[J-147-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

TEDDY PETERS,	:	No. 8 EAP 2004
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered August 11, 2003, at 3850
	:	EDA 2002, affirming the Order of the
v.	:	Court of Common Pleas of Philadelphia
	:	County entered November 15, 2002, at
	:	D.R. No. 0C9900866.
DANIEL COSTELLO AND MARYANN COSTELLO,	:	
	:	
	:	
Appellees	:	SUBMITTED: July 27, 2004

DISSENTING OPINION

MR. JUSTICE EAKIN **DECIDED: December 30, 2005**

My colleagues confer upon a couple, acting in loco parentis to a woman who is now well past the age of minority, standing to pursue court-ordered visitation of the woman's daughter under the Grandparent Visitation Act. I respectfully dissent.

The question is whether appellees are entitled to the preferred status, conferred only by the statute, enjoyed by grandparents of children; as the majority notes, the narrow question before this Court is one of interpretation of that statute.

The Act does not define "grandparents," it is true, but that word is hardly in need of definition. The term "grandparent" is clear and unambiguous, and it has been for the entirety of Pennsylvania jurisprudence. The traditional, common, clear, and time-

honored definition of "grandparent" is the parent of one's parent. Webster's Third New International Dictionary Unabridged 988 (3d ed. 1993). That is achieved one of two ways: biologically, or through adoption. A grandparent does not include someone who acts as a grandparent. Behaving like a grandparent, filling the role of a grandparent, and having others think of you as a grandparent may give rise to familial inclusion and affectionate wishes at holidays and birthdays, but it simply does not make it so for purposes of standing in child custody disputes. Serving as surrogate grandparent does not give one the statutory status of the real thing.

> As a general rule, the best indication of legislative intent is the plain language of a statute. Courts may resort to other considerations to divine legislative intent only when the words of the statute are not explicit. Thus, this Court has consistently held that other interpretive rules of statutory construction are to be utilized only where the statute at issue is ambiguous.

Pennsylvania School Boards Association v. Public School Employees' Retirement Board, 863 A.2d 432, 436 (Pa. 2004) (citations omitted). The Statutory Construction Act states, in relevant part, "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage …." 1 Pa.C.S. § 1903(a) (emphasis added). "Only after the words of the statute are found to be unclear or ambiguous should a reviewing court further engage in an attempt to ascertain the intent of the Legislature through the use of the various tools provided in the Statutory Construction Act." Zane v. Friends Hospital, 836 A.2d 25, 31 (Pa. 2003). "Grandparent" simply is not an ambiguous term. The lack of definition in the statute does not connote ambiguity--it connotes the opposite: there is no need for definition because of the obvious, simple, and unconfused meaning of the word. Where a term is instantly recognizable and clear, the failure to define it in expansive terms hardly

signifies the intent to include the non-traditional meaning--if anything, the absence of expansive definitional language means that expansive meaning is not intended.

The majority, however, adopts an expansive meaning of the term "grandparent" under the guise of following its common and approved usage. The majority defines grandparent as "'a parent's parent.'" Majority Slip Op., at 12 (quoting Webster's Third New International Dictionary 988 (2002)). The majority adopts a definition of "parent" which includes: "'a person standing in loco parentis although not a natural parent ….'" Id. (quoting Webster's Third New International Dictionary 1641 (2002)) (emphasis added). Thus, the majority concludes appellees, acting in loco parentis to an adult woman, are grandparents of the woman's daughter. Id., at 12-13.

Pennsylvania courts recognize a person may "put[ ] himself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of legal adoption. This status of 'in loco parentis', embodies two ideas; first, the assumption of a parental status, and second, the discharge of parental duties." Commonwealth ex rel. Morgan v. Smith, 241 A.2d 531, 533 (Pa. 1968) (emphasis added); see also Black's Law Dictionary 803 (8th ed. 2004) (in loco parentis is defined as "[o]f, relating to, or acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent.")

There is no evidence the genesis and evolution of the in loco parentis concept contemplated or intended granting a person who stands in loco parentis to an individual the corresponding status of "in loco grandparentis" over the individual's children. Consequently, the common and approved usage of the term "grandparent" does not include a person who stands in loco parentis to the natural parent of a child.

