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containing the decisions rendered in the 52nd Judicial District

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No. 29

Public Notices

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NAME CHANGE**

Opinion

Heagy v. Haduck and Heagy No. 2012-20214

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**Paul W. Kilgore, Esq., Chair
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DECEDENTS' ESTATES

NOTICE IS HEREBY GIVEN that Letters Testamentary or of Administration have been granted in the following estates. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

FIRST PUBLICATION

ESTATE OF GALEN S. BOLLINGER, late of Bethel Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Galen L. Bollinger, Executor
c/o Zimmerman Law Office
466 Jonestown Road
Jonestown PA 17038

ESTATE OF THERESA FERRETTI, late of the Borough of Myerstown, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executors.

Contina Ferretti, Executor
Louis Ferretti, Executor
107 S. Cherry Street
Myerstown, PA 17067

Kenneth C. Sandoe, Esquire
Steiner & Sandoe, Attorneys

ESTATE OF LINDA S. HIBSHMAN, late of Myerstown, Lebanon County, PA, deceased. Letters of Administration have been granted to the undersigned Administrator.

Warren J. Hibshman, Administrator
35 East Main Avenue
Myerstown PA 17067

Ann H. Kline, Esq.
547 South Tenth Street
Lebanon PA 17042
717-274-2184

ESTATE OF EUGENE D. LONGENECKER, late of Lebanon City, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Donna Kreiser, Executrix
c/o Jon Arnold, Esq.
Ehrgood and Arnold
410 Chestnut Street
Lebanon PA 17042

ESTATE OF RUSSELL E. LYONS, late of Union Township, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrators.

Danielle L. Bender and Corey M. Lyons –
Administrators
c/o Keith D. Wagner
P. O. Box 323
Palmyra, PA 17078
Attorney

ESTATE OF JOSEPH W. PETRY, late of South Lebanon Township, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administratrix.

Jennifer Swanson, Administratrix
123 South 5th Avenue
Lebanon, PA 17042

Jason J. Schibinger, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF CAROLYN L. MARIANI, late of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Bernadette Huey, Executrix
16 Cambridge Drive
Hershey PA 17033

Ann H. Kline, Esq.
547 South Tenth Street
Lebanon PA 17042
717-274-2184

ESTATE OF LEROY A. MEASE, late of the Township of West Lebanon, County of Lebanon, and Commonwealth of Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrator.

Beverly A. Stuckey, Administrator
111 N. Ramona Rd., Lot 61
Myerstown, PA 17067

William H. Sturm, Jr., Esquire
Steiner & Sandoe, Attorneys

ESTATE OF ALBERT W. MOSSER, JR., late of Annville, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Gail E. Forbes, Executrix
2163 Gelder Park Drive
Hummelstown PA 17036

Deborah L. Packer, Esq.
1135 E. Chocolate Ave.
Hershey PA 17033
Attorney

SECOND PUBLICATION

ESTATE OF DOROTHY S. BATCHELOR, late of Annville Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

S. James Batchelor, Executor
Keith D. Wagner, Attorney
P.O. Box 323
Palmyra, PA 17078

ESTATE OF WENDEL STAHLER BECKMAN, late of Jonestown, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administratrix.

Roberta A. Beckman, Administratrix
c/o Weiss Burkett
802 Walnut Street
Lebanon, PA 17042

Samuel G. Weiss Jr., Esquire
Attorney

ESTATE OF GEORGE P. FISHEL, III, late of South Lebanon Township, Lebanon County, PA. Letters Testamentary have been granted to the undersigned Executor.

J. Mattson Fishel, Executor
c/o Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF STEVEN LEE FORTI, late of Palmyra, Lebanon County, PA, deceased. Letters of Administration have been granted to the undersigned Administrator.

