

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: N.T., a Minor, : IN THE SUPERIOR COURT OF
C.T., a Minor : PENNSYLVANIA

APPEAL OF: W.R. and E.R., :
Appellants : No. 1174 MDA 2012

Appeal from the Order entered May 25, 2012,
in the Court of Common Pleas of Northumberland County,
Juvenile Division, at No(s): DP-49-0000027-2012,
CP-49-DP-0000028-2012

BEFORE: MUSMANNO, BENDER and COLVILLE*, JJ.

MEMORANDUM BY MUSMANNO, J.: Filed: January 10, 2013

W.R. ("Maternal Grandfather") and his wife, E.R. ("Maternal Grandmother") ("Grandparents"), the maternal grandfather and grandmother of the subject children, N.T. and C.T. (the "Children"), appeal from the Order providing that they are entitled to timely notice and an opportunity to be heard at any hearings in the Children's dependency matters, but denying them standing as parties in the matters. We affirm.

The trial court set forth the procedural history of this appeal as follows:

[The Children] were placed into [the] temporary care and custody of Northumberland County Children and Youth Services on March 8, 2012. On March 12, 2012, a Shelter Care Hearing was held[,] at which time it was determined that both children would remain in Shelter Care pending an adjudication hearing. An adjudication hearing on said [Children] was subsequently

*Retired Senior Judge assigned to the Superior Court.

held on March 28, 2012[,] whereby both [Children] were adjudicated "dependent" by support of clear and convincing evidence pursuant to the Pennsylvania Juvenile Act[,] 42 Pa.C.S. § 6302 "Dependent Child".

On March 28, 2012, a Petition to Intervene in Custody Action was filed by [Grandparents], requesting standing *in loco parentum*.

Trial Court Opinion, 7/31/12, at 1-2.

On March 28, 2012, the trial court held an adjudication and disposition hearing on the dependency Petition filed by Northumberland County Children and Youth Services ("CYS"). At the hearing, the trial court heard testimony and argument regarding Grandparents' Petition to intervene. CYS presented the testimony of its caseworker, Cynthia Fawess, and Grandparents presented the testimony of Maternal Grandmother and Mother.

The trial court made the following factual findings from the testimony at the hearing:

For four years, [Grandparents] have been housing their biological daughter and [the Children]. [Grandparents] have provided a stable residence, shown great affection, and contributed to the development of both [Children]. Through emotional and financial support, [Grandparents] exemplify all qualities that are imperative of competent grandparents....

The [f]ather of the [Children] is deceased, consequently, Mother is the sole bearer of all legal rights to both [Children]. Acting within her parental role, Mother prepares meals, attends doctors' appointments, and is frequently involved within the [C]hildren's lives. At no point has Mother ever expressed or relinquished any legal rights to [the Children to Grandparents], but instead has turned to them to aid in the raising of her children. [] [Grandparents] contend that they have a vested

interest in the dependency proceeding of their grandchildren. Their assertion is that they have standing *in loco parent[um]*.

Trial Court Opinion, 7/31/12, at 4-5.

On March 28, 2012, the trial court issued an Order directing the parties to submit legal briefs pertaining to the issue of a party standing *in loco parentis*. On May 25, 2012, the trial court granted Grandparents timely notice and an opportunity to be heard at any hearing in the dependency hearings regarding the Children, but denied them legal standing as parties. Grandparents timely filed a Notice of appeal of the trial court's Order and a Concise Statement of errors complained of on appeal pursuant to 1925(a)(2)(i) and (b).¹

Grandparents raise two issues on appeal, as follows:

I. Did the [t]rial court err by failing to recognize the concept of *in loco parentis* standing in depend[e]ncy cases?

II. Did the [t]rial court err by denying [Grandparents] standing when facts of record demonstrate [Grandparents] stood *in loco parent[um]* to the [C]hildren at the time of removal[,] and their care and control is in question by Children and Youth Services?

Brief for Appellants at 4.

