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STATE OF MICHIGAN
13TH CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE
FAMILY DIVISION

WILLIAM D. NUMERICK,)
)
Plaintiff,)
)
-vs-)
)
)
Defendant.)

No. 03-1891-DP

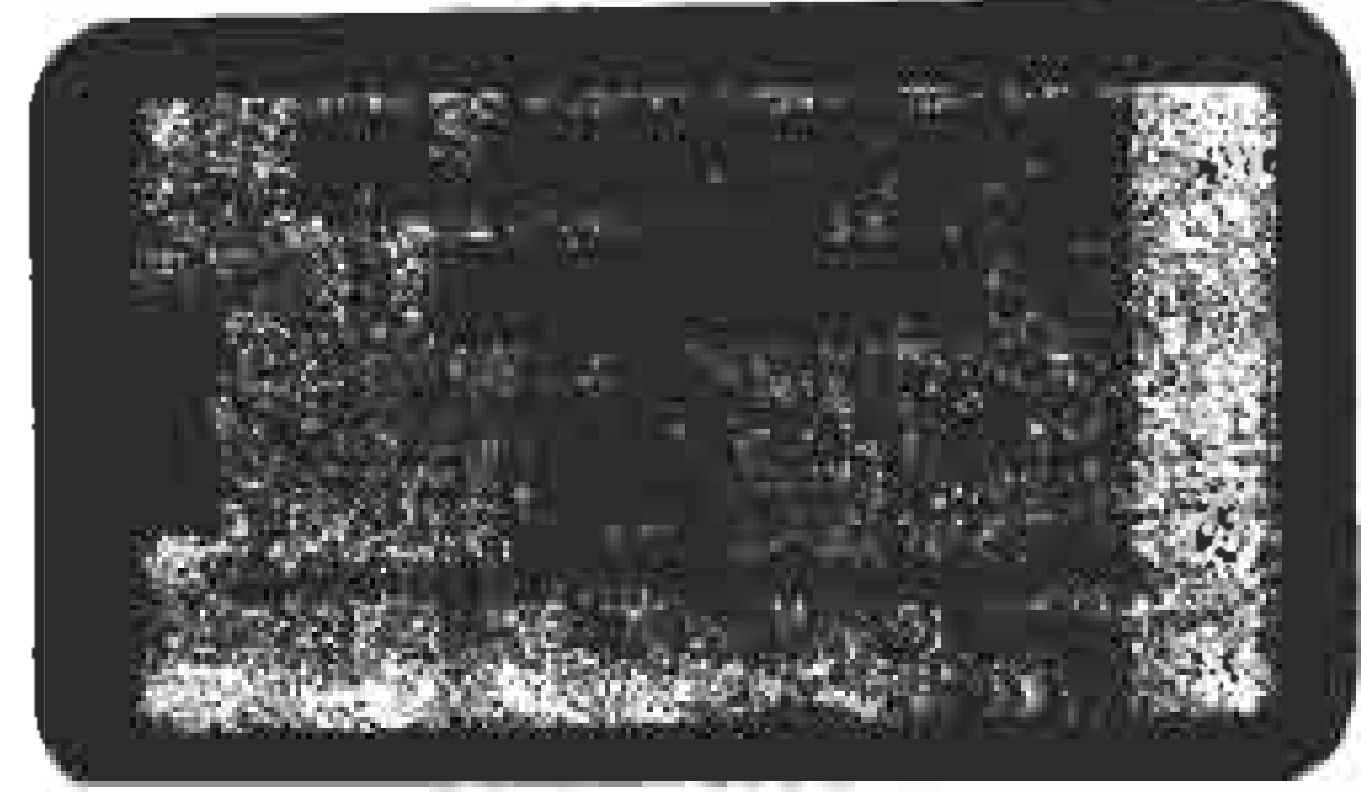
At a session of said Court held on the
16th day of May 2003, in the City of Traverse City,
State of Michigan, before the HON. DAVID L. STOWE,
Family Division Judge.

APPEARANCES:

JOHN FERGUSON, JR.
On behalf of Plaintiff

WILLIAM BOWRON
On behalf of Defendant

Janet McGee, CSR 3361



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Traverse City, Michigan

Friday, May 16, 2003 at 1:50 p.m.

MR. FERGUSON: John Ferguson on behalf of
William Numerick.

THE COURT: I apologize, Mr. Ferguson, I
have not had an opportunity to digest your brief,
and I want very much to do so. I am hopeful that
it provides me with some law that I am not familiar
with. Is it going to?

MR. FERGUSON: In sum, yes, Your Honor.
Much of the law relied on by the defense is
correct. It's distinguishable from the case at
bar.

THE COURT: Before I have you continue
then, I just dealt with an issue not unrelated to
this earlier today. This is File 03-1891-DP,
William D. Numerick, Junior versus [REDACTED]
[REDACTED] now known as [REDACTED]. It's the
Court's understanding that Mrs. Smith is a married
woman.

