STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MARKIA VICTORIA BANCROFT, Minor.

JAY BANCROFT and ERICA BANCROFT,

Petitioners-Appellees,

v

JOYCE TERESIA BANCROFT,

Respondent,

and

SCOTT WILLIAM KEMMER and CHRISTINA LORRAINE KEMMER,

Appellants.

UNPUBLISHED
February 9, 2001

No. 226828
Clinton Circuit Court
Family Division
LC No. 00-013508-AD

In the Matter of MARKIA VICTORIA BANCROFT, Minor.

SCOTT WILLIAM KEMMER and CHRISTINA LORRAINE KEMMER,

Petitioners-Appellants,

v

JOYCE TERESIA BANCROFT,

Respondent,

and

No. 226863
Clinton Circuit Court
Family Division
LC No. 00-244278-GD

JAY BANCROFT and ERICA BANCROFT,

Appellees.

Before: Wilder, P.J., and Hood and Cavanagh, JJ.

PER CURIAM.

In Docket No. 226863, petitioners Scott Kemmer and Christina Kemmer (hereinafter "The Kemmers") appeal as of right from an order terminating their appointment as temporary co-guardians for minor child Markia Victoria Bancroft, the daughter of their cousin, respondent Joyce Bancroft (hereinafter "respondent"). In Docket No. 226828, the Kemmers appeal as of right from two orders that resulted in the termination of respondent's parental rights and placed the minor child with appellees Jay Bancroft and Erica Bancroft (hereinafter "The Bancrofts") for adoption.

In September 1998, respondent learned that she was pregnant with her fourth child. Respondent's two oldest children were cared for by her parents. A third child was adopted by the Bancrofts. Jay Bancroft is the brother of respondent, and Erica Bancroft is Jay's wife. After learning of her pregnancy, respondent approached the Bancrofts about adopting her fourth child. The Bancrofts made preparations for the minor child's birth, including holding several baby showers and setting up a crib for the minor child. Respondent, an habitual offender, gave birth to the minor child in prison on April 13, 1999. After the birth, respondent changed her mind and arranged for the minor child to be placed with the Kemmers. The change of heart benefited respondent. Upon her release from prison in August 1999, on tethered status, respondent was able to live with the Kemmers and the minor child. In December 1999, the Kemmers accused respondent of theft from the home and the failure to follow "the rules." Consequently, respondent was returned to confinement.

After her return to confinement, respondent rescinded a prior power of attorney bestowed on the Kemmers and named the Bancrofts as her new attorneys-in-fact. Specifically, respondent alleged that the minor child should not remain in the care of the Kemmers because of physical and alcohol abuse that was occurring in the home. Accordingly, two competing actions were filed to determine who would care for the minor child. A petition was filed in Shiawassee Circuit Court by the Kemmers for appointment as co-guardians of the minor child. However, in Clinton Circuit Court, a petition for adoption was filed by the Bancrofts. On January 12, 2000, an order entered that appointed the Kemmers as co-guardians of the minor child in Shiawassee Circuit Court. That same day, a petition for adoption was entered in Clinton Circuit Court.[1]

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[1] The written consent to adoption was executed by respondent on January 6, 2000, but was received for filing on January 12, 2000. However, on January 12, 2000, a hearing was held before Judge Robertson regarding the termination of parental rights and consent for adoption. At that time, respondent testified that she was married to Mark Gillespie at the time of conception, but had not had contact with him since 1993. Respondent did not have Gillespie's name placed

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However, both court files contained notice of the involvement of the other parties. Additionally, the order appointing the Kemmers as co-guardians expressly provided that the order was temporary and expired "at a time that a full hearing can be held."

On January 19, 2000, Shiawassee Circuit Court Judge Clatterbaugh signed an order transferring venue of the guardianship action to Clinton County. An adoption investigation report was filed with the Clinton Circuit Court that recommended that the minor child be placed with the Bancrofts based on their parenting skills and previous successful adoption experience. On February 17, 2000, *the Kemmers objected* to respondent's consent to adoption and argued that their appointment as co-guardians on the same date as the adoption consent superseded the adoption proceedings. Shortly thereafter, respondent sent a letter indicating that she was discharging her attorney. Curiously, respondent also sent a letter to counsel, whom she was discharging, that she wished to revoke her consent to the adoption. The letter contained the allegation that respondent was "forced" into the adoption from the beginning, an assertion contrary to her oral consent on the record. An "unsolicited fax" was also sent to counsel for the Kemmers, however, there was no letter sent to the trial court, and respondent did not request the appointment of new counsel. There were no allegations of fact to support any coercion or force in the letter.

A hearing was held regarding the temporary co-guardianship, the adoption, and objections to the adoption. Counsel for the Kemmers wanted to take testimony from respondent. When the trial court requested an offer of proof, it was alleged that respondent's parents and the Bancrofts forced, through threats and coercion, the adoption. However, oral statements from respondent at the hearing did not corroborate that offer of proof. Instead, respondent alleged that after she objected to the adoption, she was unable to visit her two oldest children who were in the custody of her parents. Respondent also alleged that she was molested as a child by Jay Bancroft. The court concluded that the status of the co-guardianship was temporary, and the consent to the adoption was valid.

