

STATE OF MICHIGAN
COURT OF APPEALS

DENISE ANN MCMULLIN MOORE,

Plaintiff,

v

ROBERT ELLIS MCMULLIN,

Defendant-Appellee,

and

ROSA PETROELJE,

Appellant.

UNPUBLISHED

August 9, 1996

No. 188295

LC No. 88-064761-DM

Before: Doctoroff, P.J., and Wahls and Smolenski, JJ.

PER CURIAM.

Appellant appeals as of right from the trial court's order dismissing her petition for temporary custody of the minor children from the marriage of plaintiff, who was her daughter, and defendant. Following plaintiff's death in a motorcycle accident, the trial court ordered that the children be returned to defendant's custody. In dismissing appellant's petition for custody, the trial court held that no custody dispute existed as a result of appellant's unlawful attempt to keep defendant's children, that appellant lacked standing to sue for custody, that appellant failed to establish any unfitness on defendant's behalf, that appellant failed to show an established custodial environment for the children, and that appellant stipulated to an agreement with defendant. We affirm.

Although appellant frames her argument in jurisdictional terms, it is clear that MCL 552.16(1); MSA 25.96(1) grants jurisdiction to a circuit court to hear and decide a child custody dispute that is ancillary to divorce proceedings. *Bowie v Arder*, 441 Mich 23, 39; 490 NW2d 568 (1992). Similarly, MCL 552.17; MSA 25.97 grants the circuit court jurisdiction to decide postjudgment custody disputes. Here, the question is not one of jurisdiction, but of standing. See *Bowie*, pp 39-40, 42-43, 49.

The Child Custody Act does not create substantive rights of entitlement to custody of a child, whether the child lives with the parents or with someone else. *Bowie, supra*, p 43; *Porter v Overton*, 214 Mich App 95, 100; 542 NW2d 288 (1995). There is simply no provision of the act that can be read to give a third party, who is not a guardian or a limited guardian, a right to legal custody of a child on the basis of the fact that the child either resides or has resided with that party. *Bowie, supra*, p 43; *Porter, supra*, p 100. Except for limited visitation rights, grandparents have no greater claim to custody than any other relative, or indeed any other person. *Bowie, supra*, p 43; *Ruppel v Lesner*, 421 Mich 559, 566; 364 NW2d 665 (1984). Although other circumstances give a third party standing to file a child custody dispute, those circumstances are not present here. See *Porter, supra*, p 103. The trial court did not err in holding that appellant lacked standing to bring a petition for custody before the trial court. *Bowie, supra*, p 43; *Porter, supra*, p 104.

Appellant argues that the trial court erred in dismissing appellant's petition where it was defendant who first invoked judicial intervention and created a custody dispute. We disagree. Appellant may not rely on the ancillary jurisdiction stemming from the divorce action alone. *Bert v Bert*, 154 Mich App 208, 212; 397 NW2d 270 (1986); see *In re Clausen*, 442 Mich 648, 681; 502 NW2d 649 (1995). A court may enter postjudgment child custody orders only "on the petition of either of the parents." MCL 552.17; MSA 25.97; *Bert, supra*, p 212.

It is true that once judicial intervention has already taken place, a trial court may award custody to third parties. *Clausen, supra*, pp 681, 683; *Bowie, supra*, pp 51-52. However, by filing a petition for custody, defendant did not create a custody dispute between himself and appellant, but merely sought recognition of his legal right to custody as the sole surviving biological parent. See *Clausen, supra*, p 682. In any case, rather than challenge defendant's petition or the resulting court orders, appellant instead filed an independent complaint for custody.

Finally, appellant argues that the trial court erred by not conducting a hearing to determine whether there was an established custodial environment. However, where a party has no legally cognizable claim to custody of a child, there is no right to a hearing to determine the best interests of that child. *Clausen, supra*, p 678. Our disposition makes it unnecessary to address appellant's remaining allegations of error.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Myron H. Wahls

/s/ Michael R. Smolenski