MS. SMITH: Correct.

MR. BOWRON: That's correct, Your Honor.

THE COURT: That there was born during
the course of Mrs. Smith's marriage a child who was
born, weather conceived or not, but born during the

1 course of your marriage, is that correct?

2 MS. SMITH: Correct.

3 THE COURT: That you are married to
4 Derrick Smith. And according to Mr. Bowron, your
5 attorney, the Paternity Act does not afford the
6 plaintiff, Mr. Numerick, standing to address the
7 issue of paternity. Is that it in a nutshell?

8 MR. BOWRON: That's it in a nutshell,
9 Your Honor.

10 THE COURT: Mr. Numerick, you are
11 requesting the motion for summary disposition --

12 MR. BOWRON: That's correct, Your Honor.

13 THE COURT: -- be denied. Mr. Ferguson,
14 I am familiar with the Child Custody Act, the
15 Family Support Act and the Paternity Act. If you
16 could provide for the Court the reasons why you
17 believe Mr. Bowron's position is one that can be
18 distinguished in this case.

19 MR. FERGUSON: Thank you, Your Honor.
20 Essentially, all of the cases relied upon by Mr.
21 Bowron involve facts where the child is already
22 born before the punative father seeks to assert his
23 rights. In this case, Mr. Numerick sought a
24 judicial adjudication prior to the marriage in
25 question.

1 was something filed during --

2 MR. FERGUSON: No, Your Honor. Of course
3 not. However, the gestational period for human
4 beings is 40 weeks, and it seems unlikely that Mr.
5 Numerick couldn't have done anything more quickly
6 to assert his rights because as soon as he makes
7 that move, theoretically Ms. Smith could have
8 gotten married and barred his claim.

9 In order for a father to assert rights
10 consistent with case law and the Statute and the
11 constitution, we are submitting this is the way one
12 goes about doing it. As soon as we know of the
13 pregnancy, bring an action for paternity, that
14 would preserve your opportunity to get that, quote,
15 unquote, prior judicial adjudication. We don't
16 think that it's just, simply put, to interrupt an
17 adjudication procedure with this marriage.

18 Conversely, and I mentioned this in my
19 brief, we think it would also be unjust for Mr.
20 Numerick to be able to enjoin in this case Ms.
21 Smith from getting married. That would be unfair,
22 but the question before the Court is who is the
23 biological father of this child and this is the way
24 to go about doing it.

25 If the facts were consistent with the

1 cases that we have cited, the Girard line of cases
2 where the child was already born into a nuclear
3 family, then the policy argument makes sense it
4 would be disruptive for a punative father to come
5 forward, here I am with my checkbook. That's not
6 what we are doing. When we filed this, she was
7 single and believed that we were within our rights
8 to make this claim.

9 THE COURT: Mr. Ferguson, what is your --
10 do you have a position with respect to Mr. Smith?

11 MR. FERGUSON: We have no position with
12 respect to Mr. Smith. Again, Mr. Numerick doesn't
13 seek to split their marriage up. He simply wants
14 normal parenting time. I am quite confident that
15 Mr. Numerick and Ms. Smith could come to some
16 arrangement in terms of what that would mean. I
17 don't believe we would be litigating those issues
18 down the road.

19 THE COURT: You think the distinguishing
20 characteristic between this case and the other
21 lines of cases supportive of the Paternity Act, is
22 that Mr. Numerick acted during the gestation period
23 and prior to the birth of the child?

24 MR. FERGUSON: Correct. And prior to the
25 marriage. That's also very key. It's the only way

1 that he has a meaningful opportunity to exercise
2 his rights.

3 THE COURT: Thank you, sir.

4 Mr. Bowron, any comments?

5 MR. BOWRON: Your Honor, the Statute
6 seems relatively clear with respect to Mr.
7 Numerick's standing to address the issue of
8 paternity, one is whether the child -- it comes
9 down to an issue of whether the child is born out
10 of wedlock.

11 By definition with respect to marriage
12 the child was obviously born during the course of
13 Mrs. Smith's marriage, and as a result of that, the
14 first definition can't be met. Was there a prior
15 court determination? There has been no prior court
16 determination. The child is not born out of
17 wedlock, and Mr. Numerick doesn't meet the standing
18 for purposes of proceeding on paternity.

19 THE COURT: Thank you, Mr. Bowron. Mr.
20 Ferguson, any response?

21 MR. FERGUSON: No response, Your Honor.
22 I hope that Your Honor does take time to read my
23 motion or my brief in support.

