

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 17, 1996

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2067

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**STATE OF WISCONSIN,
RACINE COUNTY CHILD SUPPORT
DEPARTMENT, and TANYA BOGART,**

Petitioners-Respondents,

v.

EDWARD A. BOGART,

Respondent-Appellant.

APPEAL from an order of the circuit court for Racine County:
ALLEN PATRICK TORHORST, Judge. *Affirmed.*

Before Brown, Nettesheim and Snyder, JJ.

PER CURIAM. Edward A. Bogart appeals pro se from a trial court order requiring him to pay child support for two children after finding that he had failed to rebut the presumption that he is the children's father and that it was not in the best interest of the children to perform blood tests to determine paternity. On appeal, Bogart argues that the court lacked personal and subject matter jurisdiction and that his assertion of non-paternity was sufficient to require blood tests. We reject these arguments and affirm.

Bogart's jurisdictional arguments appear to be premised upon his contention that his wife and the children were not residents of the State of Wisconsin at the time the Racine County Child Support Department commenced an action to compel him to pay child support. Bogart's wife and children had received public assistance from the Racine County Department of Human Services from January to July 1993.

We conclude that the circuit court had subject matter jurisdiction in this matter by virtue of § 767.075(1), STATS., which makes the State of Wisconsin the real party in interest for purposes of "securing reimbursement of aid paid" to a dependent child. *See also* § 767.08(3), STATS. (governing actions to compel support where public aid has been furnished). The Racine County Child Support Department brought the action on behalf of the State.

"Circuit courts in Wisconsin are courts of general jurisdiction and have original subject matter jurisdiction over civil and criminal matters not excepted in the constitution or prohibited by law." *State v. Olexa*, 136 Wis.2d 475, 479, 402 N.W.2d 733, 735 (Ct. App. 1987). Under §§ 767.075(1) and 767.08(3), STATS., the legislature has empowered the circuit courts of this state to entertain actions to compel support where public aid has been received. Therefore, the circuit court had subject matter jurisdiction to entertain the action against Bogart to compel support.

We also conclude that the court had personal jurisdiction over Bogart because he was served in Wisconsin with the action to compel support. *See* § 801.05(1)(a), STATS.

In response to the action to compel support, Bogart moved the trial court to order blood tests because he believes he is not the father of the children for whom support was sought. The trial court found that on the dates the children were born, Bogart was married to their mother. Under §§ 891.39(1)(a) and 891.41(1), STATS., there was a presumption that Bogart was the father of the children because he was married to their mother at the time

they were born and he bore the burden of proving non-paternity by a clear and satisfactory preponderance of the evidence.¹

The record on appeal is devoid of any of Bogart's arguments or other facts he offered in support of his non-paternity claim. His motion seeking blood tests merely alleges that his wife was "adulterous" but does not offer any additional facts. Because the record on appeal is insufficient to support Bogart's claim, we cannot address this issue. See *Fiumefreddo v. McLean*, 174 Wis.2d 10, 26-27, 496 N.W.2d 226, 232 (Ct. App. 1993).

We reject Bogart's blood test issue on another ground. An action to determine paternity under § 767.45(5)(b), STATS., "may be joined with any other action for child support" Unless a man is presumed to be the child's father under § 891.41, STATS., child support may not be ordered until paternity is adjudicated. Section 767.45(5m). Here, the presumption of paternity under § 891.41(1) has not been rebutted. Bogart and the children's mother "are or have been married to each other and the child[ren] [were] conceived or born after marriage and before the granting of a decree of legal separation, annulment or divorce" *Id.* Because paternity was not at issue in this child support enforcement action, the trial court did not err in declining to require blood tests to determine Bogart's paternity.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

¹ The respondent contends that Bogart did not claim non-paternity in the trial court. While Bogart's motion seeking blood tests was not completely clear, it was implicit in the motion that he was challenging his paternity. Furthermore, it is apparent from the trial court's decision that Bogart disputed paternity during proceedings in the trial court.