

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

VG

Plaintiff

CIVIL ACTION NO. 15 – 20,348

v.

LG,

Defendant

v.

NW AND DS,

Intervenors

CUSTODY - STANDING

OPINION AND ORDER

Before the Court is a petition to intervene filed by NW and DS on May 2, 2017.¹ That petition is not opposed by the child’s Mother, but is opposed by the current caretaker of the child, {}.² At the time set for hearing, the parties agreed that there were no factual issues in dispute relevant to the petition and that the petition could be decided on the briefs and argument. At issue is whether W & S (“Intervenors”) have standing to seek custody of {child}, born September XX, 2011, pursuant to 23 Pa. C.S. § 5324(2), due to their standing in loco parentis to the child. The Court concludes that they do have standing.

FACTUAL BACKGROUND

The child was born on September 22, 2011. Defendant LG (“Mother”) is the child’s mother. The child lived with his Mother for about a year, from the time of his birth until about October 31, 2012. At that time, Mother placed the child into the care and custody of Intervenors.

¹ The pertinent procedural history of the case is that a stipulation as to custody was filed and made an Order of Court on March 31, 2015, granting custody to VG. Mother disputes signing the stipulation. Mother filed a petition for special relief on April 6, 2017, contending that VG would not permit her to see her child. The Court treated Mother’s petition as a petition to modify custody. On May 2, 2017, a petition to intervene was filed. A custody conference was held on May 12, 2017 setting forth limited visitation for Mother, and scheduling a subsequent conference following resolution of the petition to intervene.

² Mother notified the Court that she did not wish to appear at the hearing. The Court notified counsel by email. The other parties appeared with their Counsel and the Guardian Ad Litem, Jeffrey Yates, appeared on behalf of the child.

Intervenors cared for the child in the place of the child's parents, from about October 31, 2012 until around January 4, 2015, when NW required invasive surgery. At that point, Mother briefly resumed care of the child. Mother agreed to return the child to Intervenors when NW healed from surgery.³ Mother cared for the child for a brief period of time and then placed the child into the care of plaintiff, VG⁴ in early January or February of 2015. VG has been the primary caretaker of the child since that time. Intervenors submit that during the time when VG has been the primary caretaker of the child, Intervenors had restricted communication and visitation but did enjoy brief periods of custody.⁵ At this point and time, mother does not take a position and was not present at these proceedings.

DISCUSSION

23 Pa. C.S. § 5324 (2) provides that a person who stands in loco parentis to the child may file an action for any form of physical or legal custody. “It is well-established that there is a stringent test for standing in third-party suits for visitation or partial custody due to the respect for the traditionally strong right of parents to raise their children as they see fit.” T.B. v. L.R.M., 567 Pa. 222, 228, 786 A.2d 913, 916 (Pa. 2001)(citations omitted). A third party may maintain an action when they stand in loco parentis to the child. Id. The Pennsylvania Supreme Court has noted that “[t]he phrase “in loco parentis” refers to a person who puts oneself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of a legal adoption.” Id. The Court further notes that “[t]he status of in loco parentis embodies two ideas; first, the assumption of a parental status, and, second, the discharge of parental duties.” Id. (citations omitted). The assumption of in loco parentis status must not be in opposition to the biological parent's wishes. Id. Our Superior Court has noted

³ See, Petitioner's Brief in Support of Intervention, at 1.

⁴ At that time, plaintiff VG was named {}. The Court will refer to Plaintiff as LG throughout this opinion.

⁵ See, Petitioner's Brief in Support of Intervention, at 2.

that “the showing necessary to establish in loco parentis status must in fact be flexible and dependent upon the particular facts of the case.” J.A.L. v. E.P.H., 453 Pa. Super. 78, 89, 682 A.2d 1314, 1320 (Pa. Super. 1996).

In the present case, it is undisputed that Intervenors obtained in loco parentis status when Mother placed the child in their care for over two years; they assumed parental status and discharged parental duties with Mother’s consent. See, e.g., T.B. v. L.R.M., 567 Pa. 222, 225, 786 A.2d 913, 914 (Pa. 2001). VG contends, however, that Intervenors lost their status of in loco parentis due to the passage of time. This Court disagrees.

Mother placed the child into the care and custody of Intervenors. Mother consented to Intervenors continued care and custody of the child for two years, until at Intervenors request, Mother resumed custody while NW underwent surgery and recovery, with the agreement that Intervenors would continue to care for the child once NW healed from surgery. Intervenors have almost exclusively acted as parents to the child for two years. Mother does not oppose Intervenors’ petition. Intervenors continued limited communication and visitation with the child, and contend that additional contact with the child was thwarted by LG.⁶ Intervenors merely seek standing to set forth their case as to what, if any, custody is in the best interests of the child. In the absence of a case supporting forfeiture, and in light of similar time lapses existing in J.A.L. v. E.P.H., supra⁷, this Court concludes that Intervenors stand in loco parentis to the child.

Accordingly, the Court enters the following Order.

ORDER

⁶ On June 13, 2017, Counsel for Intervenors argued that LG thwarted contact between the child and Intervenors.
⁷ In J.A.L. v. E.P.H., the Superior Court reversed the trial Court’s denial of standing to a former life partner of the biological parent of a child born during their relationship. In that case, the parties separated in spring of 1992. The biological parent allowed visits for two years following the parties’ separation but then in April, 1994 ceased the visits. The third party filed suit for visits in February 1995, i.e., three years after ceasing to live with the child. J.A.L., supra, 682 A.2d at 1317. In the present case, Intervenors were almost exclusively acting as parents to the child for over two years, until January 2015. Intervenors had limited communication and visits, and filed suit May 2, 2017, two years and four months after having lived with the child.

AND NOW, this 15th day of **June 2017**, for the reasons stated above, it is ORDERED and DIRECTED that the petition to intervene filed by NW and DS on May 2, 2017 is GRANTED. NW and DS have standing to claim custody pursuant to 23 Pa. C.S. § 5324(2), due to their standing in loco parentis to the child.

BY THE COURT,

June 15, 2017

Date

Richard A. Gray, J.

c: Matthew Zeigler, Esquire & Taylor J. Mullholand, Esquire
Trisha Jasper , Esquire
Jeffrey Yates, Esquire (GAL)