

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

EMILY HALLER,	:	FC-17-21,147
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION-LAW
	:	
JOSHUA LINNER,	:	
Defendant	:	
	:	
vs.	:	Petition to Intervene
	:	
BRIAN M. HALLER,	:	
Intervener	:	

OPINION

AND NOW, this 15th day of March, 2021, this matter is before the Court on a Petition to Intervene and Modify Existing Custody Order filed by Brian M. Haller who is the Paternal Grandfather of the minor child involved in this case, MRL. Plaintiff, Emily Haller, is the Mother of the child and Defendant, Joshua Linner, is the Father of the child.

A hearing on the Petition to Intervene was held on March 12, 2021 at which time Mother and Father appeared by video and were unrepresented and Paternal Grandfather appeared personally with his attorney, Joseph Orso, Esquire.

There are two statutes that address standing for physical and legal custody of a child – 23 Pa.C.S.A. §§ 5324 and 5325. Paternal Grandfather has filed his Petition pursuant to Section 5325, which allows a grandparent to file an action for partial physical custody or supervised physical custody “where the relationship with the child began [] with the consent of a parent of the child . . . and where the parents of the child have commenced a proceeding for custody and do not agree as to

whether the grandparents . . . should have custody under this section” 23 Pa.C.S.A. § 5325(2). In other words, where a mother and father agree as to whether a grandparent should or should not have custody rights of a child, that grandparent does not have standing. *M.S. v. J.D.*, 215 A.3d 595, 601 (Pa. Super. 2019). Under this statute, the Court must limit its analysis on standing to the statutory elements rather considering the best interests of the child and the fitness of one or both parents. *Id.* at 601-02.

In the instant case, Paternal Grandfather testified that his relationship with the child is that of a typical grandfather/granddaughter. Both Paternal Grandfather and Mother testified that the child would sometimes sleep overnight at Paternal Grandfather’s home with Mother’s consent, although the frequency of which this occurred is disputed. Paternal Grandfather also testified that he would take the child to the park and would sometimes help with transportation to and from her pre-school. Mother commenced the underlying custody action against Father in Indiana County in 2016.¹ Finally, while Mother testified that she is not in favor of Paternal Grandfather having any custody rights to the child, Father testified that he is in favor of it and wants the child to have a continued to relationship with Paternal Grandfather.

Finding that the relationship between the child and Paternal Grandfather began with Mother’s consent, that Mother has previously commenced a proceeding for custody, and that Mother and Father do not agree as to whether or not Paternal

¹ The matter was transferred to Lycoming County in July 2017 because the child was living primarily with Mother who resided in Lycoming County.

Grandfather should have custody rights to the child, the Court will grant the Petition to Intervene and a custody conference will take place on April 22, 2021. As stated at the hearing, the Court's ruling on standing is not a decision on what type, if any, of visitation with the Paternal Grandfather is in the child's best interest. That decision is reserved for a custody trial should the parties be unable to reach an agreement at the custody conference. In the interim, the August 25, 2020 Custody Order shall remain in full force and effect.

ORDER

AND NOW, this **15th** day of **March, 2021**, for the reasons set forth above, the Petition to Intervene is **GRANTED**. The Prothonotary shall ensure the caption in this matter is reflected accordingly. A custody conference is scheduled for **April 22, 2021 at 10:30 a.m. in Family Court, Courtroom No. 6 of the Lycoming County Courthouse.**

By the Court,

Ryan M. Tira, Judge

RMT/ads

cc: Emily Haller – 904 6th Ave., Apt. 1, Corapolis, PA 15108
Joshua Linner – 1836 Devonshire Road, Corapolis, PA 15108
Joseph Orso, Esq.
April McDonald, CST
Family Court
Gary Weber, Esquire
Alexandra Sholley, Esq. – Judge Tira's Office