

IN THE COURT OF APPEALS  
AT KNOXVILLE

**FILED**

**June 25, 1998**

**Cecil Crowson, Jr.**  
Appellate Court Clerk

MICKEY ATKINS,	)	COCKE JUVENILE
	)	C.A. NO. 03A01-9708-JV-00337
	)	
Petitioner-Appellant	)	
	)	
vs.	)	
	)	HON. C. PHILLIP OWENS
	)	JUDGE
	)	
TAMMY SUE GROOMS and	)	
JEFFREY CHARLES GROOMS,	)	
	)	
Respondents-Appellees	)	AFFIRMED AND REMANDED

REBECCA D. SLONE, Slone & Slone, Dandridge, for Appellant.

WILLIAM M. LEIBROCK, Newport, for Appellees.

JOHN KNOX WALKUP, Attorney General and Reporter, and SUE A. SHELDON, Assistant Attorney General, for Intervenor, STATE OF TENNESSEE.

O P I N I O N

McMurray, J.

The plaintiff in this action sought a decree of paternity and to legitimate a child, Jeffrey Chase Grooms, of whom he claimed to be the biological father. At the time of Jeffrey's birth, the appellee, Tammy Grooms, (the mother) was legally married to appellee,

Jeffrey Charles Grooms. The trial court dismissed Atkins' petition under the res judicata doctrine, finding that the previous decree of divorce between the appellees had conclusively determined that the appellees were the legal parents of the child. The trial court also found that Atkins had no standing to file a paternity or legitimation petition.

A recent Supreme Court case, Evans v. Steelman, No. 01S01-9701-JV-00019, 23 TAM 14-4 (March 30, 1998), is dispositive of this appeal. In Evans, the court held that "the phrase 'not born in lawful wedlock,' as used in Tenn. Code Ann. § 36-2-202(a), applies only to a child born to an unmarried woman." Id. at p.3. Thus, the court found that a putative father has no standing to legitimate a child born to a married woman. Id.

The Evans court did not directly address the issue of a putative father's standing to file a paternity action. However, T.C.A. § 36-2-103(a)(1) states that "[a] petition to establish paternity of a child ... may be filed ... by any person." T.C.A. § 36-2-101(1) defines "child" as "a child born out of lawful wedlock." Under Evans, we construe "child born out of lawful wedlock" to mean a child born to an unmarried woman. Thus, Atkins has no standing to file a paternity action because Ms. Grooms was married at the time of the child's birth.

Atkins argues that an interpretation of the legitimation and paternity statutes which disallows him to file his petitions violates his due process and equal protection rights under the U.S. and Tennessee Constitutions. The Evans court rejected identical contentions by the petitioners. Evans, supra, at pp. 7-9.

We find it unnecessary to address the issue of res judicata.

We affirm the trial court's judgment on the grounds that Atkins had no standing to file either a paternity or legitimation petition, under the Supreme Court's ruling in Evans. The petitions are dismissed and the case remanded. Costs on appeal are assessed to appellant.

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Don T. McMurray, Judge

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Herschel P. Franks, Judge

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Charles D. Susano, Jr., Judge

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**JUDGMENT**

This appeal came on to be heard upon the record from the Juvenile Court of Cocke County, briefs and argument of counsel. Upon consideration thereof, this Court is of opinion that there was no reversible error in the trial court.

We affirm the judgment of the trial court. The petitions are dismissed and the case remanded. Costs on appeal are assessed to appellant.

PER CURIAM