

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**LESLEA DIANE WHITE, individually and as next friend  
for C.E.W. and Z.A.W.,  
APPELLANTS**

**vs.**

**ELIZABETH MICHELLE WHITE, n/k/a ELIZABETH  
MICHELLE CROWE,  
RESPONDENT**

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DOCKET NUMBER WD69580

DATE: JUNE 23, 2009

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Appeal from:

Circuit Court of Boone County, Missouri  
The Honorable Cary G. Augustine, Judge

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Appellate Judges:

Division Three: Victor C. Howard, P.J., Joseph M. Ellis and Alok Ahuja, JJ.

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Attorneys:

Susan Sommer, for Appellants

Melissa Faurot, for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**LESLIE DIANE WHITE, individually and as next friend  
for C.E.W. and Z.A.W., APPELLANTS**

**v.**

**ELIZABETH MICHELLE WHITE, n/k/a ELIZABETH  
MICHELLE CROWE, RESPONDENT**

WD69580

Boone County, Missouri

Before Division Three Judges: Victor C. Howard, P.J., Joseph M. Ellis and Alok Ahuja, JJ.

Leslea Diane White appeals from a judgment entered in the Circuit Court of Boone County dismissing without prejudice her "Petition for Declaration of Maternity, For Order of Custody and For Order of Child Support" against Elizabeth Michelle White ("Michelle") related to minors C.E.W. and Z.A.W. Leslea and Michelle had been in a same-sex relationship for eight years during which each conceived a child through artificial insemination. Leslea is the biological mother of Z.A.W., and Michelle is the biological mother of C.E.W. After the relationship ended, Michelle eventually terminated any contact between Leslea and C.E.W. and ceased having contact with Z.A.W. Leslea filed the present action asking the court to award joint legal and physical custody of both children to Leslea and Michelle and to order the payment of child support. Michelle's motion to dismiss the petition due to lack of standing and failure to state a claim for which relief may be granted was eventually granted by the circuit court.

**AFFIRMED.**

**Division Three holds:**

- (1) Leslea lacked standing to pursue an action under § 210.826.2 because there was no dispute as to the identity of each child's natural mother.
- (2) Leslea could not bring an action to declare a mother-child relationship under § 210.848 which provides that "any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship" because she was not seeking a declaration of a parent-child relationship based on a biological tie or one of the listed parental presumptions.
- (3) The Missouri Uniform Parentage Act ("MoUPA") is not the exclusive method for determining parentage in Missouri but the procedural requirements of the MoUPA should be applied in cases where parentage is contested and where no provision for adjudicating that issue outside the MoUPA appears applicable.

- (4) Leslea's point related to *Parens Patriae* and her argument on the subject fail to identify or explain the specific reasons that support a claim of reversible error, and, accordingly, present nothing for appellate review.
- (5) Missouri courts have not recognized or adopted the *de facto* or equitable parent concept.
- (6) Even assuming *arguendo* that Leslea stood *in loco parentis* to C.E.W. while she and Michelle lived together, that status would have terminated when they separated.
- (7) Equitable estoppel does not form a basis for standing or affirmative relief under the pleadings of this case.
- (8) A third party's foundational standing to litigate custody or visitation under the exceptional circumstances doctrine is dependent on the third party being named a party in an action brought by someone with standing or after being permitted by the court to intervene in the action or where the third party already has something other than *de facto* custody. As Leslea met none of those requirements, her claim was properly dismissed for lack of standing.
- (9) While a third party with no biological or adoptive relationship to a child can enter into an express contract with a biological parent to provide on-going support for the parent's child, and such agreements are enforceable, Leslea's petition fails to state a claim for breach of contract.
- (10) All of the constitutional claims raised by Leslea are only colorable.
- (11) Leslea was not denied procedural due process as she was afforded multiple opportunities to brief and argue her claims to the trial court.
- (12) Leslea's right to equal protection was not violated as the dismissal of her petition for lack of standing and failure to state a claim is not based on legitimacy, sexual orientation, and/or sex.
- (13) Leslea's argument fails to sufficiently assert a claim that the open courts provision in the Missouri constitution was violated.

**Opinion by: Joseph M. Ellis, Judge**

Date: June 23, 2009

**Concurring in part and Dissenting in part opinion by Judge Alok Ahuja:**

Judge Ahuja concurs in part and dissents in part. Contrary to the majority, he would hold that Leslea adequately pled a viable claim for equitable estoppel, as a basis for seeking financial support for her son Z.A.W. from Michelle, and would accordingly reverse the dismissal of Leslea's equitable estoppel claim to that extent, and remand for further proceedings. This proposed disposition would render it unnecessary to address Leslea's constitutional arguments, and Judge Ahuja would accordingly dismiss those claims as moot without addressing their merits. In all other respects Judge Ahuja concurs in the majority opinion.

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