

STATE OF MICHIGAN
COURT OF APPEALS

HELEN L. MARSHALL,

Plaintiff-Appellant,

v

DAWN MICHELLE DENNIS,

Defendant-Appellee.

UNPUBLISHED

July 7, 2000

No. 224888

Jackson Circuit Court

LC No. 97-079369-DC

Before: Jansen, P.J., and Hood and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right the order dismissing her petition for custody based on lack of standing. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On March 19, 1997, plaintiff filed a petition for custody of her grandchild, after her son died. Plaintiff's son had sole physical custody of his child, and he had never been married to defendant, who is the child's mother. The custody dispute was resolved by stipulation, and a final order granting custody to defendant was entered August 4, 1997, allowing plaintiff grandparent's visitation.

On April 28, 1999, plaintiff filed a petition to change custody. The trial court found that plaintiff did not have standing to seek a change of custody, and dismissed the petition.

MCL 722.26c; MSA 25.312(6c) provides in part:

(1) A third person may bring an action for custody of a child if the court finds either of the following:

* * *

(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.

When the first petition was filed, plaintiff met the three conditions for third-party standing. When plaintiff filed her petition to modify custody in 1999, she no longer met the conditions because the mother had been granted legal custody by court order.

In *Van v Zahorik*, 460 Mich 320; 597 NW2d 15 (1999), the Supreme Court observed that child custody disputes raise important public policy issues which are best resolved by the Legislature, not the judiciary. *Id.*, 327. The Legislature has provided a comprehensive statutory scheme to deal with such issues in the Child Custody Act. *Id.* If a person does not fall within the ambit of the act, he cannot bring an action for custody. *Id.*, 328.

In *Sirovey v Campbell*, 223 Mich App 59; 565 NW2d 857 (1997), this Court held that the grandparents did not have standing to assert a claim for custody, even though the court had jurisdiction over the child through the divorce judgment. The intervening grandparents did not have standing to request the circuit court to make a determination of the child's best interests with respect to her custody. *Id.*, 68. The fact that the court had jurisdiction over the child did not give petitioners standing to assert a substantive right to the child. Neither the Child Custody Act nor any other authority gives standing to create a custody dispute to a third-party who does not possess a substantive right to custody. *Id.*, 71.

Plaintiff no longer had standing to create a custody dispute once the court entered an order granting custody of the child to defendant mother. The fact that plaintiff once had standing is irrelevant: plaintiff did not have a substantive right to custody after custody was awarded to the mother. The trial court properly found that standing must be present at the time the third party seeks a best interests of the child determination. *Id.*

Affirmed.

/s/ Kathleen Jansen

/s/ Harold Hood

/s/ Henry William Saad