

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JENNIFER ROSE WOOD, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARK R. WOOD,

Respondent-Appellant,

and

BEVERLY DERKING,

Respondent.

UNPUBLISHED

October 18, 2005

No. 260714

Wayne Circuit Court

Family Division

LC No. 02-407220-NA

Before: Owens, PJ, and Fitzgerald and Schuette, JJ

PER CURIAM.

Respondent Mark R. Wood appeals as of right from the order of the trial court determining that he was not entitled to participate as a respondent in the child protective proceedings before the trial court. We affirm.

The minor child's biological mother is not a party to this appeal. For the first seven years of her life, the minor child resided exclusively with Wood who held himself out to be her father. Child protective proceedings regarding the child were initiated before the trial court when Wood was alleged to have sexually assaulted the child's minor friend. He was ultimately convicted in a separate action in connection with the allegations of sexual assault.

Initially, the trial court in this case proceeded with the child protective proceedings under the assumption that Wood was the minor child's biological father. His name appeared on the child's California birth certificate, and an order of support entered in California, directed toward the child's mother, identified Wood as the "other parent" of the child. Wood had been the sole caretaker and sole financial provider for the child. He testified before the trial court that he was the father of the child, though he had never been married to the child's mother and had never established paternity by any other method.

Various proceedings were held before the trial court over several months. Eventually, the child's mother was located, and she testified that Wood was not the minor child's biological father. She further testified that Wood knew he was not the biological father because she had never had sexual relations with him. The child's mother explained that, at the time of the child's birth, she had been a drug addict and had been facing incarceration. She therefore planned to give the child to a woman friend who was at that time in a relationship with Wood. She anticipated that the couple would marry and adopt the child. To facilitate this process, she identified Wood as the father on the birth certificate and executed a custody agreement awarding custody to her friend and Wood.

In light of this information, petitioner and counsel for the child requested that Wood submit to DNA testing to determine if he was the biological father of the child. Wood eventually complied under protest, and the DNA testing proved conclusively that he was not the child's biological father. Petitioner and the child moved to have him removed as a respondent in the case, contending that he did not have standing. The trial court granted the motion.

On appeal, Wood first contends that the trial court erred in determining that he did not have standing as a party in the child protective proceedings. We disagree. We review de novo the question of whether a party has standing. *In re KH*, 469 Mich 621, 627-628; 677 NW2d 800 (2004). MCR 3.977(B) defines a respondent in a child protective proceeding to include the father of the child, as defined by MCR 3.903(A)(7), which provides as follows, in pertinent part:

- (7) Father means:
 - (a) A man married to the mother at any time from a minor's conception to the minor's birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage;
 - (b) A man who legally adopts the minor;
 - (c) A man who by order of filiation or by judgment of paternity is judicially determined to be the father of the minor;
 - (d) A man judicially determined to have parental rights; or
 - (e) A man whose paternity is established by the completion and filing of an acknowledgement of parentage in accordance with the provisions of the Acknowledgement of Parentage Act, MCL 722.1001, et seq., or a previously applicable procedure.

Wood does not contend that he was ever married to the child's mother, that he adopted the child, or that he established paternity. Rather, he argues that he is the father under MCR 3.903(A)(7)(d), because the trial court found previously that he was the child's father. Wood points to the May 14, 2002 report and recommendation of the referee, approved by the trial court, which states under "Findings of Fact" that "Mark Wood, the legal father of Jennifer Wood, was present in court." He contends that this finding caused him to be "a man judicially determined to have parental rights." We disagree. Wood could only be a respondent in the

action if he met the definition of “father” provided by MCR 3.903(A)(7). The referee could only have properly found Wood to be a “father” under the court rule if Wood already met one of the criteria set forth in MCR 3.903(A)(7). Moreover, the trial court ultimately reviewed this question and reversed its earlier assumption that Wood had standing.

Wood next argues that the support order entered by the California court was an order of filiation or a judgment of paternity that judicially determined him to be the father of the child under MCR 3.903(A)(7)(c). Again, we disagree. As the trial court noted, the order entered by the California court appears to be merely an order of support directed toward the child’s mother that simply listed Wood as the “other parent” without any indication that the question of paternity had been litigated or decided. In absence of any further demonstration that the California court ruled on the issue of paternity, the trial court correctly determined that no such determination had been made.

Wood next argues that he had standing because his name appeared on the child’s birth certificate and because a custody agreement executed by the child’s mother gave him custody. This argument also fails. Although his name was listed on the child’s California birth certificate as the father of the child, this does not confer the status of “father” under any subsection of MCR 3.903(A)(7). Similarly, a custody agreement does not confer standing under MCR 3.903(A)(7), and MCR 3.977(B) specifically provides that a “respondent” does not include other persons to whom legal custody has been given or who are otherwise acting in the place of the mother or father. MCR 3.977(B).

We also reject Wood’s contentions that the trial court was obligated to apply California law to the determination of standing in a Michigan child protective proceeding, that Wood was denied due process and equal protection of the law, that the former court rules were applicable and determinative, and that he was entitled to judicial estoppel. Wood cites little relevant authority on these issues and none that is persuasive on these points.

Finally, we reject Wood’s argument that the other parties in the case were equitably estopped from asserting that he was not the legal father because they misled him by proceeding for some months under the assumption that he was. The doctrine of equitable estoppel arises when a party, by representations, admissions, or silence, intentionally or negligently causes another party to believe certain facts, and the second party justifiably relies and acts upon the belief to the extent that the party will suffer prejudice. *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 22; 592 NW2d 379 (1998). Whether Wood had standing as the minor child’s father, however, is a legal conclusion and not a factual assertion. *In re KH*, *supra*. In addition, contrary to his assertions, the other parties did not assert or even agree that he was the legal father of the child, even at the outset of the case. During the pretrial held March 25, 2002, the child’s attorney alerted the trial court and Wood that Wood had not necessarily validly established paternity of the child. Moreover, Wood lacked the requisite clean hands to seek equity. See *Stachnik v Winkel*, 394 Mich 375, 382-387; 230 NW2d 529 (1975). Wood knew that he was not the minor child’s biological father because he had never had sexual relations with the child’s mother, yet he concealed that fact from the court. Had he revealed this information at the beginning of the proceedings, the parties could have asserted their positions earlier.

Affirmed.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Bill Schuette