

BRENDA ADAMS v. SAMANTHA C. HUDSON n/k/a SAMANTHA C. KEMP

2016-FC-001887-03

Action in Custody; Preliminary Objections; Grandparents' Standing

1. Mother filed Preliminary Objections to Paternal Grandmother's standing to seek rights of custody of the child, after the death of Father.
2. The Court found that Grandmother did not have *in loco parentis* standing to seek custody. However, the Court did find that Grandmother sufficiently established that she had standing based on her claim that the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity" and that her relationship with the Child began with consent of one of the parents as the Child's father lived with her for a period of time.
3. Defendant's Preliminary Objections to Plaintiff's Complaint are **DENIED**.

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
FAMILY DIVISION;
BRENDA ADAMS v. SAMANTHA C. HUDSON n/k/a SAMANTHA C. KEMP;
ACTION IN CUSTODY

APPEARANCES:

For Plaintiff: Farley G. Holt, Esq.
For Defendant: Victor A. Neubaum, Esq.

**MEMORANDUM OPINION DENYING DEFENDANT'S PRELIMINARY
OBJECTIONS**

Before the Court are Defendant's Preliminary Objections to Plaintiff's Complaint.

For the following reasons, Defendant's Preliminary Objections are **DENIED**.

FACTS AND PROCEDURAL HISTORY

On November 30, 2007, Joseph D. Adams (hereinafter “Father”) filed an action in custody against Samantha C. Hudson (hereinafter “Mother”) seeking custody of Sage C. Adams (hereinafter “Child”), born July 23, 2007. Subsequently, an order was issued on October 8, 2013, awarding shared legal custody, primary physical custody to Father, and partial supervised physical custody to Mother. This order was modified by order dated February 11, 2014. Mother’s custody was to be supervised as a result her addiction to opiates.

On July 5, 2016, Mother filed a Petition to Modify Custody Order, seeking to have the requirement for supervision lifted. In an interim order dated August 5, 2016, this Court ordered that Mother’s fiancé, Ralph Kemp, was to have no contact with the Child until he completed an evaluation pursuant to 23 Pa. C.S.A. § 5329 as a result of convictions for DUI and possession with intent to deliver marijuana. Before this Court was able to rule on Mother’s Petition, Father passed away on September 24, 2016. Since Father’s death, the Child has resided with Mother and Mr. Kemp.

The Child’s paternal grandmother Brenda Adams (hereinafter, Grandmother) filed the instant action in custody against Mother on October 13, 2016, seeking primary physical custody of the Child. On October 25, 2016 Mother filed Preliminary Objections alleging that Grandmother lacks standing to bring an action for primary physical custody. On November 7, 2016, this Court issued an Interim Order for Custody Pending Trial which modified the previous arrangement. Under the new order, Mother was awarded

primary physical custody subject to Grandmother's right to partial physical custody. A hearing was held on November 10, 2016 to determine whether Grandmother has standing to bring this action for primary physical custody.

DISCUSSION

In custody actions, "A party . . . may raise any question of standing, by preliminary objection filed within twenty days of service of the pleading to which objection is made or at the time of hearing, whichever first occurs." Pa.R.Civ.P. 1915.5(a). Preliminary objections if sustained, would result in the dismissal of a cause of action, and "should be sustained only in cases that are clear and free from doubt." *Bower v. Bower*, 531 Pa. 54, 611 A.2d 181, 182 (1992). Further, preliminary objections should be granted "only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover." *Snare v. Ebensburg Power Co.*, 431 Pa. Super. 515, 637 A.2d 296 (1993) (citation omitted), *appeal denied* 538 Pa. 627, 646 A.2d 1181 (1994). When ruling on preliminary objections, the court must generally accept as true all well and clearly pleaded facts, together with such reasonable inferences as may be drawn from those facts, but not the pleader's conclusions or averments of law. *Santiago v. Pennsylvania National Mutual Casualty Insurance Company*, 418 Pa. Super. 178, 184-85, 613 A.2d 1235, 1238-39 (1992). Additionally, "the court must consider the evidence in the light most favorable to the non-moving party." *Maleski by Taylor v. DP Realty Trust*, 653 A.2d 54, 61 (Pa. Commw. Ct. 1994).

Standing to file an action in custody is governed by 23 Pa. C.S. § 5324. To have

standing to file an action in custody, a person must be:

- (1) A parent of the child.
- (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.

“The application of the law of standing to child custody cases is done with a high degree of scrupulousness by our courts.” *Silfies v. Webster*, 713 A.2d 639, 643 (Pa. Super. 1998), *citing J.A.L. v. E.P.H.*, 682 A.2d 1314, 1319 (Pa. Super. 1996). Any person other than a biological parent of a child is considered a “third party.” *Id.*, *citing Argenio v. Fenton*, 703 A.2d 1042, 1044 (Pa. Super. 1997); *Van Coutren v. Wells*, 633 A.2d 1214, 1216 (Pa. Super. 1993). “Absent a prima facie right to custody, a third party lacks standing to seek custody as against the natural parent.” *Argenio v. Fenton*, 703 A.2d 1042, 1044 (Pa. Super. Ct. 1997), *quoting Van Coutren v. Wells*, 633 A.2d 1214, 1215-16 (Pa. Super. 1993).

I: Mother’s Preliminary Objection to Grandmother’s Standing Pursuant to

23 Pa. C.S. § 5324(2).

Mother first objects to Grandmother's assertion of standing pursuant to 23 Pa. C.S. § 5324(2), arguing that Grandmother does not stand *in loco parentis* to the Child.

"The term *in loco parentis* literally means 'in the place of a parent.'" *Peters v. Costello*, 891 A.2d 705, 710 (Pa. 2005), *quoting* Black's Law Dictionary (7th Ed. 1991), 791.

The phrase "*in loco parentis*" refers to a person who puts oneself [sic] 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), *quoting* *T.B. v. L.R.M.*, 786 A.2d 913, 916–17 (Pa. 2001).

At the hearing to determine whether Grandmother has standing, Grandmother testified that she resided with the Child from January, 2015 to January, 2016. Notes of Testimony (hereinafter "N.T."), at 4. She also testified that during the time the Child resided with her, she "made sure [the Child] was up and ready for school every morning, you know, homework, bathed at night, put her to bed, cooked dinner, you know, made sure I did laundry" and interacted with the Child. N.T., at 4. Additionally, Grandmother testified that during the period from January, 2015 to January, 2016 she was the main financial provider for the Child, paying for clothing, groceries, and schooling. N.T., at 4-5, 12. Further, Grandmother testified that she made all arrangements for the Child to

attend the York Country Day School and signed all of the enrollment agreements. N.T., at 4-5.

This case is factually similar to *D.G. v. D.B.*, 91 A.3d 706 (Pa. Super. 2014), in which the grandmother of the child sought custody from the child's mother. The child's grandmother asserted standing based on her status as one who stands *in loco parentis* to the child. *Id.*, at 708. In *D.G.*, for a period of time, the child and the child's mother resided with the grandmother, who "during the periods of combined residence, . . . provided financial assistance, did cooking and laundry for Mother and [the child], bathed [the child] and cared for [the child] while Mother was away." *D.G. v. D.B.*, 91 A.3d 706, 710 (Pa. Super. 2014). The court in *D.G.* held that despite the extent of the grandmother's involvement in the child's life, "[n]othing in the record indicate[d] that the parties ever intended for Mother and [the child] to reside permanently with Grandmother." *D.G. v. D.B.*, 91 A.3d 706, 711 (Pa. Super. 2014). In the instant case, as in *D.G.*, it is undisputable that Grandmother has played a large role in the Child's life. However the record does not demonstrate intent for the Child to permanently reside with Grandmother.

Grandmother has not shown that she stands *in loco parentis* to the Child. While the Child lived with Grandmother, the Child's Father and his girlfriend also lived with her and took part in taking the Child to the doctor and dentist. Additionally, the Child has not lived with Grandmother since January, 2016. Accordingly, this Court finds that Grandmother is not a "person who stands in loco parentis to the child," and therefore does not have standing under 23 Pa.C.S.A. § 5324(2). However, this does not end our

inquiry.

**II: Mother's Preliminary Objection to Grandmother's Standing Pursuant to
23 Pa. C.S. §5324(3)(iii)(B).**

Mother also objects to Grandmother's assertion of standing pursuant to 23 Pa. C.S. § 5324(3)(iii)(B), arguing that Grandmother has failed to show that the child "is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity."

During the hearing to determine whether Grandmother has standing to bring an action for primary custody, Mother testified that beginning in 2014 her visitation rights became supervised due to her opiate addiction. N.T., at 31. According to Mother, her addiction began in 2012 when her fiancé went to prison, but she did not seek treatment until 2014 when she completed a detox treatment at White Deer Run, followed by inpatient treatment at the Pyramid Health Facility. N.T., at 37-39. Mother also testified that she has been sober for nearly three years and that she currently attends Alcoholics Anonymous, Narcotics Anonymous, counseling sessions, and doctor visits. N.T., at 39.

Mother also testified that the Child now resides with Mother and Ralph William Kemp III, Mother's fiancé. N.T., at 32. Under a previous order of Court the Child was not to be in the presence of Mr. Kemp due to his drug and DUI convictions, however that provision does not exist in the current order. N.T., at 33. The Court has directed Mother to have Mr. Kemp obtain an evaluation pursuant to 23 Pa. C.S.A. §5329, however the Court has not had the benefit of reviewing any such evaluation. N.T., at 32-33.

While Mother correctly points out that Mr. Kemp's convictions by themselves do

not place the Child “substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity,” the nature of Mr. Kemp’s offenses and the effect they had on Mother is instructive. 23 Pa. C.S.A. § 5324(3)(iii)(B). Mother is in recovery from addiction to opiates. Mother’s addiction began in 2012, however despite exercising custody of the Child in the intervening years, did not seek treatment until 2014. Furthermore, Mother’s addiction began when Mr. Kemp was taken to prison on drug related charges. Finally, the Court has had no opportunity to determine that unsupervised custody by Mother does not place the Child “substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity.” 23 Pa. C.S.A. § 5324(3)(iii)(B).

Based on the pled facts and the reasonable inferences therein, grandmother has sufficiently established, for purposes of standing, that the Child is “substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity” pursuant to 23 Pa. C.S.A. § 5324(3)(iii)(B). Therefore, Grandmother has standing under this provision to pursue her claim for primary physical custody.

**III: Mother’s Preliminary Objection to Grandmother’s Standing Pursuant to
23 Pa. C.S. § 5324(3)(iii)(C)**

Third and finally, Mother challenges Grandmother’s assertion of standing pursuant to 23 Pa. C.S.A. § 5324(3)(iii)(C), asserting that Grandmother has not shown that she resided with the Child for a period of at least 12 consecutive months and that the action was filed within six months after the removal of the Child from Grandmother’s home.

During the hearing, Grandmother testified that she lived with the Child from January, 2015 to January, 2016. While Grandmother did prove that she lived with the child for a period of 12 consecutive months, Grandmother filed her Complaint on October 13, 2016, nine months after the child was removed from her home.

Although Grandmother has shown that the Child resided with her for a period of 12 consecutive months, her Complaint was filed outside of the six-month window provided for by 23 Pa. C.S.A. § 5324(3)(iii)(C). Accordingly, Grandmother does not have standing to assert a claim for primary physical custody on this basis.

CONCLUSION

Mother's Preliminary Objections to Grandmother's Standing are Denied because although Grandmother does not stand *in loco parentis* and does not meet the requirements of 23 Pa. C.S.A. § 5324(3)(iii)(C), Grandmother does have standing to bring the instant Action in Custody based on her claim that the child is substantially at risk. Grandmother has shown that her relationship with the Child began with consent of one of the parents as the Child's father lived with her for a period of time. Grandmother has also shown that she is willing to assume responsibility for the child. Finally, Grandmother has sufficiently pled, pursuant to 23 Pa. C.S.A. § 5324(3)(iii)(B) that the child is "substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity" as a result of Mother's opiate addiction.

For the reasons set forth above, Mother's Preliminary Objections are **DENIED**.

By the Court,

Joseph C. Adams, Judge

DATED: November 29, 2016

