STATE OF MICHIGAN

COURT OF APPEALS

ROLA KOLAILAT, Plaintiff-Appellant,	UNPUBLISHED December 17, 2015
v	No. 328333 Washtenaw Circuit Court
LINDSEY MCKENNETT, Defendant-Appellee.	LC No. 15-000839-DC

Before: GADOLA, P.J., and K. F. KELLY and FORT HOOD, JJ.

PER CURIAM.

In this action under the Child Custody Act (CCA), MCL 722.21 *et seq*., plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition and dismissing plaintiff's petition to be recognized as an equitable parent to defendant's minor child. We affirm.

Plaintiff and defendant were in a same-sex relationship between 2005 and 2014, but were never married. During that time frame, the couple decided to have a child, and defendant underwent the process of being artificially inseminated with sperm from an anonymous donor. On February 5, 2010, defendant gave birth to the minor child. While it appears that plaintiff helped raise the child and acted as her second parent, there is no dispute that she never adopted the child. Eventually, plaintiff and defendant separated, and plaintiff initiated this child custody action, seeking to be recognized as the child's equitable parent. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that plaintiff lacked standing to initiate the child custody action. The trial court granted defendant's motion. Plaintiff now appeals.

We review a trial court's decision on a motion for summary disposition de novo. *BC Tile & Marble Co, Inc v Multi Bldg Co, Inc*, 288 Mich App 576, 583; 794 NW2d 76 (2010). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint," and "[a]ll well-pleaded allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Summary disposition may be granted under MCR 2.116(C)(8) "only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id*. (internal quotation marks and citations omitted). The proper application of the equitable parent doctrine and the issue of whether a party has standing are questions of law which we review de novo. *Franklin Historic Dist Study Comm v Village of Franklin*, 241 Mich

App 184, 187; 614 NW2d 703 (2000); *Killingbeck v Killingbeck*, 269 Mich App 132, 141; 711 NW2d 759 (2005).

The trial court correctly determined that plaintiff lacked standing to initiate this child custody action. "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). "However, when the cause of action is created by statute, the plaintiff may be required to allege specific facts in order to have standing." *Id*. Here, 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).

Plaintiff lacks standing pursuant to the CCA, and alternatively sought standing through application of the equitable parent doctrine. 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.]

If plaintiff were recognized as the child's equitable parent, she would be placed on "equal footing with any other natural or adoptive parent," *Soumis v Soumis*, 218 Mich App 27, 34; 553 NW2d 619 (1996), and would be entitled to proceed under the CCA "as a parent, rather than as a third person," *Van v Zahorik*, 460 Mich 320, 329; 597 NW2d 15 (1999). This Court recently extended the equitable parent doctrine to same-sex couples in light of the United States Supreme Court's decision in *Obergefell v Hodges*, ___ US ___; 135 S Ct 2584; 192 L Ed 2d 609 (2015).[1] *Stankevich v Milliron*, ___ Mich App ___, ____; ___ NW2d ___ (2015) (Docket No. 310710); slip op at 1, 4-6.

However, our Supreme Court has held that "[b]y its terms, [the equitable parent] doctrine applies, upon divorce, with respect to a child born or conceived during the marriage." *Van*, 460 Mich at 330. Thus, where a child is not conceived or born within a marital relationship, the equitable parent doctrine is not applicable. *Id*.; *Killingbeck*, 269 Mich App at 141-142. In *Stankevich*, the Court acknowledged the *Van* Court's refusal to extend the equitable parent doctrine outside the context of marriage. *Stankevich*, ___ Mich App at ___; slip op at 3. Relying

[1] In *Obergefell*, 135 S Ct at 2607-2608, the Supreme Court held that "same-sex couples may exercise the fundamental right to marry in all States" and "that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character."

on *Van*, this Court held that, in attempting to establish standing pursuant to the equitable parent doctrine, a same-sex couple must prove the existence of valid marriage. *Id*. at ___; slip op at 4-5.

In *Stankevich*, the parties were married in Canada before the birth of their child. *Id*. at ___; slip op at 1. Thus, the Court held that plaintiff had standing, and that the equitable parent doctrine would apply provided the elements were proven. *Id*. at ___; slip op at 4-5. In contrast, in the present case, the parties were never married. Accordingly, plaintiff lacks standing pursuant to *Van*.

In her brief on appeal, plaintiff recognizes *Van* and its limitation on the equitable parent doctrine, but argues that the Supreme Court's decision in that case was "flawed" because it failed to recognize that the overriding consideration in a child custody action is the best interests of the child. She also argues that the decision violates illegitimate children's equal protection rights. As such, she asks this Court to overturn that decision. It is well-settled, however, that under the principle of stare decisis, this Court is without authority to provide plaintiff the relief she seeks because *Van* is binding Supreme Court precedent. "A decision of the Supreme Court is binding upon this Court until the Supreme Court overrules itself[.]" *O'Dess v Grand Trunk W R Co*, 218 Mich App 694, 700; 555 NW2d 261 (1996).

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

/s/ Michael F. Gadola
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood