

Court of Appeals, State of Michigan

ORDER

RENEE S HARMON V TAMMY L DAVIS

Docket No. 297968

LC No. 10-101368

Karen M. Fort Hood
Presiding Judge

Michael J. Talbot

Christopher M. Murray
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting the application for leave to appeal, the Court orders, pursuant to MCR 7.205(D)(2), that the April 16, 2010 order holding the standing decision in abeyance pending an evidentiary hearing is hereby REVERSED. “Standing ensures that a genuine case or controversy is before the court.” *Michigan Citizens for Water Conservation v Nestle Waters North America*, 479 Mich 280, 294, 737 NW2d 447 (2007). If a plaintiff cannot obtain a legal determination that she is the child's “parent,” she does not have standing to seek custody under the Child Custody Act. *Aichele v Hodge*, 259 Mich App 146, 165; 673 NW2d 452 (2003), citing *Girard v Wagenmaker*, 437 Mich 231, 251; 470 NW2d 372 (1991). “Parent” is defined as “the natural or adoptive parent of a child.” MCL 722.22(h). Plaintiff cannot be considered a “parent” because she is neither a parent through nature (a natural or biological parent) nor through adoption, so the statute is not satisfied. Nor, for that matter, can plaintiff gain standing through the un rebutted presumption from the birth of a child born during a legal marriage. See Const 1963, art 1, sec 25; MCL 551.1; MCL 551.4; MCL 551.272. In other words, one becomes a parent under the Child Custody Act through procreation, or through adoption or the presumption (not rebutted) arising from a child born in a legal marriage. Plaintiff admits that none of these situations apply. And, because it is well-settled that one who is not otherwise a legal parent cannot gain standing through equitable principles, see *Van v Zahorik*, 460 Mich 320, 331-332; 597 NW2d 15 (1999), the trial court erred in concluding that plaintiff could establish that she is a “parent” under the act based on an agreement between two unmarried and unrelated individuals. One cannot confer standing by agreement. *Bowie v Arder*, 441 Mich 23, 42-43; 490 NW2d 568 (1992).

Plaintiff also cannot meet the third party standing requirements under the act. Third-party standing under the Act is established exclusively by statute, and unless a third party can establish standing through the two permissible ways, the third party cannot maintain a custody case. See MCL 722.26b and 26c; *In re Anjoski*, 283 Mich App 41, 50-51; 770 NW2d 1 (2009). The trial court found that plaintiff did not meet these statutory standing requirements, and that should have ended the inquiry. *Id.* The case is remanded to the circuit for further proceedings consistent with this order.

The motion for stay is DENIED as moot.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 08 2010

Date

Sandra Schultz Mengel

Chief Clerk