

NO. A10-1098

State of Minnesota
In Supreme Court

OFFICE OF
APPELLATE COURT

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FILED

In re the Custody of: D.T.R.

Michael L. Richards,

Respondent,

vs.

Derek Reiter,

Respondent,

and

Lynette A. Marthe,

Appellant.

BRIEF OF RESPONDENT DEREK REITER

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STATEMENT OF LEGAL ISSUE

- I. Did the Court of Appeals properly dismiss Appellant's appeal because she lacked standing?

Court of Appeals Properly Held: Appellant, mother, lacked standing to appeal the trial court's determination of father's paternity.

Apposite Authority:

Sierra Club v. Morton, 405 U.S. 727, 92 S.Ct. 1361 (1972).

City of St. Paul v. LaClair, 479 N.W.2d 369 (Minn. 1992).

Mankato Aglime & Rock Co. v. City of Mankato, 434 N.W.2d 490 (Minn. Ct. App. 1989).

Minnesota Statutes §§ 257.60 & 257.52.

STATEMENT OF THE CASE

This case arises out of a paternity action brought by Respondent Michael Richards to establish his alleged paternity of the minor child D.T.R. D.T.R. was born during the marriage of Appellant and Respondent Derek Reiter.

In the paternity action, the district court adjudicated Respondent Derek Reiter the father of D.T.R. *A-1*. It was the only issue determined by the district court. *Id.* The district court made no findings or determination regarding parenting time, custody, or support. *Id.* Respondent Michael Richards did not appeal the district court's determination. Appellant, mother of D.T.R. and wife of Respondent Derek Reiter, appealed the district court's determination of paternity to the Court of Appeals. *A-11*.

On July 9, 2010, the Court of Appeals directed the parties to provide memoranda regarding whether Appellant had standing. *A-12*. Appellant filed a memorandum, as did Respondent Derek Reiter. *A-16*. After careful deliberation and with the benefit of memorandum before the Court, the Court of Appeals dismissed Appellant's appeal for lack of standing. *A-21*.

Thereafter, Appellant filed a Petition for Review of Decision of The Court of Appeals. *A-24*. This Court granted review of said Petition. *A-30*.

Respondent Derek Reiter requests oral argument.

STATEMENT OF FACTS

D.T.R. was born in 2004, during the marriage of Appellant, mother, and Respondent Derek Reiter. *A-1*. Respondent Derek Reiter raised D.T.R. as his son. *Id.* In 2006, Appellant and Respondent Derek Reiter had another child, B.P.R, who is not subject to this proceeding. *A-41*. Respondent Derek Reiter and Appellant raised their children together and resided as a family. *Id.*

In 2007, Appellant reconnected with Respondent Michael Richards, whom she had had sexual intercourse with prior to her marriage to Respondent Derek Reiter. *A-1*. In 2008, Appellant had D.N.A. testing conducted on D.T.R. *Id.* D.N.A. tests revealed that Respondent Michael Richards was D.T.R.'s biological father. *Id.*

Respondent Michael Richards sought to be adjudicated D.T.R.'s father. *Id.* After trial, wherein the sole issue was the paternity of D.T.R., the district court adjudicated Respondent Derek Reiter as D.T.R.'s father. *Id.* The district court, by its Amended Order, did not rule on custody, parenting time, or child support. *Id.*

Respondent Michael Richards did not appeal the district court's adjudication of the paternity, or father-child relationship, of D.T.R. Appellant, and mother, appealed the district court's adjudication of the father-child relationship. *A-11*. As this was the sole issue upon which the district court ruled, it was the sole issue Appellant appealed. *Id.*

The Court of Appeals properly dismissed Appellant's appeal, as she lacked standing to challenge the adjudication of the father-child relationship. *A-21*. Appellant was not injured, as there was no determination or ruling on custody, parenting time, or child support, such that would implicate her rights under the mother-child relationship.

SUMMARY OF ARGUMENT

The Court of Appeals properly decided that it did not have jurisdiction to hear Appellant's appeal because appellant lacked standing. Appellant lacks standing both pursuant to Minnesota common law and pursuant to the Minnesota Parentage Act.

Because the district court solely adjudicated paternity, which affects the rights of the child and the purported fathers, the Appellant's rights were not affected. Appellant was not injured by the district court, because her purported injuries were not addressed by the district court, but will be addressed by another court in the future. The cases cited by Appellant do not confer standing. In the cases cited, the district court not only adjudicated, but also made additional determinations as to custody, parenting time, or child support. Appellant's rights were not affected by the district court's adjudication of paternity, therefore she lacks standing to appeal.

