

STATE OF MICHIGAN
COURT OF APPEALS

JULIANNA ELLEN USITALO,

Plaintiff-Appellee,

v

MELISSA JO LANDON,

Defendant-Appellant.

UNPUBLISHED
December 11, 2012

No. 308240
Saginaw Circuit Court
LC No. 10-007690-DC

Before: CAVANAGH, P.J., and HOEKSTRA and SHAPIRO, JJ.

SHAPIRO, J. (*concurring*).

I concur with the majority's conclusion and its analysis.

I write separately to note the internal contradiction in defendant-appellant's argument. Defendant's entire claim rests upon her assertion that plaintiff lacked standing to contest defendant's custody motion, because the adoption that gave plaintiff parental rights was void *ab initio*. Were that to be true, however, it would result not only in the elimination of plaintiff's parental status, but the elimination of defendant's parental status as well. Both plaintiff and defendant attained that status through a single order of adoption naming each of them as a parent. We cannot declare that order void *ab initio* as to one of the adopting parties and not the other. Either it is void as to both, or effective as to both. There is nothing in that joint adoption order or elsewhere in the record that gives one of the two jointly adopting parents priority over the other.

Defendant seems to imply that her long-abandoned status as birth mother would still provide her with parental rights over the child if the joint adoption was voided. However, that implication has no basis in law. Defendant surrendered her parental rights as birth mother prior to the joint adoption and she makes no jurisdictional challenge to the circuit court's order that those rights be terminated. Nor does she argue that after seven years, she still retains a right to appeal that termination on the merits, which of course she does not.

Defendant had a full opportunity to dispute the jurisdiction of the family court prior to entry of that court's order of adoption. She declined to do so. She also could have raised such a challenge on appeal from that order as subject matter jurisdiction may be challenged on direct appeal even if not raised in the trial court. However, defendant chose not to raise that challenge and instead, seven years after the fact, seeks to now void the only document that provides this

child with a legal parent. Were we to void the 2003 joint adoption, it is quite possible that this nine year old child would be without a legal parent. Defendant's willingness to risk this result is quite troubling, as is her unabashed repudiation of the jurisdiction that she herself invoked seven years ago.

/s/ Douglas B. Shapiro