

Court of Appeals, State of Michigan

ORDER

Deborah J Williamson v Joseph R Harris

Docket No. 304517

LC No. 08-167505-DP

Christopher M. Murray
Presiding Judge

Michael J. Talbot

Cynthia Diane Stephens
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the motion for peremptory reversal is GRANTED. The April 15, 2011, order of the Wayne Circuit Court granting plaintiff's motion to reinstate the 2008 paternity case hereby is REVERSED. Under statute, generally only the mother or the father of a child born out of wedlock may commence a paternity action. MCL 722.714(1). Where a woman is married at the time the child was conceived and born, a presumption of legitimacy attaches to the child. See MCL 722.711(a); *In re KH*, 469 Mich 621, 624-625; 677 NW2d 800 (2004). When the child was conceived and born, and when plaintiff initiated this paternity action, plaintiff was married. Thus, plaintiff's standing to bring a paternity action required a prior court determination that the child was born out of wedlock, i.e., not an issue of the marriage. *Girard v Wagenmaker*, 437 Mich 231, 242; 470 NW2d 372 (1991). In November of 2008 when plaintiff brought the instant suit, there was no prior court determination that the child was not the issue of the marriage. Accordingly, the circuit court erred in reinstating the 2008 paternity action. The instant case is dismissed without prejudice to plaintiff filing a new paternity action in light of the later determination by the circuit court that the child was not the issue of the marriage. The case is remanded to the circuit court for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

FEB 16 2012
Date


Chief Clerk