STATE OF MICHIGAN

COURT OF APPEALS

JENNIFER STANKEVICH a/k/a JENNIFER MILLIRON, Plaintiff-Appellant, v LEANNE MILLIRON, Defendant-Appellee.	UNPUBLISHED October 17, 2013 No. 310710 Dickinson Circuit Court LC No. 12-016939-DP

Before: RIORDAN, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) (failure to state a claim). We affirm.

I. FACTUAL BACKGROUND

The parties entered into a same-sex marriage in Canada in July 2007. Before that date, defendant had been artificially inseminated, and later gave birth to a child. Defendant is the biological mother of the child.

The parties' separated in March 2009. While they initially agreed to a visitation schedule, they subsequently found that they could not agree. Thus, plaintiff filed a verified complaint, asserting that she fully participated in the care and rearing of the minor child. She requested relief from the trial court, which included an order dissolving the marriage, an order affirming that she is the parent of the child, and orders regarding custody, parenting time, and child support.

Defendant, however, filed a motion for summary disposition pursuant to MCR 2.116(C)(8). She asserted that plaintiff did not have standing to petition for custody of the child. The trial court granted defendant's motion. Plaintiff now appeals.

II. SUMMARY DISPOSITION

A. Standard of Review

We review the grant of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint" and "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id.* at 119. Furthermore, the motion only should be granted when the claims are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* (quotations marks and citation omitted).

"Whether a party has legal standing to assert a claim constitutes a question of law that we review de novo." *Heltzel v Heltzel*, 248 Mich App 1, 28; 638 NW2d 123 (2001).

B. Standing

"Generally, a party has standing if it has some real interest in the cause of action, . . . or interest in the subject matter of the controversy." *In re Anjoski*, 283 Mich App 41, 50; 770 NW2d 1 (2009) (quotation marks and citation omitted). Yet, "this concept is not given such a broad application in the context of child custody disputes involving third parties, or any individual other than a parent[.]" *Id.* (quotation marks and citation omitted).

Under the Child Custody Act (CCA), child custody disputes exist "between the parents, between agencies, or between third persons[.]" MCL 722.25(1). The CCA defines "parent" as the "natural or adoptive parent of a child." MCL 722.22(h). As plaintiff is not the adoptive parent, the question becomes whether she is a "natural" parent. While "natural" parent is not defined under the act, "[u]ndefined statutory terms must be given their plain and ordinary meanings, and it is proper to consult a dictionary for definitions." *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004). According to *Random House Webster's College Dictionary* (2005), "natural" means, in part, "related by blood rather than by adoption: *one's natural parents*." (Emphasis in original). Here, there is no dispute that plaintiff is not related to the child by blood. Thus, plaintiff is not a parent as defined by MCL 722.22(h).[1]

Moreover, as the Michigan Supreme Court has admonished:

> [A] third party cannot create a custody dispute by simply filing a complaint in circuit court alleging that giving legal custody to the third party is in the best interests of the child. A third party does not have standing to create a custody dispute not incidental to divorce or separate maintenance proceedings unless the third party is a guardian of the child or has a substantive right of

[1] Moreover, plaintiff does not contend that she is "third person" who could bring this action pursuant to MCL 722.26c. Plaintiff also does not advance any argument that she could maintain this action pursuant to MCL 722.26b, as she is not a guardian or limited guardian, or pursuant to MCL 722.27b, as she is not a grandparent.

> entitlement to custody of the child. The Legislature has not created a substantive right to custody of a child on the basis of the child's residence with someone other than a parent, and this Court is not in a position to do so. [*Bowie v Arder*, 441 Mich 23, 48-49; 490 NW2d 568 (1992) (footnotes omitted).]

Plaintiff, however, contends that even though she is not a biological parent, this Court should expand the equitable parent doctrine to include same-sex couples and find that *Van v Zahorik*, 460 Mich 320; 597 NW2d 15 (1999), incorrectly limited the equitable parent doctrine to a legal marriage. However, we are bound by the Supreme Court's holding in *Van*.

This Court adopted the equitable parent doctrine in *Atkinson v Atkinson*, 160 Mich App 601, 608-609; 408 NW2d 516 (1987). The doctrine provides that a husband who was not the biological father of a child can be treated as a parent under the following circumstances:

> (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.*]

In *Van*, 460 Mich at 323, 329, our Supreme Court was asked to extend the doctrine to a man who was not married to the child's mother and who was not the biological father, but who had cohabited with the mother and was in a relationship with her when the two children were born. The Court declined the invitation to extend the doctrine outside the context of marriage. *Id.* at 330-331. The Court held that because "the children at issue were not born or conceived during marriage . . . the doctrine of equitable parenthood would not apply[.]" *Id.* Our Court explained that "the extension of substantive rights regarding child custody implicates significant public policy issues and is within the province of the Legislature, not the judiciary. Accordingly, the primary reason we will not extend this theory here is that the Child Custody Act, which occupies the field of child custody, does not recognize such a theory." *Id.* at 331. The Court further explained that the equitable parent doctrine was "rooted in marriage" and that "extending it to persons who were never married would have repercussions on the institution of marriage." *Id*. at 332.