ARGUMENT

I. STANDARD OF REVIEW

Whether a party lacks standing is an issue that is reviewed *de novo*, as it is a question of law. *Riehm v. Comm'r of Public Safety*, 745 N.W.2d 869 (Minn. Ct. App. 2008).

II. COURT OF APPEALS PROPERLY DECIDED IT DID NOT HAVE JURISDICTION BECAUSE APPELLANT LACKS STANDING TO APPEAL

Appellant, to have standing, must have a sufficient stake in a justiciable controversy to seek relief. *Sierra Club v. Morton*, 405 U.S. 727, 731-32, 92 S.Ct. 1361, 1364-65 (1972). A party has standing when there has been injury to a legally protected right. *City of St. Paul v. LaClair*, 479 N.W.2d 369, 371 (Minn. 1992). Standing is “conferred either by statute or by status as an aggrieved party.” *Id.* A party is an aggrieved party if the party “is injuriously or adversely affected by a judgment when it operates on his rights of property or bears directly upon his personal interest.” *Mankato Aglime & Rock Co. v. City of Mankato*, 434 N.W.2d 490, 493 (Minn. Ct. App. 1989). Appellant lacks standing to appeal because standing is not conferred by statute, and because Appellant was not adversely affected by the district court’s determination of paternity.

A. Appellant Lacks Standing under the Parentage Act

Minnesota Statute § 257.52 defines the parent-child relationship. Parent-child relationship is defined as: “[t]he legal relationship existing between a child and the child’s biological or adoptive parents incident to which the law confers or imposes rights,

privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.” Minn. St. § 257.52. Establishing the mother and child relationship is separate from establishing the father and child relationship. The establishment of either is not dependent on the other. Adjudication of paternity, or establishment of the father child relationship, imposes rights and obligations on the father and conveys certain privileges. *Id.* The district court in the paternity action referenced herein established paternity alone - it gave Respondent Reiter certain rights, privileges, duties and obligations. *Id.*; *A-1*. The district court’s decision did not impact the mother and child relationship or change the rights, privileges, duties and obligations that Appellant mother has with her child. The district court’s Amended Order does not *mention* Appellant in its conclusions of law or order section. To have been an injured party, Appellant mother would have to demonstrate that her property rights or rights bearing upon her direct interest were affected. *Mankato Aglime & Rock Co. v. City of Mankato*, 434 N.W.2d 490, 493 (Minn. Ct. App. 1989). Appellant mother’s rights, privileges, duties or obligations were not changed or impacted by the district court’s order. Therefore, she was not adversely affected by the district court’s order and has no standing to appeal the district court’s decision.

Appellant argues that it would be in D.T.R’s best interest if Respondent Michael Richards were the father, because it would allegedly be easier for her to co-parent with him rather than Respondent Reiter, the father of her second child. Neither a father nor a mother is allowed to represent the child’s interests or represent the child as a party in a paternity proceeding. Minn. St. § 257.60. Furthermore, the declaration of paternity does

not depend on the “best interest” factors in Minnesota Statute § 518.17. The declaration of paternity by the district court was made based on the “weightier considerations of policy and logic.” Minn. St. § 257.55. The district court appropriately did not consider the best interest factors in the case at hand as it was not the applicable standard. Custody, parenting time, and child support were left to be determined in a separate proceeding; therefore Appellant has not been injured because rights bearing upon her direct interest have yet to be ruled on.

Appellant further argues that simply because she was a party to the custody action this should confer standing upon her. The facts of this case do not warrant such a result. Appellant must be able to demonstrate that she was injured by the district court’s order. In paternity actions, courts have the power to determine and set child support, custody, and parenting time. Minn. St. §§ 257.541 & 257.72; Minnesota Statutes Ch. 257. Therefore, mothers and fathers are necessary parties, and either a father or a mother may bring the action. Minn. St. § 257.57. A father may also bring an action to establish the mother and child relationship. Minn. St. § 257.71. However, on the facts of this case, Appellant does not have standing as custody, parenting time, and child support will be established in a separate proceeding. Therefore, Appellant was not aggrieved by the order she appealed.

