STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL KIVARI, Plaintiff-Appellee,	UNPUBLISHED April 12, 2016
v	No. 328951 Oakland Circuit Court Family Division
ANGELA KIVARI, Defendant-Appellant.	LC No. 2013-812027-DO

Before: GLEICHER, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Defendant, Angela Kivari, appeals as of right from an order denying her motion seeking custody of and parenting time with the son of plaintiff, Michael Kivari. On appeal, defendant argues that she has standing to seek custody of and parenting time with the minor child and that she is the child's equitable parent. We affirm.

Plaintiff and defendant were married in 1999; the parties had no children together during the marriage. However, plaintiff had an affair with Janet Bell, and the two conceived the minor child. When the child was 18 months old, he came to live with plaintiff and defendant. Plaintiff later obtained sole custody of the child, and Bell received parenting time. Plaintiff and defendant eventually divorced in 2013. The minor child was not included in the complaint or judgment of divorce. However, before the judgment of divorce, the trial court became aware that a child had been born to plaintiff and Bell during the course of plaintiff and defendant's marriage. Following the divorce, the minor child resided with defendant, and plaintiff had parenting time every other weekend and Tuesday nights. When plaintiff sought to alter the custody arrangement by essentially reversing the time that the child spent with each party, defendant filed a motion seeking to establish custody and parenting time. The trial court denied the motion, holding that defendant lacked standing and that the equitable parent doctrine did not apply. Defendant now appeals the decision of the trial court.

Defendant first argues that the trial court erred in holding that she lacked standing to raise an issue regarding custody and parenting time of the minor child. We disagree. Whether a party has standing to pursue a claim is a question of law that this Court reviews de novo. *Stankevich v Milliron* (*On Remand*), ___ Mich App ___; ___ NW2d ___ (2015) (Docket No. 310710); slip op

at 3. Issues involving statutory construction are also reviewed de novo. *In re Anjoski*, 283 Mich App 41, 50; 770 NW2d 1 (2009).

"Generally, in order to have standing, a party must merely show a substantial interest and a personal stake in the outcome of the controversy." *Altman v Nelson*, 197 Mich App 467, 475; 495 NW2d 826 (1992). Divorces and child custody proceedings are actions governed by statute, and therefore, "a party must have standing bestowed by statute." *Ryan v Ryan*, 260 Mich App 315, 332; 677 NW2d 899 (2004). Here, whether defendant had standing implicates both the statute governing divorce actions and the Child Custody Act (CCA).

Regarding the legislation governing actions for divorce, MCL 552.17a(1) provides, in pertinent part, as follows:

> The court has jurisdiction to make an order or judgment *relative to the minor children of the parties* as authorized in this chapter to award custody of each child to 1 of the parties or a third person until each child has attained the age of 18 years and may require either parent to pay for the support of each child until each child attains that age. . . . [Emphasis added.]

Likewise, MCL 552.17(1) provides, in pertinent part, as follows:

> After entry of a judgment concerning annulment, divorce, or separate maintenance and *on the petition of either parent*, the court may revise and alter a judgment concerning the care, custody, maintenance, and support of some or all of the children, *as the circumstances of the parents* and the benefit of the children require. [Emphasis added.]

Similarly, MCL 552.16(1) provides, in pertinent part, as follows:

> Upon annulling a marriage or entering a judgment of divorce or separate maintenance, the court may enter the orders it considers just and proper concerning the care, custody, and, as prescribed in section 5 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605, support *of a minor child of the parties*. . . . [Emphasis added.]

As the plain language of these statutes make clear, this legislation clearly contemplates that the trial court's determinations regarding custody in divorce proceedings are limited to circumstances involving the minor children of the parties to the divorce. It is undisputed that defendant is not the child's natural mother. Accordingly, the divorce statutes do not provide defendant with authority to seek a legal determination concerning the child's custody and parenting time, and notably defendant does not contend on appeal that they do.

