

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

<b>NICHOLAS CASALE,</b>	:	
<b>Plaintiff</b>	:	<b>NO. FC-16-20822</b>
	:	
<b>vs.</b>	:	
	:	
<b>ELIZABETH SAUERS and</b>	:	
<b>TERRI O’CONNOR,</b>	:	<b>CUSTODY</b>
<b>Defendants</b>	:	

**OPINION AND ORDER**

This matter was scheduled for a custody trial on May 5, 2021 at which time Nicholas Casale (Father) appeared and was represented by Bradley Hillman, Esquire, Elizabeth Sauers (Mother) appeared and was represented by Christina Dinges, Esquire, and Terri O’Connor (Maternal Grandmother and Intervener) appeared and was represented by Andrea Pulizzi, Esquire. By agreement of the parties, Maternal Grandmother’s Petition to Intervene was previously granted on December 21, 2020 pursuant to 23 Pa.C.S.A. § 5325.<sup>1</sup> At the outset of the trial, Mother made an oral Motion to Dismiss Maternal Grandmother from the action, in which Father joined. The parties indicated to the Court that, while Maternal Grandmother had standing to intervene in December

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<sup>1</sup> In addition to situations set forth in section 5324 (relating to standing for any form of physical custody or legal custody), grandparents and great-grandparents may file an action under this chapter for partial physical custody or supervised physical custody in the following situations:

- (1) where the parent of the child is deceased, a parent or grandparent of the deceased parent may file an action under this section;
- (2) where the relationship with the child began either with the consent of a parent of the child or under a court order and where the parents of the child:
  - (i) have commenced a proceeding for custody; and
  - (ii) do not agree as to whether the grandparents or great-grandparents should have custody under this section; or
- (3) when the child has, for a period of at least 12 consecutive months, resided with the grandparent or great-grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, an action must be filed within six months after the removal of the child from the home.

of 2020, she no longer has standing because the parties are in agreement that Maternal Grandmother should not have Court Ordered custodial time with the child. Both parties testified on record to such.<sup>2</sup> Maternal Grandmother asserts that since an Order has already been entered granting her intervention, she should remain an intervener.

The Rules of Civil Procedure allow a party to “raise standing by preliminary objection **or at a custody hearing or trial.**” Pa.R.C.P. No. 1915.5(a)(2) (emphasis added). Additionally, the Pennsylvania Superior Court has held that “custody cases may be fluid under some circumstances” and has re-evaluated a party’s standing when a factual change in circumstances is demonstrated. *M.G. v. L.D.*, 155 A.3d 1083, 1087 n.5 (Pa. Super. 2017). For example, the Court in *M.W. v. S.T.* held that “[c]hildren’s change in status from dependent to not dependent, and reunification with [their] parents, were relevant changes in circumstances that permit re-evaluation of standing upon motion by a party.” 196 A.3d 1065, 1071 (Pa. Super. 2018).

Here, Maternal Grandmother was granted intervention pursuant to Section 5325 “because the relationship began with the consent of both parents, the parents have a custody action, **and are not in agreement about continuing Maternal Grandparents [sic] partial custody.**” See *October 26, 2020 Petition to Intervene (emphasis added)*. Now, the circumstances have changed in that the parents are in agreement regarding Maternal Grandmother’s custody time. The presumption is that parents’ joint decisions, even when there is a custody action,

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<sup>2</sup> The parties later agreed that any visitation time between the child and Maternal Grandmother will be at the parties’ discretion and will be supervised by either Mother or Father.

are made in the best interest of the child. With Mother and Father's agreement, Maternal Grandmother no longer meets the elements required under Section 5325 and therefore, has no standing to continue to intervene in this custody action. For these reasons, Mother's motion is granted and Maternal Grandmother is hereby dismissed from this action.

**ORDER**

**AND NOW**, this **6<sup>th</sup>** day of **May, 2021**, upon consideration of Mother's oral Motion to Dismiss, in which Father joined, and Maternal Grandmother's response, Mother's motion is **GRANTED** and Maternal Grandmother is hereby **DISMISSED** from the action. A modified Custody Order was issued separately this date.

BY THE COURT,

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Hon. Ryan M. Tira, Judge

RMT/ads

CC: Bradley Hillman, Esq.  
Christina Dinges, Esq.  
Andrea Pulizzi, Esq.  
Trisha Jasper, Esq.  
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