Roland F. Forti, Jr., Administrator
123 S. Prince Street
Palmyra PA 17078
Hillary N. Snyder, Esq., Attorney

ESTATE OF SALLY ANN GETTLE-SIMMONS, late of Lebanon, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Gregory Gettle, Executor
c/o Weiss Burkett
802 Walnut Street
Lebanon, PA 17042

Loreen M. Burkett, Esquire
Attorney

ESTATE OF BRUCE V. KEENEY, late of Jonestown Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Fred T. Keeney, Executor
c/o Zimmerman Law Office
466 Jonestown Road
Jonestown PA 17038

John M. Zimmerman, Esquire
Attorney for the Estate

ESTATE OF DOROTHY V. KRALL, late of Annville, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Ernest Krall, Executor
c/o Weiss Burkett
802 Walnut Street
Lebanon, PA 17042

Loreen M. Burkett, Esquire
Attorney

ESTATE OF LEONARD L. QUICK, late of Millcreek Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Maureen Q. Leshner, Executrix
1925 Garfield Avenue
Reading PA 19609

Elizabeth Roberts Fiorini, Esquire
Fiorini Law, P.C.
1150 West Penn Avenue
Womelsdorf, Pennsylvania 19567
Attorney

ESTATE OF IDA M. RESSLER, late of Millcreek Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Kelly R. Weidman, Executrix
319 E. Main Street
Newmanstown PA 17073

Elizabeth Roberts Fiorini, Esquire
Fiorini Law, P.C.
1150 West Penn Avenue
Womelsdorf, Pennsylvania 19567
Attorney

ESTATE OF GLORIA P. SHIRK, late of West Lebanon Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Marilyn R. Galebach, Executrix
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

THIRD PUBLICATION

ESTATE OF JAMES H. BLOUCH, late of the City of Lebanon, County of Lebanon, Pennsylvania, died December 12, 2017. Letters Testamentary have been granted to the undersigned Executor.

Charles E. Blouch, Jr., Executor
1005 South Second Avenue
Lebanon, Pennsylvania 17042

Attorney: Terrence J. Kerwin
Kerwin & Kerwin, LLP
4245 State Route 209
Elizabethville, Pennsylvania 17023

ESTATE OF RUTH N. HETRICK, late of South Londonderry Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Frederick E. Wilt, Executor
c/o Keith D. Wagner
P.O. Box 323
Palmyra, PA 17078 – Attorney

ESTATE OF PATRICIA A. HOFFMAN, late of the Township of Jackson, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Douglas L. Hoffman, Executor
7 Lorraine Avenue
Myerstown, PA 17067

Kenneth C. Sandoe, Esquire
Steiner & Sandoe, Attorneys

ESTATE OF JUSTINE M. PRITZ, a/k/a Justine M. Souders, late of Swatara Township, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrator.

Keith F. Pritz, Administrator
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF JOAN S. RAGUS, a/k/a Joan Shirley Ragus, late of South Lebanon Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Roxanne L. Dohner, Executrix
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF CLIFFORD L. RASP, late of North Annville Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Linda J. Miller, Executrix
c/o Gerald J. Brinser
P. O. Box 323
Palmyra, PA 17078 – Attorney

ESTATE OF JANE L. SHUEY, late of Palmyra Borough, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Pamela J. Sheriff, Timothy M. Shuey,
Beth M. Dove, Co-Executors
c/o Keith D. Wagner
P. O. Box 323
Palmyra, PA 17078-Attomey

ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State at Harrisburg, Pennsylvania on January 31, 2018, incorporating **Gitke Associates, P.C.** as a professional corporation under the provisions of the Business Corporation Law of 1988.

Michelle R. Calvert, Esquire
Reilly Wolfson
1601 Cornwall Road
Lebanon, PA 17042

CHANGE OF NAME

IN THE COURT OF COMMON PLEAS
of Lebanon, County, Pennsylvania

NOTICE is hereby given that on 12/01/2017, a petition for change of name was filed in the Court of Common Pleas, requesting a decree to change the name of **Dolores L. Dreer to Dolores L. Motter.** The Court has fixed the 6th day of March 2018 at 4:00 p.m. at the Lebanon County Courthouse, Courtroom 2 as the time and place for the hearing on said petition when and where all persons interested may appear and show cause, if any they have, why the prayer of the said petitioner should not be granted.

HEAGY V. HADUCK AND HEAGY NO. 2012-20214

Civil Action-Family Law-Custody-Grandparents-Preliminary Objection-Standing-Incarceration of Parent-Statutory Construction-In Loco Parentis-Best Interests of the Child

Plaintiffs Margaret Heagy and Timothy Heagy (“Grandparents”), paternal grandparents of the child in this case, lodged a Complaint seeking partial physical and shared legal custody of their five (5) year old grandchild against the child’s mother, Defendant Kristine Haduck (“Mother”), and the child’s father, Defendant Tyler Heagy (“Father”), who currently is serving a seven (7) to twenty (20) year sentence of incarceration relating to criminal convictions including Criminal Attempt to Commit Criminal Homicide. Mother filed Preliminary Objections to the Complaint, asserting that Grandparents lack standing to seek partial custody of her child.

1. Pa.R.C.P. Rule 1028(a)(5) permits a party to file a preliminary objection alleging the lack of standing of another party to sue.
2. In the area of child custody, principles of standing have been applied with particular scrupulousness because they serve the dual purpose of assuring that actions are litigated by appropriate parties and preventing intrusion into the protected domain of the family by those who merely are strangers.
3. The guiding polestar in deciding all cases involving a child, including whether grandparent visitation rights should be awarded, is the best interests of the child.
4. The law protects a natural parent’s relationship with his or her child and will not interfere unnecessarily with that relationship, even at the cost of estrangement to the extended family.
5. To interfere with the right of a parent to raise his or her child in favor of a third party, including a grandparent, the record must establish a statutory basis for standing of that third party.
6. The basic tenet of statutory construction requires the court to construe the words of a statute according to their plain meaning.
7. When the words of a statute are clear and unambiguous, the court cannot disregard them under the pretext of pursuing the spirit of the statute.
8. Title 23 Pa.C.S. § 5325 provides that a grandparent may seek partial custody of a grandchild where the parent of the grandchild is deceased, the parents of the grandchild have initiated divorce proceedings or the grandchild has resided with the grandparent for a

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period of twelve (12) consecutive months, is removed by the parents and the grandparent has filed an action within six (6) months of the grandchild's removal.

9. In light of the fact that the child's parents are alive, the child's parents never were married such that divorce proceedings could be commenced and the child has not resided with Grandparents for twelve (12) consecutive months, Grandparents have no standing to pursue partial custody of the child pursuant to § 5325.

10. Title 23 Pa.C.S. § 5324 provides that a person who stands in loco parentis to a child may file an action for any form of physical or legal custody.

11. The phrase "in loco parentis" refers to a person who puts himself or herself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of legal adoption.

12. In loco parentis standing will be found where the child has established strong psychological bonds with a person who, although not a biological parent, has lived with the child and has provided care, nurture and affection, assuming a status like that of a parent in the child's eye.

13. While the record establishes that Father took the child to Grandparents' home during his custodial visits at which time Grandparents provided care and affection for the child and Mother and child lived with Grandparents for a period of time when the child was younger, the record fails to establish that Grandparents developed a strong psychological bond with the child such as that enjoyed between a child and a parent so as to confer in loco parentis standing upon Grandparents.

L.C.C.C.P. No. 2012-20214, Opinion by Samuel A. Kline, Judge, July 21, 2017.

HEAGY V. HADUCK AND HEAGY NO. 2012-20214

**IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY,
PENNSYLVANIA**

CIVIL DIVISION No.: 2012-20214

MARGARET HEAGY and TIMOTHY HEAGY, Plaintiffs

v.

KRISTINE HADUCK and TYLER HEAGY, Defendants

ORDER

AND NOW, to wit, this 21st day of July, 2017, upon consideration of Defendant's Preliminary Objections, the Plaintiffs' Complaint, the parties' submitted briefs and the arguments presented before this Court, Defendant's Preliminary Objections are SUSTAINED and this matter is therefore DISMISSED.

BY THE COURT:

SAMUEL A. KLINE, J.

APPEARANCES:

GREER H. ANDERSON, ESQ. - for Plaintiffs

ERIN ZIMMERER, ESQ. - for Defendant, Kristine Haduck

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OPINION, KLINE, J., JULY 21, 2017

Before the Court are Defendant's Preliminary Objections to Plaintiffs' Complaint. For reasons set forth herein, Defendant's Preliminary Objections are sustained as specified below.

FACTS AND PROCEDURAL HISTORY

This matter involves custody of a five-year-old girl ("K.H."). Plaintiffs ("Grandparents") are the paternal grandparents of K.H. and are seeking shared legal and partial physical custody of K.H. Defendant, Kristine Haduck ("Mother") is K.H.'s natural mother and Defendant, Tyler Heagy ("Father") is K.H.'s natural father. Mother and Father were never married and K.H. has resided with her Mother since birth and continues to do so. Father is now incarcerated.

While the parties dispute the facts in regards to the exact amount, it is agreed that K.H. spent some time with Father at Grandparents' home, including some overnight stays. Furthermore, it is agreed between the parties that Father spent a portion of time living with Mother during the course of K.H.'s life. Lastly, Father has a son from a previous relationship that K.H. has had at least some contact with during past visits.

On March 13, 2017, Father pled guilty to various criminal counts, including the attempted murder of Mother, upon which he was sentenced to 7 to 20 years confinement. The sentencing order also stated that "father shall have no contact with the victims in this case: [Mother] and her family."

Grandparents filed their Complaint for Custody on April 6, 2017, alleging standing to do so under 23 Pa.C.S. § 5325. In providing for facts establishing standing, Grandparents stated that "Father resided with Plaintiffs and exercised his custodial periods in Plaintiffs' home, including overnight custody. Plaintiffs have been *in loco parentis* during those periods for at least two years." (Pl.'s Compl. ¶ 16(b)).

Mother filed Preliminary Objections in the nature of a demurrer on April 28, 2017, and filed her Brief in Support on June 5, 2017. Grandparents filed their Brief in Opposition on June 16, 2017. On June 30, 2017, this Court heard oral arguments from the parties in this matter. Thus, this matter is before us and ripe for disposition.

DISCUSSION

Under Pennsylvania Rule of Civil Procedure 1028(a)(5), a party may file preliminary objections alleging the lack of standing of another party to sue. Standing is a threshold matter that must be determined prior to judicial resolution. *Pittsburgh Palisades Park, LLC v. Com.*, 888 A.2d 655, 659 (PA. 2005).

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. . . . 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.

J.A.L. v. E.P.H., 682 A.2d 1314, 1318 (Pa.Super. 1996). Furthermore, in a recent decision, our Superior Court has stated that:

[W]hen our legislature has designated who may bring an action under a particular statute, a court does not have jurisdiction over the action unless the party bringing the action has standing. ...

[W]hen a statute creates a cause of action and designates who may sue, the issue of standing becomes interwoven with that of subject matter jurisdiction. Standing then becomes a jurisdictional prerequisite to an action. It is well-settled that the question of subject matter jurisdiction may be raised at any time, by any party

A.A.L. v. S.J.L., ___ A.2d ___, 603 WDA 2016 (Pa.Super. Apr. 10, 2017) (quoting *K.B. II v. C.B.F.*, 833 A.2d 767, 774 (Pa.Super. 2003)).

We begin by noting that Grandparents brought this action under 23 Pa.C.S § 5325, entitled “Standing for partial physical custody and supervised physical custody”, which provides the basis for standing under the statute as follows:

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:

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- (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 parents of the child have been separated for a period of at least six months¹ or have commenced and continued a proceeding to dissolve their marriage; 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.

However, Grandparents then pled facts to support their standing under Section 5325 as “Father resided with [Grandparents] and exercised his custodial periods in [Grandparents’] home, including overnight custody. [Grandparents] have been *in loco parentis* during those periods for at least two years.” (Pl.’s Compl. ¶ 16(b)). Since Section 5325 does not require *in loco parentis* status in order to obtain standing, we view Grandparents’ complaint as providing an alternative basis by which to claim standing to bring this action. We will therefore address Grandparents standing under both Section 5325 and as *in loco parentis*, under Section 5324.

Mother argues that Grandparents lack any standing by which to bring the present action. Referring to the plain language of Section 5325, Mother asserts that Grandparents do not meet the requirements under Section 5325 by which standing may be conferred. Father is not deceased and K.H. did not reside with Grandparents for at least twelve consecutive months. Furthermore, since Mother and Father were never married, there has been no commencement of action to dissolve any such marriage.

Mother additionally argues that Grandparents further lack any standing to seek custody as a third party or as *in loco parentis*. Mother states that she never consented to Grandparents standing as *in loco parentis* and she asserts that Grandparents have not played a substantial role in K.H.’s life or well-being. Mother alleges that K.H. has had limited contact with Grandparents while in Father’s physical custody, but that such does not satisfy *in loco parentis* standard or “the stringent *prima facie* right to custody by a third party.” (Def.’s Br.

¹ We note that the Pennsylvania Supreme Court recently severed the first half of paragraph (2) (relating to parents who have been separated for six months) from the remaining portions of the statute, declaring it unconstitutional in *D.P. v. G.J.P.*, 146 A.3d 204 (Pa. 2016).

10).

Grandparents acknowledge that Section 5325 provides standing to a grandparent only in limited circumstances — where a parent of the child is deceased or where the child has resided with the grandparent for at least twelve months consecutively. Furthermore, Grandparents admit that they do not facially meet the requirements of either of the enumerated circumstances. However, in acquiescing to the fact that Father is not deceased, Grandparents argue that the length of his sentence results in an absence from K.H.’s life that would have the same effect as if he were deceased.

Grandparents then refer to 1 P.S. § 1922(1) for the principle that “[i]n ascertaining the intention of the General Assembly in the enactment of a statute” one may presuppose that “the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.” Grandparents argue that the clear intent of the General Assembly in the enactment of Section 5325 was to ensure “that grandparents are not alienated from a grandchild’s life.” (Pl.’s Br. 6). To prohibit Grandparents from seeking custody would ensure that “K.H. will be completely estranged from [Grandparents’] life, and likely from the life of K.H.’s own brother.” (Pl.’s Br. 6).

It is true that “[t]he guiding polestar in deciding all cases involving a child, including whether grandparent visitation rights should be awarded is the best interests of the child.” *Hughes v. Hughes*, 463 A.2d 478, 480 (Pa.Super. 1983). However, “[t]he law protects the natural parent’s relationship with his or her child and will not interfere unnecessarily with that relationship, even at the cost of estrangement to the extended family.” *Jackson v. Garland*, 622 A.2d 969, 970–71 (Pa.Super. 1993).

The right to raise one’s children has long been recognized as one of our basic civil rights. Freedom of personal choice in matters of family life, and the concomitant freedom from unwarranted governmental intrusion, is a fundamental liberty interest protected by the Fourteenth Amendment. For these reasons, governmental intrusion into the family is warranted only in exceptional circumstances. The statutory bases for court interference with the parents’ right to custody are limited and specific, reflecting that philosophy.

Weber v. Weber, 524 A.2d 498, 498–99 (Pa.Super. 1987)(internal citations omitted). Therefore, to interfere with the right of parent to raise their child in favor of a third party, including a grandparent, we must have some statutory basis for standing. *See In re Custody of Hernandez*, 376 A.2d 648, 654 (Pa.Super. 1977) (parents’ “prima facie right to custody”

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may be forfeited if “convincing reasons appear that the child’s best interest will be served by awarding custody to some one else”).

23 Pa.C.S. § 5325 provides a basis for grandparents to seek partial custody of a child, but the circumstances are set forth by which such standing may be granted. While Grandparents may request this Court to look beyond the statute to assess the intent of the General Assembly, we note that:

The basic tenet of statutory construction requires a court to construe the words of the statute according to their plain meaning. 1 Pa.C.S. § 1903(a); *Commonwealth v. Stanley*, 498 Pa. 326, 335, 446 A.2d 583, 587 (1982). When the words of a statute are clear and unambiguous, a court cannot disregard them under the pretext of pursuing the spirit of the statute. 1 Pa.C.S. § 1921(a); *Coretsky v. Board of Commissioners of Butler Township*, 520 Pa. 513, 555 A.2d 72 (1989). Only if a statute is unclear may a court embark upon the task of ascertaining the intent of the legislature by reviewing the necessity of the act, the object to be attained, the circumstances under which it was enacted and the mischief to be remedied. *Id.* at 517–18, 555 A.2d at 74 (citing 1 Pa.C.S. § 1921(c)).

Grom v. Burgoon, 448 Pa.Super. 616, 619–20, 672 A.2d 823, 825 (1996). We therefore look to the words of the statute to determine whether the statute is unclear or ambiguous. If the words are clear and unambiguous, we cannot thereupon assign further definition to those words or expand upon their plain meaning in order to effect a result, despite a litigant’s desire to do so. Likewise, we cannot afford an additional intrusion upon the rights of a parent where the law has provided clear guidelines

Section 5325 clearly states the circumstances by which a grandparent may seek partial custody of a grandchild. Those circumstances include where the parent of the grandchild is deceased; where the parents of the grandchild had initiated divorce proceedings; and where the grandchild has resided with the grandparent for a period of twelve consecutive months, is removed by the parents and the grandparent has filed an action within six months of the grandchild being removed. Certainly the unfortunate circumstances that we are confronted with in this matter are not novel and have been encountered by the families of incarcerated parents on more than one occasion. We empathize with Grandparents that the actions of their child have far reaching consequences and may serve to affect the intergenerational familial relations. However, the General Assembly would most certainly have been aware of such a situation and could have addressed this condition, but chose otherwise. We cannot now force the hand of the legislature to expand upon the narrow avenues of interference

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into protected parental rights. Accordingly, we find that Grandparents have no standing under Section 5325 to seek partial custody of K.H.

We next address Grandparents argument that they stood in loco parentis to K.H. so as to confer standing by which to seek partial custody. 23 Pa.C.S. § 5324, entitled “Standing for any form of physical custody or legal custody,” provides that: “The following individuals may file an action under this chapter for any form of physical custody or legal custody. . . (2) A person who stands in loco parentis to the child.”

The phrase ‘*in loco parentis*’ refers to a person who puts oneself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of a legal adoption. The status of *in loco parentis* embodies two ideas; first, the assumption of a parental status, and, second, the discharge of parental duties. *T.B. v. L.R.M.*, 567 Pa. 222, 786 A.2d 913, 916-917 (2001). Our courts have recognized that the child’s best interest requires that one who is *in loco parentis* be granted standing so as to have the opportunity to fully litigate the issue of whether that relationship should be maintained, even over a natural parent’s objections. *J.A.L. v. E.P.H.*, 453 Pa.Super. 78, 682 A.2d 1314, 1320 (1996). Standing will be found where the child has established strong psychological bonds with a person who, although not a biological parent, has lived with the child and provided care, nurture, and affection, assuming in the child’s eye a stature like that of a parent.

S.A. v. C.G.R., 856 A.2d 1248, 1250 (Pa.Super. 2004). Grandparents state that they remained *in loco parentis* during Father’s custodial periods when Father resided with Grandparents. Grandparents further state in their Brief in Opposition that “K.H. . . . has spent most of her recent custodial visits with Father at [Grandparents’] residence and it was only the criminal charges that ended that contact. Thus, during those periods, [Grandparents] have stood in the shoes of the parent.” (Pl.’s Br. 5). However, this does not provide facts sufficient to support a determination of *in loco parentis*. “*In loco parentis* is a legal status and proof of essential facts is required to support a conclusion that such a relationship exists.” *T.B. v. L.R.M.*, 786 A.2d 913, 916 (Pa. 2001). Grandparents have provided no further facts or evidence in support of their claim. There is no demonstration, and no argument made, that K.H. has established strong psychological bonds with Grandparents.

