MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CHRISTOPHER MANDACINA,

Respondent

v.

AMANDA POMPEY, Appellant;

LINDA MANDACINA,

Respondent

DOCKET NUMBER WD84158

DATE: October 12, 2021

Appeal From:

Circuit Court of Clay County, MO
The Honorable Alisha Diane O'Hara, Judge

Appellate Judges:

Division One
Alok Ahuja, Presiding Judge, Lisa White Hardwick, Judge, Anthony Rex Gabbert, Judge

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Attorneys:

Nancy A. Garris, Blue Springs, MO, Counsel for Appellant

Amanda Basri, Kansas City, MO, Counsel for Respondent Linda Mandacina

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CHRISTOPHER MANDACINA, Respondent,
v.
AMANDA POMPEY, Appellant;
LINDA MANDACINA, Respondent

WD84158 Clay County

Before Division One Judges: Alok Ahuja, Presiding Judge, Lisa White Hardwick, Judge, and Anthony Rex Gabbert, Judge

Amanda Pompey ("Mother") appeals the circuit court's Judgment awarding third-party intervenor, Linda Mandacina ("Paternal Grandmother"), sole custody of Mother's and Christopher Mandacina's ("Father") minor son, S.M., on Mother's "Motion to Set Aside Default Judgment or Alternatively, Motion to Modify." Mother asserts on appeal that, 1) the Judgment of Dissolution of Marriage entered December 5, 2018, is void with regard to all orders related to custody, visitation, or support of the minor child, contending that under Missouri law the exclusive remedy for determining such matters for a child born out-of-wedlock is through a Petition for Declaration of Paternity, 2) the transcript of the circuit court proceeding deprives this court of sufficient information to make appellate review possible, arguing that ninety-six times during trial the proceedings were indiscernible to the court reporter, 3) the circuit court denied Mother due process and thereby erred in granting Paternal Grandmother's Motion to Intervene, arguing that the court granted the motion before Mother was served notice and an opportunity for a full and fair hearing, 4) the circuit court erred in granting Paternal Grandmother's Motion to Intervene, arguing Missouri Rule of Civil Procedure 52.04 requires either a statutory claim of intervention by right or a permissive intervention to protect a legally cognizable interest, and Paternal Grandmother had neither, 5) the circuit court erred in entering its Temporary Restraining Order without notice to Mother in violation of Rule 92.02(b)(3), and 6) the circuit court erred in entering its Preliminary Injunction, arguing Mother's due process rights were violated when the court entered the order without providing Mother the benefit of giving or receiving evidence, entering the order only two days after Mother was served the pleadings, and ordering a change of custody without a hearing of any kind.

AFFIRMED.

Division One holds:

1) The Judgment of Dissolution of Marriage entered December 5, 2018, is not void with regard to all orders related to custody, visitation, or support of the minor child, as the circuit court had subject matter jurisdiction to entertain those issues.

2) The transcript of the circuit court proceeding does not deprive this court of sufficient information to make appellate review possible.

3) Mother waived her claim that the circuit court denied Mother due process and thereby erred in granting Paternal Grandmother's Motion to Intervene by, pursuant to Rule 55.27, not raising her claim of insufficiency of notice at the earliest opportunity.

4) The circuit court did not err in allowing Paternal Grandmother to intervene as Paternal Grandmother had, at the very least, a right to permissive intervention.

5) Mother's claim that the circuit court erred in entering its Temporary Restraining Order without notice in violation of Rule 92.02(b)(3) is moot, and

6) Mother's claim that the circuit court erred in entering its Preliminary Injunction is moot.

Opinion by: Anthony Rex Gabbert, Judge Date: October 12, 2021

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.