interests, John Doe's interest in personal matters relative to his medical history and information, and the state's interests in protecting family peace and unity, precluding disruption of lives before and after divorce, and keeping the court system unclogged. We are simply not prepared to find any constitutional violations in denying plaintiff from pursuing this action under the given facts and arguments presented.

[4] We note that plaintiff cites various materials and sources in support of the proposition that family medical history is of crucial importance; however, none of these materials were submitted to the trial court and thus are outside the record and cannot be considered. Further, plaintiff submitted no medical documentary evidence, nor documentary evidence in general, indicating that Minor J is in need of the biological father's medical information and history. There is no indication whatsoever that Minor J is in the midst of a health crisis necessitating the sought after information, nor that he is contemplating having children at this time.

[5] To address the issues raised in this case, the Legislature could conceivably craft legislation that is comparable to the Adoption Code, MCL 710.21 *et seq.*, with respect to compilation and release of nonidentifying medical information.

We conclude that, under the facts and arguments presented in this case, constitutional guarantees are not offended in denying plaintiff an opportunity to pursue a paternity action. The trial court did not err in summarily dismissing the action.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Kirsten Frank Kelly