

STATE OF MICHIGAN
COURT OF APPEALS

KAREN BARTLETT,

Appellee-Appellee,

v

PAUL DEJOHN,

Defendant,

and

PAULA SUE DEJOHN,

Intervening Defendant-Appellant.

UNPUBLISHED

May 2, 1997

No. 197649

Oakland Circuit Court

LC No. 86-317133

Before: Sawyer, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Intervening defendant Paula Sue DeJohn appeals as of right the trial court order dismissing her as a third-party intervenor for lack of standing. We affirm.

In her first issue, appellant argues that the trial court erred in finding that she did not have standing to intervene. Appellant contends that she has standing because the dispute arose incidentally from the original paternity action in circuit court under MCL 722.27; MSA 25.312(7). Under the Child Custody Act, MCL 722.21 *et seq.*; MSA 25.312(1) *et seq.*, questions of law are reviewed for clear legal error. *Fletcher v Fletcher*, 447 Mich 871, 881; 526 NW2d 889 (1994).

The Legislature has provided that a third party has standing to file a child custody action if the court finds:

(b) All of the following:

(i) The child's biological parents have never been married to one another.

(ii) The child's parent who has custody of the child dies or is missing and the other parent has not been granted legal custody under court order.

(iii) The third person is related to the child within the fifth degree by marriage, blood, or adoption. [MCL 722.26c(1)(b); MSA 25.312(6c)(1)(b).]

Appellant, however, relies on MCL 722.27; MSA 25.312(7), which provides:

(1) If a child custody dispute has been submitted to the circuit court as an original action under this act or has arisen incidentally from another action in the circuit court or an order or judgment of the circuit court, for the best interests of the child the court may:

(a) Award the custody of the child to 1 or more parties involved or to others and provide for payment of support for the child, until the child reaches 18 years of age.

Appellant contends that under MCL 722.27; MSA 25.312(7), she can be awarded custody because she brought a motion to intervene pursuant to the paternity action that had been heard in circuit court.

This Court has recently rejected appellant's argument. In *Sirovey v Campbell*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 180182, issued 4/18/97), this Court noted that the Child Custody act involves procedure only and does not create substantive rights of entitlement to the custody of a child. The *Sirovey* panel therefore held that MCL 722.27(1)(a); MSA 25.312(7)(1)(a) does not confer standing on third parties to assert a claim for custody of a child. *Id.* at slip op pp 4-6. Accordingly, we find that the trial court did not err in finding that appellant does not have standing to intervene in this case.

Appellant also argues that the addition of MCL 722.26c; MSA 25.312(6c) had no effect on MCL 722.27; MSA 25.312(7). We disagree. As stated previously, the Child Custody act involves procedure only and does not create substantive rights of entitlement to the custody of a child. *Bowie v Arder*, 441 Mich 23, 43; 490 NW2d 568 (1992); *Sirovey, supra* at 4. Accordingly, we find that this argument is without merit.

Finally, appellant contends that to treat MCL 722.27; MSA 25.312(7) as applicable to child custody disputes incidental to divorce or separate maintenance actions but not paternity actions violates equal protection. Classifications based upon illegitimacy violate the Equal Protection Clauses of US Const, Am XIV and Const 1963, art 1, § 2, unless they are substantially related to permissible state interests. *Dones v Thomas*, 210 Mich App 674, 677; 534 NW2d 221 (1995). However, because MCL 722.27; MSA 25.312(7) does not grant third parties substantive rights of entitlement to the custody of a child in either custody actions or paternity actions, see *Bowie, supra*; *Sirovey, supra*, we find no violation of equal protection.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Mark J. Cavanagh