



# SWAN Legal Services Initiative

## December Legal Report

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## Supreme Court of Pennsylvania– Middle District

### **A.S. v. I.S.**

Date of Decision: December 29, 2015

Cite: 8 MAP 2015

### **Holding:**

Reversed Superior Court's order affirming dismissal of Mother's complaint for child support. When a stepparent takes affirmative legal steps to assume the same parental rights as a biological parent, the stepparent likewise assumes parental obligations, such as the payment of child support.

### **Facts and Procedural Posture:**

Mother gave birth to twin sons in 1998. In 2005, Mother married Appellee (Stepfather), and they all resided together until the parties separated in 2009. Following the separation, Mother and Stepfather informally shared physical custody of the children. Stepfather filed for divorce in 2010. Two years later, Mother planned to relocate to California with the children. Stepfather filed a complaint for custody and an emergency petition to prevent Mother's relocation, asserting that he stood *in loco parentis* to the children. The trial court granted Stepfather's petition and entered a temporary custody agreement awarding him partial custody. Mother filed various preliminary motions seeking to dismiss Stepfather's complaint for custody due to lack of standing, as well as a complaint for child support against Stepfather.

The trial court concluded that Stepfather stood *in loco parentis* to the children and denied Mother's motions, while the support master dismissed Mother's complaint for child support, reasoning that Stepfather owed no duty to support the children because he was not their biological father. In May 2013, the trial court entered an order affirming the master's decision to dismiss Mother's support claim. Mother appealed the trial court's decision, but it was affirmed by the Superior Court. In July 2013, a full custody hearing resulted in a final custody order granting the parties shared legal and physical custody. Mother filed a Petition for Allowance of Appeal of the Superior Court's decision.

### **Issue:**

Under Pennsylvania law, should a former stepparent who pursued and established parental rights equal to the children's natural parent be relieved of the duty to contribute to the children's support?

**A.S. v. I.S. (cont'd)****Rationale:**

The statute from which support obligations are derived provides that “parents are liable for the support of their children...” 23 Pa.C.S. § 4321. The Court reiterated the longstanding principle that *in loco parentis* status alone is insufficient to establish a support obligation for a stepparent; however, the court looked to existing case law, primarily pertaining to paternity by estoppel<sup>1</sup>, which recognizes a nonparent should be treated as a parent if the nonparent has taken affirmative steps to act as a legal parent. In applying this standard, the Court found that Stepfather did not fall into the category of a stepparent who simply desires a continuing relationship with his stepchildren. Rather, he haled the biological parent into court and repeatedly litigated to achieve full legal and physical custody rights as the biological parent, and also asserted those rights to prevent the biological parent from relocating with the children. Under these circumstances, Stepfather should share parental obligations, such as child support. The court further noted that this does not create a new class of stepparent obligors, but it increases the likelihood that “only individuals who are truly dedicated and intent to be a stable fixture in a child’s life will take the steps to litigate and obtain rights equal to those of the child’s parent.”

**Dissent:**

The legal obligation of support should turn upon whether Stepfather can be deemed to be a “parent” of the children as required in the statute. Although common law has recognized the presumption of paternity, and the doctrine of paternity by estoppel applies, neither appear to be the basis for the majority’s decision to establish legal parenthood. Current legislation allows those *in loco parentis* to children to pursue custody; however, the law of support does not account for this relationship. It is the legislators’ responsibility to consider whether the law of support should be adjusted.

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## Did You Know?

On December 30, 2015, the Commonwealth Court in Pennsylvania unanimously ruled that a state law preventing convicted criminals from gaining employment in certain health care facilities — including nursing homes and residential facilities — was unconstitutional and unenforceable. The case, *Peake v. Commonwealth of PA*, specifically challenged the constitutionality of provisions of the Older Adult Protective Services Act (OAPSA) that apply such bans to working with older adults. Similar to provisions in the Child Protective Services Law, OAPSA prohibits the hiring of individuals who have criminal histories containing specified violations. The lifetime ban applies regardless of the age of the conviction and precludes any consideration of the rehabilitative efforts in which the ex-offender engaged in. As such, Pennsylvania’s Department of Human Services has joined with other state agencies to recommend the General Assembly make changes to the employment (and volunteer) bans on those “having contact” with children. The full case can be found [on the Pennsylvania Court's website](#).