B. Appellant Lacks Standing under Common Law

Appellant also lacks standing to appeal the district court’s order pursuant to common law for the same reasons she lacks standing statutorily. Because the district

court only adjudicated the father and did not affect Appellant mother's rights, Appellant lacks standing under common law.

Minnesota Courts have held that a mother has standing to appeal when child support is addressed, thereby affecting her rights and bearing upon her personal interest. *State v. Sax*, 42 N.W.2d 680, 682 (Minn. 1950). In *State v. Sax*, the Court held that the mother had standing to appeal because she had a "definite *personal financial interest* in the amount of the award for support." *Id.* (Emphasis added.) In the paternity case herein, child support was not addressed. The district court merely established paternity. Therefore, Appellant's financial interest in any award for support was not injured, as the district court did not address child support. *State v. Sax* does not confer standing to Appellant.

In *State v. E.A.H.*, the Court iterated again that because a mother has a personal financial interest in child support, she has standing to appeal. 75 N.W.2d 195, 199-200 (Minn. 1956). In *State v. E.A.H.*, the Government sought to have the Defendant adjudged the father of the minor child. *Id.* at 197. Fifty years ago, D.N.A. was not available, and the State had to prove paternity through other means. *Id.* at 198. Because Defendant was found not guilty, the minor child did not have a father, and the mother was left to support the minor child on her own. *Id.* at 198-99. The Court iterated: "determination of guilt is a prerequisite to the order for support." *Id.* at 199. Because the Defendant had been found not guilty, there could be no order for support. Had the Defendant been found guilty in the proceeding, there would have been an order for support. Therefore, since

there would be *no* father, there would be no child support. Essentially, the child support was permanently set at \$0.

State v. E.A.H. is not akin to the facts of the case herein. In *State v. E.A.H.*, there was going to be no father and no support. In the case herein, there were *two fathers* seeking to be adjudicated the father of D.T.R. As the Court in *E.A.H.* stated, “determination of guilt is a prerequisite to the order for support.” Whether the district court adjudicated Respondent Derek Reiter or Respondent Michael Richards, Appellant mother’s rights regarding child support were not affected. Appellant mother is not like the mother in *E.A.H.*, upon whom the possibility of child support would have been foreclosed. Because the issue of child support has not been foreclosed to the Appellant mother herein, her personal property has not been affected nor has a direct interest of hers been affected such that she has been injured.

Appellant cannot cite to a single case that confers standing when a district court merely adjudicates a father. All of the cases cited by Appellant involve determinations regarding child support, parenting time, or custody; or the issue appealed is not akin to the case herein. *Zentz v. Graber*, 760 N.W.2d 1 (Minn. Ct. App. 2009) (issue raised in district court by mother and the finding subsequently appealed was whether alleged father had standing to bring paternity action; not akin to the issue of the case herein); *State v. D.E.A.*, No. A06-2426, 2007 WL 1816471 (Minn. Ct. App. June 26, 2007) (both adjudication and child support were before the court, court adjudicated and denied temporary child support); *In re Custody of Child of Williams*, 701 N.W.2d 274 (Minn. Ct. App. 2005) (district court adjudicated father and gave him sole physical custody, with

visitation to mother); *In re Welfare of C.M.G.*, 516 N.W.2d 555, 557 (Minn. Ct. App. 1994) (district court adjudicated, made custody determinations, and ordered visitation); *Spaeth v. Warren*, 478 N.W.2d 319 (Minn. Ct. App. 1991) (court made determinations, and mother challenged: best interests of child determinations, adjudication, and visitation); *Nicholson v. Getchell*, No. C1-96-183, 1996 WL 523787 (Minn. Ct. App. Sept. 17, 1996) (court *did not* make paternity determination or reach issues of support because court declared mother was barred by *res judicata*; issue appealed was application of *res judicata* to mother which did bear upon mother's interest; not akin to the issue of the case herein and does not confer standing). Because there is no case that confers standing to Appellant, Appellant lacks standing pursuant to common law.

CONCLUSION

To have standing, Appellant must assert that her property interests or direct personal interests were adversely affected. Because the district court merely adjudicated the father and did not address child support, parenting time, or custody, Appellant's interests were not affected. The statutes do not confer Appellant standing on the facts of this case, nor does common law. Appellant's rights were not affected by the district court's adjudication of paternity, therefore she lacks standing to appeal.

Dated: December 16, 2010

Respectfully submitted,



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