

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KAIN N. KELLY,
Plaintiff

vs.

NATASHA K. STEPPE,
Defendant

: No. 24-20327
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: CIVIL ACTION - LAW
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OPINION and ORDER

Presently before the Court is Defendant’s Preliminary Objections that challenge Plaintiff’s standing with respect to the Custody Complaint filed April 2, 2024.

Plaintiff is seeking physical and legal custody of the minor child, ANK. Specifically, Plaintiff asserts that he acted as ANK’s Father from 2019 until 2022, when Defendant and Plaintiff separated. Plaintiff is not ANK’s biological Father as the Plaintiff is transgender. Rather the parties used an agreed upon donor to impregnate Mother. Since Plaintiff is not ANK’s biological Father, Plaintiff argues that he stands *in loco parentis* to ANK.

Defendant filed preliminary Objections to the Custody Complaint. Defendant contends that Plaintiff does not stand *in loco parentis* and therefore the complaint should be dismissed. On June 28th, 2024 the Court received testimony and argument from both parties.

DISCUSSION

Pursuant to 23 Pa. C.S.A § 5324 an individual may file an action for any form of physical custody or legal custody if they stand *in loco parentis*. The Pennsylvania Supreme Court in *T.B. v. L.R.M.* explains the doctrine of *in loco parentis* as “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.”¹ There must be the assumption of a parental status, as well as, the discharge of parental duties.² Essentially the non-biological parent’s relationship and duties to the child is exactly that of biological parent. Lastly, the non-parent cannot place themselves *in loco parentis* in defiance of the parent’s wishes and the parent/child relationship.³

¹ *T.B. v. L.R.M.*, 786 A.2d 913 (2001)

² *Id.* At 228

³ *Id.* At 229

In *T.B.*, the parties were a same-sex couple who were engaged in an intimate relationship and subsequently decided to have a child. They resided together, cared for the child equally and went on family vacations together. The Court found that the Appellee did have *in loco parentis* standing.

The Supreme Court in *C.B. v. J.H.*, 193 A. 3d 418 (PA. 2018), declined to grant Appellant *in loco parentis* status. In this case the decision to have the child was a decision made solely by the biological mother. The non-biological party made no decisions regarding the health or education. Rather Appellant acted more like a babysitter as opposed to assuming the duties of a parent.

In the instant case, Plaintiff and Defendant provide two very different versions of Plaintiff's involvement with ANK. What they do agree upon is that ANK was conceived with the help of a sperm donor who was identified and agreed upon by both parties. It was further established that the donor was not involved in ANK's life in any capacity or at any time. The parties also agree they were in a relationship from the time ANK was born until approximately May of 2022. They also agree that ANK was conceived via a sperm donor by mutual agreement.

Defendant contends that although she considered the parties a family prior to their move to Cincinnati in 2020 Plaintiff did not perform any parental duties and only occasionally assisted Defendant because they were living together. Specifically, Defendant stated that during the work week Plaintiff would stay home with ANK and the only care he provided was lying in bed watching videos on a phone.⁴ Defendant stated that she was primarily responsible for ANK including the scheduling of doctors' appointments as well as purchasing clothes for ANK. Although Defendant held herself out as the primary caregiver for the child, Defendant did acknowledge that she, Plaintiff and ANK engaged in activities as a family, such as, go to parks, go out to eat, and go to family functions together.

After their separation Mr. Kelly went to rehab as a result of his alcohol dependency. Mr. Kelly's dependency on alcohol appears to be the root cause of the parties separation. Defendant was ultimately awarded a final Protection from Abuse Order that including both Defendant and ANK as protected parties. Prior to entry of the PFA and while Mr. Kelly was in rehab there were three visits between Plaintiff and ANK. These visits occurred following the parties separation. After

⁴ *Transcript at p. 14-15*

the third and final visit Mother then filed for protective order. Once ANK was included as a protected party under the PFA in December 2022, Plaintiff no longer had contact with ANK.

Plaintiff asserts that although he only attended one doctor's appointment he did provide financial support for ANK including the purchase of formula, clothes and diapers. Plaintiff also stated that he provided Defendant with money for the ANK.⁵ Plaintiff further maintains that the parties did agree that Plaintiff would adopt ANK, but the adoption was contingent upon him no longer consuming alcohol.⁶ Moreover, Plaintiff made it clear that after the parties separation he tried to file for custody in 2022, but same was ultimately dismissed because he failed to complete the documents correctly.⁷

Plaintiff also presented numerous pictures that documented Defendant's pregnancy as well as the parties preparing the unborn child's room. These pictures were all captured during the time that the parties were cohabitating and awaiting the birth of ANK. Additional pictures introduced by Plaintiff depict what the Court considers family photos to include a trip to the zoo, a local amusement park, a sibling's softball games, the local library, as well as various photos with Plaintiff's family members and visits with Plaintiff in the rehab facility.

Plaintiff's sister, Shamone Kelly, also testified on Plaintiff's behalf. Ms. Kelly stated that she was introduced as ANK's Aunt. She also testified that she witnessed Plaintiff performing parental duties on behalf of ANK that Plaintiff did speak with her about filing for custody prior to the filing of the instant complaint

Analysis

Since Plaintiff is not the biological parent of ANK or an adoptive parent, the Court's analysis is limited to whether Plaintiff has standing pursuant to *in loco parentis*. As stated above, Plaintiff must demonstrate that [he] put himself 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."⁸ Plaintiff must also establish that he assumed parental status, and discharged those

⁵ *Id.* At 41

⁶ *Id.* At 43

⁷ *Id.* At 54

⁸ *T.B. v. L.R.M.*, at 228

parental duties.⁹ Lastly, the non-parent cannot place themselves *in loco parentis* in defiance of the parent's wishes and the parent/child relationship.¹⁰

Based on the testimony presented by both parties it is clear that Plaintiff and Defendant were conducting themselves as a family unit. Not only did the parties mutually agree to conceive ANK, Plaintiff testified that he also cared for Defendant's other children.¹¹ Additionally, he cared for the ANK while the Defendant was working. He purchased food and clothing and cared for ANK for the first three years of ANK's life. Plaintiff assumed the role of a parent and discharged the parental obligations daily. Further, Plaintiff presented many photos that can only be described as capturing an endearing parent-child relationship. Defendant admitted that that she considered herself, Plaintiff, and the minor child a family for at least a portion of the relationship and during that time, Plaintiff acted as ANK's parent with the support of Defendant.

Although the Court understands Defendant's frustration with Plaintiff's struggle with alcohol throughout their relationship, this does not discount the fact that Plaintiff did act as the Father figure for ANK and since entry of the PFA has made several attempts to reintroduce himself into the life of ANK. Accordingly, the Court finds that Plaintiff is *in loco parentis* to ANK, and accordingly has standing to pursue legal and physical custody.

⁹ *Id.* At 228

¹⁰ *Id.* At 229

¹¹ *Transcript a p.35t*

ORDER

AND NOW, this **20th** day of **August, 2024**, Defendant's Preliminary Objections to Plaintiff's Complaint for Custody are denied. A custody conference is scheduled for the **25th, day of September, 2024 in courtroom no. 6 of the Lycoming County Courthouse.**

By The Court,

Ryan C. Gardner, Judge

RCG/kbc

cc: Kai Kelly – 1850 Chase Ave., B9 Cincinnati, OH 45223
Sharon McLaughlin, Esq.
Gary Weber, Esq.
Family Court