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F A M I L Y L A W

Unique Case of Stepparent Owing Child Support to Stepchildren

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Special to the Legal

In Pennsylvania, generally, a stepparent is not liable for child support of his or her stepchildren. The mere existence of a relationship between a child and the stepparent is insufficient to establish a support obligation for the stepparents, even if the stepparent is found to be in loco parentis to the child. The recent Pennsylvania Supreme Court case of *A.S. v. I.S.*, 2015 Pa LEXIS 3129, 8 MAP 2015 (Pa. Dec. 29, 2015), has sent shock waves through the family law community. However, it is to be noted that the Supreme Court does not appear to want the opinion to send shock waves through the family law community and create “a new class of stepparent obligors” and be interpreted as holding in loco parentis standing alone to be sufficient to hold the stepparent liable for support. Therefore, the *A.S.* case is not to be broadly applied.

The pertinent facts of the case are as follows: I.S. (the mother) and A.S. (the stepfather) were married in 2005. Prior to the parties’ marriage, the mother gave birth to twin boys in Serbia in 1998. Since 2006, the biological father of the twin boys has not been involved with the children and though there is a Serbian court order between the mother and the biological father pertaining to custody and child support, the mother has never sought to enforce child support against the father and the father has not sought to act on his custodial rights. After the parties married in 2005, the mother and the stepfather lived



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together in Pennsylvania for four years. After the parties separated in 2009, the mother and the stepfather “informally shared physical custody of the children who were about 11 years of age,” the opinion said. The stepfather formally filed for divorce in 2010. In 2012, the mother graduated from law school and took the California bar examination planning to relocate to California with the children in September 2012, the opinion said. In August 2012, the stepfather filed a complaint for custody and an emergency petition to prevent the mother from relocating with the children to California and asserted that he stood in loco parentis to the children. On an emergency basis, the trial court granted the stepfather’s emergency petition and prohibited the mother from leaving the jurisdiction with the children.

Pursuant to a temporary custody agreement approved by the court, the mother had primary physical custody of the children and the stepfather enjoyed partial custody of the boys every other weekend and every Wednesday night. Approximately six months later, the trial court denied the mother’s motion to dismiss the stepfather’s complaint for a lack of standing, as the court concluded that “stepfather stood in loco parentis to the children.” After a full custody hearing in July 2013, the court entered an order granting the parties shared legal custody as well

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as shared physical custody on an alternating week basis. The trial court also “prohibited either party from relocating with the children without permission of the other party or the court,” pursuant to the opinion.

When the trial court granted the stepfather’s emergency petition to prevent the mother from relocating to California, the mother filed for child support against the stepfather approximately four days after the trial court order. The mother’s support complaint was dismissed by the support master, “reasoning that stepfather

owed no duty to support the children because he is not their biological father.” Thereafter, the mother filed exceptions “contending that the stepfather should be treated as a biological parent for purposes of support because he litigated and obtained the same legal and physical custody rights as a biological parent, and, further, successfully prevented mother from relocating with the children.”

The trial court affirmed the master’s decision to dismiss the mother’s support complaint, based upon the precedent in Pennsylvania that “a stepparent generally is not liable for child support following the dissolution of a marriage,” according to the opinion.

The mother appealed the trial court’s decision to the Superior Court and the Superior Court affirmed the trial court finding that no duty of support existed. The Supreme Court thereafter granted the mother’s petition for allowance of appeal, raising the following primary issue: “Whether, under Pennsylvania law, a former stepparent who has pursued and established equal parental rights as the children’s natural parent—and per a court order, equally shares physical and legal custody with the natural parent—should be relieved of the duty to contribute to the children’s support.” On appeal, the mother analogized her case to the Superior Court case of *L.S.K. v. H.A.N.*, 813 A.2d 872 (Pa. Super. 2002). In *L.S.K.*, “a woman was liable for child support for five children born to her former same-sex partner using a sperm donor where the parties agreed to start a family together and both women acted as the children’s parents.” The nonbiological mother in the *L.S.K.* case “had obtained custodial rights to the children based on in loco parentis standing,” and the court stated “equity mandates that [the nonbiological mother] cannot maintain the status of in loco parentis pursuant to an action as to the children, alleging she has acquired rights in relation to them and at the same time deny any obligation for support merely because there was no agreement to do so.”

The Supreme Court in the *A.S.* case focused on the support statute as well as paternity by estoppel jurisprudence. As stated in the Supreme Court’s opinion, “The statute provides that ‘parents are liable for the support of their children.’” The Supreme Court highlighted that cases in Pennsylvania had

deemed a “parent” for child support purposes as “encompassing more than biological or adoptive parents.” In focusing on paternity by estoppel cases, the Supreme Court justices highlighted that they “have found a stepparent could be liable for child support where he has held a child out as his legal child.” The Supreme Court examined the Superior Court case law where it determined that the mere existence of a relationship between a stepparent and a child through in loco parentis status is “insufficient to establish the support obligation for the stepparent.”

In reviewing the Pennsylvania case law, the Supreme Court reiterated that “in loco parentis status alone and/or reasonable acts to maintain a post-separation relationship with stepchildren are insufficient to obligate a stepparent to pay child support for those children.” However, the Supreme Court differentiated *A.S.* from the situation where a stepparent merely has in loco parentis status alone and takes reasonable acts to maintain a relationship with the stepchildren. In *A.S.*, according to the opinion, the stepfather was involved in a “relentless pursuit” of parental duties and “hailed a fit parent into court, repeatedly litigating to achieve the same legal and physical and custodial rights as would naturally accrue to any biological parent.” The Supreme Court went so far as stating: “This is not the ‘typical case’ of a stepparent who has grown to love his stepchildren and wants to maintain a post-separation relationship with them.” The stepfather also prevented “a confident biological mother from relocating with her children.”

In finding the stepfather liable for child support in the present case, the Supreme Court stated: “When a stepparent does substantially more than offer gratuitous love and care for his stepchildren, when he instigates litigation to achieve all the rights of parenthood at the cost of interfering with the rights of a fit parent, then the same type of policy attended to the doctrine of paternity by estoppel is implicated: that it is in the best interest of the children to have stability and continuity in their parent-child relationships.” The Supreme Court further stated: “By holding a person such as stepfather liable for child support, we increase the likelihood that only individuals who are truly dedicated

and intend to be a stable fixture in the child’s life would take the steps to litigate and obtain rights equal to those of the child’s parent.” After holding that the stepfather was liable for child support, the Supreme Court held that the typical support procedures should be applied to the case with regard to the calculation of child support.

This case is a very important case for the family law practitioner and the family court bench. It is important to note that the Supreme Court was clear that it was not seeking to open the floodgates and create many stepparent support obligors. This case was a very fact-sensitive case, and should only be applied in cases with similar circumstances where a stepparent goes through extreme efforts to gain equal or primary physical custody and equal or sole legal custody. Further, additional exertions of custodial rights have to occur, such as preventing a parent from relocating. In such instances, in following the *A.S.* case, a child support order entered against the stepparent may occur. Interestingly, as reflected in the opinion, simply finding that the stepfather had a duty to support did not necessarily mean that he will actually owe the mother child support, as the guidelines will apply regarding the parties’ incomes, and who has been the primary custodian during the relevant periods (recognizing that stepfather at one point has become the primary custodian of the children). •