An issue regarding standing to participate in dependency proceedings is a question of law warranting plenary review, and our standard of review is *de novo*. ***In re J.S.***, 980 A.2d 117, 120 (Pa. Super. 2009). “[T]he question

¹ The trial court noted that Grandparents' initial Notice of appeal had not included the Concise Statement, that the trial court had directed them to file a Concise Statement within twenty-one days, and that Grandparents complied. Trial Court Opinion, 7/31/12, at 2.

of standing is whether a litigant is entitled to have the court decide the merits of the dispute or of particular issues.” **Silfies v. Webster**, 713 A.2d 639, 642 (Pa. Super. 1998).

The trial court set forth the following standards relating to standing under the Juvenile Act:

Under the Juvenile Act, attendance at and participation in dependency proceedings are restricted. Dependency hearings are closed to the general public. 42 Pa.C.S.A. § 6336(d); **In re L.J.**[,] 456 Pa. Super. 685, 691 A.2d 520, 526 (Pa. Super. 1997). Only a “party” has the right to participate, to be heard on his or her own behalf, to introduce evidence, and/or to cross-examine witnesses. 42 Pa.C.S.A. § 6338(a); **L.J., supra**... Although the Juvenile Act does not define “party,” case law from the Court has conferred the status of party to a dependency proceeding on three classes of persons: (1) the parents of the juvenile whose dependency status is at issue; (2) the legal custodian of the juvenile whose dependency status is at issue[;] or (3) the person whose care and control of the juvenile is in question. **In re J.P.**, ... 832 A.2d 492, 496 (Pa. Super. 2003); **L.J.**[,] **supra**; **In re Manuel**, ... 566 A.2d 626, 628 (Pa. Super. 1989); and **In re Michael Y.**, 530 A.2d 115, 118 (Pa. Super. 1987). These categories seem logical, given that the Court may remove a child from the custody of a parent or legal custodian. **[S]ee** 42 Pa.C.S.A. § 6351; **[s]ee also In re L.C., II**, [900 A.2d 378, 381 (Pa. Super. 2006)]. Due process requires that the child’s legal caregiver, be it a parent or other custodian, be granted party status in order to be able to participate and present argument in the dependency proceedings. **See Brooks-Gall v. Gall**, ... 840 A.2d 993, 997-[]98 (Pa. Super. 2003).

Pursuant to 42 Pa.C.S.A. § 6336.1,^[2] Notice and Hearing, the court may grant a party, not legal standing, but instead notice of hearings and the opportunity to be heard. This differs from the common law doctrine of *in loco parentis*. "*In loco parentis* is a legal status and proof of essential facts required to support a conclusion that such a relationship exists." ***T.B. v. L.R.M.***, 567 Pa. 222, 786 A.2d 913, 916 (2001). The Court must recognize standing *in loco parentis* with a two (2) prong test. First, the relevant proof of essential facts is required to confer the common law doctrine. ***See In re D.M.***, 995 A.2d 371, 377-[]78 [(Pa. Super. 2010)]. Second, the "*in loco*" parent must fit within one of the categories of standing defined in the statute. [***Id.*** at 378]....

The phrase "*in loco parentis*" refers to a person who puts oneself 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 third party in this type of relationship, however, cannot place himself *in loco parentis* in defiance of the parents' wishes and the**

² Section 6336.1 of the Juvenile Act provides as follows:

§ 6336.1. Notice and hearing

(a) General rule.—The court shall direct the county agency or juvenile probation department to provide the child's foster parent, preadoptive parent or relative providing care for the child with timely notice of the hearing. The court shall provide the child's foster parent, preadoptive parent or relative providing care for the child the right to be heard at any hearing under this chapter. Unless a foster parent, preadoptive parent or relative providing care for a child has been awarded legal custody pursuant to section 6357 (relating to rights and duties of legal custodian), nothing in this section shall give the foster parent, preadoptive parent or relative providing care for the child legal standing in the matter being heard by the court.

parent/child relationship. *Liebner v. Simcox*, 834 A.2d 606, 609 (Pa. Super. 2003) (quoting *T.B. v. L.R.M.*, 786 A.2d at 916-17].... When determining standing for third parties, the Court has also stated 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.** *Liebner, supra* at 610 (emphasis added) (quoting *Bupp v. Bupp*, 718 A.2d 1278, 1281 (Pa. Super. 1998))....

Trial Court Opinion, 7/31/12, at 3-4 (emphasis and footnote added).

In their first issue, Grandparents argue that the present case is distinguishable from *In re D.M.*, 955 A.2d at 371, and *In re L.C., II*, 900 A.2d at 378, cited by the trial court, based on the fact that the Children here had resided with Grandparents for more than two years at the time of their

removal.³ Grandparents allege that they met the third prong of the test for a “party” in a dependency case, *i.e.*, the care and control prong, based on the fact that the Children resided with them at the time the Children were removed from Grandparents’ home, and that Grandparents jointly shared parenting duties with Mother. Grandparents also assert that they met the care and control prong by their contact with CYS prior to the dependency proceeding. Finally, Grandparents assert that the record reflects that the Children were removed because of the inability of Mother, as well as Grandparents, to keep the Children safe, and, thus, they should have standing. Brief for Appellants at 6-9.

In addressing this issue, the trial court reasoned as follows:

The issue before us lies within the definition of the third class of persons [*i.e.*, the person whose care and control of the juvenile is in question]. [Grandparents] are under the

³ In *In re L.C., II*, the trial court denied the petition of the minor’s grandmother to participate in a dependency proceeding. Although the minor had lived with grandmother for the first fourteen years of his life, at age fifteen, the trial court had awarded physical and legal custody to the minor’s mother. This Court affirmed the trial court’s denial of grandmother’s request, on the basis that the grandmother was not the parent or legal custodian of the minor and grandmother’s care and control of the minor was not in question because he was in the legal and physical custody of his mother at the relevant time. *In re L.C., II*, 900 A.2d at 382.

In *In re D.M.*, the minor’s mother, whose parental rights had been previously terminated, sought standing in the minor’s dependency proceeding. The minor had lived with the mother for a time subsequent to the termination of parental rights. The trial court found, and the Superior Court affirmed, that the mother was not entitled to standing because, at the time of filing of the dependency petition, the minor did not reside with mother, and mother’s care and control of the minor was not in question at the dependency hearing. *In re D.M.*, 995 A.2d at 378.

assumption that they should be granted standing *in loco parent[um]* because they are "the person" whose care and control of the [Children] is in question. Bolstered through case law of the Court, "care and control" involves the named persons in an adjudicatory petition, in this case Mother, who is alleged to not be fulfilling a legal duty as a parent.... Despite the verity that [CYS] had stricken the option of [Grandparents] even being a potential kinship placement for the [C]hildren, it still cannot be elicited or constituted that [Grandparents] fall within the class of persons whose "care and control" is in question. [Grandparents] have no legal right to the [Children], nor have they explicitly been named as the reason for the adjudication process to commence. [T]he fact that [Grandparents] reside[d] with the [Children] in no way substantiates the definition of the third class of persons.

If the [t]rial court is to accept [Grandparents'] logic and confer standing to them as a party, the liberty of Mother's legal parental rights diminishes. To merely reside or perform some parental role with the [Children] in question does not give latitude to intervene with legal action. Opening this door presumes that teachers, babysitters, and siblings are all entitled to legal standing. The phrase "*in loco parentis*" refers to a person who puts oneself 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 third party in this type of relationship, however, cannot place himself *in loco parentis* in defiance of the parents' wishes and the parent/child relationship. *Liebner []*, 834 A.2d [at 609] (quoting *T.B. []*, ... 786 A.2d [at 916-17]).... Given the testimony of Mother in regards to her never leaving the [Grandparents'] residence and her stringent opposition to [Grandparents'] completion of parental duties, the [t]rial court cannot rationally conclude that [Grandparents] ever stood *in loco parentis*.

Trial Court Opinion, 7/31/12, at 5; **see** N.T., 3/28/12, at 12, 20-22.

Here, while the Grandparents' home was the Children's place of residence, Mother also resided there. The record shows that Mother had never relinquished her custody of the Children to Grandparents, and the

Grandparents' care and control of the Children was not the matter that brought the Children into dependency proceedings. N.T., 3/28/12, at 12; Dependency Petition, 3/14/12. As Grandparents did not have custody of the Children when CYS filed the dependency Petition and were not the persons whose care and control of the Children was in question, the Grandparents' first claim fails.

In their second issue, Grandparents contend that the testimony at the hearing established that they assumed parental status with regard to the Children, and that they discharged parental duties. In support of their argument, Grandparents rely on ***J.A.L. v. E.P.H.***, 682 A.2d 1314 (Pa. Super. 1996).

The trial court disagreed, finding as follows:

What the [t]rial court does concede is that [Grandparents] acted in a manner that aided and further supplemented Mother in completing certain parental activities. We would also aver that [Grandparents], as assessed from testimony, do show a great deal of affection and love toward their grandchildren. To assume that these performances alone confer standing as pertaining to *in loco parentis* is where the [t]rial court cannot agree with [Grandparents].... Again, the legal rights over the [Children] were vested in Mother, who is the only person that maintains legal standing in this case. [Grandparents] have aided Mother and [the Children] financially and emotionally in the preceding years....

[T]he [t]rial court cannot [] go beyond its interpretation of the law. Conforming familial emotion and legally binding case law is often times perceptually unfair in the eyes of the appellant. That is why the [t]rial court, as an impartial party, must differentiate matters of fact and come to conclusions that it sees best-reasoned and legitimized in accordance to law. It is

our opinion that [Grandparents] are not entitled to standing *in loco parentis*.

Trial Court Opinion, 7/31/12, at 6.

In **J.A.L.**, E.P.H. and J.A.L. were a same-sex female couple. E.P.H. underwent artificial insemination and gave birth to the subject child. While the couple was together, they lived with the child in a home that they owned together. E.P.H. was the child's primary caregiver, and J.A.L. assisted with the child's care and was the primary wage earner for the household. Upon the parties' separation, E.P.H. took the child to live in a separate home with her, and, by agreement, J.A.L. would visit the child. After two years of visitation, the parties could no longer reach an agreement regarding J.A.L.'s visits, and J.A.L. filed a custody action seeking partial custody. E.P.H. challenged J.A.L.'s standing in preliminary objections. After a hearing, the trial court sustained E.P.H.'s preliminary objections, finding that J.A.L. lacked standing.

On appeal, this Court reversed the decision of the trial court, finding that the evidence established that J.A.L. and the child were co-members of a non-traditional family. We held that the evidence was sufficient to establish that J.A.L. stood *in loco parentis* to the child and had standing to seek partial custody. **J.A.L.**, 682 A.2d at 1322.

As previously indicated herein, there is a narrow class of persons entitled to participate in dependency proceedings. Here, the trial court held

that Grandparents may not circumvent the requirements for standing in a dependency proceeding by claiming that the assistance and support they provided Mother and Child gave rise to standing. In this case, Mother never gave permission to Grandparents to act *in loco parentis* to Children. Thus, the Grandparents did not take the place of a parent to the Children, and did not stand on equal footing with Mother as to the Children. We, therefore, reject Grandparents' second argument as without merit.

After a careful review of the record in this matter, and consideration of the controlling statutory and case law, we find no abuse of discretion on the part of the trial court in concluding that Grandparents did not act *in loco parentis* to the Children and did not meet the requirements of standing in this dependency proceeding.

Accordingly, we affirm the Order granting Grandparents notice and an opportunity to be heard in any dependency proceedings regarding the Children, and denying their Petition to intervene.⁴

Order affirmed.

⁴ We note that Mother, in her appellee's brief, contends that the trial court erred by ordering that Grandparents have the right to notice and opportunity to be heard at any hearing with respect to this case. **See** Brief for Appellee at 6. However, the record shows that Mother has not filed an appeal or cross-appeal of the trial court's Order. **See** Pa.R.A.P. 501 (stating that any party who is aggrieved by an appealable order may appeal therefrom); Pa.R.A.P. 903 (stating that a notice of appeal must be filed within thirty days of the order from which the appeal is taken, and a cross-appeal may be filed within fourteen days of the date on which the first notice of appeal was served). Because Mother did not file an appeal or cross-appeal of the trial court's Order, we lack jurisdiction to address Mother's claim. **See In re K.P.**, 872 A.2d 1227, 1230 (Pa. Super. 2005) (stating that the appellate jurisdiction of this Court is invoked where a party files an appeal within thirty days of the entry of an appealable order). We note, however, that Mother's claim lacks merit as this Court has permitted the person seeking standing in a dependency case, who formerly cared for the dependent child, to receive notice of and be present at dependency hearings related to the child. **See In re D.M.**, 995 A.2d at 379; **In re L.C., II**, 900 A.2d at 382-83.