STATE OF MICHIGAN

COURT OF APPEALS

KAREN SUE HANSEN,

Plaintiff-Appellant,

v

MARTHA FLORENCE MCCLELLAN,

Defendant-Appellee.

UNPUBLISHED
December 7, 2006

No. 269618
Ingham Circuit Court
LC No. 06-000015-CZ

Before: Murphy, P.J., and Meter and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right an order denying her motion for summary disposition and granting defendant's motion for summary disposition. On the same narrow basis relied on by the trial court, we affirm.

The parties in this case have never been married, but they entered into a committed relationship in 1991. On January 21, 1999, plaintiff gave birth to twins that the parties wished to raise together as a family. Pursuant to a joint adoption procedure in place in the Family Division of the Washtenaw Circuit Court, plaintiff voluntarily terminated her parental rights to the children in orders entered July 14, 1999, making the children wards of the court. The parties then jointly petitioned to adopt the children, and the petitions were granted. Orders of adoption naming both parties as parents were entered on July 14, 1999. The parties and the children resided together as a family for several years before the parties' relationship broke down. Defendant moved out of the residence. The parties apparently encountered difficulties negotiating parenting issues with each other thereafter. In January, 2003, plaintiff filed a petition for custody, parenting time, and support in the Ingham Circuit Court, but that action was dismissed by stipulation of the parties.

Plaintiff commenced the present action on January 4, 2006, seeking declarative judgment that the July 14, 1999, adoptions were void because the Washtenaw Circuit Court lacked subject-matter jurisdiction to enter the orders. Plaintiff also sought to have the termination of her parental rights set aside because that termination "was never based on fitness and was solely incidental to the Adoption." The parties cross-moved for summary disposition. The trial court denied plaintiff's motion and granted defendant's motion on the narrow ground "that the circuit court in the State of Michigan has the subject matter jurisdiction to grant adoptions, the family division of the circuit court." The trial court therefore concluded that the adoption orders could not be collaterally attacked irrespective of their correctness. Plaintiff appeals.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The trial court did not specify the court subrule upon which it based its decision, but because the trial court did not look outside the pleadings, it appears to have granted the motion pursuant to MCR 2.116(C)(8). Only the pleadings may be considered when deciding a motion under MCR 2.116(C)(8). *Id.*, 119-120. A motion brought under MCR 2.116(C)(8) should be granted only where the complaint is so legally deficient that recovery would be impossible even if all well-pleaded facts were true and construed in the light most favorable to the non-moving party. *Id.*, 119. We review de novo as a question of law whether a court has subject-matter jurisdiction. *Young v Punturo*, 270 Mich App 553, 560; 718 NW2d 366 (2006).

A court's "jurisdiction" is its power to act and authority to hear and determine a case. *Wayne Co Chief Executive v Governor*, 230 Mich App 258, 269; 583 NW2d 512 (1998). This does not refer to "'"the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court in which it is pending, because of some inherent facts which exist and may be developed during the trial."'" *Bowie v Arder*, 441 Mich 23, 39; 490 NW2d 568 (1992), quoting *Joy v Two-Bit Corp*, 287 Mich 244, 253-254; 283 NW 45 (1938), quoting *Richardson v Ruddy*, 15 Idaho 488, 494-495; 98 P 842 (1908). A lack of jurisdiction makes any action by the court other than dismissal absolutely void and subject to collateral attack; conversely, if the court has subject-matter jurisdiction over a matter, it has the jurisdiction to make an error, which may only be challenged by a direct attack on appeal, no matter how grave. *Kaiser v Schreiber*, 258 Mich App 357, 363-364; 670 NW2d 697 (2003), rev'd on other grounds 469 Mich 944 (2003).

Plaintiff concedes, as she must, that "the family division of circuit court has sole and exclusive jurisdiction" over adoption proceedings. MCL 600.1021(1)(b). Plaintiff contends that the Family Division of the Washtenaw Circuit Court nevertheless lacked subject-matter jurisdiction to grant joint adoptions to unmarried couples. In other words, plaintiff argues that, despite the court's jurisdiction to adjudicate adoptions, the trial court lacked the power to adjudicate *these particular* adoptions. We disagree.

If we were to assume, as plaintiff argues, that MCL 710.24(1) precludes joint adoptions by unmarried couples, an order by the Family Division of the Washtenaw Circuit Court granting such an adoption nevertheless constitutes an exercise of its power to adjudicate adoptions. The trial court would have committed a clear legal error subjecting the order to a direct attack and reversal on appeal. The trial court would not have acted outside the scope of cases it was authorized to adjudicate.

Plaintiff relies in significant part on *In re Adams*, 189 Mich App 540; 473 NW2d 712 (1991), and *Ryan v Ryan*, 260 Mich App 315; 677 NW2d 899 (2004). However, *Adams* contains no mention of subject-matter jurisdiction. Rather, the *Adams* panel merely indicated in general terms that the jurisdiction, duties, and powers of a court granting an adoption "may not exceed that which is conferred by statute." *Adams, supra* at 542. The Court further noted that all adoption proceedings "must strictly comply with the terms of the authorizing statute." *Id*. This language does not mean that any and all rulings relative to adoptions made pursuant to statute concern subject-matter jurisdiction. Indeed, the Court in *Adams* framed the issue in terms of

"who may adopt," rather than whether the court had subject-matter jurisdiction to grant the adoption. *Id.*, 543.

The question presented to us now concerns standing more than subject-matter jurisdiction. "Subject-matter jurisdiction and standing are not the same thing." *Altman v Nelson*, 197 Mich App 467, 472; 495 NW2d 826 (1992). Again, subject-matter jurisdiction "is the right of the court to exercise judicial power over a class of cases," while "standing relates to the position or situation" of the party or parties seeking relief. *Id.*, 472, 475. In cases governed by statute, standing is bestowed on a party by statute. *Ryan*, *supra* at 332. Again presuming the correctness of plaintiff's interpretation of MCL 710.24(1), that statute did not allow the parties to adopt because their "position or situation" was that of two unmarried persons jointly seeking to adopt. With respect to the class of cases, MCL 600.1021(1)(b) specifically gives the family division of the circuit court sole and exclusive jurisdiction over "[c]ases of adoption," and this is indeed a "case of adoption." We conclude that *Adams* does not conflict with our ruling, but rather lends support.

In *Ryan*, *supra* at 332, a minor attempted to "divorce" her parents, and this Court held that she lacked standing to do so. The *Ryan* panel additionally held that the trial court did not have subject-matter jurisdiction over the plaintiff minor's divorce complaint against her parents, explaining that "a court only has jurisdiction over the dissolution of a marriage between a man and a woman." *Id.*, 332. Because a "marriage" is defined by statute as "inherently a unique relationship between a man and a woman," MCL 551.1, it necessarily followed that there could be no "divorce" between a child and his or her parents. *Id.*, 331-332. In other words, a "divorce" between a child and his or her parents is a legal impossibility under any circumstances. In contrast, it is beyond dispute here that each of the parties in the present case could have individually adopted the children. The problem is that they joined together to do so. Therefore, there were "adoption proceedings" in this case, although they may have been flawed, whereas in *Ryan*, there technically were no "divorce proceedings" at all, nor could there have been.

To the extent that *Ryan* suggests the result proffered by the dissent, we find that controlling Michigan Supreme Court precedent in *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993), dictates our result, wherein the Court held that, consistent with the case law cited above, "subject matter jurisdiction is established when the proceeding is of a class the court is authorized to adjudicate . . . ." The jurisdictional class, as provided in MCL 600.1021(1)(b), is "[c]ases of adoption[,]" and this is a case of adoption. The possible error – again presuming the correctness of plaintiff's interpretation of MCL 710.24(1) – related to the exercise of jurisdiction over the adoption proceedings, not the want of jurisdiction. See *Hatcher*, *supra* at 439-440. The dissent incorrectly gives a more narrow reading of what constitutes a "class" by examining the particular case at bar instead of the "class" of adoption in general as provided by MCL 600.1021(1)(b), which speaks directly to the court's jurisdiction. The dissenting opinion's narrowed focus would provide an analytical framework to collaterally attack adoptions on other grounds beside the one raised today. We note the *Hatcher* Court's closing remarks:

> Our ruling today severs a party's ability to challenge a probate court decision years later in a collateral attack where a direct appeal was available. It should provide repose to adoptive parents and other who rely upon the finality of probate court decisions. [*Hatcher*, *supra* at 444.]

Our ruling should also provide repose to adoptive parents and others who rely on the finality of adoption decisions now rendered by the family division of the circuit court.

