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Are We on the Path to Custody Rights for Step-Parents?

BY JAMES R. NIXON JR.

Special to the Legal

Consider the following hypothetical scenario: Tom and Ann get married in their early twenties and have a child, Ben. Unfortunately, shortly after Ben is born, Tom and Ann get divorced and they agree to have a week on/week off shared physical custody schedule of Ben. Tom remarries Diane, who serves as an involved step-parent to Ben on the weeks when Ben is living in their household.

Diane is there for Ben before and after school on Tom's custody weeks, helps Ben with his homework, drives Ben to his many extracurricular activities and acts in all respects as a third parent to Ben. The relationship between Tom and Diane deteriorates and they end up divorcing. Ben has had Diane as a loving step-parent

for many of his formidable years. Diane's absence in Ben's life will hit Ben hard and he wants to spend time with Diane.

What rights does Diane have to be with Ben? The answer, in Pennsylvania, is none. Legally, upon Diane's separation from Tom, there is no place for Diane in Ben's life.

Notably, the Appellate Division of the Superior Court of New Jersey recently addressed the role of step-parents in the case of *K.A.F. v. D.L.M.* (August 6, 2014). In *K.A.F.*, the court indicated that a step-parent who has raised a child from a young age can seek custody or visitation with the child. A step-parent who is deemed a "psychological parent" can now have standing in custody or visitation even when two fit parents are involved with the child. As part of its reasoning, the court cited previous New Jersey case law, noting "the legal



JAMES R. NIXON JR.

parent has created a family with the third party and the child, and has invited the third party into the otherwise inviolable realm of family privacy."

In issuing its ruling, the court determined that a step-parent who resides with and provides for a child over a prolonged period of time, and creates a parent-child relationship with the permission of one of the parents, should be permitted to file for custody or visitation, in accordance with the best interests of the child. To hold otherwise, "a court would be powerless to avert harm through the severance

of the child's parent bond with a third party."

Although the step-parent in K.A.F. happened to be the former same-sex partner of the biological child's mother, the sexual orientation aspect of the case seems less precedential than the standing that has been carved out for some step-parents.

In issuing this decision, the New Jersey court is in line with states such as California, where step-parents were granted standing in child custody cases by statute in California Family Code Section 3101, which specifically recognizes step-parent visitation on divorce or death of a parent.

Whether Pennsylvania will follow California and New Jersey's lead on step-parent custody and visitation remains to be seen. Over the years, Pennsylvania law has extended standing in custody and visitation to certain non-parent family members—grandparents, provided they meet specified criteria, or other adults who may be acting in loco parentis.

However, the response to legislation introduced last year to extend standing to siblings may indicate that Pennsylvania will be reluctant to broaden the definition of standing. HB 642 of 2013 sought to amend the domestic relations statute to provide

standing to siblings in child-custody matters. In May, the Pennsylvania Bar Association House of Delegates, upon recommendation of the family law section, passed a resolution to oppose the bill. In adopting the resolution, it was noted that the bill was "broad, overreaching, and ha[d] the extreme potential to interfere with a parent's relationship with their children."

The family law section also cautioned that "if the petitioning sibling has a poor relationship with his or her parents, they could use their ability to sue for custody of their brother or sister as a means to harass their parents and interfere with parenting decisions." Additionally, the family law section warned that "there are no minimum age requirements in the bill for a sibling to obtain standing. Therefore, the guardian of a newborn would have standing to sue the parents of the newborn's sibling or step-sibling."

If Pennsylvania were to follow California and New Jersey's lead, it is not impossible to imagine a case in which an estranged spouse, who is also a step-parent, would use the threat of custody to harass his or her divorcing partner. There may also be situations where, unlike Ben in

our hypothetical, the child may not want to see the step-parent. However, in cases similar to Ben, where a step-parent has been intimately involved with the child for many years, and a loving relationship has been established, it is troubling to think that the door could be slammed shut and all contact could be lost. As in all custody cases, the best interest of the child must be considered.

It will be interesting to see if our appellate courts or legislature eventually address this difficult topic.

James R. Nixon Jr. is an associate in Weber Gallagher Simpson Stapleton Fires & Newby's family law group. He concentrates his practice on family law matters, including divorce, custody and adoption. He can be reached at 610-278-1503. •