Seemingly acknowledging the limitations on her standing under the divorce statutes, defendant primarily relies on the CCA to assert her position. The CCA confers standing to initiate child custody actions only upon certain persons; specifically, "parents," "agencies," or designated "third persons." See MCL 722.25(1); *Aichele v Hodge*, 259 Mich App 146, 165; 673 NW2d 452 (2003). On appeal, defendant relies on MCL 722.27(1), which provides, in relevant part:

> 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 do 1 or more of the following:
>
> (a) Award the custody of the child to 1 or more of the parties involved or to others and provide for payment of support for the child, until the child reaches 18 years of age. . . .
>
> (b) Provide for reasonable parenting time of the child by the parties involved, by the maternal or paternal grandparents, or by others, by general or specific terms and conditions. . . . [Emphasis added.]

It is well established that "[t]he Child Custody Act does not create substantive rights of entitlement to custody of a child." *Ruppel v Lesner*, 421 Mich 559, 565; 364 NW2d 665 (1984). Our Supreme Court has also specifically rejected the nonparents' argument that where a child had lived with a third party, that third party had standing to petition for a change of custody of the child pursuant to the Child Custody Act. *Bowie v Arder*, 441 Mich 23, 33; 490 NW2d 568 (1992). "A third party does not have standing to create a custody dispute not incidental to divorce or separate maintenance proceedings unless the third party is a guardian of the child or has a substantive right of entitlement to custody of the child." *Id*. at 49 (footnote omitted).

Subsequent cases in the Michigan Supreme Court and this Court have noted and followed the holding of both *Ruppel* and *Bowie*. See *Hunter v Hunter*, 484 Mich 247, 263; 771 NW2d 694 (2009) (recognizing that "no constitutional or statutory basis exists for third parties to have standing to seek child custody solely because they have an established custodial relationship with the child"); *Van v Zahorik*, 460 Mich 320, 329; 597 NW2d 15 (1999) (recognizing that a third party does not acquire standing because the child has resided with the third party); *In re Anjoski*, 283 Mich App at 50-52 (recognizing limited standing that Child Custody Act provides for third parties); *Sirovey v Campbell*, 223 Mich App 59, 69 ; 565 NW2d 857 (1997) (observing that third parties do not gain standing in a child custody action because the minor child has lived with them).

Defendant attempts to distinguish the current case from the limitations that have been placed on a third party's attempt to initiate a child custody dispute. Specifically, defendant argues that custody and parenting time with the child is a dispute that has "arisen incidentally from another action in the circuit court . . . ." MCL 722.27(1). However, in this case, while an action involving the minor child's custody and parenting time was before the circuit court in the action between plaintiff and Bell, there was no such custody dispute between plaintiff and defendant in their divorce proceeding. Indeed, to allow defendant to claim that a child custody dispute has "arisen incidentally" from her divorce proceeding with plaintiff would essentially subvert the intention of the Legislature to limit third-party custody actions under the CCA to individuals meeting specific conditions. See, e.g., *McGuffin v Overton*, 214 Mich App 95, 103; 542 NW2d 288 (1995) (recognizing that the Legislature has been "very specific" in limiting those third persons who may pursue an action for child custody).

Defendant attributes the fact that the minor child was not at issue in the divorce case to plaintiff's failure to comply with MCR 3.206(A)(5)(b), a court rule that requires the parties to inform the trial court in the complaint if minor children were born during the marriage. Defendant alleges that had plaintiff complied with the court rule, defendant may have consulted with an attorney to determine her rights to the minor child (rather than proceed in propria persona), initiated guardianship proceedings for the child, or filed a counter-claim relating to the child. However, defendant filed an answer to this case, and, like plaintiff, did not mention the minor child or deny plaintiff's allegation that no minor children were born during the marriage. The case proceeded to a consent judgment of divorce, with no reference to the child. Indeed, it even appears that the trial court was informed that plaintiff had two children of which defendant was not the biological mother. Moreover, even assuming there was an error, we are not convinced that the custody and parenting time of the minor child was ultimately relevant to the divorce proceeding, or that a technical error should now act to confer standing on defendant, particularly when plaintiff represented himself in propia persona as well.

