

STATE OF MICHIGAN
COURT OF APPEALS

KALISHA KAY TODD,

Plaintiff-Appellant,

v

DUSTIN RYAN DOUGLAS,

Defendant-Appellee.

UNPUBLISHED

July 23, 1999

No. 204221

Calhoun Circuit Court

LC No. 95-003499 DS

Before: Griffin, P.J., and Wilder and R. J. Danhof,* JJ.

PER CURIAM.

Plaintiff appeals by right from an order of the trial court dismissing this action for child support. We reverse and remand.

Plaintiff and defendant are the parents of a child born out of wedlock on October 3, 1995, when plaintiff was fifteen years old and defendant was fourteen. On October 6, 1995, both parties executed an affidavit of parentage pursuant to MCL 700.111(4)(a); MSA 27.5111(4)(a). When defendant subsequently failed to pay child support, a support action was initiated pursuant to the family support act (FSA), MCL 552.451 *et seq.*; MSA 25.222(1) *et seq.*, which provides in § 1a, MCL 552.451a; MSA 25.222(1a):

A custodial parent or guardian of a minor child. . . may proceed in the same manner, and under the same circumstances as provided in section 1 [MCL 552.451; MSA 25.222(1)], against the noncustodial parent for the support of the child. . . . This section applies only to legitimate, legitimated, and lawfully adopted minor children. . . .

Defendant signed a consent order requiring him to pay support. His failure to do so resulted in a show cause hearing at which a domestic relations referee ruled that (1) for a support action to be commenced under the FSA, the child who is the subject of the action must be legitimate, legitimated or lawfully adopted; (2) a child may be legitimated by the proper execution of an affidavit of parentage; (3) in order for an affidavit of parentage to establish paternity, it must be executed in the same manner as a deed conveying land pursuant to MCL 565.1; MSA 26.521, which provides that “[c]onveyances of lands, or of any estate or interest

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

therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney;” (4) because defendant was a minor when he signed the affidavit, and it was not signed by his lawful agent or attorney, it did not comply with the statutory requirements for a real estate deed and was ineffective to establish paternity; (5) the FSA action was void because paternity had not been established before its commencement; and (6) the order of support previously entered was also void.

The trial court adopted the referee’s findings, dismissed the support action, and subsequently denied plaintiff’s motion for relief from judgment, stating:

In this case, it is clear that the Defendant, who was 14 years old at the time he signed an Affidavit of Legitimation[,] was not of lawful age; and it is also clear that the Affidavit was not also signed by his lawful agent or attorney, which is required by statute. MCLA 565.1. The Affidavit, therefore, is legally deficient.

The underlying issue in this case, as I see it, is not whether the defective Affidavit is only voidable by the minor Defendant as opposed to being void; rather, the issue is whether a lawfully-executed Affidavit of Legitimation is a condition precedent to initiating a Family Support Action. I believe it is[,] and since it was not lawfully executed in this case, the Support Action must fall.

In reaching their conclusion that the affidavit was invalid because it had not been executed in the manner provided by law for the execution and acknowledgment of deeds of real estate, the domestic relations referee and the trial court cited MCL 700.111(4)(a); MSA 27.5111(4)(a), which they quoted in pertinent part as follows:

(4) If a child is born out of wedlock . . . , a man is considered to be the natural father of that child for all purposes of intestate succession if any of the following occurs:

(a) The man joins with the mother of the child and acknowledges that child as his child in a writing executed and acknowledged by them in the same manner provided by law for the execution and acknowledgment of deeds of real estate and recorded at any time during the child’s lifetime in the office of the judge of probate in the county in which the man or mother of the child reside at the time of execution and acknowledgment. . . .

However, before the parties executed the affidavit of parentage on October 6, 1995, MCL 700.111(4)(a); MSA 27.5111(4)(a) had been amended by 1994 PA 387, effective December 29, 1994, to read:

(4) If a child is born out of wedlock. . . , a man is considered to be the natural father of that child for all purposes of intestate succession if any of the following occurs:

(a) The man joins with the mother of the child and acknowledges that child as his child by completing and filing an acknowledgment of paternity. The man and mother shall each sign the acknowledgment of paternity in the presence of 2 witnesses, who shall also sign the acknowledgment, and in the presence of a judge, clerk of the court, or notary public appointed in this state. The acknowledgment shall be filed at either the time of birth or another time during the child's lifetime with the probate court in the mother's county of residence or, if the mother is not a resident of this state when the acknowledgment is executed, in the county of the child's birth. . . .

No further amendment of this statute occurred until June 1, 1996.

Clearly, on October 6, 1995, MCL 700.111(4)(a); MSA 27.5111(4)(a), as amended by 1994 PA 387, contained no requirement that an affidavit of parentage must comply with the requirements applicable to deeds of real estate, and the trial court erred by ruling otherwise. We therefore reverse and remand to the trial court for action consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Kurtis T. Wilder

/s/ Robert J. Danhof