

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of C.A.W., Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LARRY HEIER,

Appellant,

and

DEBORAH ANN WEBER and ROBERT  
RIVARD,

Respondents.

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FOR PUBLICATION

October 23, 2003

9:05 a.m.

No. 235731

Macomb Circuit Court

Family Division

LC No. 92-036958-NA

ON REMAND

Updated Copy

December 30, 2003

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

GAGE, J. (*concurring*).

I concur in the result only. I write separately to express my deep concern over the outcome of this case. The record here demonstrates that during the lower court proceedings Robert Rivard's paternity of CAW was called into question by the natural mother. In the pleadings filed in this case, it was suggested that Mr. Rivard was not CAW's natural father and that Larry Heier was. While I acknowledge that Mr. Heier's late attempt at intervention is troubling, I find it more disturbing that a man who claims to be a child's father, and has established some relationship, albeit not substantial, with the child and provided some support for the child, can be denied the opportunity to intervene in a child protective proceeding to have his paternity established and his fitness tested. A majority of our Supreme Court has decided that the Legislature did not intend to allow putative fathers an opportunity to intervene in child protective proceedings. I do not believe the policy considerations that apparently gave comfort to the majority of our Supreme Court supersede the presumption that a child is better off in the care of a fit natural parent rather than with strangers in foster care or through adoption. See *Troxel v Granville*, 530 US 57; 120 S Ct 2054; 147 L Ed 2d 49 (2000). Perhaps, for the sake of clarity, the court rules should be amended to specifically allow a putative father to intervene in a child protective proceeding if he is able to raise a legitimate question about paternity.

/s/ Hilda R. Gage