

STATE OF MICHIGAN
COURT OF APPEALS

LONNIEL WARREN,
Plaintiff-Appellant,

UNPUBLISHED
April 19, 2007

v

EUGENE J. BROWN,
Defendant,
and

No. 269247
Washtenaw Circuit Court
LC No. 05-001190-DZ

IVORY WRIGHT,
Defendant-Appellee.

Before: White, P.J., and Zahra and Kelly, JJ.

PER CURIAM.

Plaintiff appeals the circuit court order granting summary disposition to defendants on plaintiff's claim for grandparenting time. We reverse and remand for further proceedings under MCI 722.27b. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's daughter, April Maria Warren (Warren), conceived a child, Aidan, during a relationship with defendant Eugene J. Brown (Brown). Warren and Brown separated before Aidan was born on March 22, 2001. Warren then became involved with defendant Ivory Wright (Wright). Nine months after Aidan's birth, Warren died from a lingering illness. The day before Warren died, she and Wright were married. Warren stated in her will that she wanted Wright to raise Aidan. After Warren's death, Wright became Aidan's sole caregiver and sole guardian.

In August 2004, Wright married Kimberly Miller. The Wrights became joint guardians of Aidan and then adopted Aidan on April 29, 2005. After the Wrights adopted Aidan, they limited visitation with Aidan by members of the Warren family.

Plaintiff commenced this action against Brown¹ and Wright seeking grandparent visitation. Wright filed an answer and requested that plaintiff be denied visitation rights. A joint affidavit of Ivory and Kimberly Wright was attached to the answer stating that they, as two fit parents, opposed plaintiff's request for grandparent visitation. Wright also moved for summary disposition under MCR 2.116(C)(4) (lack of jurisdiction) and (C)(8) (failure to state a claim). Wright argued that Aidan's adoption precluded a claim for grandparent visitation and that the objection of "two fit parents" to grandparent visitation precluded plaintiff's request. Plaintiff responded that Aidan's adoption was a stepparent adoption and, therefore, the exception to the general rule precluding grandparent visitation rights applied. The circuit court granted Wright's motion, reasoning that, when Wright adopted Aidan, he was no longer Aidan's stepparent because Aidan's mother had died and Wright had remarried. Therefore, the stepparent adoption exception did not apply, and Aidan's adoption precluded plaintiff's claim.

Plaintiff appeals as of right, claiming that he properly sought and was entitled to grandparent visitation. We review de novo the circuit court's grant of defendant's motion for summary disposition. *Carmacks Collision, Inc v Detroit*, 262 Mich App 207, 209; 684 NW2d 910 (2004).

A grandparent may bring an action for grandparenting time under circumstances including where the "child's parent who is a child of the grandparents is deceased." MCL 722.27b(1)(c). MCL 722.27b(13), however, provides:

Except as otherwise provided in this subsection, adoption of a child or placement of a child for adoption under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, terminates the right of a grandparent to commence an action for grandparenting time with that child. Adoption of a child by a stepparent under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, does not terminate the right of a grandparent to commence an action for grandparenting time with that child.

The term "stepparent" is not defined in the Michigan adoption code.

Defendant asserts that Warren's death ended Wright's status as a stepparent, and that to hold otherwise would mean that Wright would still be a "stepparent" today, while also being a "parent," as he adopted Aidan as his guardian. We conclude that MCL 722.27b(13) contemplates that situation, and reverse and remand for further proceedings.

The plain language of MCL 722.27b(13) refers to a stepparent adopting a child, i.e., the statute contemplates a stepparent becoming a parent via adoption. Further, MCL 722.27b(13) covers adoption by a stepparent of any sort permitted under the *entire adoption code*: "Adoption of a child by a stepparent under the Michigan adoption code, chapter X of the probate code . . . MCL 710.21 to 710.70, does not terminate the right of a grandparent to commence an action for

¹ Brown did not file an answer or otherwise respond and is not part of this appeal.

grandparenting time with that child.” That is, by referencing the entire adoption code, MCL 722.27b(13) addresses guardianship adoptions, as occurred in the instant case. The fact that the adoption of Aidan was a guardianship adoption, rather than an adoption under MCL 710.51(6) is thus of no consequence. Wright was, nevertheless, a stepparent.

Wright also asserts that plaintiff’s claim was properly dismissed on the basis that the Wrights, as two fit parents, signed an affidavit opposing an order for grandparenting time. However, the two fit parent provision, MCL 722.27b(5),² contains the same stepparent adoption exception language as MCL 722.27b(13). Moreover, the language of MCL 722.27b(5) supports plaintiff’s position, rather than Wright’s, as it contemplates a situation of two parents by adoption³ — one a stepparent, and the other the new spouse of the stepparent — while at the same time continuing to call the stepparent a “stepparent.” That is, under the grandparent visitation provisions, a stepparent who is widowed by the child’s natural parent dying does not cease being a stepparent when he or she is widowed, adopts the child, or remarries, or when the new spouse adopts the child.

We conclude that the Wrights’ adoption of Aidan falls under the exception to the general rule that an adoption of a child under the adoption code terminates the right of a grandparent to commence an action for grandparenting time with that child.

² MCL 722.27b(5) provides:

If 2 fit parents sign an affidavit stating that they both oppose an order for grandparenting time, the court shall dismiss a complaint or motion seeking an order for grandparenting time filed under subsection (3). This subsection does not apply if 1 of the fit parents is a stepparent who adopted a child under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, and the grandparent seeking the order is the natural or adoptive parent of a parent of the child who is deceased . . .

³ MCL 722.1(b) states:

“Parents” means natural parents, if married prior or subsequent to the minor’s birth; adopting parents, if the minor has been legally adopted; or the mother, if the minor is illegitimate.

Thus, in a situation presenting the stepparent exception to the two fit parent provision of MCL 722.27b(5), the parents will by definition be parents by adoption because they will not fit any of the other definitions of parents.

Reversed, and remanded for further proceedings under MCL 722.27b. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Brian K. Zahra

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KELLY, J. (*dissenting*).

I respectfully dissent because Aidan's adoption by Ivory Wright and Kimberly Wright was not a stepparent adoption. The adoption code treating stepparent adoption, MCL 710.51(6), contemplates a fact pattern that does not exist in this case. MCL 710.51(6) provides for an adoption of a child by a stepparent as follows:

If the parents of a child are divorced, or if the parents are unmarried but the father has acknowledged paternity or is a putative father who meets the conditions in section 39(2) of this chapter, *and if the parent having legal custody of the child subsequently marries and that parent's spouse petitions to adopt the child, the court upon notice and hearing may issue an order terminating the rights of the other parent* if both of the following occur:

(a) The other parent, having the ability to support, or assist in supporting, the child, has failed or neglected to provide regular and substantial support for the child or if a support order has been entered, has failed to substantially comply with the order, for a period of 2 years or more before the filing of the petition.

(b) The other parent, having the ability to visit, contact, or communicate with the child, has regularly and substantially failed or neglected to do so for a period of 2 years or more before the filing of the petition. [Emphasis added.]

“The primary purpose of MCL 710.51(6) is to ‘foster stepparent adoptions in families where the natural parent had regularly and substantially failed to support or communicate and visit with the child’ yet refused or is unavailable to consent to the adoption.” *In re Newton*, 238 Mich App 486, 492; 606 NW2d 34 (1999), citing *In Re Colon*, 144 Mich App 805, 810; 377 NW2d 321 (1985) “Indeed, the clear purpose of the statute is to allow the creation of a two-parent family where one did not exist before.” *Newton, supra* at 493.

Here, while Ivory Wright, joined by his wife Kimberly Wright, petitioned to adopt Aidan, he did not do so while he was April Marie Warren’s spouse. Moreover, clearly Kimberly Wright was not petitioning for adoption as a stepparent. Further, the record does not reflect that the parental rights of Eugene Brown, Aidan’s putative biological father, were terminated as contemplated in MCL 710.51(6)(a) and (b). Rather, the Wrights adopted Aidan as full guardians. MCL 710.24.

Thus, I believe that the Wrights’ adoption of Aidan was not an exception to the general rule that an adoption of a child under the adoption code terminates the right of a grandparent to commence an action for grandparenting time with that child. I would affirm.

/s/ Kirsten Frank Kelly