

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

<b>JE,</b>		<b>: No. 20-20,094</b>
	<b>Plaintiff</b>	<b>:</b>
		<b>:</b>
<b>vs.</b>		<b>: CIVIL ACTION - LAW</b>
		<b>:</b>
<b>ET,</b>		<b>:</b>
	<b>Defendant</b>	<b>: CUSTODY</b>

**ORDER**

**AND NOW**, this 24<sup>th</sup> day of **June, 2020**, before the Court are Preliminary Objections filed on February 18, 2020, by ET (“Defendant”), in response to a Complaint for Custody filed on February 5, 2020, by JE (“Plaintiff”). After multiple continuances, argument on the Preliminary Objections was held on June 1, 2020. Plaintiff was present and represented by Brandon Schemery, Esquire, and Defendant was present and represented by Patricia Shipman, Esquire.

Defendant is the natural mother of ET (“Child”), born August 24, 2013. Plaintiff is not the biological father of the Child but he and Defendant began a relationship in October of 2013 when the Child was approximately 10 weeks old. Plaintiff and Defendant dated for two years and were then engaged for approximately one year before eventually breaking up in 2016. While they were in a relationship, Plaintiff and Defendant never resided together, but both parties testified that they would spend weekends together at each other’s houses. Plaintiff testified that while they were engaged, he and Defendant had discussions about him playing a “father figure” role but that they never had a conversation about him adopting the Child.

Following their breakup, Defendant permitted Plaintiff to continue to have a relationship with the Child. Approximately every other weekend, Plaintiff's mother would keep the Child overnight on Friday and Plaintiff would keep the Child overnight on Saturday. Additionally, Defendant would take the Child to see Plaintiff's family for a few hours on holidays. There was never any type of written custody agreement between the parties. Defendant never filed a claim for child support against Plaintiff and, despite Plaintiff's testimony that he has offered Defendant money to help support the Child, Defendant has never accepted financial assistance from the Plaintiff.

In early 2020, Defendant accepted a new job in New York and relocated approximately 2.5 hours away. While Defendant was in the process of moving and getting settled, she left the Child in the care of her parents, with whom Defendant and Child lived. Upon learning of Defendant's relocation, Plaintiff presented Defendant with paperwork that included proposed legal custody rights and significant periods of physical custody with the Child. Defendant testified that at that time, she decided to cut ties with Plaintiff and visitation stopped at the end of January, 2020. Plaintiff filed his Complaint for Custody on February 5, 2020, and Defendant's Preliminary Objections were filed on February 18, 2020.

The Complaint for Custody does not state with specificity which sections of the custody statute the Plaintiff believes grant him standing to pursue custody of the Child. In his argument, counsel for Plaintiff indicated that he believed Plaintiff has standing to pursue custody of the Child pursuant to 23 Pa.C.S. §5324(1), which allows a "parent of the child" to file an action for any form of physical or legal custody. This statute confers standing on a "parent of the child," but does not define "parent." C.G. v. J.H., 172 A.3d 43, 51 (Pa. Super. 2017). Pennsylvania courts have interpreted "parent" to include only

biological parents and adoptive parents. Id. See, T.B. v. L.R.M., 786 A.2d 913, 916 (Pa. 2001). As there is no dispute among Plaintiff and Defendant that Plaintiff is neither the biological nor the adopted father of the Child, Plaintiff cannot achieve standing under 23 Pa.C.S. §5324(1).

Plaintiff also asserts he has standing to pursue custody of the Child pursuant to 23 Pa.C.S. §5324(2), as he stands *in loco parentis* to the Child. There is a stringent test for standing in third-party suits for custody due to the respect for the traditionally strong right of parents to raise their children as they see fit.

“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.”

Peters v. Costello, 891 A.2d 705, 710 (Pa. 2005).

The testimony of the parties reflects that Plaintiff clearly holds himself out to be the Child’s father. While Defendant testified that she initially referred to Plaintiff as “Joe” or “Joey,” she further testified that as time and their relationship progressed, the Plaintiff began referring to himself as “Dad.” Defendant permitted this and continued to refer to the Plaintiff as “Daddy” until the end of 2019 when speaking to the Child about the Plaintiff. The Child calls the Plaintiff’s parents “Meme” and “Pappy Doug.” Both Plaintiff and his mother testified that the Defendant never expressed any discomfort about the Child’s use of those monikers for Plaintiff and his family. Plaintiff introduced numerous cards and art projects that referred to him as “Dad” or “Daddy” as well as numerous photos of himself, members of his family, and the Child engaging in various activities over the past six years. It is clear to the Court that there was a positive relationship

between the Plaintiff and the Child and that, for several years following their breakup, Defendant supported the continued relationship between Plaintiff and the Child.