We are further persuaded that our view is the correct one by our Supreme Court's decision in *In re Adoption of Knox*, 381 Mich 582; 165 NW2d 1 (1969), in which the plaintiff challenged the validity of adoption proceedings completed back in 1917. The adopted child's maternal grandmother petitioned for adoption, but her husband, the child's grandfather, did not join in the petition, in contravention of a similarly-worded predecessor statute to MCL 710.24(1), yet an order of adoption was entered. *Id*., 583. The plaintiff, who was the child's guardian, argued that the adoption order was invalid for the following reasons set forth by the Court:

> Plaintiff claims that chapter 64 of the judicature act of 1915 did not permit the adoption of a minor child by a married person alone and that the probate court had no jurisdiction in 1917 to enter an order of confirmation of the adoption because the husband of [the maternal grandmother] did not sign the articles of adoption or consent to them on the record. Plaintiff claims that the order of confirmation was therefore void from its inception. [*Id*., 586.]

The Michigan Supreme Court upheld the adoption, finding that the adoption petition and probate court record did not contain any indication that the child's maternal grandmother was married; therefore, resort to extrinsic evidence to establish that fact would be necessary. *Id*., 588-589. But the Court, relying on 1948 CL 701.23, stated that "[m]ore than 20 years having elapsed since the date of the adoption proceedings, plaintiff is foreclosed by the presumption of validity imposed by the statute since nothing to the contrary appears on the record. *Knox, supra* at 589. The Court then concluded:

> All of the extrinsic evidence in this case tends to support the adoption. Assuming we were to accept plaintiff's interpretation of the judicature act, there is only one fact to the contrary – the failure of the husband . . . to join in the adoption proceedings. We need not and do not determine the extent to which chapter 64 of the judicature act of 1915 requires that married adopting parents both join in an adoption proceeding under the statute. As stated by the Court of Appeals, the 1917 probate court proceedings here under challenge are regular on their face. The presumption of the statute being applicable, it is conclusive. [*Knox*, *supra* at 589.]

Given that a jurisdictional challenge was made in Knox, the Supreme Court's decision to let the adoption order stand without the need to determine whether the pertinent statute prohibited the adoption strongly indicates that subject-matter jurisdiction was not at issue in the minds of the Justices. This is particularly convincing because of the Court's assumption that the only problem under the statute was the husband's failure to join in the adoption proceedings. If this were an issue of subject-matter jurisdiction, the Court could not have made that assumption because the assumption would necessarily lead to the conclusion that there was no jurisdiction, thus making the adoption void, yet the adoption was upheld. Further, if subject-matter jurisdiction were at issue in *Knox*, the Court could not have determined that it was unnecessary to reach the issue of whether the husband was required to join in the adoption proceedings under the statute. Such a determination would be necessary to resolve a jurisdictional question. And had the *Knox* Court concluded that there was no subject-matter jurisdiction, it would have had to

void the adoption regardless of the presumption statute upon which it relied, because the probate court would not have had authority even to enter an adoption order giving rise to the presumption.

The supposed defect in *Knox*, i.e., failure of a party to join in an adoption, is comparable to the alleged and assumed defect here, i.e., improper joinder of a party in an adoption. As in *Knox*, we also need not decide whether a similar statute, MCL 710.24(1), allowed for the parties' adoption of the twins because the issue does not concern subject-matter jurisdiction, and only the lack of subject-matter jurisdiction would permit the collateral attack pursued by plaintiff. We therefore agree with the trial court's analysis below: even if we were to presume for the sake of argument that the adoption orders entered by the Family Division of the Washtenaw Circuit Court were impermissible by MCL 710.24(1), the court would have erred, but it did not act outside of its jurisdiction. The orders were therefore subject only to direct attack on appeal, and the window of time in which to do so has long since closed.

Plaintiff additionally argues that the Washtenaw Circuit Court lacked jurisdiction because MCL 710.24(1) further provides that adoption petitions must be filed "with the court of the county in which the petitioner resides or where the adoptee is found." There is no dispute that all parties and both children have at all relevant times resided in Ingham County. For the same reasons set forth above, we disagree. Again presuming it was error for the adoption adjudication to take place in Washtenaw County instead of Ingham County, the error was in venue, not jurisdiction. See *Morrison v Richerson*, 198 Mich App 202, 206-208; 497 NW2d 506 (1992). Such an error is not subject to collateral attack.

Affirmed.

/s/ William B. Murphy
/s/ Alton T. Davis