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GRANDPARENT VISITATION

A. Introduction

Grandparents when filing a custody complaint must allege standing in order to seek relief that can be provided under 23 Pa.C.S.A 5324 or 5325. Pursuant Pa.C.S.A. § 5325; Grandparents must allege that 1) either of the natural parents are deceased, 2) the natural parents have commenced and continued a proceeding to dissolve their marriage or 3) children resided with the Grandparents.

If the natural parents are separated, the Supreme Court in *D.P. v. G.J.P.* 146 A.3d 204 (2016) held that 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 disturbing the decision of presumptively fit parents concerning the individuals with whom their minor children should associate. It follows that the infringement upon parental rights worked by Section 5325 is not narrowly tailored to a compelling governmental interest, as the provision could have been drafted to exclude separation as an independent basis for grandparent standing.

Absent 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. See *Parham v. J.R.*, 442 U.S. 584, 602–03, 99 S.Ct. 2493, 2504, 61 L.Ed.2d 101 (1979); *Troxel*, 530

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U.S. at 68, 120 S.Ct. at 2061. Parents have a fundamental right to direct the care, custody, and control of their children, thus triggering strict scrutiny under the Due Process Clause. Especially in cases when natural parents have never sought Court involvement.

Whenever a custody dispute arises between the parents and a third party, “the evidentiary scale is tipped, and tipped hard, to the parents' side.” *Hiller, 588 Pa. at 362, 904 A.2d at 887 (quoting Ellerbe, 490 Pa. at 367, 416 A.2d at 514)*; see also *id. at 363, 904 A.2d at 888* (developing that this Court has repeatedly “reaffirmed the presumption in favor of parents set forth in *Ellerbe*”); accord *Charles v. Stehlik, 560 Pa. 334, 340, 744 A.2d 1255, 1258 (2000)*.

B. Lack or Standing Rule 1915.5

If a Grandparent files a petition seeking custody and they fail to meet the requirements of 23 Pa.C.S.A 5324 or 5325; Parents’ counsel would file Preliminary Objections based on a lack of standing.

Pursuant to Rule 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 (20) days of service of the pleading to which objection is made or at the time of hearing, whichever first occurs."

The Court should address the issue of standing first to protect Parents against the expense, stress, and pain of litigation. Grandparents have the burden of demonstrating standing first before seeking relief or pursuing their claim.

C. Violation of Rule 1023.1

Rule 1023.1(c), which provides in pertinent part that the “signing, filing, submitting or

later advocating [of] a document, the attorney or pro se party certifies that, to the best of [his] knowledge, information, and belief” that the document “is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Pa.R.C.P. 1023.1(c).

Therefore, it is imperative that a Grandparent satisfy the statutory requirements of 23 Pa.C.S.A 5324 or 5325 or the Grandparents may be Ordered to pay the Parents’ attorney’s fees if the Court finds that the Grandparents filed the petition for an improper purpose.

D. 42 Pa.C.S.A. 2503

Sub-section 2503(7) of the Judicial Code provides: “The following participants shall be entitled to reasonable counsel fees as part of the taxable costs of the matter: ... (7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.” 42 Pa.C.S. § 2503(7). Our Commonwealth Court has stated, “[A]n award for counsel fees under Section 2503 is meant to compensate the innocent litigant for costs caused by the actions of the opposing party.

E. Conclusion

There is no doubt that Grandparents play a vital role in the lives of their grandchild. However, Grandparents need to retain competent and experienced counsel to navigate them though the complexities of the legal system.

As an attorney with 23 years trial experience and 3 law degrees; I provide my clients with the confidence that they as Grandparents are doing everything possible to be involved in their grandchildren’s lives.