

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>JM,</b>		<b>: No. 02-20,533</b>
	<b>Plaintiff</b>	<b>:</b>
		<b>:</b>
<b>vs.</b>		<b>: CIVIL ACTION - LAW</b>
		<b>:</b>
<b>MS,</b>		<b>:</b>
	<b>Defendant</b>	<b>: CUSTODY</b>

**ORDER**

**AND NOW**, this 18<sup>th</sup> day of **April, 2011**, this order is entered in regards to a hearing held on March 28, 2011 on Petitioners, J and K N's, Petition to Intervene in the above-captioned custody matter filed on March 17, 2011.

JM, and MS are the natural parents of ATM, date of birth March 7, 1995; GJM, date of birth June 8, 1997; and MRM, date of birth April 17, 1998. Pursuant to an Order entered on April 4, 2002, Father was granted primary physical custody of the children and Mother was granted partial physical custody of the children. On May 27, 2005, maternal grandfather, BHC, and maternal step-grandmother, SLC filed a Petition for Modification of Custody seeking primary physical custody of the three minor children. At the time the maternal grandparents filed the Petition, Father was incarcerated on charges of murder and Mother's whereabouts were unknown. By Order dated August 11, 2005, by agreement of all parties involved, legal custody and primary physical custody of the minor children was granted to the maternal grandparents, BHC and SLC. At some point in 2009, the oldest child, ATM, began to reside primarily with the paternal aunt and uncle, Petitioners K and J N. This arrangement was formalized by a Stipulation for

Custody signed by all parties and approved as an Order of Court on June 21, 2010 (filed to No. 09-21,153). The maternal grandfather, BHC, filed a Complaint in Divorce against the maternal step-grandmother, SLC, on March 2, 2010. The maternal grandparents permanently separated on or about September 16, 2010. On February 10, 2011, maternal grandfather, BHC, and natural mother, MS, filed a Petition for Modification of Custody seeking primary physical custody of the two minor children, GJM and MRM. On March 17, 2011, the paternal aunt and uncle, K and J N, filed a Petition to Intervene in Custody Action which is the subject of the present hearing before the Court.

In support of their petition, Petitioners K and J N, cite two precedential cases, *J.A.L. v. E.P.H.*, 682 A.2d 1314 (Pa. Super. 1996), and *T.B. v. L.R.M.*, 86 A.2d 913 (Pa. 2001). Petitioners argue that these cases support the proposition that they, the children's aunt and uncle, stand *in loco parentis* to the children because like the petitioners in *J.A.L. v. E.P.H.* and *T.B. v. L.R.M.*, the children are in a non-traditional family situation and petitioners possess a parent-child relationship with the children.

The Court in *J.A.L. v. E.P.H.* found *in loco parentis* standing where a child was a member of the parties' nontraditional family which involved a same-sex relationship, and so the child was a child of both parties and was not merely the offspring of a single parent. *J.A.L. v. E.P.H.*, 682 A.2d 1314 (Pa. Super. 1996). The Court noted, that child was created, via artificial insemination, to be the child of the same-sex relationship and be jointly raised thereby. The Court found that the parties' conduct after the child's birth and before their separation established their efforts to create a parent-like relationship.

The facts are similar in *T.B. v. L.R.M.* In that case, the Court determined that

because the mother consented to her girlfriend's performance of parental duties, the girlfriend was more than a frequent caretaker, and the parties and the child lived as a family unit, that the girlfriend had *in loco parentis* standing to seek custody. *T.B. v. L.R.M.*, 786 A.2d 913 (Pa. 2001). Just as in *J.A.L. v. E.P.H.*, the Court determined that the girlfriend assumed the role of co-parent. *Id.*

Like in *J.A.L. v. E.P.H.* and *T.B. v. L.R.M.*, here we have a non-traditional family. The non-traditional family is not characterized by a same-sex relationship, however, as was the case in *J.A.L. v. E.P.H.* and *T.B. v. L.R.M.* The children that are the subject of the pending litigation are in a non-traditional family due to the fact that their parents are not available to care for them. The natural Father is incarcerated for murder of his girlfriend at SCI-Albion for life without parole. The Mother's involvement with the children over the years has been sporadic, at best. In fact, Mother did not appear at the hearing on the Ns' Petition to Intervene. Their parents' situations have thrust these children into a predicament whereby they depend on extended family members for love, support, guidance, etc., and a parent-child relationship.

The Respondents join in Petitioners recitation of the rule in *J.A.L. v. E.P.H.*, but argue that the Petitioners have not shown an assumption of parental status and the performance of parental duties. *Bupp v. Bupp*, 718 A.2d 1278 (Pa. Super. 1998) quoting *Commonwealth ex. Rel. Morgan v. Smith*, 241 A.2d 531 (Pa. 1968). This Court disagrees.

The natural Father's and Mother's situations are such that they have not for some time and will not for some time be able to maintain a parent-child relationship with their

children. Thus, it is necessary, and the children are fortunate, that their extended family members have stepped up to fulfill the parent-child relationship in the children's lives. While it is true that the Maternal Grandparents, the Cs, have provided for the majority of the parental functions in the children's lives thus far since their parents became unable to provide for them, the Petitioners, the Ns, have also served as parental figures to the children. A vacancy was left in the children's lives in regard to a parental role. Due to this, many people have stepped in to fill this void, including the Ns. It was clear from the testimony that, in this family, it was not just the maternal grandparents who have stepped in to occupy the role of parent in the parent-child relationship regarding these children. The Ns have also done so.

Anytime that it was necessary or helpful for them to perform a parental duty, the Ns did so without hesitation. In addition, as discussed above, the Ns have assumed a parental status in the children's lives and the children seek their guidance, comfort, shelter, etc. in a way in which this Court finds that the children do view them as parental figures. Thus, the Court finds that in this case, the Ns do stand *in loco parentis* to the children and the Ns may join as parties in this matter. Petitioners, J and K N's, Petition to Intervene is hereby GRANTED.

BY THE COURT,

Joy Reynolds McCoy, Judge