MONROE COUNTY BAR ASSOCIATION
MONROE LEGAL REPORTER
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Family Law: Grandparents' Rights
December 3, 2021
Via Zoom
Participant Instructions

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- Viewers, please switch your screens to "speaker view" and "side-by-side" under viewing options so you can see the presenter and their slides.
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- Please use the chat feature to submit your questions when the presenter(s) are speaking.
- Please note your questions must be general in nature, not case specific (no names/addresses)
- Questions will be answered at the end of the program as time permits.
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[X] I certify that I have attended this seminar for the full amount of time for which it is accredited by the PA CLE Board.

Signature_____

PA Attorney #: _____ Firm: _____

Print Name: _____

Signature: _____

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Hillary A. Madden, Esquire /s/
Hillary A. Madden, Esquire
President
Monroe County Bar Association

Monroe County Bar Association
Continuing Legal Education Committee Presents:
FAMILY LAW: GRANDPARENTS' RIGHTS
December 3, 2021
Via Zoom: https://us06web.zoom.us/j/81254588098
Presenters: Jennifer Spata, Esquire, and Mary Louise Parker, Esquire

Handouts:

1. Scenario
2. Dependency Flow Chart
3. Standby and Temporary Guardianship Act
4. Kinship Care Navigator Program
5. 23 Pa. C.S. §§ 5324 to 5328
6. *In re: Adoption of B.E.W.G.*, 549 A.2d 1286 (Pa. Super. 1988)
7. *In re: Adoption of R.J.S.*, 889 A.2d 92 (Pa. Super. 2005)
8. *In re: C.L.P.*, 126 A.3d 985 (Pa. Super. 2015)
9. *M.W. v. S.T.*, 196 A.3d 1065 (Pa. Super. 2018)

Outline:

I. Introduction & Summary of Scenario

II. Legal Options for Grandparents

a. Public Agency Involvement
b. Kinship Care Navigator Program
c. Standby Guardianship
d. Temporary Guardianship
e. Custody

III. Overview of Monroe Custody Procedures

IV. Grandparents & Custody

a. Sections 5324 & 5325 - Standing
b. Section 5327 - Presumption
c. Section 5328 - Custody Factors

V. The View from the Bench

VI. Practice Tips

VII. Effect of Adoption on Prior Custody Rights

a. Section 5326 - Effect of Adoption

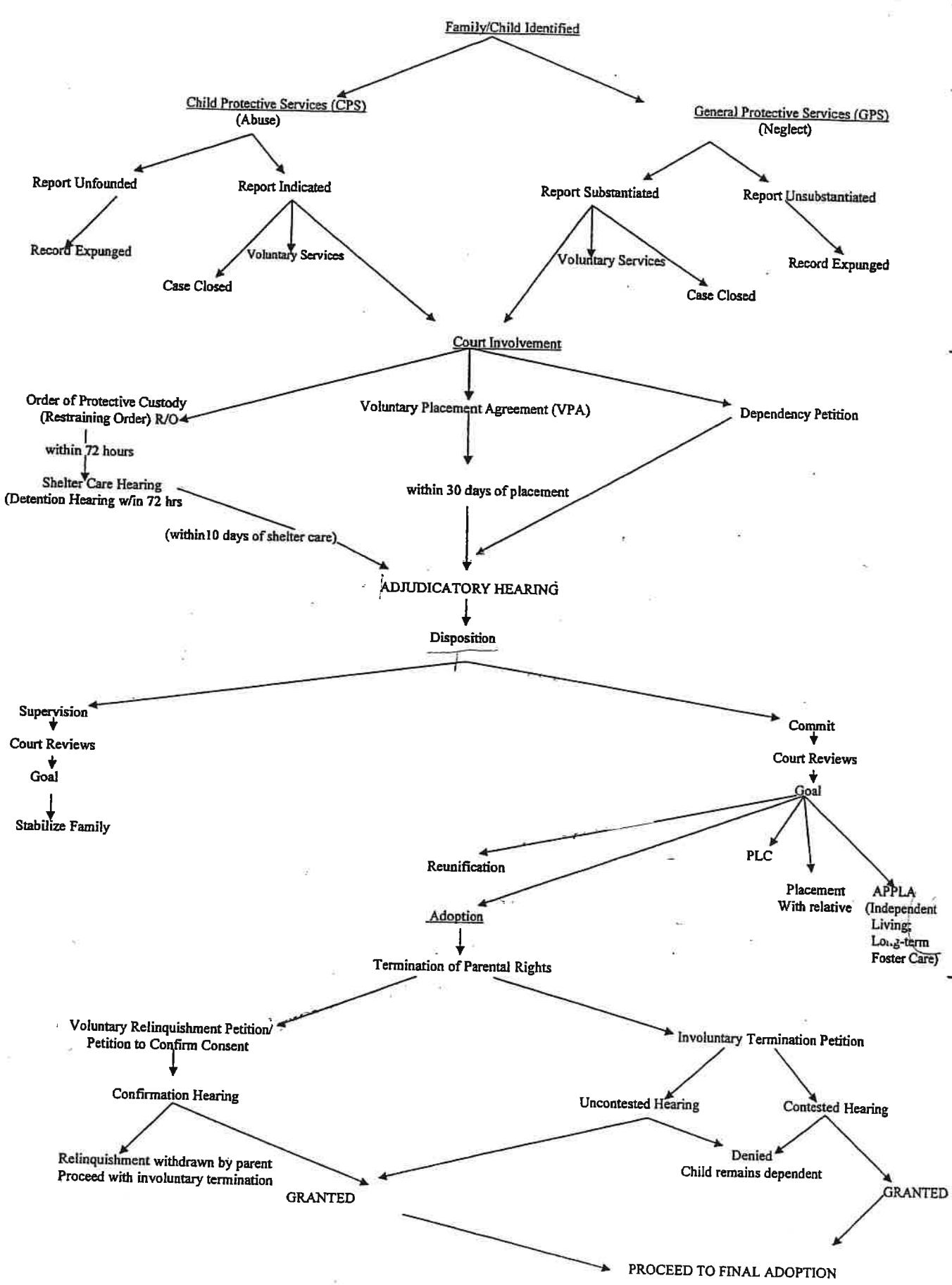
VIII. Wrap Up/Questions

SCENARIO

Paternal grandparents call your office asking for help regarding their granddaughter. You meet for a consultation in your office and learn that their son John and his girlfriend Sarah have resided with them for the last six months. John met Sarah in a drug and alcohol treatment center. When they learned Sarah was pregnant, they invited both to stay at their home. They helped Sarah with prenatal care and appointments and were even at the hospital when Sarah gave birth to Olivia last month. Sarah has an older son, Adam, who is 4 years old. From what they were told, Adam resides with a maternal family member. Paternal grandparents do not know any other information about Adam, his father or Sarah's family, only that Sarah is estranged from her family.

Shortly before Olivia's birth, John relapsed and is currently in a treatment program. While Sarah and Olivia were still in the hospital, paternal grandparents received a call from Children and Youth Services. Paternal grandparents were informed that they received a referral indicating that Sarah tested positive for substances at birth. Children and Youth Services informed paternal grandparents that Olivia would need to be discharged to their care under a safety plan to avoid Olivia being placed in foster care. They learned that Sarah has a history with Children and Youth Services regarding her other child due to her challenges with substance abuse and not following through with her mental health treatment. Children and Youth Services explained that the safety plan would be in place for thirty days to allow Sarah to seek treatment and required all contact between Sarah and Olivia to be supervised by them. There are only ten days left until the safety plan expires and they just convinced Sarah to enter the same treatment program that John is at. Sarah does not want Olivia to enter foster care and does not want any involvement with Children and Youth. She tells the paternal grandparents that she wants them to care for Olivia while she gets clean. Paternal grandparents want Olivia to remain in their home, but they do not know what rights they have or what they can do now that Children and Youth are involved.

What options are available for these grandparents?


Family/Child Identified
Child Protective Services (CPS)
(Abuse)
General Protective Services (GPS)
(Neglect)
Report Unfounded
Report Indicated
Report Substantiated
Report Unsubstantiated
Record Expunged
Voluntary Services
Case Closed
Voluntary Services
Case Closed
Record Expunged
Court Involvement
Order of Protective Custody
(Restraining Order) R/O
Voluntary Placement Agreement (VPA)
Dependency Petition
within 72 hours
Shelter Care Hearing
(Detention Hearing w/in 72 hrs
within 30 days of placement
(within10 days of shelter care)
ADJUDICATORY HEARING
Disposition
Supervision
Court Reviews
Goal
Stabilize Family
Commit
Court Reviews
Goal
Reunification
PLC
Placement
With relative
APPLA
(Independent
Living;
Long-term
Foster Care)
Adoption
Termination of Parental Rights
Voluntary Relinquishment Petition/
Petition to Confirm Consent
Involuntary Termination Petition
Confirmation Hearing
Uncontested Hearing
Contested Hearing
Relinquishment withdrawn by parent
Proceed with involuntary termination
GRANTED
Denied
Child remains dependent
GRANTED
PROCEED TO FINAL ADOPTION
C.P.S.L.
JUVENILE ACT
ADOPTION ACT

§ 5601. Short title of chapter

This chapter shall be known and may be cited as the Standby and Temporary Guardianship Act.

History:

Amended by P.L. TBD2018 No. 88, §1, eff. 12/24/2018. 1998, Nov. 24, P.L. 811, No. 103, § 1, effective in 60 days.

§ 5602. Definitions

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Alternate." A person with all the rights, responsibilities and qualifications of a standby guardian who shall become a standby guardian only in the event that the currently designated standby guardian is unable or refuses to fulfill his obligation.

"Attending physician." A physician who has primary responsibility for the treatment and care of the designator. If physicians share responsibility, another physician is acting on the attending physician's behalf or no physician has primary responsibility, any physician who is familiar with the designator's medical condition may act as an attending physician under this chapter.

"Coguardian." A person who along with a parent shares physical or legal custody, or both, of a child.

"Consent." A written authorization signed by the designator in the presence of two witnesses who shall also sign the writing. The witnesses must be 18 years of age or older and not named in the designation.

"Court." Family Court Division or domestic relations section of a court of common pleas unless otherwise provided by local rules of court.

"Debilitation." A person's chronic and substantial inability as a result of a physically incapacitating disease or injury to care for a dependent minor.

"Designation." A written document naming the standby guardian or temporary guardian. A parent, a legal custodian or a legal guardian may designate an alternate standby guardian in the same writing.

"Designator." A parent, a legal custodian or a legal guardian who appoints a standby guardian or temporary guardian.

"Determination of debilitation." A written finding made by an attending physician which states that the designator suffers from a physically incapacitating disease or injury. No identification of the illness in question is required.

"Determination of incapacity." A written finding made by an attending physician which states the nature, extent and probable duration of the designator's mental or organic incapacity.

"Family member." A grandparent, aunt, uncle or adult sibling of a minor.

"Incapacity." A chronic and substantial inability, resulting from a mental or organic impairment, to understand the nature and consequences of decisions concerning the care of the designator's dependent minor and a consequent inability to care for the minor.

"Standby guardian." A person named by a designator to assume the duties of coguardian or guardian of a minor and whose authority becomes effective upon the incapacity, debilitation and consent, or death of the minor's parent.

"Temporary guardian." A family member, appointed by a court for a limited period as a guardian of the minor when the minor's custodial parent has entered a rehabilitation facility for treatment of drug or alcohol addiction or has been subject to emergency medical intervention due to abuse of drugs or alcohol.

"Triggering event." A specified occurrence stated in the designation which empowers a standby guardian to assume the powers, duties and responsibilities of guardian or coguardian.

History:

Amended by P.L. TBD2018 No. 88, §2, eff. 12/24/2018. 1998, Nov. 24, P.L. 811, No. 103, § 1, effective in 60 days. Amended 2000, June 22, P.L. 443, No. 59, § 2, imd. effective.

§ 5603. Scope

The provisions of Chapter 53 (relating to custody) and 20 Pa.C.S. Ch. 25 (relating to wills) shall apply to standby guardians, coguardians, guardians, temporary guardians and any alternates unless otherwise specified in this chapter. Nothing in this chapter shall be construed to deprive any parent, custodial or noncustodial, of legal parental rights. Nothing in this chapter shall be construed to relieve any parent, custodial or noncustodial, of a duty to support a child under the provisions of Chapter 43 (relating to support matters generally).

History:

Amended by P.L. TBD2018 No. 88, §2, eff. 12/24/2018. 1998, Nov. 24, P.L. 811, No. 103, § 1, effective in 60 days.

§ 5611. Designation

(a) General rule.--A custodial parent, a legal custodian or legal guardian may designate a standby guardian by means of a written designation unless the minor has another parent or adoptive parent:

(1) whose parental rights have not been terminated or relinquished;

(2) whose whereabouts are known; and

(3) who is willing and able to make and carry out the day-to-day child-care decisions concerning the minor.

(b) Exception where other parent consents.--Notwithstanding subsection (a), a parent, legal custodian or legal guardian may designate a standby guardian with the consent of the other parent.

(c) Contents.--

(1) A designation of a standby guardianship shall identify the custodial parent, legal custodian or legal guardian making the designation, the minor or minors, any other parent, the standby guardian and the triggering event or events upon which a named standby guardian shall become a coguardian or guardian. If desired, different standby guardians may be designated for different triggering events. The designation shall also include the signed consent of the standby guardian and the signed consent of any other parent or an indication why the other parent's consent is not necessary.

(2) The designation shall be signed by the designating parent, legal custodian or legal guardian in the presence of two witnesses who are 18 years of age or older and not otherwise named in the designation, who shall also sign the designation. If the parent, legal custodian or legal guardian is physically unable to sign the designation, the parent, legal custodian or legal guardian may direct another person not named in the designation to sign on the parent's, the legal custodian's or the legal guardian's behalf in the presence of the parent, legal custodian or legal guardian and the witnesses.

(3) A parent, legal custodian or legal guardian may also but need not designate an alternate in the designation.

(4) A designation may but need not be in the following form:

I (insert name of designator) do hereby appoint (insert name, address and telephone number of standby guardian) as the standby guardian of (insert name(s) of minor(s)) to take effect upon the occurrence of the following triggering event or events (insert specific triggering events).

I hereby revoke all former wills and codicils to the extent that there is a conflict between those formerly executed documents and this, my duly executed standby guardian designation.

I am the (insert designator's relationship to minor(s)) of (insert name(s) of minor(s)).

(Insert name(s) of minor(s)'s other parent(s)) is the father/mother of (insert name(s) of minor(s)).

His/her address is:

_____
_____
_

_____
_____
_____

(Check all that apply):

____ He/she died on (insert date of death).

____ His/her parental rights were terminated or relinquished on (insert date of termination or relinquishment).

____ His/her whereabouts are unknown. I understand that all living parents whose rights have not been terminated must be given notice of this designation pursuant to the Pennsylvania Rules of Civil Procedure or a petition to approve this designation may not be granted by the court.

____ He/she is unwilling and unable to make and carry out day-to-day child-care decisions concerning the minor.

____ He/she consents to this designation and has signed this form below.

By this designation I am granting (insert name of standby guardian) the authority to act for 60 days following the occurrence of the triggering event as a coguardian with me or, in the event of my death, as guardian of my minor child(ren).

Optional: I hereby nominate (insert name, address and telephone number of alternate standby guardian) as the alternate standby guardian to assume the duties of the standby guardian named above in the event the standby guardian is unable or refuses to act as a standby guardian.

If I have indicated more than one triggering event, it is my intent that the triggering event which occurs first shall take precedence. If I have indicated "my death" as the triggering event, it is my intent that the person named in the designation to be standby guardian for my minor child(ren) in the event of my death shall be appointed as guardian of my minor child(ren) when I die.

It is my intention to retain full parental rights to the extent consistent with my condition and to retain the authority to revoke the standby guardianship if I so choose.

This designation is made after careful reflection, while I am of sound mind.

_____	_____
(Date)	(Designator's signature)
_____	_____
(Witness's signature)	(Witness's signature)
_____	_____
(Number and Street)	(Number and Street)
_____	_____
(City, State and Zip Code)	(City, State and Zip Code)

If applicable: I (insert name of other parent) hereby consent to this designation.

_____	_____
(Date)	(Signature of other parent)

_____

_____

(Address of other parent)

I, (insert name of standby guardian) hereby accept my nomination as standby guardian of (insert minor(s)'s name(s)). I understand that my rights and responsibilities toward the minor child(ren) named above will become effective upon the occurrence of the above-stated triggering event or events. I further understand that in order to continue caring for the child(ren), I must file a petition with the court within 60 days of the occurrence of the triggering event.

_____	_____
(Date)	(Signature of standby guardian)

History:

1998, Nov. 24, P.L. 811, No. 103, § 1, effective in 60 days. Amended 2000, June 22, P.L. 443, No. 59, § 3, effective in 60 days.

§ 5612. Petition for approval of a designation

(a) General rule.--A petition for court approval of a designation under this chapter may be made at any time by filing with the court a copy of the designation. If the triggering event has not occurred on or before the time of filing, only the designator may file the petition. If the triggering event has occurred on or before the time of filing, the standby guardian named in the designation may file the petition, and the petition shall also contain one of the following:

(1) A determination of the designator's incapacity.

(2) A determination of the designator's debilitation and the designator's signed and dated consent.

(3) A copy of the designator's death certificate.

(b) Notice.--

(1) The petitioner shall notify any person named in the designation within ten days of the filing of the petition and of any hearing thereon.

(2) If the petition alleges that a nondesignating parent cannot be located, that parent shall be notified in accordance with the notice provisions of the Pennsylvania Rules of Civil Procedure in Custody Matters. No notice is necessary to a parent whose parental rights have previously been terminated or relinquished.

(c) Jurisdiction.--For purposes of determining jurisdiction under this chapter, the provisions of Chapter 54 (relating to uniform child custody jurisdiction and enforcement) shall apply.

(d) Presumptions.--In a proceeding for judicial appointment of a standby guardian, a designation shall constitute a rebuttable presumption that the designated standby guardian is capable of serving as coguardian or guardian. When the designator is the sole surviving parent, when the parental rights of any noncustodial parent have been terminated or relinquished or when all parties consent to the designation, there shall be a rebuttable presumption that entry of the approval order is in the best interest of the child. In any case, if the court finds entry of the approval order to be in the best interest of the child, the court shall enter an order approving the designation petition.

(e) Approval without hearing.--Approval of the designation without a hearing is permitted when the designator is the sole surviving parent, when

the parental rights of any noncustodial parent have been terminated or relinquished or when all parties consent to entry of the approval order.

(f) Hearing.--In the event a hearing is required, it shall be conducted in accordance with the proceedings set forth in Chapters 53 (relating to custody) and 54.

(g) Court appearance.--The designator need not appear in court if the designator is medically unable to appear.

History:

1998, Nov. 24, P.L. 811, No. 103, § 1, effective in 60 days. Amended 2004, June 15, P.L. 236, No. 39, § 4, effective in 60 days [Aug. 16, 2004].

§ 5613. Authority of standby guardian

(a) General rule.--The standby guardian shall have authority to act as coguardian or guardian upon the occurrence of the triggering event. The commencement of the standby guardian's authority to act as coguardian pursuant to a determination of incapacity, a determination of debilitation and consent or the receipt of consent alone shall not itself divest the designator of any parental rights but shall confer upon the standby guardian concurrent or shared custody of the child. The commencement of the standby guardian's authority to act as guardian pursuant to the death of the designator shall not confer upon the standby guardian more than physical and legal custody of the child as defined in Chapter 53 (relating to custody). A coguardian shall assure frequent and continuing contact with and physical access to the child and shall further assure the involvement of the parent, to include, to the greatest extent possible, in the decision making on behalf of the child.

(b) Effect of filing.--The designator may file a petition for approval of a designation with the court at any time. If the petition is approved by the court before the occurrence of the triggering event, the standby guardian's authority will commence automatically upon the occurrence of the triggering event. No further petition or confirmation is necessary. If a designation has been made but the petition for approval of the designation has not been filed and a triggering event has occurred, the standby guardian shall have temporary legal authority to act as a coguardian or guardian of the minor without the direction of the court for a period of 60 days. The standby guardian shall within that period file a petition for approval in accordance with section 5612 (relating to petition for approval of a designation). If no petition is filed within the specified 60 days, the standby guardian shall lose all authority to act as coguardian or guardian. If a petition is filed but the court does not act upon it within the 60-day period, the temporary legal authority to act as coguardian or guardian shall continue until the court orders otherwise.

(c) Parental rights.--The commencement of a coguardian's or guardian's authority under this subchapter may not itself divest a parent or legal guardian of any parental or guardianship rights.

(d) Restored capacity.--If a licensed physician determines that the designator has regained capacity, the coguardian's authority which commenced pursuant to the occurrence of a triggering event shall become inactive, and the coguardian shall return to having no authority. Failure of a coguardian to comply with this provision and to immediately return the minor to the designator's care shall entitle the designator to an emergency hearing in a court of competent jurisdiction.

History:

1998, Nov. 24, P.L. 811, No. 103, § 1, effective in 60 days.

§ 5614. Revocation

(a) Prepetition.--Prior to a petition being filed under section 5612 (relating to petition for approval of a designation), the designator may revoke a standby guardianship by simple destruction of the designation and notification of the revocation to the standby guardian.

(b) Postpetition.--After a petition has been filed, the designator may revoke a standby guardianship by:

(1) executing a written revocation;

(2) filing the revocation with the court; and

(3) notifying the persons named in the designation of the revocation in writing.

(c) Unwritten revocation.--Regardless of whether a petition has been filed, an unwritten revocation may be considered by the court if it can be proven by clear and convincing evidence.

History:

1998, Nov. 24, P.L. 811, No. 103, § 1, effective in 60 days.

§ 5615. Conflicting documents

If a parent has appointed a testamentary guardian of the person or estate of a minor by will under 20 Pa.C.S. §2519 (relating to testamentary guardian) and there is a conflict between that will and a duly executed written standby guardian designation, the document latest in date of execution shall prevail.

History:

1998, Nov. 24, P.L. 811, No. 103, § 1, effective in 60 days.

§ 5616. Bond

In no event shall a standby guardian be required to post bond prior to the occurrence of the triggering event. The court may require a bond if the standby guardian is designated the coguardian or guardian of the estate of a minor but will not require a bond for the coguardianship or guardianship of the person of a minor.

History:

1998, Nov. 24, P.L. 811, No. 103, § 1, effective in 60 days.

§ 5621. Designation

(a) General rule.--Except as provided in subsection (b), a custodial parent may designate a temporary guardian by means of a written designation unless the minor has another parent or adoptive parent:

(1) whose parental rights have not been terminated or relinquished;

(2) whose whereabouts are known; and

(3) who is willing and able to make and carry out the day-to-day child-care decisions concerning the minor.

(b)Exception where other parent consents.--Notwithstanding subsection (a), a parent, legal custodian or legal guardian may designate a temporary guardian with the consent of the other parent.

(c) Contents.--

(1) A designation of a temporary guardianship shall identify the custodial parent, the minor or minors, any other parent, the temporary guardian and the triggering event or events upon which a named temporary guardian shall become a coguardian or guardian. The designation shall also include the signed consent of the temporary guardian and the signed consent of any other parent or an indication why the other parent's consent is not necessary.

(2) The designation shall be signed by the designating parent in the presence of two witnesses who are 18 years of age or older and not otherwise named in the designation, who shall also sign the designation.

(3) A parent may also but need not designate an alternate in the designation.

(4) A designation may but need not be in the following form:

.....

(Insert name of designator) do hereby appoint

.....

(Insert name, address and telephone number of temporary guardian) as the temporary guardian of

.....

(Insert name(s) of minor(s) to take effect upon

..... (Date).

I am the mother/father/other to.....

.....

(Insert name(s) of minor(s)).

.....

(Insert name(s) of other parent(s) of minor(s)) is the father/mother/other of.....

.....

(Insert name(s) of minor(s)).

By this designation, I am granting.....

(insert name of temporary guardian) the authority to act for 90 days following the occurrence of..... as a coguardian with me or as guardian of my minor child(ren).

It is my intention to retain full parental rights to the extent consistent with my condition and to retain the authority to revoke the temporary guardianship if I so choose.

This designation is made after careful reflection, while I am of sound mind.

.....

(Date)(Designator's signature)

.....

(Witness's signature)(Witness's signature)

.....

(Number and Street)(Number and Street)

.....

(City, State and Zip Code)(City, State and Zip Code)

If applicable: I,..... ,

(Insert name of other parent)

fastcase Smarter legal research.

hereby consent to this designation.

.....

(Date)(Signature of other parent)

.....

(Address of other parent)

I,.....

(Insert name of temporary guardian), hereby accept my nomination as temporary guardian of.....

.....

(Insert minor(s)'s name(s)). I understand that my rights and responsibilities toward the minor child(ren) named above will become effective upon..... (Date) I further understand that in order to continue as temporary guardian for the child(ren), I must file a petition with the court of common pleas within 30 days of the order granting the petition for temporary guardianship.

.....

(Date)(Signature of temporary guardian)

NOTARY SEAL

I hereby revoke the above temporary guardianship agreement.

..... (Parent signature)

..... (Date)

NOTARY SEAL

History:

Added by P.L. TBD2018 No. 88, §4, eff. 12/24/2018.

§ 5622. Petition for approval of designation

(a)General rule.--Except as provided in subsection (b), a petition for court approval of a designation under this chapter may be made when an individual who is a custodial parent of a minor has entered a rehabilitation facility for treatment of a drug or alcohol addiction or has been subject to emergency medical intervention due to abuse of drugs or alcohol by filing with the court a copy of the designation.

(b) Exception where designation has not been entered.--If a custodial parent has been subject to emergency medical intervention due to abuse of drugs or alcohol and a written designation has not been executed, a family member shall petition the court to hold a hearing to be designated temporary guardian. The petition, which shall require the notarized signature of the petitioner, shall be provided by the court in the following form:

Petition for temporary guardianship without consent of parent

I,..... (Insert name, address and telephone number of family member petitioning for temporary guardianship and relationship to minor), hereby declare my intent to be appointed temporary guardian of..... (Insert name(s), address(es) and telephone number(s) of minor(s) for whom the appointment of temporary guardian is being sought) as a result of emergency medical intervention resulting from abuse of drugs or alcohol by..... (Insert name, address and telephone number), father/mother to..... (Insert name(s) of minor(s)), on..... (Insert approximate date of the event).

I have notified the child(ren)'s other parent,..... (Insert name, address and telephone number), of my intent to petition this court for temporary guardianship.

I understand that filing this petition does not revoke the parental rights of the minor's parent(s) nor does it grant me any parental rights.

I understand that my rights and responsibilities as a temporary guardian toward the minor child(ren) named above will become effective upon the completion of a hearing and rendering of a decision by the court.

I understand that filing fees and other costs associated with these proceedings may be waived if i demonstrate the fees and other costs would constitute a financial burden to me and my family.

I hereby swear or affirm that the information contained herein is true and correct to the best of my knowledge.

.....

(Date) (Signature of petitioner)

(c) Notice.--

(1) The court shall notify a person named in the designation within 10 days of the filing of the petition and of any hearing on the petition.

(2) If a designation has not been executed, the petitioner shall notify the custodial parent or parents, noncustodial parent or adoptive parent within 10 days of the filing of the petition and of any hearing on the petition.

(3) If the petition alleges that a noncustodial parent cannot be located, that parent shall be notified in accordance with the notice provisions of the Pennsylvania Rules of Civil Procedure in custody matters. No notice is necessary to a parent whose parental rights have previously been terminated or relinquished.

(d)Jurisdiction.--For purposes of determining jurisdiction under this chapter, the provisions of Chapter 54 (relating to uniform child custody jurisdiction and enforcement) shall apply.

(e)Presumptions.--In a proceeding for judicial appointment of a temporary guardian, a designation shall constitute a rebuttable presumption that the designated temporary guardian is capable of serving as coguardian or guardian. When the designator is the sole surviving parent and when the parental rights of any noncustodial parent have been terminated or relinquished or when all parties consent to the designation there shall be a rebuttable presumption that entry of the approval order is in the best interest of the child. In any case, if the court finds entry of the approval order to be in the best interests of the child, the court shall enter an order approving the designation petition.