24 THE COURT: I have read your motion and
25 brief in support. I honestly hope I am wrong. I

1 have to and am ruling that consistent with Mr.
2 Bowron's argument I do not believe your client has
3 standing under the Paternity Act. That's not to
4 say that policy considerations should not be looked
5 at, but I do not feel comfortable extending,
6 looking behind the legislative intent of the
7 Statute when the Statute does appear to be clear.

8 I have reviewed a number of the cases
9 that you have cited in your brief. I am familiar
10 with the Statutes in question. Despite the fact
11 that I can appreciate your argument and distinction
12 of bringing an action during the gestation period
13 and prior to the marriage, indicating an action, it
14 still doesn't take away from the literal
15 interpretation of the Statute that would appear to
16 indicate your client does not have standing. More
17 than appear, it would specifically indicate your
18 client does not have standing.

19 There are a number of cases not unlike
20 this in this jurisdiction and others. At the risk
21 of asking questions of Mrs. Smith that I don't feel
22 appropriate to ask her at this time, I am going to
23 deny your motion for summary disposition. I'd ask
24 Mr. Bowron to prepare an order.

25 I don't want to encourage you to appeal

1 this decision, but I do believe we need further
2 direction from the Court of Appeals that we haven't
3 received to date. Your argument and the logic
4 associated with your argument I think is sound, but
5 it's not one that at this time is consistent with
6 the law from the Court's perspective. I know it
7 doesn't seem logically fair certainly. I am not
8 suggesting logically that it is. That's my
9 ruling.

10 If I could see you both at the bench,
11 please.

12 MR. BOWRON: Your Honor, just for
13 clarification purposes, the Court is granting
14 defendant's motion on summary judgement, correct?

15 THE COURT: That's correct.

16 MR. FERGUSON: You said denied.

17 THE COURT: Yes, I am granting it. Thank
18 you.

19
20 (A conference is had off the record at the bench.)

21
22 MR. FERGUSON: While we were at the
23 bench, Mr. Bowron pointed out that our motion to
24 show cause is now rendered mute by the Court's
25 ruling.

1 THE COURT: Thank you.

2 MR. FERGUSON: Thank you.

3 MR. BOWRON: Thank you, Your Honor.

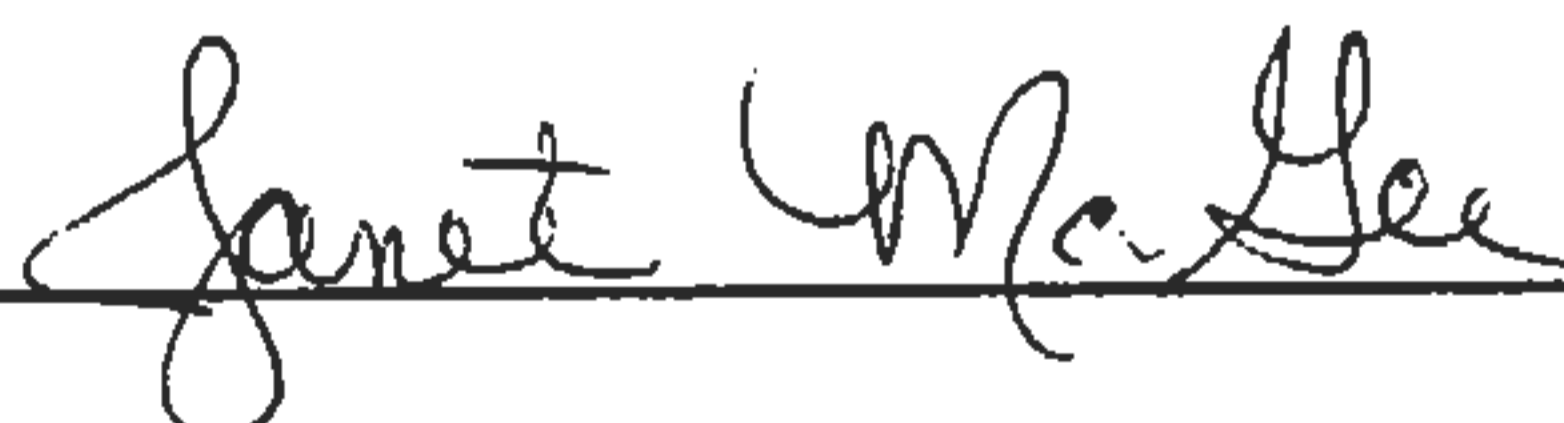
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5 (Hearing concluded at 2:05 p.m.)

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7 --ooOoo--

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9 STATE OF MICHIGAN

10 COUNTY OF GRAND TRAVERSE

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12 I, Janet McGee, Official Court Reporter
13 for the Grand Traverse County Family Court, State
14 of Michigan, do hereby certify that the foregoing
15 transcript comprises a full, true, and correct
16 transcription to the best of my ability, of the
17 proceedings and testimony taken in the
18 above-captioned matter on the 16th day of May 2003.

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21 Janet McGee, CSR 3361

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