

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT L. STANTON,

Plaintiff-Appellant,

V

WENDY J. DEIBLER-BAUGH,

Defendant-Appellee.

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UNPUBLISHED

November 30, 2001

No. 224783

Ingham Circuit Court

Family Division

LC No. 98-006492-DP

Before: White, P.J., and Talbot and E.R. Post\*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order granting summary disposition for defendant, apparently under MCR 2.116(C)(5), on the ground that plaintiff lacked standing to bring this paternity action. We affirm.

This Court reviews a trial court's decision regarding a motion for summary disposition *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Standing to pursue relief under the paternity act, MCL 722.711 *et seq.*, is conferred on the mother of a child born out of wedlock, the father of a child born out of wedlock, or the Family Independence Agency on behalf of a child born out of wedlock. MCL 722.714(1), (10). For purposes of the act, a child is born out of wedlock if the mother was unmarried from the conception to the birth of the child, or if the child is one that "the court has determined to be a child born or conceived during a marriage but not the issue of that marriage." MCL 722.711(a). In *Girard v Wagenmaker*, 437 Mich 231, 242; 470 NW2d 372 (1991), our Supreme Court interpreted this language to mean that a circuit court must have made a determination that the child was not the issue of the marriage before the complaint for paternity is filed, such as in connection with a divorce action.

The child in this case does not meet the definition of a child born out of wedlock under either clause of the statutory definition. At the time the child was conceived and born, defendant was married and her then-husband's name appears on the child's birth certificate. Further, there was no circuit court determination before this action was filed that the child was the issue of that marriage; in fact, defendant's divorce judgment acknowledged that the child was born of the marriage. Because the child was not born out of wedlock as defined under the paternity act,

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\* Circuit judge, sitting on the Court of Appeals by assignment.

plaintiff lacked standing to bring this action. See also *Spielmaker v Lee*, 205 Mich App 51, 53-54; 517 NW2d 558 (1994); *Afshar v Zamarron*, 209 Mich App 86, 90; 530 NW2d 490 (1995).

Plaintiff contends that his alleged biological link coupled with his established relationship with the child created a recognized liberty interest as the child's father. Citing *Hauser v Reilly*, 212 Mich App 184; 536 NW2d 865 (1995), he asserts that a finding that he lacked standing deprived him of his right to due process. Plaintiff is correct that the *Hauser* Court found a putative father could have a liberty interest derived from his biological link with his child and a substantial parent-child relationship, and that such a claim must be afforded appropriate due process. *Hauser, supra* at 187-188. In *McHone v Sosnowski*, 239 Mich App 674, 678-680; 609 NW2d 844 (2000), however, this Court refused to apply *Hauser* on facts similar to those in this case, concluding that *Hauser's* discussion of a putative father's liberty interest was dictum. Plaintiff's argument fails under *McHone*. Accordingly, we find no error in the trial court's decision to grant summary disposition for defendant.

Affirmed.

/s/ Helene N. White  
/s/ Michael J. Talbot  
/s/ Edward R. Post