STATE OF MICHIGAN

COURT OF APPEALS

ROBERT PORTER and JUDITH PORTER, Plaintiff-Appellants, v CHRISTINA MARIE HILL, f/k/a CHRISTINA MARIE PORTER, Defendant-Appellee.	FOR PUBLICATION June 11, 2013 9:00 a.m. No. 306562 Saginaw Circuit Court LC No. 11-012799-DZ

Before: FITZGERALD, P.J., and METER and BOONSTRA, JJ.

METER, J.

Plaintiffs appeal as of right from the trial court's order granting summary disposition to defendant. Plaintiffs argue that the trial court erred by ruling that they did not have legal standing to seek a grandparenting-time order. We affirm.

Defendant is the biological mother and sole legal parent of two children. The biological father of the children is defendant's ex-husband, Russell Porter, the biological son of plaintiffs. Russell's parental rights were involuntarily terminated as a result of physical abuse, and Russell and defendant subsequently divorced. Russell paid child support until his death.

Following their son's death, plaintiffs sought an order of grandparenting time. Defendant moved for summary disposition, arguing that plaintiffs did not have standing to pursue such an order, because their son's parental rights had been terminated. The trial court granted defendant's motion.

"Whether a party has standing is a question of law that we review de novo." *Manuel v Gill*, 481 Mich 637, 642; 753 NW2d 48 (2008) (internal citation and quotation marks omitted). We also review de novo a trial court's decision regarding a motion for summary disposition. *Jimkoski v Shupe*, 282 Mich App 1, 4; 763 NW2d 1 (2008).

Michigan's Child Custody Act of 1970, MCL 722.21 *et seq.*, "is the exclusive means for pursuing" orders of parenting time. *Van v Zahorik*, 460 Mich 320, 328; 597 NW2d 15 (1999). MCL 722.27b(1) provides that "[a] child's grandparent may seek a grandparenting time order under 1 or more of the following circumstances: . . . (c) The child's parent who is a child of the grandparents is deceased." The term "parent" is defined as "the natural or adoptive parent of a

child[,]" MCL 722.22(h), and the term "grandparent" is defined as "a natural or adoptive parent of a child's natural or adoptive parent," MCL 722.22(e).

At the time of his death, Russell was not a legal parent of the children. He had no right to have any input in their lives; in fact, to do so would have violated a court order. Plaintiffs, as Russell's parents, derived their rights as grandparents through him. Russell's death had no effect on his rights or those of plaintiffs, and there is no authority for plaintiffs' contention that "natural" as used in MCL 722.22 is merely a substitute for "biological." The recent case of *People v Wambar*, ___ Mich App ___; ___ NW2d ___; 2013 WL 1339201 (2013), is instructive. At issue in *Wambar* was whether a man whose parental rights to a child had been terminated based on abuse and who attempted to unlawfully take the child could be convicted under the general child-taking statute, MCL 750.350, or whether the defendant should have been charged under the parental-kidnapping statute, MCL 750.350a. *Wambar*, slip op at 1 n 2, 1-2. The general statute states that "[a]n adoptive or natural parent of the child shall not be charged with and convicted for a violation of this section." MCL 750.350(2). The defendant argued that "natural parent" meant "biological parent" and encompassed him such that he could not be convicted under MCL 750.350. *Wambar*, slip op at 2.

This Court upheld the defendant's conviction under the general statute, emphasizing that the defendant's status as a parent had been terminated in a legal proceeding, *id*., slip op at 3, and that the phrase "natural parent" is not automatically equivalent to the phrase "biological parent," *id*, slip op at 3 n 5. This Court stated that "[i]t would be anomalous for the Legislature to authorize a court to terminate a person's parental rights but to protect[1] that same person if he or she attempted to take the child away from a person with legal rights to the child." *Id*., slip op at 4.

