

Ada STORY and Ada STORY, Next Friend of Angel
Renee PAGE, A Minor, and the STATE of Arkansas
v. Richard HODGES

81-4

614 S.W. 2d 506

Supreme Court of Arkansas
Opinion delivered April 27, 1981

APPEAL & ERROR — WHEN APPEALS LIE — GENERAL RULE — ORDER IN INSTANT CASE NOT APPEALABLE. — The general rule is that appeals lie only when and if there is a judgment. *Held:* The evidentiary ruling in the instant paternity case is not an appealable order where the court ruled that appellants were not denied equal protection of the law by the admission of the results of the standard ABO blood tests authorized by Ark. Stat. Ann. § 34-705.1 (Repl. 1962), which excluded appellee as the father.

Appeal from Lee Circuit Court, *Henry Wilkinson*, Judge; dismissed.

Doddridge M. Daggett, for appellants.

Butler, Hicky & Hicky, by: *Preston G. Hicky*, for appellee.

ROBERT H. DUDLEY, Justice. Ada Story and her minor daughter, Angel Renee Page, filed a paternity suit in the County Court of Lee County alleging that Richard Hodges, the appellee, was the father of Renee. The referee ordered the standard ABO blood tests to be made and found that appellee was not the father. An appeal was taken to the Circuit Court of Lee County and appellants again asked for blood tests and the court so ordered.

Appellants then moved in limine for the court to declare Ark. Stat. Ann. § 34-705.1 (Repl. 1962) unconstitutional. This statute allows blood tests in evidence only to exclude paternity. It is contended that blood tests now should be admitted to establish paternity because a relatively new test, Human Leukocyte Antigen, can determine paternity with a

reasonable degree of medical certainty. The trial court did not find a denial of equal protection and this appeal is from that ruling.

This evidentiary ruling is not an appealable order. The general rule is that appeals lie only when and if there is a judgment. *Nolan v. Manning*, 241 Ark. 422, 407 S.W. 2d 937 (1966); Arkansas Rules of Appellate Procedure, Rule 2 (Vol. 3A, Repl. 1979).

Appeal dismissed.

HOLT, J., not participating.