Defendant also refers to a line of authority standing for the proposition that even where a third party lacks standing, the trial court may award custody or parenting time to the third party following a determination of the best interests of the child. See *Bowie*, 441 Mich at 49 n 22; *Ruppel*, 421 Mich at 565-566; *Anjoski*, 283 Mich App at 62. In *Terry v Affum* (*On Remand*), 237 Mich App 522, 533; 603 NW2d 788 (1999), this Court recognized that a "common thread[]" among cases that allow for the awarding of custody to a third party where that third party did not have standing was that the third party did not initiate the action, thus comporting with the "threshold requirement" of MCL 722.27(1). The Court ultimately concluded that before parenting time could be awarded to a third party, a child custody dispute must already be properly before the trial court. *Id*. at 534. Here, because a proper child custody dispute did not exist in the parties' divorce action, this line of authority is not supportive of defendant's assertion that she ought to have been awarded custody and parenting time. Accordingly, we reject defendant's claim of error.

Defendant next argues that the trial court erred in holding that she was not the equitable parent of the minor child. We disagree. The proper application of the equitable parent doctrine is a question of law which we review de novo. *Killingbeck v Killingbeck*, 269 Mich App 132, 141; 711 NW2d 759 (2005).

The equitable parent doctrine, adopted in *Atkinson v Atkinson*, 160 Mich App 601; 408 NW2d 516 (1987), provides that:

> [A] husband who is not the biological father of a child born or conceived during the marriage may be considered the natural father of that child where (1) the husband and the child mutually acknowledge a relationship as father and child, or the mother of the child has cooperated in the development of such a relationship over a period of time prior to the filing of the complaint for divorce; (2) the husband desires to have the rights afforded to a parent, and (3) the husband is willing to take on the responsibility of paying child support. [*Id*. at 608-609.]

Undeniably, the doctrine, as stated, does not apply to defendant because she is not "a husband who is not the biological father of the minor child[.]" Defendant asserts that her status as a wife

rather than a husband is a "distinction without a difference." Even assuming this was true, we do not agree that defendant can show that she and the child mutually acknowledged a relationship as mother and child, or that the father of the minor child cooperated in the development of such a relationship over a period of time. Here, it was known to all parties that defendant was not the child's natural mother; she was his stepmother. As such, defendant fails the *Atkinson* test, and the equitable parent doctrine does not apply.

Defendant argues that we should extend the equitable parent doctrine in this case, but we do not agree. "[T]he Legislature, not the judiciary, is the appropriate entity to weigh the sensitive public policy issues involved in creating or extending parental rights to persons with no biological . . . link to a child." *Van*, 460 Mich at 337. In addition, we agree with plaintiff's assertion that the child already has a legal mother—Bell. Indeed, as the trial court noted in its opinion and order below, in other legal contexts, a review of Michigan authority reflects that courts are reluctant to declare more than two people as legal parents. For example, in *York v Morofsky*, 225 Mich App 333, 339-340; 571 NW2d 524 (1997), this Court determined that one of the parties to the appeal, the defendant Chester Morofsky, was the equitable parent of a child that was born to the plaintiff Cynthia York during the parties' marriage. In *York*, only one man came forward seeking to be a father to the child, and was declared an equitable parent. *Id.* at 334-340. As this Court observed in *York*, 225 Mich App at 337, equitable parenthood is a "permanent status" with very serious obligations and responsibilities. These include such matters as inheritances, income tax status, and medical care responsibility. *Id.* at 339. The parties do not dispute that the minor child has a natural, biological mother. The trial court thus correctly recognized that the relevant case law does not support the application of the equitable parent doctrine under the facts of this case, and declined to extend it in a context where a child would then be declared to have three legal parents with the commensurate rights of custody, parenting time and the additional legal responsibilities.[1]

Affirmed. Plaintiff, the prevailing party, may tax costs. MCR 7.219.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood

[1] Although not referenced by defendant, we acknowledge that recently, this Court expanded the equitable parent doctrine to same-sex couples in light of the United States Supreme Court's opinion in *Obergefell v Hodges*, ___ US ___; 135 S Ct 2584, 2604-2605; 192 L Ed 2d 609 (2015). *Stankevich*, ___ Mich App at ___; slip op at 4, 5. However, as this case does not involve a same-sex couple and was not impacted by *Obergefell*, we are not convinced that *Stankevich* provides any further support for extending the doctrine in the current case.