Similarly, with respect to the present case, it would be anomalous for the Legislature to authorize a court to terminate a person's parental rights based on abuse but then to somehow "revive" those rights for purposes of grandparent visitation. Accordingly, for purposes of the present case, Russell was not a legal parent,[2] plaintiffs are not legal grandparents, and they have no basis on which to seek an order of grandparenting time.

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[1] The potential punishment under the parental-kidnapping statute, MCL 750.350a is much less than under MCL 750.350. See *Wambar*, slip op at 4 n 6.

[2] The dissent claims that we are equating the phrase "natural parent" with the phrase "legal parent." However, in stating that Russell was not a legal parent, we are emphasizing the fact that Russell ceased being a "parent" at all, in the eyes of the law, after his parental rights were terminated. Because he was not a "parent," it is axiomatic that he could not be a "natural parent." The juxtaposition of "natural parent" and "adoptive parent" in MCL 722.22 makes perfect sense in this context. The use of the term "natural" is used to distinguish a *legal* parent affiliated with a child by reason of biology from a *legal* parent affiliated with a child by reason of adoption. As clearly stated in *Pecoraro v Rostagno-Wallat*, 291 Mich App 303, 314; 805 NW2d 226 (2011), "[t]he phrase 'natural parent' [in MCL 722.22(h)] was used by the Legislature to distinguish between adoptive parents and non-adoptive parents." It was not used to distinguish

Plaintiffs argue that because their son continued to pay child support and thus met his parental responsibilities, they are entitled to grandparenting time, i.e. visitation, an express parental right. However, in *In re Beck*, 488 Mich 6, 8; 793 NW2d 562 (2010), the Michigan Supreme Court observed that, under Michigan's statutory scheme, parental rights are distinct from parental obligations. The *Beck* Court held that while an order terminating parental rights terminates a parent's "liberty interest in 'the care, custody, and control of their children[,]'" see *id*. at 11, quoting *Troxel v Granville*, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000), a termination order does not eliminate the parental obligation to support a child, *Beck*, 488 Mich at 15. A parent whose parental rights have been terminated "retains *absolutely no rights* with respect to the children and no right to interpose himself in the lives of his children." *Id*. at 16 n 23 (emphasis added). "In the absence of statutory authority, the terminated parent may not claim *any* right to see or contact the children attendant to the payment of child support." *Id*. (emphasis in original).

Plaintiffs also emphasize that defendant claimed social-security benefits for the children through Russell Porter; however, such benefits go to the support obligation that continues, as noted, even after parental rights are terminated. Similarly, even if the children are entitled to inherit from Russell, such rights of the children to financial benefits do not somehow revive the parental rights of the parent.

Finally, plaintiffs cite MCL 722.27b(5), which provides:

> If 2 fit parents sign an affidavit stating that they both oppose an order for grandparenting time, the court shall dismiss a complaint or motion seeking an order for grandparenting time filed under subsection (3). This subsection does not apply if 1 of the fit parents is a stepparent who adopted a child under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, and the grandparent seeking the order is the natural or adoptive parent of a parent of the child who is deceased or whose parental rights have been terminated.

We acknowledge that the second sentence of MCL 722.27b(5) appears to lend support to plaintiffs' argument in that it mentions a situation in which a grandparent seeks to visit a child even though the child's parent has had his or her parental rights terminated. However, the circumstances outlined (e.g., a stepparent adoption) are not present here, and thus MCL 722.27b(5) does not advance plaintiffs' case. As noted by defendant, it is likely that the Legislature included the termination-of-rights language in this statute in order to accommodate a situation in which a parent has voluntarily released his or her parental rights merely to allow for a stepparent adoption. We strongly urge the Legislature to amend this statute to clarify that the second sentence of MCL 722.27b(5) does not apply in cases where parental rights have been involuntarily terminated based on neglect or abuse or in cases where parental rights have been relinquished following the initiation of child-protective proceedings.

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between adoptive parents and persons (i.e., non-parents) who produced a child by virtue of biological processes. See, generally, *id*. at 313-314.

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald