SUPREME COURT OF MISSOURI
en banc

In the matter of A.L.P. and S.H.P., minors; ALICIA SMITH,	)	***Opinion issued February 24, 2026***
Respondent,	)	
v.	)	No. SC101121
LORA MARTINEZ,	)	
Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY
The Honorable Kenneth R. Garrett, III, Judge
The Honorable Sherrill L. Rosen, Commissioner

Alicia Smith brought a petition under section 452.375.5(5)(a)[1] seeking third-party visitation after a judgment in a separate adoption proceeding granted parental rights of S.H.P. and A.L.P. ("minor children") to Lora Martinez. The circuit court granted third-party visitation, and Martinez appealed. Because section 452.375.5(5)(a) does not create an independent cause of action when custody is not at issue, this Court reverses the circuit court's judgment.

[1] All statutory citations are to RSMo Supp. 2021 unless otherwise noted.

Factual and Procedural Background

Smith and Martinez began their relationship in the early 2000s but never married. In 2012, they were granted joint letters of guardianship over the minor children, twin girls who were younger than two years old at the time. When Smith and Martinez ended their relationship in 2013, they shared custody of the minor children pursuant to the guardianship. In 2019, Martinez and Smith filed competing petitions for adoption. On September 28, 2020, the circuit court granted Martinez's petition for adoption, and the probate division terminated the guardianship. Smith appealed, and the court of appeals affirmed. *S.H.P. v. N.B.*, 638 S.W.3d 524, 534 (Mo. App. 2021).

While her appeal of the adoption judgment was pending, Smith filed a petition seeking third-party custody pursuant to section 452.375.5(5). She alleged that Martinez was "unfit, unsuitable, and/or unable to care for the minor children and [that] the welfare of the children … required custody be vested with" Smith. Alternatively, she asked for visitation rights. Martinez filed a motion to dismiss Smith's petition, arguing Smith lacked standing to seek third-party custody or visitation under section 452.375.5(5)(a). The circuit court overruled Martinez's motion and allowed Smith's claim to proceed.

A day before trial, on February 6, 2024, the parties informed the circuit court they had settled the case. The same day, the guardian ad litem filed two documents with the court: "Affidavit of Petitioner and Respondent Requesting Entry of Judgment of Third Party Visitation" and "Joint Stipulation for Visitation" (collectively, the "separation agreement"). Both documents were notarized and signed by the parties.

The joint stipulation stated the parties had reached an "agreement regarding contact and visitation" between Smith and the minor children and outlined the visitation schedule. The joint stipulation also stated "[a]ll parties understand and stipulate that these provisions are best for" the minor children.

The affidavit stated that, "On February 2, 2024, the parties entered into the following stipulation, which the Court finds is in the best interest of the minor children[.]" The parties "agreed upon entering the terms of the Judgment being submitted with this Affidavit," asking the court to "enter a Judgment of Visitation based upon the pleadings and affidavit filed hereafter."

The next day, on February 7, Smith's counsel submitted a proposed judgment, incorporating the separation agreement. On March 29, the circuit court contacted the parties about the proposed judgment, asking whether it was the final product to sign and issue as the final judgment. Martinez responded she did not consent to the proposed judgment and would seek to set aside the joint stipulation. On April 9, the circuit court conducted a teleconference with the parties, which was not recorded. On April 10, the circuit court signed the proposed judgment (characterized by the docket entry as a "Consent Judgment"), granting visitation to Smith based on the separation agreement.

Martinez filed a motion to amend the judgment, arguing once again that Smith lacked standing and that Martinez did not consent to the proposed judgment Smith submitted. The circuit court did not rule on the motion, which was deemed overruled on August 6 pursuant to Rule 78.06. Martinez appealed.

While Martinez challenged Smith's visitation rights, Smith filed a family access motion under section 452.400, stating Martinez had denied Smith visitation in violation of the April 10 judgment. On August 25, the circuit court found Martinez had violated the judgment, awarded Smith compensatory visitation, and ordered Martinez to pay Smith's attorney fees. Martinez appealed.

Both the visitation appeal and family access appeal were consolidated before the court of appeals, which found: (1) Smith had standing to seek third-party custody or visitation under section 452.375.5(5)(a) based on *T.Q.L. v. L.L.*, 386 S.W.3d 135 (Mo. banc 2012), and (2) Martinez's consent to the joint stipulation and affidavit at the time they were filed relinquished her right to later unilaterally withdraw from the separation agreement, upon which the judgment was based. Accordingly, the court of appeals affirmed both judgments.