(f) Approval without hearing.--Approval of the designation without a hearing is permitted when the designator is the sole surviving parent, when the parental rights of a noncustodial parent have been terminated or relinquished or when all parties consent to entry of the approval order.

(g)Hearing.--If a hearing is required, it shall be conducted in accordance with the proceedings under Chapters 53 (relating to child custody) and 54.

(h)Court appearance.--If a designation has not been executed and a petition for temporary guardianship has been filed with the court by a family member, the custodial parent and noncustodial parent or adoptive parent shall appear in court in order to consent to or oppose the designation. If notice has been given under subsection (c)(3) and a noncustodial parent does not appear in court, it is presumed that consent to the designation has been granted.

(i)Costs.--A court may waive filing fees and other costs upon application when the petitioner demonstrates the fees and other costs would constitute a financial burden upon the petitioner and the petitioner's family. There shall be a presumption of a financial burden if the income from all sources of the petitioner is less than 300% of the poverty level set by the Federal Government.

History:

Added by P.L. TBD2018 No. 88, §4, eff. 12/24/2018.

§ 5623. Authority of temporary guardian

(a) Authority.--

(1) The temporary guardian shall have the authority to act as coguardian or guardian upon a custodial parent entering into an alcohol or drug treatment facility or upon a court ordering the designation pursuant to hearing under subsection 5622(b) (relating to petition for approval of designation).

(2) The commencement of the temporary guardian's authority to act as coguardian shall not itself divest the custodial parent of parental rights but shall confer upon the temporary guardian concurrent or shared custody of the child.

(3) A coguardian shall assure frequent and continuing contact with and physical access to the child and shall further assure the involvement of the custodial parent, to the greatest extent possible, in the decision making on behalf of the child.

(4) The commencement of a temporary guardian's authority under this subchapter shall not itself divest a parent or legal guardian of parental or guardianship rights.

(b) Limitations on authority.--In addition to any other restrictions placed on a temporary guardian by the court, the temporary guardian may not:

(1) remove the minor or permit the minor to be removed from the United States either permanently or temporarily without the consent of the custodial parent and the approval of the court; or

(2) remove the minor from this Commonwealth absent a court order, which may only be issued after a hearing at which both parents and the minor shall have the right to be present.

History:

Added by P.L. TBD2018 No. 88, §4, eff. 12/24/2018.

§ 5624. Period of temporary guardianship

(a)Initial period.--Temporary guardianship under this subchapter shall be limited to not more than 90 days from entry of the order of temporary guardianship.

(b) Extension of guardianship.--Upon approval by the court or by written agreement of the temporary guardian and the parent who has entered a rehabilitation facility, temporary guardianship shall be extended for periods of up to 90 additional days.

(c)Total period.--The total period of guardianship under this section shall not exceed 365 days.

History:

Added by P.L. TBD2018 No. 88, §4, eff. 12/24/2018.

§ 5625. Termination of temporary guardianship

(a) Conditions.--A court shall terminate a temporary guardianship if any of the following exists:

(1) The custodial parent demonstrates the basis for the temporary guardianship no longer exists.

(2) The custodial parent and temporary guardian agree upon termination.

(3) The temporary guardian files a petition with the court seeking termination.

(4) Subject to subsection (b), a noncustodial or adoptive parent files a petition with the court seeking termination of the guardianship.

(5) The temporary guardian or an individual who resides with the temporary guardian commits an offense that results in the temporary guardian or an individual who resides with the temporary guardian being identified as a perpetrator as defined in section 6303 (relating to definitions).

(b) Mandatory considerations.--Before terminating an order for temporary guardianship under subsection (a)(4), the court shall consider if termination of the temporary guardianship is in the best interests of the minor if the individual's parental rights were previously terminated.

History:

Added by P.L. TBD2018 No. 88, §4, eff. 12/24/2018.

How Pennsylvania KinConnector Helps

Pennsylvania KinConnector helps kinship care families in numerous ways, including:

- Connecting caregivers to health, financial, and legal services
- Connecting Caregivers to training and parenting support
- Identifying local physical or behavioral health services
- Identifying support groups
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- Providing access to a compassionate KinConnector who will listen and provide supportive guidance

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Kinship care is becoming more common in Pennsylvania with thousands of children being raised by grandparents or other relative and non-relative caregivers.

Children in kinship care will experience better outcomes when they are living with a relative or someone they know.

Those who choose to provide kinship care often make a selfless choice to care for a child and ensure they receive love and support from someone they know and trust.

While extremely rewarding, kinship care can be challenging – financially, emotionally, and socially – for the caregivers and the children they are raising.

The Pennsylvania KinConnector Program was created to help:

The Pennsylvania KinConnector program was created by Act 89 of 2018 to be a resource for grandparents and other relative or non-relative caregivers who are raising children in the state of Pennsylvania. Pennsylvania KinConnector is a bridge that helps kinship care families identify multiple sources of assistance, including local, state, federal, and private resources.

The Pennsylvania KinConnector Program is staffed by KinConnectors – compassionate and knowledgable social service professionals dedicated to helping kinship care families thrive.

§ 5324. Standing for any form of physical custody or legal custody

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

(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.

(4) Subject to paragraph (5), an individual who establishes by clear and convincing evidence all of the following:

(i) The individual has assumed or is willing to assume responsibility for the child.

(ii) The individual has a sustained, substantial and sincere interest in the welfare of the child. In determining whether the individual meets the requirements of this subparagraph, the court may consider, among other factors, the nature, quality, extent and length of the involvement by the individual in the child's life.

(iii) Neither parent has any form of care and control of the child.

(5) Paragraph (4) shall not apply if:

(i) A dependency proceeding involving the child has been initiated or is ongoing; or

(ii) There is an order of permanent legal custody under 42 Pa.C.S. § 6351(a)(2.1) or (f.1)(3) (relating to disposition of dependent child).

History:

Amended by P.L. TBD2018 No. 21, §1, eff. 7/3/2018. 2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011].

§ 5325. Standing for partial physical custody and supervised physical custody

In addition to situations set forth in section 5324 (relating to standing for any form of physical custody or legal custody), grandparents and great-grandparents may file an action under this chapter for partial physical custody or supervised physical custody in the following situations:

(1) where the parent of the child is deceased, a parent or grandparent of the deceased parent may file an action under this section;

(2) where the relationship with the child began either with the consent of a parent of the child or under a court order and where the parents of the child :

(i) have commenced a proceeding for custody; and

(ii) do not agree as to whether the grandparents or great grandparents should have custody under this section; or

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

History:

Amended by P.L. TBD2018 No. 21, §2, eff. 7/3/2018. 2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011].

§ 5326. Effect of adoption

Any rights to seek physical custody or legal custody rights and any custody rights that have been granted under section 5324 (relating to standing for any form of physical custody or legal custody) or 5325 (relating to standing for partial physical custody and supervised physical custody) to a grandparent or great-grandparent prior to the adoption of the child by an individual other than a stepparent, grandparent or great-grandparent shall be automatically terminated upon such adoption.

History:

2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011].

§ 5327. Presumption in cases concerning primary physical custody

(a) Between parents.--In any action regarding the custody of the child between the parents of the child, there shall be no presumption that custody should be awarded to a particular parent.

(b) Between a parent and third party.--In any action regarding the custody of the child between a parent of the child and a nonparent, there shall be a presumption that custody shall be awarded to the parent. The presumption in favor of the parent may be rebutted by clear and convincing evidence.

(c) Between third parties.--In any action regarding the custody of the child between a nonparent and another nonparent, there shall be no presumption that custody should be awarded to a particular party.

History:

2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011].

§ 5328. Factors to consider when awarding custody

(a) Factors.--In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

(1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.

(2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.

(2.1) The information set forth in section 5329.1(a)(1) and (2) (relating to consideration of child abuse and involvement with protective services).

(3) The parental duties performed by each party on behalf of the child.

(4) The need for stability and continuity in the child's education, family life and community life.

(5) The availability of extended family.

(6) The child's sibling relationships.

(7) The well-reasoned preference of the child, based on the child's maturity and judgment.

(8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.

(9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.

(11) The proximity of the residences of the parties.

(12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

(14) The history of drug or alcohol abuse of a party or member of a party's household.

(15) The mental and physical condition of a party or member of a party's household.

(16) Any other relevant factor.

(b) Gender neutral.--In making a determination under subsection (a), no party shall receive preference based upon gender in any award granted under this chapter.

(c) Grandparents and great-grandparents.--

(1) In ordering partial physical custody or supervised physical custody to a party who has standing under section 5325(1) or (2)(relating to standing for partial physical custody and supervised physical custody), the court shall consider the following:

(i) the amount of personal contact between the child and the party prior to the filing of the action;

(ii) whether the award interferes with any parent-child relationship; and

(iii) whether the award is in the best interest of the child.

(2) In ordering partial physical custody or supervised physical custody to a parent's parent or grandparent who has standing under section 5325(3), the court shall consider whether the award:

(i) interferes with any parent-child relationship; and

(ii) is in the best interest of the child.

History:

Amended by P.L. 11672013 No. 107, §1, eff. 1/1/2014. 2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011].

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379 Pa.Super. 264, 57 USLW 2304
In re ADOPTION OF B.E.W.G. and S.L.W.G.
Appeal of Howard L. WEST and Kay West.
Superior Court of Pennsylvania.
Argued June 14, 1988.
Filed Oct. 24, 1988.

[379 Pa.Super. 265] Donald B. Hoyt, York, for appellants.

Wanda Neuhaus, York, for appellees.

Before CIRILLO, President Judge, and WIEAND and DEL SOLE, JJ.

WIEAND, Judge:

The issue in this appeal is whether the Orphans' Court in York County, Pennsylvania, could properly order an adoption of two minor children upon the sole consent of the children's father, who had killed the children's mother, while a custody action was pending in New York between the children's father and maternal grandparents, without notice to the maternal grandparents or the New York court in which the custody action was pending.

On December 4, 1983, the children's father killed their mother by stabbing her to death in the family's home in Brooktondale, Tompkins County, New York. At the time of [379 Pa.Super. 266] the stabbing, B.E.W.G., then ten months of age, was present in the home, but S.L.W.G., then four years of age, was visiting her paternal grandfather in New York

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City. Afterwards, the paternal grandfather also took B.E.W.G. to his home.

On December 21, 1983, the maternal grandparents, Howard and Kay West, filed a petition in the Tompkins County Family Court to obtain custody of their grandchildren. The children's father had been released on bail, however, and, by order of March 26, 1984, the New York court placed the children in his custody, while awarding visitation privileges to the Wests. This order was to remain in effect until the criminal charges against the father were determined. On May 15, 1984, the Tompkins County Court continued its custody order in effect but expanded the Wests' visitation privileges. Thereafter, the father took the children from their home in New York, and the Wests did not see them again.

On May 22, 1984, the children's father was found guilty of manslaughter in connection with the killing of his wife, the children's mother.[1] Thereafter, on May 29, 1984, the Tompkins County Family Court entered an order awarding temporary custody of S.L.W.G. and B.E.W.G. to the Wests pending further hearing. When an additional hearing was held on June 11, 1984, the father refused to disclose the whereabouts of the children. The New York court thereupon continued temporary custody in the Wests. On November 9, 1984, a final order was entered which awarded permanent custody of the children to their maternal grandparents.

In August, 1985, the grandparents learned for the first time that the children were living with adoptive parents somewhere in Pennsylvania. Unbeknownst to them, the children's father had delivered the children to Tressler-Lutheran Associates, Inc. of York, Pennsylvania, for adoption, and had executed a "temporary custody agreement" by [379 Pa.Super. 267] which he surrendered the children to the agency on a temporary basis until a decision could be made regarding the children's welfare and custody. Subsequently, the children had been placed by their father and the Tressler-Lutheran Agency in a private home for adoption. On May 16, 1984, the adopting parents filed a report of their intention to adopt the children pursuant to 23 Pa.C.S. § 2531; and on June 4, 1984, a petition for adoption was filed. At a hearing thereon, the Orphans' Court of York County was told the circumstances surrounding the death of the children's mother

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and that their father had been convicted of manslaughter. The court was also informed of the custody proceedings in New York, that the maternal grandparents had been granted visitation, and that they would likely seek permanent custody of the children if the father were convicted and sentenced to prison.[2] At the end of the hearing, the court raised an issue regarding its jurisdiction, deferred making a decision, and continued the hearing until June 25, 1984. It requested counsel "to give the court some assurance ... that the courts of the State of New York do not already have legal jurisdiction over these two children so that the courts of Pennsylvania have no authority at all [or] jurisdiction to take any action[ ]...." On June 25, 1984, the York County court entered a decree allowing the adoption of S.L.W.G. and B.E.W.G. The record does not disclose that further consideration was given to the custody proceedings in New York or the decree of the New York court which had awarded custody of the children to their maternal grandparents.

The Wests, on January 14, 1986, filed in York County, Pennsylvania, a petition to inspect the impounded record of the adoption proceedings. They also requested that the adoption decree be vacated. Their petition was dismissed on grounds that they lacked standing. On appeal, a panel of this Court reversed. See: In re Adoption of B.E.W.G., 355 Pa.Super. 554, 513 A.2d 1061 (1986). The matter was [379 Pa.Super. 268] remanded with instructions to permit the grandparents to examine the adoption record and for the court to decide the petition to vacate. On

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remand, the Wests argued that the court in York County had lacked jurisdiction to decree an adoption and that the proceedings had been defective because they had neither consented to nor received notice of the adoption proceedings. They also alleged that a fraud had been committed on the court and that the father had failed to comply with the strictures of the Interstate Compact on the Placement of Children.[3] The Orphans' Court rejected these arguments and dismissed the petition to vacate the adoption decree.[4] This appeal followed.

An adoption decree is presumed to be valid, and the person challenging it bears the burden of showing its invalidity by clear and convincing evidence. In the Matter of the Adoption of Christopher P., 480 Pa. 79, 84, 389 A.2d 94, 97 (1978); Singer Adoption Case, 457 Pa. 518, 522, 326 A.2d 275, 277 (1974); Chambers Appeal, 452 Pa. 149, 152-153, 305 A.2d 360, 362 (1973); List Adoption Case, 418 Pa. 503, 508-509, 211 A.2d 870, 873-874 (1965). In List Adoption Case, supra, the Supreme Court listed five principles of law which are pertinent to a collateral attack on an adoption decree.

In determining this appeal certain principles of law must be kept in mind: (1) an adoption decree entered by a court having jurisdiction over the subject matter and the parties is generally immune from collateral attack, particularly where the record shows a substantial compliance with the adoption statute; (2) where the record in the adoption proceedings affirmatively reveals a lack of jurisdiction, then the adoption decree is subject to collateral attack; (3) notice to a natural parent of the adoption proceedings and the consent of a natural parent, where [379 Pa.Super. 269] necessary, are jurisdictional prerequisites in an adoption proceeding; (4) when an adoption decree is collaterally attacked, the entry of the decree raises a presumption of its validity and regularity and an implication arises that the court did find the necessary facts and did perform all the steps essential to the jurisdiction of the court; (5) the burden is upon the person attacking an adoption decree to establish its invalidity by clear and convincing evidence.

Id. (footnotes omitted).

The Orphans' Court in the instant case determined that the adoption proceedings had not been pursued fraudulently and that the adoption decree had properly been premised upon the father's consent. The circumstances surrounding the children's presence in Pennsylvania, the death of their mother, and the

pendency of a custody action in New York had been disclosed to the court in York County. Therefore, it cannot be said that the Tressler-Lutheran Agency and the children's father committed a fraud on the court. The Orphans' Court, moreover, was acting with the consent of the surviving parent of the children. The provisions of 23 Pa.C.S. § 2711(a) are as follows:

§ 2711. Consents necessary to adoption

(a) General rule.--Except as otherwise provided in this part, consent to an adoption shall be required of the following:

(1) The adoptee, if over 12 years of age.

(2) The spouse of the adopting parent, unless they join in the adoption petition.

(3) The parents or surviving parent of an adoptee who has not reached the age of 18 years.

(4) The guardian of an incompetent adoptee.

(5) The guardian of the person of an adoptee under the age of 18 years, if any there be, or of the person or persons having the custody of the adoptee, if any such person can be found, whenever the adoptee has no parent whose consent is required.

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[379 Pa.Super. 270] The consent of the person having custody of the adoptee, according to the statute, is necessary only when the adoptee has no parent whose consent is required.

It remains to be determined, however, whether the Orphans' Court of York County, Pennsylvania, had jurisdiction to decree an adoption of children whose temporary custody had been awarded to their grandparents without requiring that notice of the pending adoption and an opportunity to be heard be given to the grandparents or the New York court in which the custody action was still pending. The Adoption Law, at 23 Pa.C.S. § 2721, provides that

".... Notice of the hearing shall be given to all persons whose consents are required and to such other persons as the court shall direct. Notice to the parent or parents of the adoptee, if required, may be given by the intermediary or someone acting on his behalf. Notice shall be by personal service or by registered mail to the last known address of the person to be notified or in such other manner as the court shall direct.

The grandparents, as we have already observed, were not persons whose consents to the adoption were specifically required by the statute. Still, they had been awarded custody of their grandchildren by a New York court in preference to the father who had been convicted of killing the children's mother. To permit the children's father to remove the children from New York and, with the assistance of the Pennsylvania courts, thwart the New York custody decree by an adoption proceeding calculated to cut off the rights of the grandparents is offensive to the judicial mind. The grandparents were, at the very least, entitled to notice and an opportunity to be heard.

If the adoption action in York County, Pennsylvania, had been an action for the custody of the children, the York County court could not have proceeded. Section 5347 of the Uniform Child Custody Jurisdiction Act, 42 Pa.C.S. § 5347, would have prevented a Pennsylvania court from exercising jurisdiction. The statute provides as follows:

[379 Pa.Super. 271] § 5347. Simultaneous proceedings in other states

(a) General rule.--A court of this Commonwealth shall not exercise its jurisdiction under this subchapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this subchapter, unless the proceeding is stayed by the court of the other state because this Commonwealth is a more appropriate forum or for other reasons.

(b) Procedure.--Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under section 5350 (relating to information under oath to be submitted to the court) and shall consult the child custody registry established under section 5357 (relating to registry of out-of-state custody decrees and proceedings) concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) Stay; communication with other court.--If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 5360 (relating to hearings and studies in another state; orders to appear) through 5363 (relating to request for court records of another state). If a court of this Commonwealth has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another

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state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

[379 Pa.Super. 272] Several courts have held that these statutory provisions are equally applicable to adoption proceedings. Thus, in the Matter of the Adoption of K.C.P., 432 So.2d 620 (Fla.Dist.Ct.1983), it was held that under the Uniform Child Custody Jurisdiction Act, a Florida court lacked jurisdiction to enter an adoption decree while a custody action was pending in New York. See also: Noga v. Noga, 111 Ill.App.3d 328, 67 Ill.Dec. 18, 443 N.E.2d 1142, (1982) (where adoption proceeding already pending in Arkansas, Illinois court properly declined to exercise its jurisdiction to consider petition for visitation rights as the Arkansas adoption proceeding was a custody proceeding within the scope of Uniform Child Custody Jurisdiction Act); Roth v. Hatfield, App. No. 82CA 19, 20 & 21, Ohio Court of Appeals, Fourth Appellate Dist., Gallia County (Slip Op. December 28, 1983) (unreported) (Ohio court lacked jurisdiction to enter adoption decree while custody action was on-going in Michigan). Cf. In re Adoption of Baby Boy W., 701 S.W.2d 534 (Mo.App.1985) (Missouri court's jurisdiction to enter adoption decree not defeated by Indiana custody decree where Indiana court lacked jurisdiction under Uniform Child Custody Jurisdiction Act); E.E.B. v. D.A., 89 N.J. 595, 446 A.2d 871 (1982), cert. denied, 459 U.S. 1210, 103 S.Ct. 1203, 75 L.Ed.2d 445 (1982) (New Jersey court had jurisdiction of adoption proceeding under Uniform Child Custody Jurisdiction Act, notwithstanding habeas corpus/custody action in Ohio, where Ohio court had declined to exercise its jurisdiction). Contra: Olivo v. Gainey, 185 Ga.App. 427, 364 S.E.2d 279 (1987) (Uniform Child Custody Jurisdiction Act inapplicable to adoption proceedings), overruling In re C.C.B., 164 Ga.App. 3, 296 S.E.2d 198 (1982); In re Johnson, 415 N.E.2d 108 (Ind.App.1981) (jurisdiction for termination of parental rights is not encompassed by Uniform Child Custody Jurisdiction Act, as such action does not establish or modify custody decree, but is properly determined under adoption statutes). Because the effect of a final decree of adoption is to terminate all legal rights between the adopted child and the child's relatives, including grandparents, an adoption decree will necessarily terminate the custody rights of [379 Pa.Super. 273] grandparents. In order to prevent by adoption that which cannot be achieved by custody proceedings, the provisions of the Uniform Act must also be applied to adoption proceedings. We conclude, in the absence of Pennsylvania precedent to the contrary, that this is the better view.

Our holding is consistent with the reasons for adopting the Uniform Child Custody Jurisdiction Act and the stated purposes thereof. These include, inter alia, the avoidance of "jurisdictional competition and conflict with courts of other states in matters of child custody"; the promotion of "cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child"; the assurance "that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection"; the deterrence of "abductions and other unilateral removals of children undertaken to obtain custody awards." See: 42 Pa.C.S. § 5342(a)(1), (2), (3), (5).

Even if the Uniform Child Custody Jurisdiction Act is not applicable to adoption proceedings, however, it does not follow that Pennsylvania courts can ignore with impunity a custody action or decree in the courts of a sister state. The Pennsylvania Adoption Law, which provides for notice "to such other persons as the court shall direct," requires at the very least that notice of the adoption proceedings be given to the parties to a pending custody action or, as here, to grandparents who have been granted custody of the children by the court of another state. A party who has been awarded custody of the children by a court in preference to a father who has killed the children's mother cannot be ignored by the forum court where the father has attempted to place the children for adoption. The courts of this Commonwealth

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will not be permitted to become accessories to the conniving act of a parent who attempts to evade a custody order entered by the courts of another state. Here, the father unilaterally had removed the children from the State of New York, in defiance of custody proceedings [379 Pa.Super. 274] there pending, and had surrendered them for adoption in Pennsylvania. The court in Pennsylvania, having had knowledge of the custody proceedings in New York, could not enter an adoption decree calculated to defeat the New York custody decree without communicating with the New York court and giving notice to the persons who had been awarded custody in the New York action. When it nevertheless attempted to do so, the court abused its discretion.

Having determined that the Pennsylvania adoption proceedings were defective, the adoption decree must be vacated.[5]

The order dismissing appellant's petition to vacate the adoption decree is reversed. The adoption decree of June 25, 1984, is vacated and set aside.

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1 He is presently serving a term of imprisonment for not less than 8 1/3 years nor more than 25 years in New York.

2 In fact, custody had been awarded to the grandparents on May 29, 1984.

3 Act of June 13, 1967, P.L. 31, § 761, as amended, 62 P.S. § 761.

4 Sometime in early July, 1984, the adoptive parents returned the children to the Tressler-Lutheran Agency, and the children were thereafter readopted by other adoptive parents. The propriety of the later adoption is not before us in this appeal. We recognize, however, that our decision in the instant case may have an effect on the validity of the "consents" offered in the later action.

5 In view of this decision, we do not determine the difficult issue of whether the Interstate Compact, 62 P.S. § 761, has application to a parent who places his children for adoption in another state.

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889 A.2d 92
In re: ADOPTION OF R.J.S.,
Appeal of: B.A.H. & B.D.H., Adoptive Parents, Appellants.
Superior Court of Pennsylvania.
Argued August 30, 2005.
Filed November 14, 2005.

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Joseph J. Yeager, Forty Fort, for appellants.

David S. Rasner, Philadelphia, for D.S. & M.S., appellees.

BEFORE: HUDOCK, BOWES and BECK, JJ.

OPINION BY BOWES, J.:

¶ 1 B.A.H. and B.D.H. ("Aunt" and "Uncle," respectively, or "Appellants") appeal the order entered on November 17, 2004, denying and dismissing their petition for adoption. We affirm.

¶ 2 Appellants are the maternal aunt and uncle of R.J.S., born October 5, 1995. Appellant Aunt is a sister to R.J.S.'s mother, R.S. ("Mother"). Tragically, R.J.S.'s biological father, D.S., committed suicide on April 17, 1997. Appellees ("Grandparents"), who live in Lackawanna County, are D.S.'s parents and R.J.S.'s paternal grandparents. R.J.S. lived with Grandparents[1] from his birth until December 31, 1997, when Mother took the child and relocated to Luzerne County. Thereafter, without informing Grandparents, Mother decided that R.J.S. should live with Aunt and Uncle in Luzerne County.

¶ 3 On February 2, 1998, Aunt and Uncle filed a custody complaint in Luzerne County, in which Mother joined, to transfer physical custody of R.J.S. from Mother to Aunt and Uncle. On February 4, 1998, the custody stipulation between Mother and Aunt and Uncle was made an order of court.

¶ 4 Unaware of this prior Luzerne County custody stipulation, Grandparents filed a custody action on February 13, 1998, in Lackawanna County, seeking to confirm their primary physical custody of R.J.S. and alleging their *in loco parentis* status to the child. The parties at some point agreed that Luzerne County[2] "had jurisdiction

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and all matters relating to the custody of [R.J.S.] were to be heard ... in Luzerne County ...." for a determination of custody. Petition to vacate order granting periods of partial custody, 8/31/00, at 1; Supplemental Reproduced Record for Appellees at 35b, Answer to petition to vacate, 11/28/00, at 1. The custody court ordered a comprehensive custody evaluation, the matter proceeded to a Master, and finally, a full custody hearing took place in Luzerne County on February 29, 2000,[3] following which the trial court granted Aunt and Uncle legal and primary physical custody of R.J.S. Grandparents received periods of partial custody on alternating weekends and certain stipulated holidays. The February 29, 2000 order also required the parties to keep one another informed regarding major issues affecting R.J.S. *See* Order, 2/29/2000, at 2. (The parties shall be kept informed of R.J.S.'s "medical, social, educational, religious or other relevant information ... including extracurricular activities and special events so as to enable [Grandparents] to attend...."). A March 3, 2000 order altered the holiday schedule for Grandparents.

¶ 5 On June 5, 2000, Mother filed a petition for permission to relinquish her parental rights in favor of Aunt and Uncle in the Luzerne County Orphans' Court. The court held a hearing on June 21, 2000, wherein Mother testified that because she was a heroin addict, she believed that R.J.S.'s best interests would be served by voluntary relinquishment of her parental rights.[4] The court granted the petition that day. On August 4, 2000, without notice to Grandparents, Aunt and Uncle filed a petition for adoption of R.J.S. Although paragraph 4 of the adoption petition required identification of the time and places where the

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child had lived since his birth, Aunt and Uncle pointedly left the question blank. Adoption petition, 8/4/00, at ¶ 4. By this glaring omission, Aunt and Uncle failed to reveal that R.J.S. lived with Grandparents from birth to age two.

¶ 6 On August 23, 2000, the court held a hearing on the petition for adoption. When asked on direct examination to list everyone R.J.S. had lived with since birth, Appellant Aunt testified that R.J.S. had lived with Mother and then with Aunt and Uncle, again failing to apprise the court that the child had resided with Grandparents for the first two years of his life. N.T., 8/23/00, at 4. At the conclusion of the hearing, the court granted the adoption.

¶ 7 On August 31, 2000, Aunt and Uncle filed a petition to vacate the February 29, 2000, and March 3, 2000 orders granting partial physical custody of R.J.S. to Grandparents based upon Appellants' adoption of the child. Significantly, "[I]t was not until after [Aunt and Uncle] filed a Petition to Vacate ... that Grandparents learned of the adoption action." Grandparents' brief at 4. On September 1, 2000, Grandparents immediately filed a petition seeking to hold Aunt and Uncle in contempt, to set aside the adoption, and to transfer custody of R.J.S. to them. On November 14, 2000, the trial court directed Valley Counseling Associates to complete an updated evaluation of the parties and R.J.S. The court

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issued interim orders on November 16, 2000, and December 15, 2000, granting Grandparents partial custody every third weekend and on certain holidays. On June 26, 2001, concluding that Grandparents had been entitled to notice of the adoption proceedings, the court vacated the adoption decree subject to reinstatement and scheduled a hearing for September 24, 2001, in order to receive testimony on the issue of whether adoption by Aunt and Uncle was in the best interest of R.J.S.

¶ 8 It appears that hearing was not held at that time. On July 24, 2001, Aunt and Uncle filed a notice of appeal from the June 26, 2001 order vacating the August 23, 2000 adoption decree. On August 1, 2001, the court directed Aunt and Uncle to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b), but they did not comply. Thereafter, on December 4, 2002, this Court dismissed Aunt and Uncle's appeal for failure to file a docketing statement. *See* Pa.R.A.P. 3517.[5]

¶ 9 Throughout the next two years, several evaluations and conferences concerning custody of R.J.S. were held. The custody and adoption actions were consolidated on August 27, 2002, in response to Grandparents' petition filed that day; the orphans' court also added Grandparents as additional parties "to the Adoption Petition for purposes of Intervention and/or Contesting same." Order, 8/27/02, at 2. Dr. Lenora Herrmann-Finn,[6] an evaluative psychologist, concluded that adoption by Aunt and Uncle was in the best interest of the child **only if** Grandparents remained an integral part of the child's life. The guardian *ad litem* recommended that additional custody be awarded to Grandparents. On November 17, 2004, the orphans' court denied and dismissed Aunt and Uncle's petition for adoption, but maintained physical and legal custody with Aunt and Uncle. It awarded Grandparents partial custody on alternating weekends and specified holidays. This appeal ensued.

¶ 10 On appeal, Aunt and Uncle raise the following issues:

1. Did the Lower Court err in vacating the adoption decree of August 23, 2000[?]

2. Did the Lower Court abuse its discretion in denying and dismissing the Petition for Adoption filed by Appellants?

Appellants' brief at 4.

¶ 11 Our standard of review when considering an appeal from an orphans' court order is as follows:

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This court must determine whether the record is free from legal error and the orphans' court's factual findings are supported by the evidence. Because the court sits as the fact-finder, it determines the credibility of the witnesses and on review, we will not reverse its credibility determinations absent an abuse of that discretion.

In re Adoption of A.M.B., 812 A.2d 659, 662 (Pa.Super.2002). Our scope of review when the orphans' court has granted a petition to vacate an adoption "is limited to determining whether the trial court's findings are supported by competent evidence or whether the court abused its discretion or committed an error of law." *In re Adoption of S.A.J.,* 575 Pa. 624, 631, 838 A.2d 616, 620 (2003) (quoting *In the Matter of the Adoption of Christopher P.,* 480 Pa. 79, 86, 389 A.2d 94, 98 (1978)).

¶ 12 Aunt and Uncle contend the court erred in vacating the adoption decree and in concluding that Grandparents were entitled to notice of the adoption hearing. They assert that the Adoption Act did not require them to provide notice to Grandparents. Their sole support is *Faust v. Messinger,* 345 Pa.Super. 155, 497 A.2d 1351 (1985), where the court held that a minor child's grandparent, seeking to vacate an adoption decree one and one-half years after its implementation, was not required to receive notice of a pending adoption.

¶ 13 *Faust* is readily distinguishable from the instant case on two bases. First, the *Faust* grandparent's sole claim to entitlement of notice related to the Custody and Grandparents Visitation Act. In contrast, Grandparents herein based their entitlement to seek custody on their *in loco parentis* status in addition to their statutory rights. *Walkenstein v. Walkenstein,* 443 Pa.Super. 683, 663 A.2d 178 (1995) (where party stands *in loco parentis* to child standing to pursue custody action against biological parent is granted). Second, the grandparent in *Faust* failed to institute an action for visitation of her grandson before his adoption despite the Act's provision entitling her to do so. In the instant case, Grandparents enjoyed court-ordered partial custody every other weekend at the time Aunt and Uncle filed their adoption petition.

¶ 14 More significantly, the Adoption Act, 23 Pa.C.S. § 2101 *et seq.,* sets forth the requirements of notice for the time and place of the adoption hearing. While Aunt and Uncle focus on the fact that Grandparents are not delineated as parties requiring notice for the hearing, they conveniently ignore that the statute requires notice of the adoption hearing not only to every person whose consent is required, but also "to such other persons as the court shall direct." 23 Pa.C.S. § 2721.

¶ 15 *In re Adoption of B.E.W.G.,* 379 Pa.Super. 264, 549 A.2d 1286 (1988), provides guidance. The facts of that case are as follows. The children's father, who had murdered the children's mother, was placed in jail; the children initially resided with the paternal grandfather. The maternal grandparents then sought custody of the children and temporarily were granted visitation. However, the father was released on bail and was granted physical custody of the children until the criminal charges against him were resolved. The father then took the children from their home in New York and concealed their whereabouts. He was convicted of manslaughter on May 22, 1984, and sentenced to a term of imprisonment. On May 29, 1984, the New York Family Court entered an order awarding the grandparents temporary custody of the children. At a subsequent custody hearing on June 11, 1984, the father refused to reveal the children's location. The New York Court

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entered a final order on November 9, 1984, granting custody to the grandparents even though the children's whereabouts remained unknown.

¶ 16 Unbeknownst to the grandparents, the father had taken the children to an adoption agency, had executed a temporary custody agreement, and placed them in an adoptive home.

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The adopting parents, who lived in York County, had filed a report of intention to adopt without notice to the grandparents on May 16, 1984, in York County. Counsel informed the York County Orphans' Court that the grandparents had visitation and likely would seek custody if the father was convicted and sentenced to prison. The court continued the case and asked counsel for assurance that the New York courts "do not already have legal jurisdiction over these two children." *Id.* at 1287. The York County Orphans' Court ultimately entered a decree allowing the adoption on June 25, 1984; the record did not reveal whether the York County Court gave further consideration to the grandparents' custody proceedings in New York.

¶ 17 In August 1985, the grandparents learned for the first time that the children were living with adoptive parents somewhere in Pennsylvania. On January 14, 1986, the grandparents sought to vacate the adoption decree. The orphans' court ultimately rejected the grandparents' claim that they should have been given notice of the adoption proceedings and dismissed the petition to vacate the adoption decree. The grandparents appealed to this Court, and we reversed, concluding that they were entitled to notice of the adoption proceedings and an opportunity to be heard.

¶ 18 Clearly, the reasoning of *B.E.W.G.,* which involved an ongoing custody action in a sister state, is applicable herein where the ongoing custody action occurred in a sister county.

[I]t does not follow that Pennsylvania courts can ignore with impunity a custody action or decree in the courts of a sister state. The Pennsylvania Adoption Law, which provides for notice "to such other persons as the court shall direct," **requires at the very least that notice of the adoption proceedings be given to the parties to a pending custody action or, as here, to grandparents who have been granted custody of the children** by the court of another state .... The courts of this Commonwealth will not be permitted to become accessories to the conniving act of a parent who attempts to evade a custody order .... Here, the father unilaterally had removed the children from the State of New York, in defiance of custody proceedings there pending, and had surrendered them for adoption in Pennsylvania. The court in Pennsylvania, having had knowledge of the custody proceedings in New York, could not enter an adoption decree calculated to defeat the New York custody decree without communicating with the New York court and giving notice to the persons who had been awarded custody in the New York action. When it nevertheless attempted to do so, the court abused its discretion.

Id. at 1290-91 (emphasis added). In the instant case, if the orphans' court had been apprised of Grandparents' partial custody rights and the ongoing nature of that custody action, it would have directed that Grandparents be given notice of the adoption action by Appellants, as evidenced by the court's ultimate conclusion that Grandparents were entitle to notice in its June 26, 2001 order vacating the adoption decree subject to reinstatement.

¶ 19 Additionally, the record supports a conclusion that Aunt and Uncle deceived

the court below. Indeed, in its June 26, 2001 order vacating the adoption decree subject to reinstatement, the orphans' court implied as much and stated that Grandparents had been entitled to notice of the adoption because, *inter alia,* "[Aunt and Uncle's] counsel was aware" of the order granting Grandparents partial custody and their relationship to R.J.S. Order, 6/26/01, at 1.

¶ 20 Moreover, Grandparents assert that they "successfully demonstrated that [Aunt and Uncle] obtained the adoption of the Child through secret and dishonest means by not telling the court about the pending custody action with Grandparents and by making certain that neither Grandparents nor their counsel knew about the adoption action." Appellees' brief at 10. Grandparents also contend that "although [Aunt

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and Uncle] and Grandparents were **actively** involved in custody litigation regarding [R.J.S.], [Aunt and Uncle] and their counsel kept the adoption proceedings secret from Grandparents and their counsel." *Id.* at 11 (emphasis in original). Such allegations assuredly encompass the perpetration of a deception on the court. Clearly, we may uphold a decision below if there is any proper basis for the result reached; thus, our affirmance may be based on different grounds from the trial court. *Frank v. Frank,* 833 A.2d 194 (Pa.Super.2003); *Weber v. Lynch,* 237 Pa.Super. 48, 346 A.2d 363 (1975).

¶ 21 *B.E.W.G.* again provides guidance. Therein, fraud was not established because the circumstances surrounding the children's presence in Pennsylvania and the pendency of the New York custody action were revealed to the Pennsylvania orphans' court prior to the adoption. In the instant case, however, Aunt and Uncle concealed the on-going custody action from the orphans' court. Further, Aunt and Uncle failed to complete the portion of the adoption petition requiring potential adoptive parents to reveal the parties with whom the child had lived since birth. This was crucial information for the orphans' court's consideration. Our Supreme Court noted, "The essence of fraud is deceit intentionally and successfully practiced to induce another to part with property or with some legal right. Fraud is practiced when deception of another to his damage is brought about by a misrepresentation of fact or **by silence when good faith required expression."** *Thorne's Estate,* 344 Pa. 503, 511, 25 A.2d 811, 816 (1942) (emphasis added); *In Re McClellan's Estate,* 365 Pa. 401, 75 A.2d 595 (1950). This Court stated that "fraud comprises `anything calculated to deceive, whether by single act or combination, or by suppression of truth, or suggestion of what is false, whether by direct falsehood or innuendo, by speech **or silence,** word of mouth, or look or gesture ....'" *Estate of Doerr,* 388 Pa.Super. 474, 565 A.2d 1207, 1211 (1989) (emphasis added); *see also Hart v. Arnold,* 2005 PA Super 328, ¶ 43 n. 7, 884 A.2d 316.

¶ 22 Aunt and Uncle's failure to be forthright and candid, indeed, their omission and silence when good faith required expression, speaks volumes regarding their desirability as adoptive parents of this child who has enjoyed a loving relationship with his paternal grandparents. *Keeler's Adoption,* 52 Pa.Super. 516 (1913) (prospective adoptive parent's failure to reveal natural mother's desire in order to obtain adoption constituted "a legal fraud on the court to suppress the jurisdictional facts and for that reason the decree was invalid, and the... court had ample authority to vacate the decree it had erroneously entered."). As we observed nearly a century ago:

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[T]he [adoption] petition ... was presented and the decree secured, without the court being informed of the actual and vital facts of the case.... It may be well that the court was not designedly imposed on by the petitioner, and he took a chance on the subsequent ratification by the mother. However, the petitioner suppressed a fact, which if known by the court, would have prevented the decree, and he is not now in position to complain of a decree which would have been entered had the whole truth been exhibited at the time it was entered. No court of justice will set aside or even be led to look into a solemn judgment on light or trival [sic] ground; but when it is alleged upon adequate proofs that a judgment in whole or in part has been obtained by a suppression of truth, which it was the duty of the party to disclose; or by the suggestion of a falsehood or by any of the infinite and therefore indefinable means by which fraud may be practiced, no court will allow itself, its records, and the process of law to be used as instruments of fraud: *Cochran v. Eldridge,* 49 Pa. 365. While there is no suggestion of designed or actual fraud, as such, in this case, it was clearly a legal fraud on the court to suppress the jurisdictional facts and for that reason the decree was invalid, and the same court had ample authority to vacate the decree it had erroneously entered: *Fisher v. Ry. Co.,* 185 Pa. 602, 40 A. 97.

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Keeler's Adoption, supra at 4.

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¶ 23 Finally, even if we were to be convinced that the orphans' court was not deceived, the record supports the conclusion that revocation of the adoption decree was in R.J.S.'s best interests. In the absence of fraud, an adoption will be revoked if it is in the best interest of the child to do so, as the welfare of the child is of paramount importance, even in proceedings to vacate an adoption decree. *In re Adoption of List,* 418 Pa. 503, 211 A.2d 870 (1965). *Wilder,* Pa. Family Law Prac. and Proc. (5th ed.), § 32-14. This Court stated in *In re Adoption of J.E.F.,* 864 A.2d 1207, 1211 (Pa.Super.2004) (citing *In re Adoption of Hess,* 530 Pa. 218, 227, 608 A.2d 10, 14 (1992)), that "a child's interests are best served when all those who demonstrate an interest in [the child's] welfare are allowed to be heard." Grandparents have shown a strong interest in the welfare of R.J.S. since his birth. In addition to taking him into their home for two years, Grandparents consistently have fought for and were granted custody rights. Moreover, pursuant to 23 Pa.C.S. § 2902(a), statements made in an adoption petition must be true, and it must be shown that "the needs and welfare of the person proposed to be adopted will be promoted by the adoption."

¶ 24 As noted *supra,* it is well-settled that adoption must be in the best interest of the child. *See, e.g., In re Adoption of Hess, supra; In re Adoption of List, supra* (welfare of child is of paramount importance in proceedings to vacate adoption decree); *Adoption of Baby Boy McKnight,* 338 Pa.Super. 603, 488 A.2d 56 (1983); 23 Pa.C.S. § 2902(a). It is difficult to identify the precise nature of Appellants' argument regarding R.J.S.'s best interests, which is encompassed in their contention that the orphans' court abused its discretion in dismissing the adoption petition. At most, Aunt and Uncle elucidate some facts but fall short of establishing the significance of those facts. For example, Aunt and Uncle suggest that the parties "were living with and working with-in (sic) the confines of an ongoing custody order." Appellants' brief at 12. Read in an expansive light, Aunt and Uncle might be inferring that they would allow Grandparents' involvement with R.J.S. even if the adoption were permitted. However, Aunt and Uncle sought to vacate Grandparents' periods of partial custody, and their representation that such maneuverings were prompted solely by Grandparents' petition to set aside the adoption is self-serving and rings hollow. It is more likely that Aunt and Uncle tolerated Grandparents' involvement only because it was ordered by the court, as they sought to terminate it at the first available opportunity. This behavior provides additional fuel to the conclusion that if permitted to adopt R.J.S., upon the concomitant termination of any legal rights in Grandparents,[7] Aunt and Uncle would be unsupportive of R.J.S.'s continued contact with Grandparents. Such a conclusion also is supported by the recommendation of the Guardian *ad Litem* ("GAL") herein, who stated:

> At best, it is uncertain whether [Aunt and Uncle] would maintain or encourage R.J.S.'s relationship with [Grandparents], at worst, they would seek to limit the relationship. Either way, it is necessary to ensure that [Grandparents] maintain a legally reciprocal and enforceable right to contact with the child, in order to preserve the beneficial relationship to the child. Therefore, with great reluctance, the Guardian ad Litem must recommend that the adoption not be granted as not being in the best interest of the minor child.
>
> Recommendation of the Guardian *ad Litem,* 10/29/04, at 2.[8]

¶ 25 The expert testimony offered at the September 26, 2002 hearing following the orphans' court's vacation of the original adoption decree confirmed the importance of Grandparents' involvement in R.J.S.'s life. Dr. Herrmann-Finn completed three separate custody evaluations in this case: one in 1999, one in 2001, and the final one in September 2002. N.T., 9/26/02.[9] As part of those evaluations, Dr. Herrmann-Finn completed assessments of cognitive functioning and R.J.S.'s bonding with the parties. Dr. Herrmann-Finn concluded that

Grandparents functioned as parental figures in R.J.S.'s life when he was young. *Id.* at 20. She recommended that adoption by Aunt and Uncle was in the child's best interest only if Grandparents remained a significant part of his life:

[Dr. Herrmann-Finn]: [T]hese grandparents have been an integral part of this child's life for a very long time and they need to continue that. [R.J.S.] has benefited from his time with [Grandparents] and [Aunt and Uncle] at this point

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support [Grandparents] but they are not at the level yet where we could rely on the cooperation of the four of them to get this child to different places. I think that at this point in time until these four people can reconcile their own issues, [R.J.S.'s] time with [Grandparents] need[s] to be at the directive of the Court so that it happens on a regular basis.

....

At this point in time [R.J.S.] perceives [Grandparents] as his grandparents, but yet there is history here. There is history where [R.J.S.] has been taken to these people as a respite.

....

The reason I recommended the amount of time that I recommended was that this child has developed a very very strong nurturing positive bond with [Grandparents]. If we're going to look at the best interest of this child, we need to move away from the concept of win/loss ....

[By Grandparents' counsel]:

Q. So, that if I would to [sic] say to you that your position for adoption of this child by [Aunt and Uncle] is conditioned upon [Grandparents] having extensive partial custody rights, would I be correct?

[Dr. Herrmann-Finn]:

A. Yes. Both needs [sic] to happen.

[Grandparents' counsel]:

Q. Now if that could not happen, if they do not have partial custody of their grandson, if the adoption were granted, would you still be in favor of the adoption?

[Dr. Herrmann-Finn]:

A. ... All I can speak to is the best interest of this child. This child needs stability. This child needs the stability of knowing who his parents are and that can occur through adoption. That needs to be supplemented by contact with the grandparents. The package needs to be implemented. **If one piece of it is missing, I would have grave concerns.**

[Grandparents' counsel]:

Q. If I suggest to you to assume that an adoption would terminate the rights of these people as grandparents so that there would be no schedule of an imposed Order regarding custody, I take it then your position would be that you do not favor the adoption because as you said, that [R.J.S.] needs all these parties in his life, am I correct?

[Dr. Herrmann-Finn]:

A. Well, what I would then say is that these people need to work together with the counselor to reach the point of agreement and that everyone would then support the adoption process so [Grandparents] would remain involved. **If that can't happen at this point, then it's not in the best interest of this child.**

Id. at 28-34 (emphasis added).

¶ 26 Dr. Herrmann-Finn was consistent and adamant. Aunt and Uncle's adoption of R.J.S. was in the child's best interest only if the court could concurrently grant Grandparents' partial custody. Since adoption would relinquish all of

Grandparents' custody rights to R.J.S., the orphans' court did not abuse its discretion by denying and dismissing Appellant's petition for adoption.

¶ 27 For all of the foregoing reasons, we hereby affirm the order of June 26, 2001, vacating the adoption decree, and affirm the order of November 17, 2004, denying and dismissing the petition for adoption.

¶ 28 Order affirmed.

Notes:

1. The record does not reveal whether Mother or D.S. also lived with Grandparents during this time. The record is clear, however, that Grandparents functioned in a parental role to R.J.S. because, as the evaluative psychologist testified, "[T]here were two parents who were not able to do it. [Mother] and [D.S.] were so involved in their own mental health issues and drug and alcohol issues, they could not effectively care for this child." N.T., 9/26/02, at 22.

2. Thereafter, all proceedings referenced herein occurred in Luzerne County. The record is not comprehensive regarding all orders entered by the common pleas court regarding the custody dispute between Grandparents and Aunt and Uncle. We have endeavored to piece together as accurate a time line as possible.

3. Neither the record certified to us on appeal in the instant case nor the companion custody case, which was consolidated below, includes the notes of testimony from the February 29, 2000 hearing. The office of the Prothonotary advises that transcription of the notes of testimony from this hearing was not ordered.

4. Mother also testified that she had a four-month-old child at the time of the June 21, 2000 hearing. N.T., 6/21/00, at 4.

5. We note that the order appealed from was not a final order. The June 26, 2001 order vacating the adoption decree on the basis that Grandparents had been entitled to notice stated that the order was vacated "subject to reinstatement." Moreover, the court contemplated further proceedings and in fact, scheduled a hearing for the purpose of allowing Grandparents to present evidence relevant to whether adoption was in R.J.S.'s best interest. As such, the order did not dispose of all claims of all parties. Pa.R.A.P. 341(b). Generally, an order that anticipates further proceedings is interlocutory and unappealable. *West v. West,* 301 Pa.Super. 75, 446 A.2d 1342 (1982); *compare In the Interest of H.S.W.C.-B.,* 575 Pa. 473, 836 A.2d 908 (2003), where, in the context of dependency, the Court stated that an order maintaining the *status quo* or changing the goal for a child's disposition was appealable.

6. At the June 26, 2002 hearing, the orphans' court noted that Dr. Herrmann-Finn of Valley Counseling Associates "is the court's witness. Therefore, that being the situation, I'll let everyone take Doctor Finn as of cross-examination." N.T., 9/26/02, at 5. An August 17, 1998 order had directed that the parties "equally shall [bear] the responsibility for paying all fees assessed by Valley Counseling Associates ...." Order, 8/17/98, at 2.

7. A decree of adoption terminates forever all relations between a child and his biological parents and severs the child entirely from its own family tree and engrafts it upon its new parentage. *In re Baby Boy Benjamin,* 452 Pa. 149, 305 A.2d 360 (1973). Moreover, "When the child is adopted by someone other than a stepparent or grandparent [as here], the decree of adoption also terminates the natural grandparent's visitation rights under the Custody and Grandparents' Visitation Act." Wilder, *supra,* at § 32-8; 23 Pa.C.S. § 5314; *Faust v. Messinger, supra.* Section 5314 provides in pertinent part, "Any visitation rights granted pursuant to this section prior to the adoption of the child shall be automatically terminated upon such adoption."

8. The GAL is appointed by the court to represent the minor child's interest; such appointment generally is reserved for actions where the child's

interest may be affected adversely, such as in adoptions. 23 Pa.C.S. § 2313(a). A GAL's recommendation is advisory, and the court herein treated it as such. *C.W. v. K.A.W.,* 774 A.2d 745 (Pa.Super.2001).

9. Appellants assert that this testimony was received pursuant to the lower court's order of June 26, 2001. As the caption on the transcript from the June 26, 2001 notes of testimony failed to include the orphans' court term and number, it initially was not made part of the record, but it subsequently has been provided as a supplemental record.

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126 A.3d 985
Superior Court of Pennsylvania.

In the Interest of C.L.P., a Minor.
Appeal of F.M.P. And P.T.A.,
Maternal Grandparents.
In the Interest of G.L.P., a Minor.
Appeal of F.M.P. And P.T.A.,
Maternal Grandparents.

Argued Sept. 1, 2015.
|
Filed Oct. 2, 2015.

Synopsis

Background: Maternal grandparents moved to schedule a custody trial with respect to grandchildren, who were adjudicated dependent. The Court of Common Pleas, Philadelphia County, Nos. CP–51–DP–0002355–2013, CP–51–FN–004529–2013, CP–51–DP–0002361–2013, Fernandes, J., denied grandparents' motion. Grandparents appealed.

[Holding:] The Superior Court, No. 42 EDA 2015, No. 43 EDA 2015, Mundy, J., held that grandparents had standing to seek custody of grandchildren, notwithstanding permanency goal of reunification under Juvenile Act.

Reversed and remanded.

West Headnotes (3)

[1] Appeal and Error
Review Dependent on Whether Questions Are of Law or of Fact

The interpretation and application of a statute is a question of law that compels plenary review to determine whether the court committed an error of law.

Cases that cite this headnote

[2] Appeal and Error
Review Dependent on Whether Questions Are of Law or of Fact

Appeal and Error
Cases Triable in Appellate Court

As with all questions of law, the appellate standard of review of the interpretation and application of a statute is de novo and the appellate scope of review is plenary.

Cases that cite this headnote

[3] Child Custody
Grounds and factors in general

Child Custody
Parties;intervention

Infants
Proceedings

Grandparents had standing to seek custody of grandchildren who had been adjudicated dependent, notwithstanding permanency goal

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of reunification with parents under Juvenile Act. 23 Pa.C.S.A. § 5324(3)(iii)(A); 42 Pa.C.S.A. § 6301 et seq.

Cases that cite this headnote

Attorneys and Law Firms

***986** Stephanie A. G. Ferrandez, Pittsburgh, for appellants.

Patricia A. Korey, Public Defender, Philadelphia, for C.L.P. and G.L.P., participating parties.

BEFORE: DONOHUE, J., MUNDY, J., and FITZGERALD, J.*

Opinion

OPINION BY MUNDY, J.:

Appellants, F.M.P. (Maternal Grandfather) and P.T.A. (Maternal Grandmother), (collectively, Grandparents) appeal from the November 21, 2014 order denying, *inter alia,* their motion to schedule a custody trial pursuant to Pennsylvania Rule of Civil Procedure 1915.4, with respect to their grandsons, G.L.P. and C.L.P., who are adjudicated dependent pursuant to 42 Pa.C.S.A. § 6302. After careful review, we reverse and remand for further proceedings.

The factual background of this case, as gleaned from the certified record, is as follows. In November 2013, G.L.P., who was then five-months-old, and C.L.P., who was then three-years-old, were removed from their biological parents, G.P.T. (Mother) and C.L.R. (Father), and placed in the custody of the Philadelphia Department of Human Services, Children and Youth Division (DHS), following a non-accidental trauma suffered by G.L.P. *See* Trial Court Opinion, 5/18/15, at 1–2. A physician at the Children's Hospital of Philadelphia, where G.L.P. was treated, certified his injury as a near-fatality. *Id.* at 2.

On March 24, 2014, the trial court adjudicated G.L.P. and C.L.P. dependent. In addition, the trial court issued an aggravating circumstances order with respect to G.L.P. and C.L.P. stating that "[t]he Child or another child of the parent has been the victim of physical abuse resulting in serious bodily injury [,] sexual violence[,] or aggravated neglect by the parent; proven as to Mother and Father." Trial Court Order, 3/24/14, at 1. Nevertheless, the trial court directed DHS to provide reunification services for the family. *Id.* Since their placement, G.L.P. and C.L.P. have been in foster care through Catholic Social Services.

On June 19, 2014, Grandparents filed a complaint for custody against Mother, Father, and DHS, wherein they asserted they had standing to seek custody of G.L.P. and C.L.P. pursuant to Section 5324(3) of the Custody Act, 23 Pa.C.S. §§ 5321–5340. On the same date, Grandparents filed a motion to intervene, wherein they requested that the trial court schedule a custody hearing or, alternatively, "grant[ ] them permission to participate in the dependency proceedings

naming them as the care alternative which is the least restrictive for the boys." Motion to Intervene, 6/19/14, at ¶ 19.

Thereafter, the certified record reveals that, by a July 30, 2014 permanency review order, the trial court directed DHS to explore Grandparents as possible resources, and to schedule supervised visitation between Grandparents, G.L.P., and C.L.P., upon receipt of criminal clearances ***987** for Grandparents.[1] By permanency review order dated August 21, 2014, the trial court directed Grandparents to submit a brief within 30 days concerning whether the trial court has jurisdiction to hear the custody matter. On October 28, 2014, Grandparents filed a motion to schedule a custody trial pursuant to Pa.R.C.P. 1915.4.

An oral argument on Grandparents' motions occurred on November 21, 2014, during which counsel for DHS, Mother, Father, and Grandparents participated, along with the Child Advocate. Counsel for Grandparents explained to the trial court that the motion to intervene, filed concurrently with the custody complaint on June 19, 2014, "was nothing more than a vehicle to request a trial date under Pennsylvania Rule of Civil Procedure 1915.4. It [was] never intended to be a motion to intervene in dependency." N.T., 11/21/14, at 11. As such, counsel for Grandparents acknowledged to the trial court that Grandparents do not have standing in the dependency action. *Id.* at 62.

At the conclusion of the oral argument, the trial court, on the record, denied Grandparents' motion to intervene, and further stated that the court will not entertain the custody complaint or the motion to schedule a custody trial because Grandparents do not have legal standing. *Id.* at 69–70, 75. The trial court explained on the record that Section 5324 confers legal standing upon grandparents of dependent children "when the parents['] rights either [have] been terminated or the parent is deceased, or the parent is in no position to become a parent, which is different from this case, because ... the parents right now ... I believe they're fully compliant [with their Family Service Plan objectives.]" *Id.* at 29. By order dated November 21, 2014, the trial court denied Grandparents' motion to intervene. In addition, the order stated that Grandparents "were ruled out as possible kinship parents."[2] Trial Court Order, 11/21/14, at 1.

On December 18, 2014, Grandparents filed notices of appeal and concise statements of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i), which this Court consolidated by stipulation of the parties. The trial court issued a Rule 1925(a) opinion on May 18, 2015.[3]

On appeal, Grandparents present three issues for our review.

> A. Whether it was an error of law for the trial court to refuse to schedule a trial on the Grandparents' Complaint for Custody where the subject grandchildren had been adjudicated dependent by the trial court, such adjudication triggering the Grandparents' standing to file a

complaint for custody pursuant to 23 Pa.C.S.A. § 5324, and such filing requiring ***988** the scheduling of a trial pursuant to [Pa.R.C.P.] 1915.4[?]

B. Whether it was an error of law and abuse of discretion for the trial court to find that the Grandparents' Complaint for Custody could not be heard while reunification with the parents was being considered via the Juvenile Act [,] 42 Pa.C.S.A. § 6301 *et seq.,* which it determined to supersede the statutory mandate of 23 Pa.C.S.A. § 5324, when the plain language of 23 Pa.C.S.A. § 5324 imposes no such requirement, nor does case[ ]law interpreting it[?]

C. Whether it was an error of law for the trial court to conclude that any grant of custody to Grandparents via the Custody Act, including temporary custody which is an option within the Juvenile Act[,] 42 Pa.C.S.A. § 6351(a), and the Custody Act, 23 Pa.C.S.A. § 5323(b), would be impermissible, contrary to the parents' prima facie rights and frustrate the goal of family unity within the Juvenile Act while reunification with the parents is being explored[?]

Grandparents' brief at 3–4.

The crux of Grandparents' arguments on appeal is that they have standing to seek custody of their dependent grandsons pursuant to Section 5324(3) of the Custody Act, notwithstanding the permanency goals of reunification under the Juvenile Act, 42 Pa.C.S.A. §§ 6301–6375. Section 5324 provides as follows.

§ 5324. Standing for any form of physical custody or legal custody.

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

...

(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.

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23 Pa.C.S.A. § 5324(3). Specifically, Grandparents assert that they have standing to seek custody of G.L.P. and C.L.P. pursuant to Section 5324(3)(iii)(A). [4]

***989** **[1]** **[2]** We begin by observing that "the interpretation and application of a statute is a question of law that compels plenary review to determine whether the court committed an error of law. As with all questions of law, the appellate standard of review is de novo and the appellate scope of review is plenary." *B.K.M. v. J.A.M.,* 50 A.3d 168, 172 (Pa.Super.2012) (citations and internal quotation marks omitted).

> "The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions." 1 Pa.C.S. § 1921(a). The plain language of the statute is generally the best indicator of legislative intent, *Commonwealth v. McCoy,* 599 Pa. 599, 962 A.2d 1160, 1166 (2009), and the words of a statute "shall be construed according to rules of grammar and according to their common and approved usage...." 1 Pa.C.S. § 1903(a). We generally look beyond the plain language of the statute only where the words are unclear or ambiguous, or the plain meaning would lead to "a result that is absurd, impossible of execution or unreasonable." 1 Pa.C.S. § 1922; *see also Commonwealth v. Diodoro,* 601 Pa. 6, 970 A.2d 1100, 1106 (2009). *Commonwealth v. Garzone,* 613 Pa. 481, 34 A.3d 67, 75 (2012) (parallel citations omitted).

Instantly, in its Rule 1925(a) opinion, the trial court reasoned as follows.

> [O]nly in exceptional cases has Pennsylvania case law recognized grandparents' standing in custody actions in the Domestic Relations Court when grandchildren have been adjudicated dependent by a court in a dependency action. Specifically only in cases, [sic] family's unity preservation is not viable. Namely, when the permanency goal has been changed to adoption or parental rights have been terminated. In *In re Ado[p]tion of Hess* [530 Pa. 218], 608 A.2d [10, 12] (Pa.1992), the Pennsylvania Supreme Court recognized standing to grandparents that filed a custody complaint at the adoption proceeding after the parents voluntarily relinquished their parental rights. [ ] In *R.M. v. Baxter* [565 Pa. 619], 777 A.2d 446 (Pa.1999[2001]), the paternal grandmother had standing to file a custody action after the child was adjudicated dependent and the permanency goal was changed to adoption. ...
>
> [In this case,] [t]he FSP [Family Service Plan] goal for both parents is still reunification, and parents have been fully compliant with their FSP goals ..., and despite the trial court finding of aggravated circumstances, DHS was ordered to continue with reasonable

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> efforts for [G.L.P.'s and C.L.P.'s] reunification with their parents.... The Grandparents' rights under the Custody Act cannot trump the status of [G.L.P.'s and C.L.P.'s] biological parents, who have a prima facie right to custody. Parents' rights have not been terminated and are fully compliant. The Grandparents also admitted that they do not have standing to participate in the dependency action; therefore, their Motion to Intervene had to be denied. Consequently, the trial ***990** court did not have to hear the custody petition filed by Grandparents.

Trial Court Opinion, 5/18/15, at 8–9. We conclude the trial court erred for the following reasons.

The case authority cited by the trial court is inapposite to this matter. First, in *Hess,* our Supreme Court interpreted the Adoption Act, 23 Pa.C.S. §§ 2101 *et seq.,* to permit grandparents to intervene in their grandchildren's adoption proceedings after the parental rights of the children's mother and father were terminated. In this case, Grandparents are not seeking to intervene in adoption proceedings. Indeed, the certified record indicates that there are no pending adoption proceedings as the parental rights of Mother and Father have not been terminated. Rather, Grandparents seek a hearing on their concurrent custody action under the Custody Act with respect to their dependent grandsons. As such, the Custody Act, and not the Adoption Act, is applicable in this case. Therefore, we conclude that *Hess* is not controlling in this matter.

Second, in *R.M.,* our Supreme Court held that 23 Pa.C.S.A. § 5313(b), the predecessor to Section 5324(3)(iii), conferred automatic standing upon a grandparent to seek physical and legal custody of a grandchild after the child has been adjudicated dependent. However, Section 5313(b) was superseded by Section 5324(3)(iii) on January 24, 2011. This provision provides that, to have standing to seek physical and legal custody, a grandparent who is not *in loco parentis* to the child [5] must establish one of the three circumstances set forth in Section 5324(3)(iii)(A)–(C). *See D.G. v. D.B.,* 91 A.3d 706, 712 (Pa.Super.2014) (stating, "[u]nder § 5324(3)(iii), a grandparent must establish one of the three circumstances set forth in subsections (A) through (C) in order to have standing to seek custody") (emphasis omitted). Therefore, unlike the former Section 5313(b), Section 5324(3)(iii) does not confer automatic standing upon a grandparent to seek physical and legal custody of a grandchild.

[3] Section 5324(3)(iii)(A) confers standing upon grandparents in cases where "the child has been determined to be a dependent child under 42 Pa.C.S. Ch. 63 (relating to juvenile matters)," when the requirements of Section 5324(3)(i) and (ii) are also met. [6] 23 Pa.C.S. § 5324(3)(iii)(A). The words of this provision are clear and unambiguous, and they do not impose the limitation construed by the trial court. Thus, we reject the trial court's conclusion that "the Custody Act cannot trump the status of [G.L.P.'s and C.L.P.'s] biological parents, who have a prima facie right to custody." Trial Court Opinion,

5/18/15, at 9. Such an interpretation, that a grandparent does not have standing to seek custody of a grandchild determined to be a dependent and having a goal of reunification with his biological parents under the Juvenile Act, is contrary to the plain language of Section 5324(3)(iii)(A), by which we are to ascertain our General Assembly's intent. [7] *See Garzone, supra.*

***991** Therefore, the Custody Act grants standing to grandparents to file for any form of physical or legal custody when their grandchild has been adjudicated dependent notwithstanding a permanency goal of reunification. As such, we conclude that the trial court erred as a matter of law in failing to list Grandparents' custody action for a hearing pursuant to Grandparents' request based on its conclusion that Grandparents did not have standing. Accordingly, the trial court's November 21, 2014 order is reversed and the case is remanded for the trial court to promptly list Grandparents' custody action for a hearing on the merits.

Order reversed. Case remanded. Jurisdiction relinquished.

All Citations

126 A.3d 985, 2015 PA Super 210

Footnotes

* Former Justice specially assigned to the Superior Court.

1 By a permanency review order dated October 31, 2014, the trial court directed the parties to arrange supervised weekly visits between Grandparents and their grandsons.

2 During the oral argument on November 21, 2014, counsel for DHS advised the trial court that Grandparents have been ruled out as a kinship resource for G.L.P. and C.L.P. because of an allegation that one or both of them may have been caring for G.L.P. at the time of his injury. *See* N.T., 11/21/14, at 17, 20–21.

3 The Child Advocate argues in its appellee brief that we should dismiss this appeal because the subject order did not dismiss or deny the custody complaint. We reject this argument because the motion to intervene, which the court denied, included a request to schedule a child custody hearing. In addition, the trial court ruled on the record that it will not act on the motion to schedule a custody trial because Grandparents do not have legal standing. N.T., 11/21/14, at 69–70, 75. We deem this to be, in effect, a dismissal of their custody complaint. Therefore, we conclude that this appeal is properly before us, and we will review it on its merits.

4 Neither DHS, Mother, nor Father filed an appellee brief in this appeal. The Child Advocate asserts in its brief that the trial court did not commit an error of law. The Child Advocate asserts that Grandparents do not have standing to intervene in the dependency matter pursuant to the Juvenile Act. We deem this argument irrelevant because the issue in this case is whether Grandparents may file a child custody action concurrent to the dependency actions pending with respect to their grandsons. Indeed, Grandparents expressly stated that they are not seeking to intervene in the dependency matters, as they agree they do not have standing to intervene under the Juvenile Act. *See* N.T., 11/21/14, at 11, 62. Next, the Child Advocate asserts that Section 5324 "appears to give the grandparents the right to file a petition for custody when their grandchildren have been adjudicated dependent, [but] it does not indicate how and when that petition should be heard in light of Juvenile Act's hierarchy of permanency goals." Child Advocate Brief at 24. The Child Advocate then asserts that the trial court found it premature to list the custody complaint for trial because the permanency goals for the family remained reunification, and, in so doing, the court gave effect to both the Custody Act and the Juvenile Act. We reject this argument for reasons explained fully below.

5 "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." *T.B. v. L.R.M.*, 567 Pa. 222, 786 A.2d 913, 916 (2001).

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6 In this case, it is undisputed that Grandparents' relationship with G.L.P. and C.L.P. began with the consent of the parents, and that Grandparents are willing to assume responsibility for their dependent grandsons. *See* 23 Pa.C.S. § 5324(3)(i)–(ii).

7 Any implications concerning the children's reunification goals could pertain to the merits of the instant custody complaint, upon which we express no opinion. However, they do not negate the Grandparents' standing, which, as we have explained, is controlled by the plain text of Section 5324(3)(iii)(A) in this case.

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196 A.3d 1065

M.W., Appellant
v.
S.T. and V.T., Appellees

No. 712 WDA 2018

Superior Court of Pennsylvania.

Submitted July 30, 2018
Filed September 26, 2018

David T. Leake, Somerset County Conflict Counsel, Somerset, for appellant.

Scott A. Walker, Somerset, for appellee.

Valerie M. Schwab, Somerset, for Children and Youth, participating party.

BEFORE: OLSON, MCLAUGHLIN, and STRASSBURGER, JJ.*

OPINION BY STRASSBURGER, J.:

M.W. (Grandmother) appeals from the order entered April 16, 2018, which dismissed her complaint for custody of her minor grandchildren, O.T. and S.T. (collectively, Children). We affirm.

We provide the following background. The biological parents of Children are Appellees, S.T. and V.T. (collectively, Parents). Grandmother is the biological mother of V.T., Children's father. According to Grandmother, Somerset County Children and Youth Services (CYS) placed Children in her care in May 2015, and they remained with her until November 2015. Complaint, 3/6/2017, at ¶ 7. During that placement, Children were adjudicated dependent.[1] In November 2015, CYS removed Children from Grandmother's care and placed them in the care of their biological aunt.[2] Subsequently, in July 2016, Children were moved again and placed with another set of biological grandparents. According to Grandmother, it was at this point that she stopped having visits with Children.

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On September 29, 2016, Grandmother filed a petition with the juvenile court to intervene in the dependency proceedings.[3] N.T., 4/13/2018, at 12. Prior to disposition of Grandmother's petition, Children were returned to the care of their Parents in January 2017, but remained dependent. On February 2, 2017, argument was held on Grandmother's petition to intervene, and that petition was denied on February 8, 2017. ***Id.*** at 13. The order provided that Grandmother could re-file the petition in the civil division. On March 6, 2017, Grandmother filed a complaint for custody against Parents in the civil division.[4]

Efforts to hold a required custody conference between Grandmother and Parents were unsuccessful. The certified record reveals that a conciliation or mediation conference was scheduled for May 12, 2017. However, prior to that conference, all parties were required to attend a Families of Children Under Stress (FOCUS) seminar. As of May 12, 2017, neither Grandmother nor Parents had attended the FOCUS seminar, and the trial court rescheduled the conference to August 4, 2017.

Meanwhile, on June 21, 2017, "CYS determined that [Children] were no longer dependent, reunited [Children] with [Parents], and closed the CYS investigation and dependency proceedings." Trial Court Opinion, 5/25/2018, at 4. On August 4, 2017, Grandmother requested a continuance of the custody conference due to her health issues. The trial court granted the continuance and required Grandmother to file a praecipe to reschedule the conference. Grandmother filed a praecipe on September 29, 2017, and the conference was scheduled for December 8, 2017. Neither Grandmother nor Parents appeared for that conference, and the trial court entered an order permitting the case to be scheduled for non-jury trial upon praecipe of either party.

On December 12, 2017, Grandmother filed a praecipe. Counsel for Parents entered his appearance on February 27, 2018, and on March 7, 2018, Parents filed a petition to dismiss

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Grandmother's complaint. In that petition, Parents asserted that Grandmother does not have standing to seek custody of Children pursuant to 23 Pa.C.S. § 5324, because the juvenile court closed the dependency case on June 21, 2017, and Children and Parents were living together as an intact family.

Argument on the motion was scheduled for April 13, 2018. Both the day before argument and just prior to the argument itself, there were attempts to resolve the matter amicably. However, negotiations proved to be unsuccessful and argument on the petition to dismiss was held. ***See*** N.T., 4/13/2018, at 2-3. Parents contended that Grandmother's standing ended on June 21, 2017, when the juvenile court closed the dependency case. Grandmother argued that the trial court should determine the standing issue from the time she filed her complaint. ***Id.*** at 14. Alternatively, Grandmother contended that the statute permits a grandparent "to come back later on to sue for custody ... [because there is] the potential for [ ] issues [related to the prior dependency] to reoccur." ***Id.*** at 15.

At the close of argument, the trial court concluded that pursuant to the statute, Grandmother no longer had standing to seek custody of Children because they were no longer dependent and were residing with Parents. Accordingly, the trial court granted Parents' petition to dismiss

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Grandmother's complaint for custody.[5] Order, 4/16/2018.

Grandmother timely filed a notice of appeal and concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i). The trial court filed an opinion in response.

On appeal, Grandmother argues the trial court erred in dismissing her complaint for lack of standing pursuant to 23 Pa.C.S. § 5324.[6] ***See*** Grandmother's Brief at 3. We review this claim mindful of the following.

"Threshold issues of standing are questions of law; thus, our standard of review is *de novo* and our scope of review is plenary." ***K.W. v. S.L.*** , 157 A.3d 498, 504 (Pa. Super. 2017).

> The concept of standing, an element of justiciability, is a fundamental one in our jurisprudence: no matter will be adjudicated by our courts unless it is brought by a party aggrieved in that his or her rights have been invaded or infringed by the matter complained of. The purpose of this rule is to ensure that cases are presented to the court by one having a genuine, and not merely a theoretical, interest in the matter. Thus the traditional test for standing is that the proponent of the action must have a direct, substantial and immediate interest in the matter at hand.
>
> Moreover:
>
> In the area of child custody, principles of standing have been applied with particular scrupulousness because they serve a dual purpose: not only to protect the interest of the court system by assuring that actions are litigated by appropriate parties, but also to prevent intrusion into the protected domain of the family by those who are merely strangers, however well-meaning.

D.G. v. D.B. , 91 A.3d 706, 708 (Pa. Super. 2014) (internal quotations omitted). "Generally, the Child Custody Act does not permit third parties to seek custody of a child contrary to the wishes of that child's parents. The Act provides several exceptions to this rule, which apply primarily to grandparents and great-grandparents." ***K.W.*** , 157 A.3d at 504.

[196 A.3d 1070]

The most recent version of the Grandparent Custody and Visitation Act was enacted in 2010 and provides two separate provisions for grandparents seeking custody of their grandchildren.[7] Any grandparent may seek any form of custody pursuant to 23 Pa.C.S. § 5324(3). In addition, for grandparents in certain situations, they may seek partial custody pursuant to section 5325.[8] Here, there is no dispute that only subsection 5324(3) applies, and that section provides the following in relevant part.

> **§ 5324. Standing for any form of physical custody or legal custody**
>
> The following individuals may file an action under this chapter for any form of physical custody or legal custody:
>
> (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. § 5324.

In this case, Grandmother contends that the Children were "dependent from July 15, 2015 until June 21, 2017," and she filed her complaint for custody on March 6, 2017, while they were dependent. Grandmother's Brief at 17. Thus, she argues she

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satisfies subsection 5324(3)(iii)(A) because "[children have] been determined to be [ ] dependent [children]."[9] ***Id.***

At the time Grandmother filed her petition, she clearly had standing to file a custody complaint pursuant to this statute because Children were dependent. However, during the course of the proceedings, the juvenile court determined Children were no longer dependent; thus, the trial court concluded that Grandmother lost her standing. ***See*** Trial Court Opinion, 5/25/2018, at 5. Grandmother disagrees with this interpretation, instead arguing that a "clear and plain reading of the statute provides no indication for termination of standing upon closing of the dependency proceedings." Grandmother's Brief at 20. Thus, Grandmother first argues that the trial court erred in concluding she no longer had standing because it evaluated her claim at the wrong time. According to Grandmother, the trial court should have looked back to the time she filed her complaint to evaluate standing. ***See*** Grandmother's Brief at 18-19.

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While there are no custody cases directly on point, we have pointed out that "custody cases may be fluid under some circumstances." ***M.G. v. L.D.*** , 155 A.3d 1083, 1087 n.5 (Pa. Super. 2017). Furthermore, this Court has "re-evaluated a party's standing following a factual change in circumstances, *i.e.* , the termination of parental rights or adoption." ***Id.*** Finally, our rules permit parties to raise issues related to standing beyond the 20-day period provided for preliminary objections. ***See*** Pa.R.C.P. 1915.5(a) ("A party must raise any question of jurisdiction of the person or venue, **and 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 the hearing, whichever first occurs.") (emphasis added).

Based on the foregoing, we conclude that Children's change in status from dependent to not dependent, and reunification with Parents, are relevant changes in circumstances that permit the re-evaluation of standing upon motion by a party. In fact, it would not make sense to permit a party to raise standing at any time, but then consider the factual circumstances as they existed at the time the complaint was filed for such fluid child custody cases. Accordingly, we hold the trial court did not err in considering the circumstances as they were at the time the petition to dismiss was filed when determining standing.[10]

Grandmother next argues that even if we were to consider the circumstances at the time the petition to dismiss was filed, the statute nevertheless permits a trial court to grant Grandmother standing

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due to the potential for an unspecified future harm or future dependency adjudication. ***See*** Grandmother's Brief at 20. To the extent that this portion of the statute is ambiguous on this point,[11] we consider it mindful of the following.

> The nationwide enactment of nonparental visitation statutes is assuredly due, in some part, to the States' recognition of these changing realities of the American family. Because grandparents and other relatives undertake duties of a parental nature in many households, States have sought to ensure the welfare of the children therein by protecting the relationships those children form with such third parties. The States' nonparental visitation statutes are further supported by a recognition, which varies from State to State, that children should have the opportunity to benefit from relationships with statutorily specified persons—for example, their grandparents. The extension of statutory rights in this area to persons other than a child's parents, however, comes with an obvious cost. For example, the State's recognition of an independent third-party interest in a child can place a substantial burden on the traditional parent-child relationship.

Troxel v. Granville , 530 U.S. 57, 64, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) (plurality). The United States Supreme Court observed that the "liberty interest ... of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court." ***Id.*** at 65, 120 S.Ct. 2054. Further, the Court has "recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children." ***Id.*** at 66, 120 S.Ct. 2054. Thus, "so long as a parent adequately cares for his or her children (*i.e.* , is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." ***Id.*** at 68-69, 120 S.Ct. 2054.

The Pennsylvania Supreme Court has recognized these principles as well.

> [A]bsent factors such as abuse, neglect, or abandonment, the law presumes parents are fit and, as such, that their parenting decisions are made in their children's best interests. In the context of grandparent-initiated litigation, then, the rewritten Chapter 53 can only [apply] if the prerequisites to grandparent standing effectively filter out cases where there is little reason to believe the government may constitutionally exercise its *parens patriae* power by ordering partial custody over the parents' objections.

D.P. , 146 A.3d at 214 (internal citations omitted).

Our Supreme Court held that efforts to usurp a presumptively fit parent's rights to the upbringing of his or her children is subject to constitutional limitations. The Court concluded "the fact of a parental separation for six months or more does not render the state's *parens patriae* interest sufficiently pressing to justify potentially

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disturbing the decision of presumptively fit parents concerning the individuals with whom their minor children should associate." ***Id.*** at 215.

Based on the foregoing, it is clear that Grandmother's argument, which relies upon bootstrapping a closed dependency adjudication in an effort to obtain visitation, fails.[12] If Grandmother had concerns for Children's safety, she could have raised a subsection 5324(3)(iii)(B) (permitting grandparent standing where "the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity") argument before the trial court. She did not, and in fact, she essentially agreed that Children were being cared for adequately, and her goal with these proceedings was to have the court order periods of partial custody because Parents were not permitting her to see Children. N.T., 4/13/2018, at 18. That is not the purpose of section 5324 ; thus, we disagree with Grandmother that she should be permitted to bootstrap a prior dependency adjudication for this purpose.

Based on the foregoing, we conclude the trial court did not err in granting Parents' petition to dismiss Grandmother's complaint for custody.

Order affirmed.

Notes:

[*] Retired Senior Judge assigned to the Superior Court.

[1] The dependency arose from the situation with Parents.

[2] According to Grandmother, she still saw Children three-to-four days each week. N.T., 4/13/2018, at 11.

[3] There were two separate dependency proceedings, one for each child.

[4] That complaint for custody also listed CYS as a defendant.

[5] In addition, the trial court dismissed CYS as a party in the action.

[6] Grandmother also complains that the juvenile court erred in dismissing her petition to intervene filed in the dependency proceedings. Grandmother's Brief at 13-15. However, Grandmother did not file an appeal at those docket numbers or even identify those orders as orders from which she wished to appeal in the notice of appeal in this case. While the rules permit a party to file "only a single notice of appeal to secure review of prior non-final orders that are made final by the entry of a final order," the rule also provides that "[w]here ... one or more orders resolves [*sic*] issues arising on more

than one docket..., separate notices of appeal must be filed." ***See*** Pa.R.A.P. 341 (Note). Accordingly, we will not review the juvenile court orders.

Additionally, according to Grandmother, she did not appeal those orders "as said appeal would have almost certainly been treated by this Court as interlocutory and quashed due to the unique procedural posture." Grandmother's Brief at 14. That is not necessarily true. ***See K.C. v. L.A.*** , 633 Pa. 722, 128 A.3d 774 (2015) (holding that an appeal from an order denying intervention in a custody action is a collateral order); ***In re J.S.*** , 980 A.2d 117 (Pa. Super. 2009) (holding that an order granting foster parents' permission to intervene in dependency case is an appealable collateral order); ***In the Interest of B.S.*** , 923 A.2d 517 (Pa. Super. 2007) (assuming jurisdiction over appeal from order denying grandmother's petition to intervene in dependency proceeding). However, this Court has held consistently that individuals in Grandmother's situation do not have standing to intervene in dependency proceedings. ***See e.g.*** , ***In the Interest of L.C., II*** , 900 A.2d 378 (Pa. Super. 2006).

[7] These sections also apply to great-grandparents seeking custody of their great-grandchildren.

[8] This section of the statute has been through several iterations due to our Supreme Court having declared a portion of it unconstitutional in ***D.P. v. G.J.P.*** , 636 Pa. 574, 146 A.3d 204 (Pa. 2016) and an amendment to the 2010 version of the statute, which was effective on July 3, 2018. In 2010, this statute permitted grandparents to seek custody where a parent of their grandchild is deceased, where the parents of their grandchildren have been separated for a period of at least six months or have commenced and continued a proceeding to dissolve the marriage, or where their grandchild has been living with them for at least 12 consecutive months. Then, in ***D.P.*** , our Supreme Court held unconstitutional only the portion of the statute permitting grandparents to file a custody action where the parents of their grandchild are separated. Finally, effective July 3, 2018, the entire statute has been amended and provides for three situations where grandparents may file an action for custody: 1) where a parent of their grandchild is deceased; 2) where their relationship with their grandchild began with the consent of a parent or court order and the parents of their grandchild have commenced a custody proceeding and do not agree as to whether grandparents should have custody; or 3) where their grandchild has resided with them for at least 12 consecutive months. Because certain cases cited *infra* reference both statutes, we provide this background for clarity.

[9] There does not appear to be a dispute at this juncture that Grandmother satisfies the other prongs of this statute, *i.e.* , that her relationship with Children began with the consent of Parents or court order, and that she is willing to assume responsibility for Children. ***See*** 23 Pa.C.S. § 5324(3)(i) and (ii).

[10] As a corollary, Grandmother argues that much of the delay in having her custody complaint heard was attributable to Parents. ***See*** Grandmother's Brief at 21. Even if such delay would permit this Court to evaluate standing at a different time, this argument would not entitle Grandmother to relief as it is belied by the record. As recounted *supra* , Grandmother initially tried to intervene in the dependency proceedings, which, by law, she was not able to do. Then, she filed her complaint for custody in the appropriate division, but did not attend the FOCUS seminar as required. Thus, Grandmother herself contributed significantly to any delay.

[11] Arguably, the term "has been determined to be a dependent child," could be ambiguous under these circumstances. 23 Pa.C.S. § 5324(3)(iii)(A). In that case, the object of interpretation "is to ascertain and effectuate the intention of the General Assembly." ***In re C.L.P.*** , 126 A.3d 985, 989 (Pa. Super. 2015).

[12] ***D.P.*** analyzed section 5325, which involves partial custody only. We recognize that this case involves section 5324, which permits any form of custody. However, we must point out that in this case, Grandmother is seeking only partial custody. Grandmother was asking the trial court

for "a weekend or two visit every six weeks." N.T., 4/13/2018, at 18. Grandmother was upset because she used to see Children frequently, but due to arguments with Parents, she was no longer able to see Children. ***Id.***

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