On appeal, the Kemmers raise various issues regarding the adoption proceeding. However, the Bancrofts and guardian ad litem for the minor child allege that the Kemmers lack

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on the minor child's birth certificate because he was not the father. Respondent told the trial court that conception occurred "somewhere between the bus and work." Eventually, respondent reluctantly revealed that the father of the minor child was a customer of the restaurant where respondent worked and conception occurred in the "stockroom, cooler, freezer." Respondent testified that she did not know the customer's name and did not advise him of the pregnancy because she did not see him anymore. Despite the execution of a written consent to adopt, the trial court obtained a second oral consent on the record. Respondent testified, under oath, that the minor child was in an unsafe home with the Kemmers and gave her consent to have the minor child adopted by the Bancrofts. Counsel for respondent also noted, for the record, that respondent had an understanding of the adoption process, having previously given up a child for adoption to the Bancrofts. The trial court terminated the parental rights of the biological father because his identity was unascertainable, but also required that further attempts to give notice to Gillespie be provided. On January 31, 2000, Judge Robertson entered an order terminating the parental rights of Gillespie and any other alleged father.

standing to challenge the adoption proceeding. We agree. Questions of law, involving statutory interpretation and a party's standing, are reviewed de novo. *In re Complaint of Michigan Cable Telecommunications Association*, 241 Mich App 344, 360; 615 NW2d 255 (2000). Adoption proceedings are purely statutory, and there must be "substantial compliance with the statute[s] pertaining thereto." *Roberts v Sutton*, 317 Mich 458, 467-468; 27 NW2d 54 (1947). An adoption order will be upheld against a collateral attack, *Slattery v Hartford-Connecticut Trust Co*, 254 Mich 671, 675; 236 NW 902 (1931), and appellate courts are extremely reluctant to set aside adoption proceedings. *In re Leach*, 373 Mich 148, 153; 128 NW2d 475 (1964). In actions governed by statute, a party must have standing bestowed by statute. See *Girard v Wagenmaker*, 437 Mich 231, 252; 470 NW2d 372 (1991). Standing to intervene in an adoption proceeding is conferred by MCL 710.24a(1); MSA 27.3178(555.24a), which "specifically enumerates who is considered an interested party in adoption proceedings." *In re Toth*, 227 Mich App 548, 554; 577 NW2d 111 (1998). Our scrutiny of the enumerated categories of persons upon whom standing is bestowed by this provision reveals that, under the circumstances, the Kemmers were not interested parties in the adoption proceeding and had no standing to challenge the execution of respondent's consent or the court's placement decision. Consequently, the Kemmers' challenge to the orders in Docket No. 226828 must fail. *Id*. at 554-555.[2]

The Kemmers' remaining argument on appeal is that, after respondent withdrew her support for the petition to terminate their guardianship, there was no longer anyone with standing supporting the petition and, consequently, the court erred by granting it. This proposition rests

[2] While our conclusion regarding standing has rendered moot the challenges to the adoption proceeding, we have reviewed the Kemmers' claims of error to the adoption proceeding and reject them in all respects. The order appointing the Kemmers as temporary co-guardians was limited in scope until a full hearing could be held. However, once the trial court, in effect, concluded that the adoption consent was valid and that the guardianship was terminated, the Kemmers did not have a basis for a substantive claim or standing. See *McGuffin v Overton*, 214 Mich App 95, 102; 542 NW2d 288 (1995). Accordingly, any allegation that the guardianship superseded the adoption is without merit because of the limited nature of the order of guardianship and the knowledge of the pending adoption proceeding. Furthermore, the trial court did not err in refusing to hold an evidentiary hearing regarding the Kemmers' claim of fraud, duress, and misconduct. The trial court determined the credibility of respondent and concluded that her initial consent was valid. The letter revoking consent did not contain allegations of fraud, the offer of proof did not correspond to the ultimate allegations made by respondent, and respondent's allegations were contrary to the record. While respondent alleged that she was forced to agree to the adoption, she orally told the court that she was deprived of the opportunity to see her oldest two children *after* she raised objections to the adoption. Her allegations of abuse by her brother, Jay Bancroft, were contrary to the adoption investigation findings. The trial court effectively and properly concluded that respondent utilized the minor child as a pawn at the expense of two couples who wished to provide a loving environment for the minor child. Accordingly, we cannot conclude that the trial court abused its discretion in failing to hold a separate hearing regarding fraud, duress, and misconduct. See *In re Curran*, 196 Mich App 380, 381; 493 NW2d 454 (1992). The Kemmers' contention that the trial court failed to consider the minor child's best interests is contrary to the record. Finally, the allegations of conflict of interest and adoption attorney qualifications is not preserved for appellate review where the issues were not raised and addressed below. *In re Martin*, 200 Mich App 703, 720 n 6; 504 NW2d 917 (1993).

on the Kemmers' erroneous belief that only a parent has the statutory authority to petition a court to terminate a guardianship. In fact, such petitions may be brought by any person interested in the ward's welfare. MCR 5.404(E)(5); MCL 700.5219; MSA 27.15219. Furthermore, the order allowing the temporary co-guardianship was limited in scope until a full hearing could be held, and arguably, the hearing regarding the validity of the adoption was sufficient to terminate the guardianship order. The court was within its authority to terminate the Kemmers' appointment as temporary co-guardians in response to a petition brought by the Bancrofts.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Harold Hood
/s/ Mark J. Cavanagh