

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of SAMAURI ST. MIRACLE  
SPENCER, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LYDELL SHAW,

Appellant,

and

DARRYL HENRY and LAJEANE DORIAN  
SPENCER,

Respondents.

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Before: Jansen, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

The child protective proceeding involving the minor child culminated in a written order terminating the parental rights of the child's mother, the child's legal father, and appellant. Appellant now appeals as of right from the order denying his motion for rehearing of the termination order and for a paternity test. We affirm.

Respondent LaJeane Dorian Spencer was an unmarried minor when the child was conceived and born. A week after the child's birth, a petition was filed that sought temporary wardship of the child and named appellant Lydell Shaw as the child's putative father. However, at the preliminary hearing, the court was informed that the petition listed the wrong man as the child's father, and the court questioned Spencer about the father's identity. After Spencer indicated that respondent Darryl Henry was the child's biological father, the court crossed off appellant's name from the petition and replaced it with Henry's name. Service upon appellant of a "Notice to Putative Father" was still attempted, though; after the attempts to serve him personally or through certified mail were unsuccessful, he was alternatively served through publication. At the adjudicative hearing, the trial court accepted an Affidavit of Parentage that contained the notarized signatures of Spencer and Henry and recognized Henry as the child's

legal father. Also at that adjudicative hearing, Spencer entered a sworn plea of admissions, which included the admission that Henry was the child's father.

Two years passed and a supplemental permanent custody petition, which contained only the names of Spencer and Henry as the child's parents, was filed. At the pretrial hearing, the court did not have its court file and, therefore, was unsure whether Henry had established paternity, so Spencer was sworn in and questioned about the Affidavit of Parentage. On the date of the permanent custody hearing, Spencer voluntarily released her parental rights and the court terminated Henry's parental rights. For some reason, in addition to Spencer and Henry, the written termination order named appellant as a parent whose parental rights had been terminated. Appellant received the copy of the termination order that had been sent to Henry.<sup>1</sup> Thereafter, appellant filed a motion for rehearing and a paternity test, claiming that he had not known of the child's birth and believed that he was the child's biological father.<sup>2</sup> At the motion hearing, the attorney who had represented Spencer in the protective proceeding reported that Spencer now claimed that appellant was the child's biological father and that she had been under duress when she identified Henry as the father. The trial court denied appellant's motion.

Appellant first argues that the trial court abused its discretion when it failed at the preliminary hearing to put Spencer under oath before questioning her, which appellant asserts was a critical mistake because Spencer was at that time a minor and failed to appreciate the importance of identifying the child's biological father. However, the court rule governing preliminary hearings, MCR 3.965, does not require a court to swear in the child's mother before questioning; it only requires that a court "*inquire* of the mother regarding the identity and whereabouts of the father." MCR 3.965(B)(13) (emphasis added). The court complied with MCR 3.965.

The court also complied with governing court rules after the preliminary hearing. MCR 3.921(C) states that "[i]f, at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 3.903(A)(7), the court may, in its discretion, take appropriate action," including taking "initial testimony on the tentative identity and address of the natural father." MCR 3.921(C)(1). The trial court swore in the child's mother during the adjudicative hearing and a pretrial hearing before questioning her about the identity of the child's father. Therefore, the trial court complied with MCR 3.921(C) during the pendency of the proceeding.

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<sup>1</sup> Henry's copy of the termination order was apparently sent by mistake to the address used in unsuccessful attempts to serve appellant two years earlier. This address was reportedly the home of appellant's grandmother.

<sup>2</sup> The address provided by appellant on this motion was the same address where unsuccessful attempts to serve appellant had been made and where Henry's copy of the termination order had been mistakenly sent. Significantly, when the address was used to serve appellant with a summons for the hearing on the motion that is the subject of this appeal, the process server was once again told by an occupant that the address was not good for appellant, and the certified mail envelope was once again returned as "unclaimed."

Next, appellant argues that the trial court abused its discretion and improperly “ignored” appellant by failing to give him notice of the proceeding after Spencer identified Henry as the child’s father. This argument lacks merit because appellant was alternatively served through publication.<sup>3</sup>

Next, appellant argues that there was ongoing confusion throughout the protective proceeding about the identity of the child’s father, which was allegedly compounded by the failure of the trial court to formally admit into evidence either the child’s birth certificate<sup>4</sup> or the Affidavit of Parentage. Contrary to this claim, the trial court recognized Henry’s status as the child’s legal father when it accepted the notarized Affidavit of Parentage, which it put into the file.

Finally, as a potential biological father, appellant lacked standing to participate in the protective proceeding once the child’s legal father was recognized. See *In re CAW*, 469 Mich 192, 194; 665 NW2d 475 (2003) (the putative father did not have standing to intervene in the child protective proceedings because the child did not lack a father under MCR 5.903(A)(4) [now MCR 3.907(A)(7)]) and *In re KH*, 469 Mich 621, 624; 677 NW2d 800 (2004) (“[W]here a legal father exists, a biological father cannot properly be considered even a putative father.”). Appellant attempts to distinguish these cases on the ground that the mothers in both cases were married and there existed a presumption of legitimacy for the children born during the marriage. However, appellant’s argument fails because the determining factor in both cases was the existence of a legal father, and not the basis on which the legal father claimed his paternity. Again, the trial court has discretionary power to take action regarding a putative father only “[i]f, at any time during the pendency of a proceeding, the court determines that *the minor has no father as defined in MCR 3.903(A)(7)*.” MCR 3.921(C) (emphasis added). Therefore, once Henry was determined to be the child’s legal father, appellant lacked standing to participate, and the trial court properly denied his motion for rehearing and a paternity test.

Affirmed.

/s/ Kathleen Jansen  
/s/ Peter D. O’Connell  
/s/ Donald S. Owens

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<sup>3</sup> It also appears that appellant’s attempts to evade service at his given address led to the failure to serve him personally or by certified mail with the “Notice to Putative Father.” Given appellant’s receipt of Henry’s copy of the termination order, which was mistakenly sent to appellant’s grandmother’s home, it appears that appellant received mail at that address as long as

<sup>4</sup> The child’s birth certificate did not list a father.