

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

<b>JESS RAUCH,</b>	:	<b>FC-09-20991</b>
<b>Plaintiff</b>	:	
	:	
<b>vs.</b>	:	<b>CIVIL ACTION-LAW</b>
	:	
<b>NICOLE BERRY,</b>	:	
<b>Defendant</b>	:	
	:	
<b>vs.</b>	:	<b>Petition to Intervene</b>
	:	
<b>LEE ANNE RAUCH,</b>	:	
<b>Intervener</b>	:	

**OPINION**

**AND NOW**, this 3<sup>rd</sup> day of March, 2021, this matter is before the Court on a Petition to Intervene and Modify filed by Lee Anne Rauch who is the Paternal Grandmother of the two children involved in this case, BDR and BLR. Plaintiff, Jess Rauch, is the Father of the children and Defendant, Nicole Berry, is the Mother of the children.

A hearing on the Petition to Intervene was held on March 2, 2021 at which time Father appeared by video from the Lycoming County Prison and was unrepresented and Lee Anne Rauch appeared personally with her attorney, Matthew Diemer, Esquire. Mother did not appear.<sup>1</sup> Father indicated that he does not oppose the Petition to Intervene.

There are two statutes that address standing for physical and legal custody

---

<sup>1</sup> The hearing on the Petition to Intervene was held on March 2, 2021 at 11:00 a.m. On the same day but at some time following the conclusion of the hearing, Mother contacted the undersigned's office in later afternoon indicating she had only just received in the mail the Order scheduling the hearing, which is why she did not appear.

of a child – 23 Pa.C.S.A. §§ 5324 and 5325. Paternal Grandmother has filed her Petition pursuant to both sections and therefore, the Court will analyze this matter under both. Section 5325 allows grandparents to file an action for partial physical custody or supervised physical custody in the following relevant situations:

(2) where the relationship with the child began either with the consent of a parent of the child . . .; or

(3) when the child has, for a period of at least 12 consecutive months, resided with the 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.

23 Pa.C.S.A. § 5325(2) and (3).

Section 5324 provides as follows, in relevant part:

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

(2) A person who stands in loco parentis to the child.

(3) A grandparent of the child who is not in loco parentis to the child:

(i) whose relationship with the child began either with the consent of a parent of the child or under a court order;

(ii) who assumes or is willing to assume responsibility for the child;

and

(iii) when one of the following conditions is met:

(A) the child has been determined to be a dependent child under 42 Pa.C.S. Ch. 63 (relating to juvenile matters);

(B) the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; or

(C) the child has, for a period of at least 12 consecutive months, resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case the action must be filed within six months after the removal of the child from the home.

23 Pa.C.S.A. § 5324(2) and (3).

“The term *in loco parentis* literally means in the place of a parent. There are two components to *in loco parentis* standing: (1) the assumption of parental status

and (2) the discharge of parental duties.” *M.L.S. v. T.H.-S.*, 195 A.3d 265, 267 (Pa. Super. 2018), *citing M.J.S. v. B.B.*, 172 A.3d 651, 656 (Pa. Super. 2017).

In this case, the children and Father have lived with Paternal Grandmother since the time of their birth in 2008. The current Custody Order between Mother and Father grants Father full physical and legal custody of the children with Mother having custody to the extent Father and Mother may agree. Father is currently incarcerated in the Lycoming County Prison and could not provide an expected release date. According to the Petition, Mother has ceased all contact with Paternal Grandmother and the children. Mother is currently facing seventeen (17) criminal charges. Paternal Grandmother testified that she would assist Father in the care of the children when he was living with her. Since Father’s incarceration, Paternal Grandmother has stepped into the role of the children’s parent and has been performing all parental duties including, but not limited to, ensuring the children attend school and taking them to doctors’ appointments and extracurricular activities. Paternal Grandmother testified that she has been and currently is willing and able to assume parental responsibility of the children.

Father had clearly consented to the relationship between Paternal Grandmother and children as he and the children had been living with her for almost thirteen (13) years. Therefore, the Court finds that Paternal Grandmother has standing to intervene pursuant to 23 Pa.C.S.A. § 5325(2) and (3).

There was testimony that Paternal Grandmother has assumed the duty of the children’s sole parent since Father’s incarceration. She is their sole caregiver and has been discharging parental duties partially since the children were born and

solely since Father's incarceration. For this reason, the Court finds that Paternal Grandmother stands *in loco parentis* to the children and therefore has standing pursuant to 23 Pa.C.S.A. § 5324(2).

Even if Paternal Grandmother does not stand *in loco parentis* to the children, she nevertheless has standing to intervene pursuant to subsection (3) of Section 5324. As stated above, the relationship between Paternal Grandmother and the children began with the consent of at least Father. Paternal Grandmother has testified that she has assumed and is willing to continue to assume responsibility of the children. Additionally, there was evidence presented at the hearing that Mother has several pending criminal charges including, but not limited to, drug possession with intent to deliver and operating a methamphetamine lab. The Court finds that the children would be at substantial risk due to Mother's drug activity should they be in Mother's custody. Additionally, the children have lived with Paternal Grandmother for well over twelve (12) months.

For these reasons, the Court will grant the Petition to Intervene and a custody conference will take place on March 12, 2021. In the interim, the April 4, 2019 Custody Order shall remain in place except that Paternal Grandmother will have full physical and legal custody of the children and it will be at her discretion to allow Mother visits with the children.

**ORDER**

**AND NOW**, this **3<sup>rd</sup>** 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 **March 12, 2021 at 9:00 a.m. in Family Court, Courtroom No. 6 of the Lycoming County Courthouse.**

By the Court,

---

Ryan M. Tira, Judge

RMT/ads

cc: Jess Rauch – LCP  
Nicole Berry – 139 Fairview Street, Lock Haven, PA 17745  
Matthew Diemer, Esq.  
April McDonald, CST  
Family Court  
Gary Weber, Esquire  
Alexandra Sholley, Esq. – Judge Tira's Office