

COA Opinion: New York order of filiation is not entitled to full faith and credit under Michigan law and does not provide putative father with standing necessary to file lawsuit under the Michigan Paternity Act.

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On Tuesday, January 18, 2011, the Michigan Court of Appeals published its opinion in *Pecoraro v. Rostagno-Wallat, et. al.*, Case Nos. 293345 and 2933455. Mr. Pecoraro is the biological father of Ms. Rostagno-Wallat's child, conceived and born during her marriage to Mr. Wallat. Pecoraro filed a paternity action in Wayne County Circuit Court seeking to enforce a New York order of filiation naming Pecoraro as the legal father of Rostagno-Wallat's child. The Court of Appeals held that because a paternity determination had not previously been made in an action between Rostagno-Wallat and Wallat establishing that Wallat was not the father of this child, Pecoraro lacked standing to seek paternity under the Michigan Paternity Act. Further, the court ruled that the order of filiation was not entitled to full faith and credit because the New York court lacked personal jurisdiction over Wallat, who was a necessary party to the proceedings. Based on these rulings, the Court vacated the trial court's summary disposition ruling in favor of Pecoraro.

Rostagno-Wallat and Wallat have been married since June 4, 1994. During the course of this marriage, Rostagno-Wallat gave birth to two children. The first was born in 1999 and second in 2002. Wallat is listed as the father of both children on the birth certificates. Beginning in June 1997, however, Rostagno-Wallat began a relationship with her law school classmate, Pecoraro. She later informed him that he was the biological father of her youngest child, born in 2002. This was later confirmed by DNA testing.

When Rostagno-Wallat and Pecoraro ended their relationship in 2005, he filed a paternity petition in New York seeking an order of filiation establishing him as the father of the child. Ms. Rostagno-Wallat, who lived in Michigan, filed a motion to dismiss the action for lack of personal jurisdiction. She also argued that the Pecoraro failed to name a necessary party, her husband, Mr. Wallat. The New York court denied Rostagno-Wallat's motion to dismiss and held it had jurisdiction over her under NY Fam Ct Act § 580-210(6) because the child may have been conceived in New York. Although the court conceded Wallat was a necessary party, and that it had no personal jurisdiction over him, it nonetheless ruled that dismissal was not required because justice required that the action proceed without his being made a party. Following a trial, the court granted Pecoraro's petition to establish paternity and issued an order of filiation. The Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, subsequently affirmed this order on June 6, 2008.

In February 2008, while the New York case was still on appeal, Pecoraro filed a Complaint for Paternity in the Wayne County Circuit Court, in which he sought enforcement of the order of filiation. In July 2008, Wallat filed a declaratory judgment action against Rostagno-Wallat and Pecoraro seeking a determination that he, not Pecoraro, was the legal father of the child. A year later, on July 16, 2009, the trial court granted summary disposition in favor of Pecoraro.

On appeal, the Court ruled that Pecoraro had no standing to pursue relief under the Michigan Paternity Act. The Michigan Paternity Act only confers standing on three classes of individuals to file a paternity suit: 1) the mother of a child born out of wedlock; 2) the father of a child born out of wedlock; and, 3) the Family Independence Agency on behalf of a child born out of wedlock and supported by public assistance. MCL 722.714(1) and (8). A child is only born “out of wedlock” is a child conceived and born during a time when a woman is not married, or a child that the court has determined to not to be an issue of the marriage. Here, it is undisputed that the child was conceived and born during the Wallats’ marriage. Therefore, Pecoraro only has standing to file a paternity action if a prior court had determined the child’s paternity in a proceeding between the mother and her husband, Wallat. The Court of Appeals held that the order of filiation did not suffice. The New York proceeding was not a case between the Wallats. In fact, the New York court specifically held that Wallat could not be forced to participate—it did not have personal jurisdiction over him. Accordingly, the Court of Appeals ruled that Rostagno-Wallat and Wallat have never asked a court to declare the child was born out of wedlock. Therefore, Recoraro lacks standing to file a paternity suit in Michigan.

Similarly, the Court held that Pecoraro does not have standing to assert his claim under the Child Custody Act (“CCA”). MCL 722.21 et. seq.. The Court noted that the central premise of the CCA was to provide statutory rights to adoptive parents. The phrase “natural parent” in the Act is simply used to distinguish between adoptive parents and non-adoptive parents. Therefore, whether a putative father would be considered a natural or biological parent under the CCA is irrelevant unless he can first establish paternity.

Finally, the Court of Appeals held that New York order of filiation was not due full faith and credit in Michigan. The court noted, again, that New York lacked personal jurisdiction over Wallat and therefore he was not required to put his parental rights in peril. Additionally, the New York admitted that Wallat was a necessary party to the paternity proceedings, given the fact that he was the legal father of this child under Michigan law. Finally, the New York court conceded that the effect of the order of filiation would ultimately have to be determined by a Michigan court. Accordingly, the Court of Appeals concluded that the State of Michigan is not obliged to give the order of filiation full faith and credit under Article IV, section 1, of the United States Constitution.