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<sup>1</sup> Paternity by Estoppel: Where a party assertively holds him or herself out as a child’s parent, that party may be “estopped” (prevented) from subsequently denying that status.

# Pennsylvania Commonwealth Court

**V.S. v. Department of Public Welfare<sup>1</sup>**

Date of Decision: December 30, 2015

Cite: 1186 C.D. 2014

## **Holding:**

The Department of Public Welfare (DPW) did not err in denying Mother's appeal *nunc pro tunc*, did not violate her constitutional right to due process, and did not err in failing to toll the appeal period, where minor Mother was provided with written instruction but failed to request an appeal hearing in a timely manner.

## **Facts and Procedural Posture:**

Seventeen-year-old Mother gave birth to twins in January 2011. Approximately one month later, one of the twins was treated for medical problems potentially caused by physical abuse. Berks County Children and Youth Services conducted an investigation, and based on its findings filed an indicated report of child abuse against Mother. In April 2011, Mother received notice that she was listed on ChildLine as a perpetrator of abuse; it stated, in pertinent part, that Mother had 45 days in which she could request a review or request to skip the review and have a hearing. In accordance with the procedures explained in the notice, Mother requested a hearing.

In June 2011, DPW notified Mother via letter that her matter was reviewed, and the indicated report would remain as filed. The letter further explained her right to a hearing and stated she had 45 days to submit a request in writing. In October 2011, nearly four months later, DPW received a letter from Mother requesting a hearing. DPW subsequently notified Mother that the request was not received within 45 days, therefore it could not be honored. At Mother's request, a *nunc pro tunc* hearing was held via telephone regarding the timeliness, issue in which she participated pro se. She testified that she lost the letter from DPW and that she "didn't think the letter was that important because [she] didn't do anything." The administrative law judge (ALJ) issued an adjudication recommending that the appeal be dismissed as being untimely filed. In August 2012, the Bureau of Hearings and Appeals (BHA) adopted the ALJ's adjudication in its entirety.

Mother appealed to DPW's secretary, who upheld the BHA's order. Mother appealed, claiming that the DPW erred in denying her appeal *nunc pro tunc*, violated her constitutional right to due process by failing to have a procedure in place that would provide her counsel or a guardian ad litem, and erred in failing to toll the appeal period until Mother turned 18 years of age.

## **Rationale:**

According to the Child Protective Services Law (CPSL), a perpetrator must request that an indicated report of child abuse be amended or expunged within 45 days of being notified of that report. 23 Pa.C.S. 6341(a)(2). The court recognized that an exception allow a perpetrator to proceed *nunc pro tunc* if they can demonstrate that the delay was caused by extraordinary circumstances, and the elapsed time was one of a very short duration. In denying Mother's first claim, the court noted that Mother provided mixed reasons for the cause of the delay and failed to address the untimeliness of the appeal in a timely manner.

In addressing Mother's next claim, the court recognized that the essential elements of due process are notice and an opportunity to be heard. *Dep't of Transp, Bureau of Driver Licensing v. Clayton*, 684 A.2d 1060 ([Pa.] 1996). It was further noted that the law is "well settled that there is no right to counsel in civil cases" *Rich v. Acrivos*, 815 A.2d 1106, 1108 (Pa. Super. 2003) and that expungement proceedings are civil administrative matters, for which there is no right to counsel. *Dauphin Cnty. Soc. Servs. for Children and Youth v. DPW*, 543 A.2d 607 (Pa. Cmwlth. 1988). In the matter at hand, Mother received notice and was afforded ample opportunity to be heard, yet failed to respond in a timely manner. Further, there was no evidence that Mother was incapable of following the directions set forth by DPW. Thus, the court concluded that her constitutional right to due process was not violated.

<sup>1</sup>The Department of Public Welfare became the Department of Human Services effective November 24, 2014.

