

**WISCONSIN SUPREME COURT
WEDNESDAY, DECEMBER 13, 2006
10:45 a.m.**

05AP77

Shannon E. T. v. Alicia M. V.M.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a ruling of the Monroe County Circuit Court, Judge Michael J. McAlpine presiding.

The case involves a man who hopes to establish that he is the father of a stillborn baby so he can pursue a wrongful death claim based upon the stillbirth. The circuit court dismissed his case, and the Court of Appeals affirmed this decision but under different reasoning. Now the Supreme Court will clarify whether the law permits an unmarried man who claims to be the father of a stillborn baby to seek a legal order establishing himself as the father for purposes of filing a wrongful death claim.

Here is the background: In February 2004, when Alicia M.V.M. was 27 weeks pregnant, she was in a car accident that resulted in the stillbirth of a baby boy, Caden. Alicia was incapacitated as a result of the crash.

Shannon E.T. filed a wrongful death action in Wood County, alleging that he was Caden's father, that Caden had been a viable fetus, and that Caden had been killed due to the negligence of Alicia and/or the other driver. The circuit court ruled that Shannon could not proceed with his wrongful death action unless he first obtained a paternity determination, and it put the wrongful death action on hold.

The paternity statute¹ enumerates who may bring an action in court to determine the paternity of a child. The list includes, "A man alleged or alleging himself to be the father of the child." Under this law, Shannon filed a paternity action in Monroe County, but the Monroe County Circuit Court dismissed the action for failure to state a claim, reasoning that a stillborn is not a "child."

Shannon appealed, and the Court of Appeals affirmed the trial court's ruling, but for different reasons. The Court of Appeals called the statute ambiguous, and looked at the legislative history to attempt to determine the intent of the law. The Court of Appeals concluded from the legislative history that the Legislature did not necessarily intend for the statute to exclude stillborns; however, Shannon's case was properly dismissed, the court found, because the law does not permit an alleged father to file a paternity action for the sole purpose of pursuing a separate action.

Now Shannon has come to the Supreme Court, where he argues that the Court of Appeals wrongly interpreted the paternity statute as requiring the trial court to weigh a man's motives for seeking a paternity determination before allowing the case to proceed.

Alicia, on the other hand, argues that the circuit court got it right: the paternity statute provides no basis for determining the paternity of a stillborn.

The Supreme Court will analyze the paternity law to determine if the Legislature intended it to cover stillborns.

¹ Wis. Stat. § 767.45