Martinez sought and was granted transfer to this Court pursuant to article V, section 10 of the Missouri Constitution. She raises four points of error.

Jurisdiction and Standard of Review

Whether a party has standing is an issue this Court reviews *de novo*. *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011). When reviewing a petition to determine if there is a recognized cause of action, "the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case." *T.Q.L.*, 386 S.W.3d at 139 (internal quotation omitted). The petition must "invoke substantive principles of law entitling plaintiff to relief[.]" *Id*. (internal quotation omitted).

This Court reviews a party's designation as third party under section 452.375.5(5) *de novo*. *Bowers v. Bowers*, 543 S.W.3d 608, 613 (Mo. banc 2018).

Analysis

There is no independent cause of action under section 452.375.5(5)

Both Smith and Martinez frame this question as one of standing, presupposing that seeking third-party visitation and custody is an independent cause of action. In her first and fourth points on appeal, Martinez argues it is improper for a party to seek third-party custody or visitation under section 452.375.5(5) after losing an adoption proceeding and highlights case law pertaining to section 452.375.5(5). Alternatively, Smith distinguishes the cases on which Martinez relies as predominantly involving grandparents and argues a previous adoption proceeding does not prevent a party from seeking third-party custody or visitation because an adoption is not a child custody determination for purposes of section 452.375.5 and the court of appeals authorized third-party visitation after an adoption. *See S.H.P.*, 638 S.W.3d at 532 n.8 ("Once the adoption is complete, a person may seek to obtain third-party child custody and visitation determinations authorized by law.").

But what is really at issue in this case is whether Smith can seek third-party visitation and custody under section 452.375.5. Although related, whether a party has standing and whether a cause of action exists are distinct inquiries. To have standing, a party must have a "legally cognizable interest in the subject matter" and "a threatened or actual injury." *E. Mo. Laborers Dist. Council v. St. Louis Cnty.*, 781 S.W.2d 43, 46 (Mo. banc 1989). Alternatively, the existence of a cause of action is not affected by a party's

interest and injury. When the existence of a cause of action is disputed, this Court reviews the petition to see if it meets "the elements of a recognized cause of action, or of a cause that might be adopted in that case." *Bosch v. St. Louis Healthcare Network,* 41 S.W.3d 462, 464 (Mo. banc 2001) (citation omitted). To answer this inquiry, courts consider a statute's plain language, looking for "express provision[s] either establishing or prohibiting a private cause of action." *Johnson v. Kraft Gen. Foods, Inc*., 885 S.W.2d 334, 336 (Mo. banc 1994). If there is no express creation of a cause of action in the statute's plain language, courts consider any "clear implication[s]" and legislative intent in the statute. *Id*. at 336-37. Legislative intent demonstrating the creation of a cause of action cannot be speculative, and the Court cannot "add statutory language where it does not exist[.]" *Id*. at 337; *Peters v. Wady Indus., Inc*., 489 S.W.3d 784, 792 (Mo. banc 2016) (internal quotation omitted).

With these principles in mind, this Court turns to section 452.375.5(5) to determine whether a cause of action for third-party custody or visitation exists. At the time Martinez filed her petition, section 452.375.5 stated:

> 5. Prior to awarding the appropriate custody arrangement in the best interest of the child, the court shall consider each of the following as follows:
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> > (1) Joint physical and joint legal custody to both parents, which shall not be denied solely for the reason that one parent opposes a joint physical and joint legal custody award. The residence of one of the parents shall be designated as the address of the child for mailing and educational purposes;
> >
> > (2) Joint physical custody with one party granted sole legal custody. The residence of one of the parents shall be designated as the address of the child for mailing and educational purposes;

(3) Joint legal custody with one party granted sole physical custody;

(4) Sole custody to either parent; or

(5) Third-party custody or visitation:

> (a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian, or the welfare of the child requires, and it is in the best interest of the child, then custody, temporary custody or visitation may be awarded a person related by consanguinity or affinity to the child. If no person related to the child by consanguinity or affinity is willing to accept custody, then the court may award custody to any other person or persons deemed by the court to be suitable and able to provide an adequate and stable environment for the child. Before the court awards custody, temporary custody or visitation to a third person under this subdivision, ***the court shall make that person a party to the action***;
>
> (b) Under the provisions of this subsection, any person ***may petition the court to intervene*** as a party in interest at any time as provided by supreme court rule.