Plaintiff now asks us to extend the equitable parent doctrine to instances where the parties enter into a union that is not recognized as a marriage in Michigan. To adopt such a ruling would be contrary to the dictates of *Van*, as the Supreme Court specifically limited the application of the equitable parent doctrine to the confines of marriage. 460 Mich at 330-331. Moreover, as the Court emphasized in *Van*, this issue implicates significant public policy and strikes at the core of custody and marriage. Therefore, it is within the province of the Legislature, not the judiciary, to modify the CCA. *Van*, 460 Mich at 327, 331-332.[2]

[2] While plaintiff argues that the instant case is distinguishable from *Van* because the parties here were married, as discussed more fully *infra*, a same-sex union is not recognized in Michigan as a

Furthermore, plaintiff's suggestion that she is married for the purposes of the CCA is contrary to the law in Michigan. Earlier this year in *United States v Windsor*, ___ US ___; 133 S Ct 2675, 2689-2690; 186 L Ed 2d 808 (2013), the United States Supreme Court reiterated, in the context of the Defense of Marriage Act (DOMA), that "[b]y history and tradition the definition and regulation of marriage . . . has been treated as being within the authority and realm of the separate States." The Court affirmed that "[t]he definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the protection of offspring, property interests, and the enforcement of marital responsibilities." *Id.* at 2691 (quotation marks, citation, and brackets omitted).

Consistent with *Windsor*, the Michigan Legislature has delineated the scope of marriage within this state. MCL 551.1 defines marriage as between a man and a woman, and invalidates marriages between same-sex individuals. MCL 551.1 reads as follows:

> Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting that unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.

Additionally, MCL 551.272 provides:

> This state recognizes marriage as inherently a unique relationship between a man and a woman, as prescribed by section 1 of chapter 83 of the revised statutes of 1846, being section 551.1 of the Michigan Compiled Laws, and therefore a marriage that is not between a man and a woman is invalid in this state regardless of whether the marriage is contracted according to the laws of another jurisdiction.[3]

Further, while not challenged on appeal by plaintiff, Article I, Section 25 of the Michigan Constitution of 1963 provides:

> To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.

Thus, to recognize plaintiff's same-sex union as a marriage under the equitable parent doctrine would directly violate the constitutional provision that, "the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union *for any purpose*."

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marriage. Furthermore, while plaintiff cites numerous cases in other jurisdictions to support her argument, they are inapposite, as none include the same language as found in the CCA, in *Van*, or in the statutes and constitutional amendments discussed *infra*.

[3] While we are aware of pending legislation modifying MCL 551.1 and MCL 551.272, that does not diminish the legal effect of these statutes that currently reflect the law in Michigan.

Const. 1963, art 1, § 25 (Emphasis added); see also *Nat'l Pride At Work, Inc v Governor of Michigan*, 481 Mich 56, 87; 748 NW2d 524 (2008) (where the Michigan Supreme Court struck down a provision providing health-insurance benefits to same-sex domestic partners because it violated the marriage amendment found in Const. 1963, art 1, § 25).

As we are bound by the Michigan Constitution and the plain statutory language, we agree with the trial court that plaintiff is not a parent as defined under the CCA or the equitable parent doctrine, and therefore lacks standing to bring this action.

C. Equal Protection

Plaintiff also argues that the Court's holding in *Van*, limiting the equitable parent doctrine to marriage, violates the equal protection of children born to an unmarried couple, including children born to same-sex couples.[4] Plaintiff also submits numerous other arguments for why, in her opinion, *Van* was wrongly decided. Yet, a Supreme Court decision is binding precedent on the Court of Appeals. *State Treasurer v Sprague*, 284 Mich App 235, 242; 772 NW2d 452 (2009). Accordingly, we lack the authority to declare that *Van* was wrongly decided or that the Supreme Court's ruling violated the equal protection clause.

III. CONCLUSION

Because plaintiff lacked standing to bring this action, the trial court did not err in granting summary disposition to defendant pursuant to MCR 2.116(C)(8). We affirm.

/s/ Michael J. Riordan
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly

[4] On appeal, plaintiff does not assert any equal protection argument based on her status, but only on the child's behalf.