

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

JOHN HILL, Plaintiff	:	No. FC-14-20612
	:	
vs.	:	CIVIL ACTION - LAW
	:	
TIFFANY HILL, Defendant	:	CUSTODY

OPINION

This matter is before the Court following a Petition to Intervene filed by Linda Fulford on October 2, 2020. Ms. Fulford is seeking visitation or shared custody of the minor child, C.H. Plaintiff is the child’s maternal grandfather and has sole legal and physical custody of the child. Defendant is the child’s mother and the identity of the child’s father is unknown. Although Ms. Fulford describes her relationship with the child as her “mom, caregiver, nana,” Ms. Fulford is not biologically related to the child. Additionally, Ms. Fulford has never been related to the child through marriage. A hearing on the Petition to Intervene was held on Friday, November 13, 2020 at which point Plaintiff appeared and opposed the petition, Defendant appeared and testified on behalf of Ms. Fulford, and Ms. Fulford appeared.

Third parties may be awarded custody of a minor child over a natural parent when it would be in the best interest of the child. *D.N. v. V.B.*, 814 A.2d 750, 753 (Pa. Super. 2002). However, that third party must first have standing.

Id. It is well-established that there is a stringent test for standing in third-party¹ suits for visitation or partial custody. *T.B. v. L.R.M.*, 786 A.2d 913, 916 (Pa. 2001), *citing R.M. v. Baxter*, 777 A.2d 446, 450 (Pa. 2001). Generally, Courts find standing in custody cases only where the legislature specifically authorizes the cause of action. *T.B.*, 786 A.2d at 916. However, when a third party stands *in loco parentis* to the child, that party is permitted to maintain an action for custody. *Id.*, *citing Gradwell*, 610 A.2d at 1002.

“*In loco parentis* is a legal status and proof of essential facts is required to support a conclusion that such a relationship exists The 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. The status of *in loco parentis* embodies two ideas: first, the assumption of a parental status, and, second, the discharge of parental duties. The rights and liabilities arising out of an *in loco parentis* relationship are, as the words imply, exactly the same as between parent and child. The third party in this type of relationship, however, can not place himself *in loco parentis* in defiance of the parents' wishes and the parent/child relationship.” *T.B.*, 786 A.2d at 916-17 (internal citations omitted).

A third party may not intervene and assume *in loco parentis* status where the natural parent opposes such intervention. *J.F. v. D.B.*, 897 A.2d 1261, 1274 (Pa. Super. 2006). “The law simply cannot permit a third party to act contrary to

¹ Persons other than biological parents are “third parties” for purposes of custody disputes. *Gradwell v. Strausser*, 610 A.2d 999, 1001 (Pa. Super. 1992).

the natural parent's wishes in obtaining custody and then benefit from that defiant conduct in a subsequent custody action.” *Id.* at 1275-76; see also *McDonel v. Sohn*, 762 A.2d 1101, 1106 (Pa. Super. 2000) (recognizing that there can be no *in loco parentis* status for a third party if the natural parent's actions conflict with such a finding).

“An important factor in determining whether a third party has standing is whether the third party lived with the child and the natural parent in a family setting, irrespective of its traditional or nontraditional composition, and developed a relationship with the child as a result of the participation and acquiescence of the natural parent.” *Bupp v. Bupp*, 718 A.2d 1278, 1281–82 (Pa. Super. 1998). Additionally, when only limited custody rights are sought, the limited nature of the intrusion must be considered in deciding whether there is standing. *Id.*

For example, the Superior Court has held that the child’s biological mother's ex-wife stood *in loco parentis* when the child was born during the same-sex marriage and where the ex-wife participated in mother's pregnancy and preparations prior to the child's birth, the ex-wife held herself out as the child's parent, and the ex-wife established a parent-like relationship with child that she maintained after separating with the mother. *A.J.B. v. A.G.B.*, 180 A.3d 1263 (Pa. Super. 2018). On the contrary, the Superior Court also held that step-grandparents failed to meet the heavy burden of proof necessary to obtain custody from the child's mother where, despite the fact that they provided a loving home for the child, and notwithstanding that the child was left with the step-grandparents while the mother was remarried to a violent man, the mother

maintained contact with, and did not abandon, the child. *Com. ex rel. Gorto v. Gorto*, 444 A.2d 1299 (Pa. Super. 1982).

In the matter at bar, Ms. Fulford is seeking visitation with the child. Ms. Fulford resided in the same house with the child and the Plaintiff, the child's maternal grandfather, for the about six years until September 20, 2020 when Plaintiff evicted her from the property. Ms. Fulford resided at the property as a boarder. She was not in a relationship with the Plaintiff, as the Plaintiff has a fiancé who resided at the property with the Plaintiff. Plaintiff, who has sole legal and physical custody of the child, will now not allow Ms. Fulford to see the child.

As Ms. Fulford is not the child's biological parent, she is considered a third party for purposes of this custody action. Ms. Fulford is also not the child's biological grandmother and, as there is no statute specifically authorizing her to bring an action for custody rights, Ms. Fulford bears the heavy burden of proving that she stands *in locos parentis* to the child.

While there was testimony presented that Ms. Fulford would care for the child while the Plaintiff was at work as well as get the child ready for bed, there is no evidence that Ms. Fulford held herself out to the public as the child's mother or grandmother. Ms. Fulford argues that she acted as the child's mother in the discharge of parental duties such as taking her to school, bathing her, reading her books, and putting her to bed. However, while Ms. Fulford claims that she has "raised the child" since she was two months old, the duties that she has described are what a typical babysitter or other caregiver would provide for the child. Plaintiff has never relinquished his custody of the child to Ms. Fulford and

has never given her privileges outside of simply caring for the child while he was at work.

Finally, Plaintiff opposes Ms. Fulford's Petition to Intervene. As stated above, Pennsylvania case law is clear that the Court will not allow a third party to intervene when a biological parent opposes the intervention. Here, while Plaintiff is not the child's biological *parent*, he is the biological *grandparent* and also has been awarded, upon agreement by the child's mother, sole legal and physical custody. The Plaintiff evicted Ms. Fulford from the property for inappropriate behavior related to the child. Ms. Fulford does not deny that the incident occurred. It is clear the Plaintiff feels it is in the best interest of the child to have no contact with Ms. Fulford and the Court will not overturn that decision.

For these reasons, the Court finds that Ms. Fulford has not met her burden of proving that she stands *in loco parentis* and therefore, her Petition to Intervene is denied.

ORDER

AND NOW, this 19th day of **November, 2020**, upon consideration of the Petition to Intervene filed by Linda Fulford and for the reasons set forth above, Ms. Fulford's Petition to Intervene is **DENIED**.

BY THE COURT,

Ryan M. Tira, Judge

RMT/ads

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