Further, the majority refers to a definition of "parent" which includes "'one who brings up and cares for another[.]'" Majority Slip Op., at 12 (quoting The Merriam Webster Dictionary 535 (1997)). The adoption of this expansive definition is more troubling for its potential consequences concerning parent-child relationships than grandparent-child relationships. Childcare by non-parental parties is not unusual. Where both parents must work outside the home, others commonly assist in the raising of children. Under the majority's definition of "parent," babysitters, day-care workers, nannies, and possibly some teachers and nurses (to name a few) could arguably be considered a child's "parent" (and consequently a grandparent of that child's children) since they help bring up and care for the child. Applying this definition of "parent" leads to an absurd and unreasonable result. See 1 Pa.C.S. § 1922(1) (presumption General Assembly does not intend absurd or unreasonable result); Commonwealth v. Burnsworth, 669 A.2d 883, 888 (Pa. 1995) (citing 1 Pa.C.S. § 1922(1)).

Next, the majority's expansive definition of "parent" and "grandparent" opens the door for Pennsylvania law to conflict with Troxel v. Granville, 530 U.S. 57 (2000). In Troxel, the United States Supreme Court struck down a Washington grandparent visitation statute because it was too broad, allowing "any person" to have standing for visitation. The right to parent is a fundamental right that deserves the most protection afforded to individuals. Id., at 65. Although Troxel is not specifically implicated in this matter because this Court is only deciding if appellees have standing under the Grandparent Visitation Act to seek court-ordered visitation, the majority opens the door to a future Troxel challenge if a third party can find a claim of either in loco grandparentis status with the right to intervene in a parent's fundamental right to make

decisions on a child's behalf, or the majority's newly recognized "caregiver parent" status.

Numerous Pennsylvania statutes refer to grandparents; none find any need to define the term to include "persons who act like grandparents." See Uniform Athlete Agents Act, 5 Pa.C.S. § 3101 et seq.; Pennsylvania Uniform Transfers to Minors Act, 20 Pa.C.S. § 5301 et seq.; Agriculture Education Loan Forgiveness Act, 24 P.S. § 5198.1 et seq.; Pennsylvania Adult and Family Literacy Education Act, id., § 6401 et seq.; Vital Statistics Law of 1953, 35 P.S. § 450.105; Older Adult Daily Living Centers Licensing Act, 62 P.S. § 1511.2; Pooled Trust Act, id., § 1965.2; Family Caregiver Support Act, id., § 3063; Family Support for Persons with Disabilities Act, id., § 3303; Tax Reform Code of 1971, Realty Transfer Tax, 72 P.S. § 8101-C. Are we to reinterpret the term "grandparent" in each of these statutes as well?

In addition to biological and adoptive grandparents, Pennsylvania case law acknowledges legal grandparents, In re McAllister, 31 Pa. D. & C. 4, 8 (Lancaster Cty. 1937) (legal grandparent of illegitimate child liable for support), step-grandparents, Hill v. Divecchio, 625 A.2d 642, 647-48 (Pa. Super. 1993) (biological grandmother has standing to sue for custody; step-grandfather does not), and foster grandparents. Wolf v. Workers' Compensation Appeal Board, 705 A.2d 483, 486 (Pa. Cmwlth. 1997) (foster grandparent providing volunteer services to special children not statutory employee of county). Pennsylvania has never, however, recognized the concept of de facto grandparents for purposes of custody and visitation.