The second prong of the test to determine whether a party stands *in loco parentis* to a Child is the discharge of parental duties. At no time, either while the parties were in a relationship or after they broke up, did Defendant grant Plaintiff any authority to make any decisions with regard to the health, education, or well-being of the Child. Defendant was the sole decision maker when the Child needed surgery to have tubes placed in her ears, and when the Child had her tonsils and adenoids removed. Plaintiff played no role in Defendant's decision to enroll the Child in preschool or elementary school. Plaintiff testified that he received one call from the Child's preschool and Defendant testified that she removed his name as an emergency contact for the Child after the school contacted him. Plaintiff is not listed as an emergency contact at the Child's current school. Plaintiff is not involved with the Child's teachers on a regular basis regarding the Child's academic performance nor has he attended any parent-teacher conferences. In fact, Defendant testified that she specifically told the Child's teachers that Plaintiff was not the Child's father and he did not have her permission to speak to them. Plaintiff has not financially supported the Child and acknowledged he has contributed nothing towards school supplies, activity fees, uniforms/equipment, etc.

The Plaintiff unequivocally holds himself out to be the Child's father, despite the fact that the parties never lived together as a family unit. In support of his contention that Plaintiff stands *in loco parentis* to the Child, Plaintiff's counsel cited the case of M.L.S. v. T.H.-S., 195 A.3d 265 (Pa. Super. 2018), wherein stepfather, who was in the process of getting a divorce from the child's mother, was found to have *in loco parentis* status and therefore had standing to pursue custody of the child. In M.L.S., the Court

found the fact that stepfather did not live with mother, to whom he was married, and her child in a family setting due to his military service did not automatically defeat stepfather's claim that he stood *in loco parentis*; instead, stepfather's absence from the family home was merely one factor in determining whether he stood *in loco parentis* to the child. Id. at 268. While this Court understands that this factor alone is not dispositive, the Court also finds M.L.S. to be distinguishable from the present case. While the stepfather in M.L.S. was precluded from living with his wife and her child in a traditional family setting due to his military commitment, Plaintiff and Defendant had no barriers to residing together as a family unit with Defendant's Child. Plaintiff and Defendant simply chose to spend only weekends together, even when they were in a relationship. Unlike the stepfather in M.L.S., who spoke with the child every day, assisted the child with homework, attended parent-teacher conferences with mother, and listed the child as his dependent for purposes of receiving medical and dental benefits as part of his military benefits package, the Plaintiff in the instant case was never married to the Child's mother and his role in the Child's life was limited to every other weekend. While the Child was in his care, the Plaintiff was neither required, nor permitted, to perform any extraordinary parental duties. Defendant characterized Plaintiff's relationship with the Child as "not necessarily a father figure but more like a 'really cool uncle.'"

Plaintiff's love for the Child and his investment of time in her life, although substantial and commendable, do not amount to an informal adoption of the Child and assumption of the rights and obligations of parenthood. Here, while the Defendant may have supported an ongoing relationship between Plaintiff and the Child, the Court is hesitant to find that she permitted Plaintiff to assume legal parental status and she

certainly did not permit him to discharge parental duties. At no time did Plaintiff live with the Child in a familial setting. His periods of contact with the Child were for two nights at a time, and on one of those nights the Child stayed at the home of Plaintiff's mother rather than Plaintiff's home. The time that Plaintiff spent with the Child was solely at the discretion of the Defendant. The Plaintiff had no authority to make decisions concerning the health, education, or welfare of the Child and, in fact, was not even consulted by Defendant when she made these decisions for the Child. Although the Plaintiff provided care and ensured the Child's safety while she spent time with him, the Plaintiff did not assume the obligations incident to the parental relationship without going through a formal adoption, as required to achieve *in loco parentis* status.

The *in loco parentis* basis for standing recognizes that the need to guard the family from intrusions by third parties and to protect the rights of the natural parent must be tempered by the paramount need to protect the child's best interest. Morgan v. Weiser, 923 A.2d 1183, 1189 (Pa. Super. 2007) A person cannot stand *in loco parentis* to a child in defiance of the natural parent's wishes and the parent/child relationship. Id. Defendant did permit a relationship to continue between Plaintiff and the Child after her own relationship with Plaintiff ended, and that relationship was positive. However, Defendant testified that the Child is aware that Plaintiff is not her biological father and did not ask to see Plaintiff after Defendant discontinued their visits in early 2020. Defendant indicated that she and the Child will be relocating to New York, approximately 2.5 hours away from Plaintiff and that having to regularly travel such a far distance to enable the relationship continue would be stressful to the Child. Defendant, as the mother of the Child, has the absolute right to control the relationships that the Child has with third parties. Defendant has the sole right and responsibility to make

parenting decisions that she feels are in the Child's best interest, and absent a clear showing that a third party meets the stringent test for *in loco parentis* standing, this Court will not disturb Defendant's right to raise the Child as she sees fit.

For all of the foregoing reasons, this Court finds that the Plaintiff has not successfully proven that he is *in loco parentis* to the Child and therefore he does not have standing to pursue any type of custody of the Child. Accordingly, the Defendant's Preliminary Objections are hereby **SUSTAINED** and the Complaint for Custody filed by Plaintiff on February 5, 2020, is hereby **DISMISSED**.

By The Court,

Joy Reynolds McCoy, Judge