Grandparents state in their Complaint that “[t]he emotional, physical and/or spiritual development of [K.H.] would be enhanced by granting custody of [K.H.] to [Grandparents].”(Pl.’s Comp. ¶ 14(a)). The status of *in loco parentis* is recognized where

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“although not a biological parent, [an individual] has lived with the child and provided care, nurture, and affection, assuming in the child’s eye a stature like that of a parent.” *J.A.L. v. E.P.H.*, 682 A.2d 1314, 1320 (Pa.Super. 1996). Unfortunately, Grandparents’ argument fails to provide sufficient evidence to suggest that any such role was assumed or established by Grandparents. The parties agree that Father took K.H. to Grandparents’ home during his custodial visits. During such times, they may have provided care for and affection to K.H. Furthermore, as Grandparents have alleged, it may be true that Mother and K.H. lived with Grandparents for a period of time when K.H. was younger. However, there is no demonstration that a bond was established between Grandparents and K.H. such as that between a child and parent or facts adduced that might provide enough basis upon which to confer in loco parentis standing so as to disturb the parent-child relationship in favor of a grant in custody.

Finally, we are reminded of the case of *Commonwealth ex. rel. Zaffarano v. Genaro*, 455 A.2d 1180 (Pa. 1983), in which our Supreme Court heard a custody dispute between a father and the parents of his deceased wife. In the *Zaffarano* matter, the grandparents sought visitation and temporary custody rights of their young granddaughter after their daughter had died of injuries sustained in an automobile accident. The Court noted that prior to the accident, the grandparents had frequent contact with the granddaughter, but that relations between the father and the grandparents had soured afterward. Despite concluding that the grandparents “not unfit to act as partial custodians for [granddaughter], [the trial court] refused to order any visitation because ‘[t]he present hard feelings which unhappily exist may well serve to place Shannon in a cross-fire between conflicting adults which would certainly not be in her best interests.’” *Id.* at 1181-1182. The Superior Court reversed the trial court’s decision finding that it would be in the granddaughter’s best interest to award partial custody to the grandparents. In reversing the Superior Court and affirming the trial court, the Supreme Court stated:

We are aware that a child’s relationship with his or her grandparents is a special one and that the love, trust, security and companionship which comprise such a relationship may greatly enrich a child’s life. Nevertheless, we must face the reality that such relationships are not always welcomed by a child’s parent, either because the parent and the grandparents disagree over the care of the child, or because one of the parties, either parent or grandparent, wishes to retaliate against the other for behavior unrelated to the child. In such cases, we must determine whether the detriment to the child caused by friction between his or her parent and grandparents will outweigh any benefit to the child which arises from a continuing relationship with his or her

grandparents.

* * * *

In this case, the great potential for the development of these “devastating consequences” leads us to conclude that the detrimental effects caused by the hostility between the parties outweighs the benefits [granddaughter] would receive from a renewed relationship with her grandparents. Like the hearing court, we believe that it would be in [granddaughter’s] best interest not to be placed in the crossfire between her father and her grandparents.

Id. at 1184. Similarly, in this matter, we find that there has been animosity built between the parties. Both parties have admitted through their briefs that the history of their relationship has been rocky and that there have been significant periods of lost contact between K.H. and Grandparents. While it would no doubt serve K.H. better were the parties to engage more civilly, we cannot ignore the fact that, as matters now stand, K.H. would likely be exposed to this hostility if custody was shared.

We agree with the sentiment expressed by the Court in *Zaffarano* that “[o]ur holding today certainly does not preclude further review of this matter . . . if the circumstances surrounding the case have changed, nor does our holding preclude the parties to this action from renewing their attempts to resolve their differences amicably and to agree upon a mutually satisfactory schedule of visitation or partial custody.” *Id.* at 1185. We likewise hope that the parties might come to some agreement by which to afford K.H. a relationship with Grandparents in the future and to ensure some contact with her step-brother. Grandparents stated their essential purpose in filing their Complaint that “they were concerned that they would never see K.H. again.” (Pl.’s Br. 2). We understand such a concern, especially from a grandparent; however, we cannot sacrifice the sanctity of the parental relationship to enforce such a desire. Accordingly, we sustain Defendant’s Preliminary Objections and dismiss Plaintiffs’ Complaint in this matter. We will enter an order consistent with the foregoing.