Eleven states define "grandparent" as the biological or adoptive parent of a minor child's biological or adoptive parent; none includes "in loco grandparentis." See generally Del. Code Ann. tit. 10, § 901(9)(m)(n) (relationships include blood relationships and relationships by adoption); Haw. Rev. Stat. § 386-2 (grandparent is parent of parent by adoption, but not parent of stepparent, stepparent of parent, or stepparent of stepparent); 405 Ill. Comp. Stat. 80/2-3(h) (grandparent is relative created through relationship by blood, marriage, or adoption); see also id., 80/2-3(g) ("parent" means biological or adoptive parent of mentally disabled adult, or licensed as foster parent); Iowa Code § 239B.1(12)(2005) (grandparent is specified relative created through blood relationship, marriage, or adoption or spouse to one of relatives); Me. Rev. Stat. Ann. tit. 19-A, § 1802 (grandparent is biological or adoptive parent of child's biological or adoptive parent); Mich. Comp. Laws § 722.22(d) (grandparent is natural or adoptive parent of child's natural or adoptive parent); Neb. Rev. Stat. § 43-1801 (grandparent is biological or adoptive parent of minor child's biological or adoptive parent); N.M. Stat. Ann. § 40-9-1.1(A), (B) (grandparent is biological or adoptive parent of minor child's biological or adoptive parent); Ohio Rev. Code Ann. § 5101.85(A) (kinship caregiver includes grandparents related by blood or adoption to child); Utah Code Ann. § 30-5-1 (grandparent is person whose child, by blood, marriage, or adoption, is the parent of another); W.Va. Code § 48-10-203 (grandparent is biological relationship, person married or previously married to biological grandparent). Each of

the other 38 states has a grandparent visitation statute[1] and related statutes. No state

[1] Ala. Code § 30-3-4.1's rebuttable presumption in favor of grandparental visitation held unconstitutional, see R.S.C. v. J.B.C., 812 So.2d 361, 371 (Ala. Civ. App. 2001); Alaska Stat. § 25.20.065; Ariz. Rev. Stat. Ann. § 25-409; Ark. Code Ann. § 9-13-103's prior version held unconstitutional, see Seagrave v. Price, 79 S.W.3d 339, 344-45 (Ark. 2002) (trial court constitutionally erred by shifting grandparent's burden to fit parent); Cal. Fam. Code § 3104; Colo. Rev. Stat. § 19-1-117; Conn. Gen. Stat. § 46b-59 held unconstitutional as applied, see Roth v. Weston, 789 A.2d 431, 449 (Conn. 2002) (heightened burden of proof to justify infringement on parent's fundamental right to parent not met); Fla. Stat. § 752.01 held per se unconstitutional, see Belair v. Drew, 776 So.2d 1105, 1107 (Fla. App. 5 Dist. 2001) (Section 752.01 is facially unconstitutional as it impermissibly infringes on privacy rights under Florida Constitution); Ga. Code Ann. § 19-7-3's prior version held unconstitutional, see Ormond v. Ormond, 619 S.E.2d 370, 371 (Ga. App. 2005) (state may only impose grandparent visitation "over the parents' objections" on showing that failing to do so would be harmful to child); Idaho Code § 32-719; Ind. Code § 31-17-5-1; Kan. Stat. Ann. § 38-129 held unconstitutional as applied, see Dep't of Social and Rehabilitation Services v. Paillet, 16 P.3d 962, 970 (Kan. 2001) (trial court must presume fit parent will act in best interests of his or her child); Ky. Rev. Stat. Ann. § 405.021; La. Rev. Stat. Ann. § 9:344; La. Civ. Code Ann., art. 136; Md. Code Ann., Fam. Law § 9-102 held unconstitutional as applied, see Brice v. Brice, 754 A.2d 1132, 1135 (Md. App. 2000) (fit parent is entitled to presumption that he acts in best interest of his or her child); Mass. Gen. Laws ch. 119, § 39D; Minn. Stat. § 257C.08; Miss. Code Ann. § 93-16-3; Mo. Rev. Stat. § 452.402; Mont. Code Ann. § 40-9-102; Nev. Rev. Stat. § 125C.050; N.H. Rev. Stat. Ann. § 458:17-d repealed; N.J. Stat. Ann. § 9:2-7.1 held unconstitutional as applied, see Wilde v. Wilde, 775 A.2d 535, 545 (N.J. Super. A.D. 2001) (grandparent's statutory right to hale parent to court must be carefully circumscribed, especially where parent is fit); N.Y. Dom. Rel. Law § 72; N.C. Gen. Stat. §§ 50-13.2, 50-13.2A; N.D. Cent. Code § 14-09-05.1; Okla. Stat. tit. 10, § 5 held unconstitutional as applied, see Ingram v. Knippers, 72 P.3d 17, 21 (Okla. 2003) (grant of grandparental visitation under Section Five is voidable); Or. Rev. Stat. § 109.332; R.I. Gen. Laws §§ 15-5-24 to 15-5-24.3; S.C. Code Ann. § 20-7-420(33) held unconstitutional as applied, see Camburn v. Smith, 586 S.E.2d 565, 567 (S.C. 2003) (court must allow presumption that fit parent's decision is in child's best interest); S.D. Codified Laws § 25-4-52's prior version held partially per se unconstitutional, see Currey v. Currey, 650 N.W.2d 273, 277 (S.D. 2002) (presumption in favor of grandparents is unconstitutional); Tenn. Code Ann. §§ 36-6-306, 36-6-307; Tex. Fam. Code Ann. § 153.433; Utah Code Ann. § 30-5-2; Vt. Stat. Ann. tit. 15, §§ 1011-1013; Va. Code Ann. § 20-124.2; Wis. Stat. § 767.245 limited on constitutional grounds, see In re Paternity of Roger, 641 N.W.2d 440, 445 (Wis. App. 2002) (courts must apply (continued…)

defines "grandparent" as a person standing in loco parentis to an individual who is a parent. An extensive review of case law from these states reveals, to my knowledge, no reported decision interpreting "grandparent" to include a person standing in loco parentis to a parent.[2] This apparently leaves the majority as the only court rendering a published decision interpreting "grandparent" to include a person standing in loco parentis to a parent.

The General Assembly is familiar with the concept of the in loco parentis relationship, and would have included it, had that been its intent. In explaining who qualifies for death benefits, for example, the Workers' Compensation Act states, "[i]f [children are] members of decedent's household at the time of his death, the terms 'child' and 'children' shall include step-children, adopted children and children to whom he stood in loco parentis, and children of the deceased and shall include posthumous children." 77 P.S. § 562 (emphasis added). The General Assembly could have similarly included the in loco parentis relationship in the Grandparent Visitation Act but chose not to; we may not write it into the Act for it.

Appellees' relationship with mother is said to give them standing as de facto grandparents; this determination is flawed. That mother considers appellees to be her parents is a laudable testament to the role they have played in her life. But however mother views them, appellees stood in place of her parents--they are not her parents.

(…continued)
presumption that fit parent's decision regarding grandparental visitation is in best interest of child); Wis. Stat. § 880.155; Wyo. Stat. Ann. § 20-7-101.

[2] New York state courts interpret "grandparent" to mean the biological or adoptive parent of a parent. Gross v. Siegman, 226 A.D.2d 724 (N.Y. App. Div. 1996); Hantman v. Heller, 213 A.D.2d 637 (N.Y. App. Div. 1995).

There are limitations to the breadth of the in loco parentis relationship, and appellees cannot stand "in loco grandparentis" to the child since no such relationship exists.

Although our case law has not previously expressed that an in loco parentis relationship expires at age of majority, this appears to be the general rule unless the child is incapacitated. See Babb v. Matlock, 9 S.W.3d 508, 510 (Ark. 2000) (in loco parentis status extinguishes at age of majority unless child is incapacitated); Trievel v. Sabo, 1996 WL 944981, unpublished opinion at 6 (Del. Super. 1996) (child is emancipated from parent's control at age of majority; individual can no longer stand in loco parentis). This comports with the view that "[w]hen a child reaches the age of majority, a presumption arises that the duty to support the child ends …." Sutliff v. Sutliff, 489 A.2d 764, 775 (Pa. Super. 1985) (citing Verna v. Verna, 432 A.2d 630 (Pa. Super. 1981)). Here, when mother reached the age of majority, the need for an in loco parentis relationship ended.

The majority states "in loco parentis relationships, like adoptive relationships, have a settled place in the law as well, and generate equivalent parental rights and responsibilities." Majority Slip Op., at 13. This is not entirely so. Perhaps most basic, unlike biological or adoptive parent-child relationships, in loco parentis status can be terminated at any time, by either party. See 59 Am. Jur. 2d Parent and Child § 9 (citing U.S. v. Floyd, 81 F.3d 1517 (10th Cir. 1996) (applying Oklahoma law); Hamilton v. Foster, 620 N.W.2d 103 (Neb. 2000); Chestnut v. Chestnut, 147 S.E.2d 269 (S.C. 1966); Harmon v. Department of Social and Health Services, 951 P.2d 770 (Wash. 1998)).

Even if the rights incident to the exercise of in loco parentis status were equivalent to those of parents as concerns the child, Pennsylvania case law limits the breadth of rights and responsibilities of those acting in loco parentis. There is no basis in any statute or in this Court's jurisprudence to support the majority's extension of the in loco parentis relationship beyond the parent-child relationship. Should appellees die intestate, neither mother nor child will be recognized as an heir entitled to a share of their estate. 20 Pa.C.S. § 2103(1) (shares of intestate estate pass to, among others, issue of decedent; there is no provision for estate to pass to those with informal relationship). In Bahl v. Lambert Farms, Inc., 819 A.2d 534 (Pa. 2003), this Court determined that a man born out of wedlock, raised by his grandparents but held out to the world as their natural child (thus creating an in loco parentis relationship), was not entitled to inherit a share of his "parents'" estate. We stated:

> [I]t is apparent that the General Assembly intended, as a general rule, to limit "issue" to those in the decedent's blood line and did not intend to include as first degree "issue" individuals without the requisite consanguinity who had merely been treated like, or held out as, the decedent's children.

Id., at 538 (emphasis added). The Superior Court found a man was not responsible for support of his stepdaughter after the dissolution of the marriage, even though he stood in loco parentis before, during, and after the marriage to the girl's mother. Commonwealth ex rel. McNutt v. McNutt, 496 A.2d 816 (Pa. Super. 1985). Although a biological or adoptive parent would not be excused from financial responsibility, the Superior Court explained that requiring a stepfather who stands in loco parentis to pay child support "would be carrying the common law concept of in loco parentis further than we are willing to go." Id., at 817 (emphasis added).

The status of "in loco grandparentis" simply does not exist. Whatever relationship appellees had with the child's mother, they are not the grandparents of this child, who is in the primary custody of the father. Appellees are not biological or adoptive parents of the child's parent--hence they are not grandparents within the meaning of the legislation of which they seek to take advantage.

Despite the majority's assertion to the contrary, allowing individuals to have standing as de facto grandparents will encourage litigation by third parties who assert standing for visitation and custody. As indicated, childcare by non-parental parties is not unusual, especially where both parents must work outside the home. Today, overseas military personnel must entrust care of their children to others during their service to our country. With this decision, we add to that burden by allowing such caregivers to seek custody simply by averring an appropriate de facto relationship, even though it was never the intent of the parents (much less the legislature) to create such a right. We open the door to a person who provides for a child, necessarily acting in loco parentis in this scenario, to have standing under an ill-defined de facto relationship.

"The courts generally find standing in third-party visitation and custody cases only where the legislature specifically authorizes the cause of action." T.B. v. L.R.M., 786 A.2d 913, 916 (Pa. 2001) (citing R.M. v. Baxter, 777 A.2d 446, 450 (Pa. 2001)) (emphasis added). The majority states "[§] 5313(a) standing is specifically limited to those grandparents seeking visitation with a grandchild who 'has resided with his grandparents or great-grandparents for a period of 12 months or more and is subsequently removed from the home by his parents.'" Majority Slip Op., at 14 (emphasis added). This is true, but appellees are not grandparents; we should not

strain common sense to define them as such simply because these people are good surrogate custodians.[3]

In Larson v. Diveglia, 700 A.2d 931 (Pa. 1997), then Justice, now Chief Justice Cappy, writing for the majority, explained "[t]he creation of a doctrine of 'de facto' standing to enable a person in possession of a minor child, in the absence of a formal custody order or agreement, to sue for support would only serve to further complicate this area of the law." Id., at 933-34. Similarly, standing to sue for visitation or custody, based on a non-adoptive, non-biological relationship deemed to be grandparental, is equally ill-advised.

Adopting the concept of in loco grandparentis status is a slippery slope, and one on which we need not and should not tread. If the legislature wishes to grant standing to persons who act like grandparents, it may do so. It has chosen not to do so, and in my judgment, done so wisely. Thus, despite the appealing theory of my distinguished colleagues, I must dissent.

[3] Even in this case, the situation is not so severe as to require this stretching of the word "grandparent" to include others. The child has four real grandparents--she is not deprived of grandparental relationships. As the child's mother apparently still lives with appellees, they will see the child regularly when mother has custody; thus, they will not be deprived of a relationship with her.