

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN J. MCNAMARA,

Plaintiff-Appellant,

v

TONI L. FARMER,

Defendant-Appellee.

UNPUBLISHED

July 7, 2005

No. 260575

Luce Circuit Court

LC No. 99-002834-DP

Before: Cooper, P.J., and Fort Hood and R. S. Gribbs*, JJ.

PER CURIAM.

Plaintiff Brian J. McNamara appeals as of right from a circuit court order granting defendant Toni L. Farmer's motion for summary disposition pursuant to MCR 2.116(C)(4) in this paternity action. We reverse and remand for further proceedings consistent with this opinion.

Plaintiff and defendant conceived a child together out of wedlock. Defendant subsequently married another man prior to the baby's birth. Plaintiff instituted this paternity action in the circuit court when the child was six months old. At that time, the parties stipulated to a paternity test, as well as an interim order for visitation and support. The paternity test showed plaintiff to be the father by a 99.76% probability. Approximately four years later, an order of filiation was entered, declaring plaintiff to be the child's father. During the four interim years, the parties regularly appeared before the court and Friend of the Court on issues regarding visitation and support. Plaintiff subsequently filed the instant motion for change of custody. In response, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(4), asserting that the trial court lacked subject-matter jurisdiction. The court agreed that it lacked jurisdiction, finding that plaintiff lacked standing, and dismissed the case.

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

We review a trial court's ruling on a motion for summary disposition de novo.¹ Whether the trial court has subject-matter jurisdiction over a case and whether a party has standing to bring an action are questions of law that are also reviewed de novo on appeal.²

We find that plaintiff had standing to move for a change of custody and, therefore, the trial court erroneously determined that it did not have jurisdiction. A court has jurisdiction to establish paternity, and a plaintiff has standing to sue, “*only* if the child is ‘born out of wedlock,’ i.e., (1) the child is born of a woman who was not married at the time of conception or birth, *or* (2) *a court previously determined that the child is not issue of the marriage.*”³

Aichele is not applicable under the facts of this case. The trial court entered stipulated orders in 1999 regarding the child's paternity, visitation, and support. Whether an order is originally based on a stipulation of the parties or an independent finding of the court, it is an order of the court. The court recognized that defendant's husband was not the child's father and continued to order plaintiff to pay child support and visitation for four years before entering the final order of filiation in 2003. It was not until the following year, when plaintiff filed for a change of custody, that the question of jurisdiction arose. However, jurisdiction was established by the court's previous orders that were in complete compliance with the statutes as written and as intended by the Legislature. Accordingly, the trial court improperly dismissed plaintiff's paternity action and motion for change of custody.

¹ *Travelers Ins Co v Detroit Edison Co*, 465 Mich 149, 205; 631 NW2d 733 (2001).

² *Nat'l Wildlife Fed'n v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004); *Travelers Ins Co*, *supra* at 205.

³ *Aichele v Hodge*, 259 Mich 146, 155; 673 NW2d 452 (2003) (emphasis added). See also *Girard v Wagenmaker*, 437 Mich 231, 241-243; 470 NW2d 372 (1991).

This Court's definition of a child “born out of wedlock” in *Aichele* is based upon the language of the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*, and the Paternity Act, MCL 722.711 *et seq.* The Acknowledgment of Parentage Act provides:

“As used in this act . . . (b) ‘Child’ means a child conceived and born to a woman who was not married at the time of conception or the date of birth of the child, *or a child that the circuit court determines was born or conceived during a marriage but is not the issue of that marriage.*” [*Aichele*, *supra* at 154, quoting MCL 722.1002 (emphasis added).]

The Paternity Act provides a nearly identical definition:

“‘Child born out of wedlock’ means a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage.” [*Id.*, quoting MCL 722.711(a)(1) (emphasis added).]

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs