

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-322

MAY TERM, 2019

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|--|---|--------------------------------|
| In the Matter of the Adoption of S.P., N.S., | } | APPEALED FROM: |
| S.S., & Z.A. (R.P.*) | } | |
| | } | Superior Court, Franklin Unit, |
| | } | Civil Division |
| | } | |
| | } | DOCKET NO. 502-12-17 Frcv |

Trial Judge: A. Gregory Rainville

In the above-entitled cause, the Clerk will enter:

Petitioner appeals a civil division order affirming a probate division decision, which concluded that she lacked standing to file a petition to adopt her grandchildren. We affirm.

The record reveals the following facts. In July 2017, petitioner filed petitions in the probate division seeking to adopt her four minor grandchildren. The grandchildren were already the subject of separate proceedings in the family division and had been declared children in need of care or supervision (CHINS). During the CHINS proceedings, the family division considered placing the children with petitioner, but concluded that it was not in the children's best interests. The family division denied petitioner's motion for party status in those proceedings and petitioner did not appeal the denial. In January 2017, the court terminated the parental rights of petitioner's daughter, the children's mother, and transferred legal custody of the children to the Department for Children and Families (DCF). Mother appealed the termination decision and petitioner sought to intervene in the appeal. This Court denied petitioner's motion. In mother's appeal of the termination decision, she argued that the family division erred in denying her motion to grant petitioner conditional custody of the children. This Court affirmed, concluding that the record supported the family division's decision to deny mother's motion to have the children conditionally placed with petitioner. In re S.S., No. 2017-081, 2017 WL 2962882, *3-4 (Vt. June 26, 2017) (unpub. mem.), <http://www.vermontjudiciary.org/sites/default/files/documents/eo17-081.pdf> [<https://perma.cc/3NE3-7SSZ>].

Petitioner then filed the adoption petition in the probate division, alleging that the CHINS proceedings were flawed and seeking to adopt the children. The probate division concluded that petitioner lacked standing to adopt the children because the children were neither placed with her for adoption nor in her physical custody for at least six months prior to filing the petition. See 15A V.S.A. § 3-301(a) (setting forth persons who have standing to petition for adoption of minor). Because the court concluded that it lacked standing, it did not reach petitioner's arguments alleging errors in the CHINS proceedings, including purported violations of the Indian Child Welfare Act.

Petitioner appealed the dismissal to the civil division, which affirmed the decision of the probate division. Petitioner then filed this appeal.

On appeal, petitioner argues that she has standing and alleges several errors in the CHINS proceedings in the family division.

We first address the issue of petitioner's standing to seek adoption of her minor grandchildren. See Ihinger v. Ihinger, 2003 VT 38, ¶ 5, 175 Vt. 520 (explaining that standing is threshold jurisdictional issue). On the issue of standing, we review the civil division's findings of fact under a clearly erroneous standard and its conclusions of law under a de novo standard. Baird v. City of Burlington, 2016 VT 6, ¶ 12, 201 Vt. 112 (reciting standard of review when trial court has resolved all factual issues regarding standing and record is complete).

Adoption proceedings are created by statute and the Vermont statute sets forth the requirements of who can seek to adopt a minor, by providing as follows:

the only persons who have standing to petition to adopt a minor under this article are:

(1) a person with whom a minor has been placed for adoption or who has been selected as a prospective adoptive parent by a person authorized under this title to place the minor for adoption; or

(2) a person with whom a minor has not been placed for adoption or who has not been selected or rejected as a prospective adoptive parent pursuant to Article 2, Part 1 and Part 2 of this title, but who has had physical custody of the minor for at least six months immediately before seeking to file a petition for adoption and is allowed to file the petition by the court for good cause shown.

15A V.S.A. § 3-301(a).

Based on the evidence presented, the probate division found that the children had not been placed with petitioner for adoption and that petitioner had not had physical custody of the minors for the prior six months. Therefore, the court concluded that petitioner did not meet the standing requirement. The civil division affirmed. We conclude that the record supports the court's findings of facts and the conclusion that petitioner does not meet the requirements of the statute.

On appeal, petitioner also asserts that she has standing as her grandchildren's de facto parent. We need not reach the legal question of how to define a de facto parent or the factual question of whether petitioner would satisfy such a definition because we conclude that the statute does not recognize de facto parents as a party with standing to adopt. Adoption is a legislative process and the statutory language defines who has standing to seek adoption. In interpreting the statute, our aim is to implement the legislative intent and we do so by first looking at the plain language. In re Porter, 2012 VT 97, ¶ 10, 192 Vt. 601. The plain language does not encompass persons such as petitioner claiming a right to adopt based on past interactions with the children. Petitioner claims that this Court has recognized de facto parenthood, but this Court "has rejected

the broad theory of ‘de facto’ parenthood.” Sinnott v. Peck, 2017 VT 115, ¶ 26, 206 Vt. 274. Moreover, this Court has explained that in the complex areas of parental rights and custody of children, the Legislature is better equipped to consider all the public-policy ramifications and this Court will give deference to the Legislature’s decisions. See Moreau v. Sylvester, 2014 VT 31, ¶ 25, 196 Vt. 183 (explaining that Legislature better equipped to address issues of parental rights). Here, the Legislature has chosen to narrowly define the persons who are have standing to adopt a minor. We affirm the decision of both the probate and civil divisions that petitioner lacked standing to petition for adoption of her minor grandchildren.

Because the case was properly dismissed for lack of standing, we do not reach petitioner’s other arguments.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice