

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

SHAUN and SHAUNDA ECK,	:	FC-21-20261
Plaintiffs	:	
	:	
vs.	:	CIVIL ACTION-LAW
	:	
MALIA ECK and CAMERON COX,	:	
Defendants	:	Petition to Intervene

OPINION

AND NOW, this **21st day of June, 2021**, this matter is before the Court on a Petition to Intervene filed by Alexandra Cox (Petitioner) who is the paternal aunt of the child involved in this case, I.E-C. A hearing on the Petition to Intervene was held on June 11, 2021 at which time Shaun and Shaunda Eck (Maternal Grandparents) appeared and were represented by Melody Protasio, Esquire, Malia Eck (Mother) appeared and was unrepresented, Cameron Cox (Father) appeared and was unrepresented, and Petitioner appeared and was represented by Patricia Shipman, Esquire. Father is unopposed to the intervention and Maternal Grandparents and Mother oppose it.

Petitioner is 19 years old. She lives with her boyfriend and his family. She is a high school graduate and now works full time. She was in foster care as a child and testified that she is still receiving services through Union County Children and Youth on a voluntary basis.

When the child was born in November 2020, Petitioner would see her often while she was in Father's custody and would help transport the child between Father and Mother. In fact, Petitioner brought the child home from the hospital after

her birth. She would feed her, change her diaper, dress her, and hold her.

Petitioner testified that she no longer sees the child because Mother will not respond to her requests to do so and Father only has supervised visits with the child through Children and Youth, at which she is not permitted to attend.¹ Additionally, she acknowledged that the child has significant health issues and that, while she is not familiar with the condition or treatment, she is willing to learn. Due to those health issues, the child is not to be in a smoking environment overnight. Petitioner testified that she does not smoke and that no one in her household smokes inside the home. She also acknowledged that she has never been to one of the child's doctor's appointment, the child has never been to Petitioner's home, the child has never spent the night with Petitioner, and Petitioner has never lived with Father.

Petitioner stated that she is willing to take responsibility for the child. She has an extra bedroom in her home and also has a crib for the child. She also has the financial means to purchase diapers, food, clothing, and any other items necessary to care for the child.

Petitioner seeks to intervene in this custody action pursuant to 23 Pa.C.S.A. § 5324(4), which states as follows:

The following individuals may file an action under this chapter for any form of physical custody or legal custody:

(4) Subject to paragraph (5), an individual who establishes by clear and convincing evidence **all of the following**:

(i) The individual has assumed or is willing to assume responsibility for the child.

¹ Father's visits take place at the Sharwell Building. Petitioner requested that she be permitted to participate in the visits but was denied that request for an unknown reason.

(ii) The individual has a sustained, substantial and sincere interest in the welfare of the child. In determining whether the individual meets the requirements of this subparagraph, the court may consider, among other factors, the nature, quality, extent and length of the involvement by the individual in the child's life.

(iii) Neither parent has any form of care and control of the child.

23 Pa.C.S.A. 5324 (emphasis added).

“In third-party suits for visitation or partial custody, the test of standing is a stringent one. The strict requirement for standing has grown out of a respect for the traditionally strong right of parents to raise their children as they see fit.” *Ken R. on Behalf of C.R. v. Arthur Z.*, 651 A.2d 1119, 1120 (Pa. Super, 1994), *aff'd*, 682 A.2d 1267 (Pa. 1996) (internal citations omitted). The Superior Court has held that “[a]n 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.” *S.A. v. C.G.R.*, 856 A.2d 1248, 1250 (Pa. Super. 2004).

Turning to the elements, it is clear that Petitioner is willing to assume responsibility for the child, as she has so stated, and thus the first element is met. The third element is also met because neither Mother nor Father have care or control of the child. Under the current Custody Order, Mother’s physical custody time with the child must be supervised by Maternal Grandparents and Father’s physical custody time must be supervised by Children and Youth Services. While Mother and Father have shared legal custody, “legal custody” is defined as “[t]he

right to make major decisions on behalf of the child, including, but not limited to, medical, religious and educational decisions.” 23 Pa.C.S.A. § 5322. Nothing in this definition provides that someone with legal custody has any “control” over the child. Legal custody is not synonymous with control. Therefore, it cannot be said that Mother and Father have any care or control over the child.

Petitioner’s request for intervention fails on the second element. While the Court believes that Petitioner does indeed have a substantial and sincere interest in the welfare of the child, that interest has not been sustained, though by no fault of the Petitioner. The child is approximately seven (7) months old. Though it is unclear when, at some point in the child’s short life the Petitioner stopped seeing the child. At this point, the child is unlikely to remember Petitioner or be comfortable with her. When a child is at such a young age, her needs are constantly changing. This is especially true with this child, considering her substantial medical needs. Being out of a child’s life, even for a short period of time, can cause a person to be unaware of the child’s specific needs. Additionally, the child has never spent the night at Petitioner’s home or even been to her home.

Therefore, while the Court commends Petitioner for her stability at her young age and her interest and willingness to care for the child, she does not meet the standard necessary to intervene in this custody action. The Petition to Intervene is denied.

ORDER

AND NOW, this **25th** day of **June, 2021**, for the reasons set forth above, the
Petition to Intervene is **DENIED**.

By the Court,

Ryan M. Tira, Judge

RMT/ads

cc: Melody Protasio, Esquire
Patricia Shipman, Esquire
Malia Eck – 2734 Jacks Hollow Road, Williamsport, PA 17701
Cameron Cox – 320 Winger Alley, Montoursville, PA 17754
Jerri Rook – Judge McCoy’s Office
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