

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

IN THE MATTER OF:

KEVIN JAMES CARROLL
(dob: 11/10/9

File No. 93-10793-DC
HON. PHILIP E. RODGERS

/

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Kevin Bruce Carroll

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Guardian ad Litem

DECISION AND ORDER

The issues presently before the Court are those raised in the Respondent's Motion for Summary Disposition. The Respondent, Kevin Bruce Carroll, is the natural father of the minor child, Kevin James Carroll, and seeks the child's return from Jack and Betty Dunham, the natural parents of the minor child's deceased mother. The Dunhams were provided with temporary guardianship of Kevin in February of 1992, when a Petition for Guardianship was filed in the Grand Traverse County Probate Court, alleging that the minor child's natural mother was deceased and his natural father was confined in a place of detention. The child's paternal Grandfather (Bruce D. Carroll) intervened in the probate action and, ultimately, Jack Dunham, Betty Dunham, and Bruce D. Carroll were appointed temporary co-guardians of the minor child, Kevin James Carroll.

Subsequently, paternity blood tests were performed. Although the results were not promptly disclosed, there is no dispute that Kevin Bruce Carroll is the natural father of the minor child, Kevin James Carroll. Kevin Bruce Carroll was released from confinement on January 4, 1993.

Thereafter, on February 11, 1993, the Dunhams filed a Petition for Custody of the minor child, Kevin James Carroll, and

this motion followed. The key to the resolution of the issues before the Court is a determination of the Dunhams' status as guardians, limited guardians, or temporary guardians, and their standing, if any, to pursue a child custody action. The Court

entertained the oral arguments of counsel on April 8, 1993, and took the matter under advisement. Based upon a review of the authority provided to the Court, an examination of the court file, and in consideration of counsel's arguments, it is this Court's opinion that the Respondent's motion be granted and his son immediately returned to him.

An examination of the Probate Code and a history of the guardianship proceedings in the Grand Traverse County Probate Court indicates that the Dunhams sought appointment as temporary co-guardians. Following the intervention of the minor child's paternal Grandfather, Bruce D. Carroll, an Order appointing the Dunhams and Bruce D. Carroll as temporary co-guardians and Letters of Authority were issued on June 9, 1992. By statute, a temporary guardianship exists for a statutory maximum of six months. MCLA 700.427(3)

In a pleading signed on September 15, 1992, the Dunhams renewed their Petition for appointment as temporary guardians over the minor child and asserted their erroneous belief that the child's father would be released from confinement in July of 1992. The Dunhams alleged that they had now become aware that his release would not occur until January, 1993.

Again, the Dunhams and Bruce Carroll were able to resolve their differences. Their negotiated agreement required that Kevin Bruce Carroll submit to paternity blood testing and the parties agreed to continue their temporary co-guardianship pending the results of the blood test. The Probate Court then issued revised Letters of Authority extending the co-guardians' authority for 90 days from October 28, 1992.

As expected, Kevin Bruce Carroll was released from confinement in January of 1993. The blood test results were also received in January of 1993, and showed a probability of paternity equal to 98.02 percent. The blood test results were not promptly made known to Kevin Bruce Carroll. Finally, the temporary co-guardianship expired by its own terms on or about January 28, 1993.

Recognizing the procedural history of this case, the Dunhams

filed a Petition for Custody on February 11, 1993, subsequent to the expiration of their temporary co-guardianship. The Dunhams rely upon MCLA 722.26(b) as the authority for this Court to consider their Petition.

While a number of arguments have been raised regarding the nature of the Dunhams' guardianship, it is evident to the Court that the Dunhams were never appointed as guardians or limited guardians. To the extent they were appointed as temporary co-guardians, that appointment was expressly premised on the representation that the Defendant was confined. No proceedings were initiated to terminate the Defendant's parental rights.

The Dunhams are correct when they assert that the Probate Court has the authority to appoint a temporary guardian with the status of an ordinary guardian of a minor. MCLA 700.427(3). However, such an appointment may not exceed six months and does not include the capacity to seek custody. The statute which describes the parties who have standing to pursue custody actions is the Child Custody Act. MCLA 722.21; MSA 25.312(1). Specifically, MCLA 722.26(b) provides the authority for "a guardian or limited guardian of a child" to bring an action for custody. The Child Custody Act is silent with respect to temporary guardians. Clearly, the Probate Code and the Child Custody Act must be construed together, and the Court believes that the Respondent's analysis is superior.

The Legislature is presumed to be aware of all legislation; and, therefore, was knowledgeable that it had created three types of guardians--temporary guardians, limited guardians, and a guardian. The failure to include temporary guardians in the

class of those guardians able to seek custody must be presumed to be intentional. Trial Courts should be wary about reading into a statutory provision specific language or rights which were not included by the Legislature. *Alexander v Michigan Employment Security Comm*, 4 Mich App 378 (1966). The adoption of the Dunham's construction of the Child Custody Act would expand the rights of third parties to seek custody. In the absence of clear Legislative direction, this Court believes such a decision is more appropriately left to the Legislature. *Bowie v Arder*, 441 Mich 23, 46-47 (1992).

A review of the specific process by which a guardian or limited guardian may be appointed also suggests that the Legislature intended to deny temporary guardians the ability to

seek custody. MCLA 700.424 and MCLA 700.424(a). Guardians are appointed where parental rights have been terminated or suspended or where the parents have permitted a minor to reside with another and have not provided that person with legal authority for the care and maintenance of the minor. Similarly, limited guardians may be appointed with parental consent. Guardian or limited guardian appointments, then, occur in a setting where there has either been parental consent or termination of parental rights. A temporary guardian may be appointed, as was done here, without the express consent of the only living parent and without any termination of said parent's rights. It is this Court's opinion, then, that the Legislature specifically chose to provide guardians and limited guardians with the authority to file petitions for custody and consciously deleted any reference to temporary guardians. Both the limited nature of the "temporary" appointment and the circumstances under which it arises do not suggest compelling reasons to provide such third parties with the authority to seek custody.

Further, on the record before this Court, the temporary guardianship itself had expired prior to the Petition for Custody having been filed. Thus, even if a temporary guardian were to be afforded the standing to seek custody, the Dunhams' protected legal relationship with the minor child expired on or about January 28, 1993. The Dunhams lack the requisite standing to pursue a child custody action in Circuit Court and the respondent's Motion for Summary Disposition must be granted. *Bowie v Arder*, *supra*, at pp 41 and 49; MCR 2.116(C)(5) and (10). In pertinent part, the Bowie Court held as follows:

"We reiterate, however, that except with regard to grandparents and guardians, 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. 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 the child either resides with or has resided with that party." *Id.*, p 43.

This Court having found that temporary guardians do not have standing to pursue a child custody action and that the Dunhams' temporary guardianship expired prior to their filing a petition

for child custody in Circuit Court and the Respondent's parental rights not having been terminated or abrogated in any fashion made known to this Court, the Respondent's Motion for Summary Disposition will be granted and the minor child, Kevin James Carroll, immediately returned to him. The Court does believe that the Dunhams have taken action which has frustrated the Respondent's relationship with his minor child and which has delayed further proceedings in Probate Court. The Court has an insufficient record before it to make a determination regarding an award of sanctions. If the Respondent chooses to pursue this relief, then a separate motion must be filed and an evidentiary hearing requested. If no such action is taken within 28 days from the entry of this Order, the Court will deem the request for sanctions to be waived.

IT IS SO ORDERED.

HON. PHILIP E. RODGERS, JR.
Circuit Judge
Dated: 5/19/93