Section 452.375.5(5)(a)-(b) (emphasis added).

This Court first considers the statute's plain language to determine whether it creates an independent cause of action. Before awarding custody to third parties, the statute instructs the court to "make that person a party ***to the action***." Section 452.375.5(5)(a) (emphasis added). Before a third-party may be awarded custody, he or she must be added as a party to an already existing action in which custody is being determined. Paragraph (b) continues: "Under the provision of this subsection, any person may ***petition the court to intervene*** as a party in interest at any time as provided by supreme court rule." Section 452.375.5(5)(b) (emphasis added). Rule 52.12 governs intervention, detailing when a party who was not named as an original party may enter an

action. Rule 52.12. Intervention requires an already existing cause of action; it does not create one.

By its plain language, section 452.375.5(5) does not create an independent cause of action but, instead, provides ways in which a party may be added to an already existing action, either on the court's own initiative under paragraph (a) or by a petition to intervene under paragraph (b). The statute clearly requires an underlying cause of action in which custody is at issue before the court can consider third party custody or visitation. Such claims cannot be brought as an independent action. Moreover, although a cause of action may still exist in "the absence of express language" if there is clear indication of legislative intent, no such indications exist here. *See Johnson*, 855 S.W.2d at 336. Because this Court does not speculate as to legislative intent nor add language that does not exist, this Court does not recognize a cause of action in section 452.375.5(5)(a).

Rather, section 452.375.5(5)(a) applies when the circuit court is required to award custody in a pending divorce, separation, or paternity proceeding. *See* section 452.300, RSMo 2016; section 452.375.5; section 210.853, RSMo 2016 (enabling paternity actions to decide custody under parenting plans pursuant to section 452.310). The statute does not create an independent action that a third party may bring; instead, it allows the court to award third-party custody only when custody is already at issue in an underlying dispute.

Finding that third-party custody and visitation is not an independent cause of action but must arise out of an underlying custody dispute is also consistent with this Court's previous examination of section 452.375.5. In 2017, this Court reviewed a claim

brought pursuant to section 452.375.5 in *Hanson v. Carroll*, 527 S.W.3d 849 (Mo. banc 2017). In *Hanson*, grandparents filed a petition for third-party visitation and custody after unsuccessfully seeking guardianship over their grandchild. *Id*. at 850. The circuit court dismissed their case and this Court affirmed. *Id*. at 854. Because the guardianship provided the guardians with custody of the child with full power as provided by law, section 475.120.1, this Court held custody was not at issue and section 452.375.5(5)(a) was inapplicable. *Id*.

> Guardians, therefore, have control over the custody of Child, which encompasses control over visitation by others like Grandparents. . . . Any order or judgment granting Grandparents third-party visitation under [section 452.375.5(5)(a)] would necessarily conflict with Guardians' custody of Child pursuant to the letters of guardianship . . . . The plain language of section 452.375.5(5) is not applicable to a situation in which a probate division previously had issued letters of guardianship over a child or children at issue. . . . The language and context of section 452.375.5 shows that the legislature intended third-party custody or visitation referenced in subparagraph (5)(a) as an ***alternative consideration to parental custody***. But, in situations such as this, when letters of guardianship have been issued and ***a custody award as to a child already exists, parental custody is not at issue***.

Id. (emphasis added).[2]

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[2] Smith's broad interpretation of section 452.375.5 also creates striking similarities to the Washington statute the Supreme Court found unconstitutional in *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The statute at issue in *Troxel* provided, "Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances." *Id.* at 61 (quoting Wash. Rev. Code sec. 26.10.160(3)). The Supreme Court stated the statute was "breathtakingly broad" because it "effectively permit[ed] any third-party seeking visitation to subject any decision by a parent concerning visitation of the parent's children to state-court review." *Id.* at 67. The Supreme Court determined the statute was unconstitutional as applied because it unconstitutionally infringed upon a parent's

Applied here, Smith and Martinez had custody rights due to the guardianship. They were never married and never petitioned for a joint adoption. The circuit court denied Smith's petition for adoption and, instead, awarded parental rights of the minor children to Martinez. The minor children thereafter are deemed, ***for every purpose,*** to be the child of the adoptive parent as fully as though born to her. Section 453.090.1, RSMo 2016. The adoption by Martinez, and the subsequent termination of the guardianship, severed any rights Smith may have had. *Id.* Like in *Hanson*, custody was necessarily awarded to the adoptive parent and was not at issue.[3] Smith cannot bring an independent cause of action for third-party custody and visitation after an adoption because section 452.375.5(5) does not create an independent claim when custody is not at issue. Third-

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"fundamental right to make decisions concerning the care, custody and control of her [children]." *Id.* at 72.

[3] Some courts have not treated adoptions as custody determinations. *See, e.g.*, *Adoption of C.T.P. v. A.M.*, 452 S.W.3d 705, 707 (Mo. App. 2014) ("[A] custody determination is not in issue in an adoption proceeding[.]"). Accordingly, courts have previously endorsed third-party child custody and visitation determinations after an adoption. *Id*. at 717; *S.H.P*., 638 S.W.3d at 532 n.8. While it is true that courts do not determine chapter 452 custody disputes in adoption proceedings under chapter 453, this approach leads to absurd and illogical results. It would be odd to say that persons granted custody through a guardianship, such as in *Hanson*, had greater rights to custody than those granted parental rights through an adoption. The argument that adoptions do not determine custody undermines the binding and legal relationship formed by an adoption: "When a child is adopted[,] . . . [s]uch child shall thereafter be deemed and held to be for every purpose the child of his [or her] parent or parents by adoption[.]" Section 453.090.1, RSMo 2016. The right to custody necessarily flows from the circuit court's grant of an adoption vesting parental rights to the petitioner. It logically follows that endorsing an independent third-party custody claim after an adoption likewise would undercut the legal effect of an adoption. If a parent adopts a child but must then defend against third-party claims to that child, especially in a situation such as this in which the third-party lost in the original adoption proceedings, this Court begins to question the effect of an adoption.

party custody and visitation cannot be sought as an independent cause of action but must arise from an underlying proceeding in which custody is at issue. To the extent other cases have created or recognized an independent cause of action, they should no longer be followed.[4]

There is no independent cause of action for third-party custody under section 452.375.5(5)(a), and Smith's claim for visitation fails. Because the underlying claim fails, Smith's family access motion likewise fails.

This Court has appellate jurisdiction

In points II and III, Martinez argues the circuit court should have set aside the third-party visitation judgment because she did not consent to the judgment the circuit court entered. In response, Smith argued this Court should dismiss the appeal for lack of appellate jurisdiction because Martinez was not aggrieved by the judgment to which she consented; therefore, Martinez lacked statutory authority to appeal under section 512.020.[5]

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[4] Smith interprets this Court's 2012 opinion in *T.Q.L.* as endorsement of an independent cause of action under section 452.375.5(5)(a). The procedural posture of *T.Q.L.*, however, was that of a motion to dismiss in a paternity and custody case in which the parties disputed the sufficiency of the petitioner's pleading, not whether an independent cause of action for third-party visitation did, in fact, exist. *T.Q.L.*, 386 S.W.3d at 140. *T.Q.L* never should have been read to suggest section 452.375.5(5) creates an independent cause of action for third party visitation.

[5] While the circuit court's docket entry characterized the judgment as a "consent judgment," that term in the context of a custody proceeding under section 452.375 is a misnomer. Before making any custody determination under section 452.375, a circuit court is obligated to independently "determine custody in accordance with the best interests of the child." Sec. 452.375.2. This remains true even when the parties have agreed to a proposed custody arrangement. Sec. 452.375.6.

This Court need not reach Martinez's points II and III, as those issues are moot given the Court's ruling that there is no independent cause of action. Because section 452.375.5(5)(a) does not create a cause of action, Martinez was aggrieved by the entry of the judgment awarding Smith visitation, and this Court has appellate jurisdiction to decide this appeal.

Conclusion

The circuit court's judgment granting third-party visitation to Smith and the family access judgment enforcing the circuit court's judgment are reversed, and the Court enters judgment pursuant Rule 84.14 dismissing Smith's action for third party visitation pursuant to section 452.375.5(5)(a) and overruling Smith's family access motion.

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KELLY C. BRONIEC, JUDGE

All concur.