### V.S. v. DPW (cont'd)

Lastly, the Minor Tolling Statute (Section 5533(b)(1)(i) of the Judicial Code) applies only to matters in which a minor initiates a civil lawsuit in a court of record. The court held that Mother's appeal is from an administrative determination, rather than the commencement of a civil action, therefore it does not apply; however, the court recognized that amendments to the CPSL, which became effective December 31, 2014 (while Mother's appeal was pending), resulted in the addition of Section 6338.1. This Section sets forth certain criteria in which perpetrators, who are the subject of an indicated report of child abuse and under the age of 18 when the child abuse occurs, can have their record expunged. Although the abuse occurred prior to the effective date of this provision, the court notes that Mother is not precluded from having her ChildLine record expunged in accordance with this new section of the CPSL.

### SPOTLIGHT

In *K.C. and V.C. v. L.A.*,<sup>65</sup> MAP 2015, the Supreme Court of Pennsylvania was asked to determine whether an order denying a foster parent's petition to intervene in a custody action is appealable as of right pursuant to Pa.R.A.P. 313. Otherwise known as the collateral order doctrine, Rule 313(b) provides that an interlocutory order is collateral and therefore immediately appealable, if it is (1) separable from and collateral to the main cause of action where (2) the right involved is too important to be denied review, and (3) the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost (Pa.R.A.P. 313(b)). The Court found the appellants' claim met all three prongs. First, the question of whether an individual has the standing to seek custody is separable from the main cause of the custody action, being who is entitled to physical and legal custody of the child in light of their best interest. Next, the state has a paramount interest in the welfare of children and in identifying the parties which may participate in custody proceedings. Lastly, the right to appeal would be lost if appellants were not permitted to appeal the order denying intervention. The court concluded that the trial court's order denying intervention is an appealable order as of right under Rule 313 and, thus, the Superior Court's decision was reversed and remanded. The full opinion can be found [here](#).

### Orphans' Court Procedural Rules

On December 1, 2015, the Pennsylvania Supreme Court adopted changes to the Pennsylvania Orphans' Court Rules. The last substantial revision to these Rules occurred in November 1975. The new Rules will be **effective September 1, 2016** and are intended to promote a standard statewide practice and provide clear procedures throughout the state. These newly adopted rules will rescind and replace Rules 1.1 through 13.3 and Rule 17 and amend Rules 14.1 through 16.12. They will vacate existing Local Rules and provide uniform procedures regarding petition formatting and service. The full Rules can be found on the Pennsylvania Court's [website](#).

**\*\*In addition, the Orphans' Court Procedural Rules Committee is planning to propose the rescission of Rules 15.1 through 15.9 and replacing these rules with new rules governing Adoptions. This proposal is open for comments, suggestions, or objections until **March 16, 2016**. These proposals include changes to termination of parental rights proceedings and Act 101 procedures. More information regarding these proposals can be found [here](#).**

## Implementing and Preventing Sex Trafficking and Strengthening Families Act

**Act 75 of 2015** was passed into law December 10, 2015 and became effective immediately. This legislation:

- Authorizes caregivers of children and youth who are in out-of-home placement to make decisions regarding the youth's participation in age-appropriate or developmentally appropriate extracurricular, enrichment, cultural or social activities without prior approval of the county child welfare agency, private placement agency, or the court.
- Provides definitions for "Age-appropriate or developmentally appropriate," "Out-of-home placement," and "Reasonable and prudent parent standard."
- Provides for limited liability.
- Requires all county-operated out-of-home placement settings (other than resource family home) designate an individual to provide decision making authority under the reasonable and prudent parent standard for children residing in their care.
- Requires as a condition of licensure the development of standards and training related to the reasonable and prudent parent standard.
- Assigns training requirements to be completed by current caregivers and any individual who becomes a caregiver after the effective date of this law.

**Act 94 of 2015** was passed into law December 28, 2015 and became effective January 1, 2016. This legislation:

- Provides definitions for "child" and "sex trafficking victim."
- Requires county agencies to report missing or runaway children within 24 hours.
- Requires county agencies to report when there is a reasonable cause to suspect that a child is at risk of being a sex trafficking victim or is identified by the county agency as a sex trafficking victim.
- Amends the Juvenile Act to include definitions for "Age-appropriate or developmentally appropriate," "Caregiver," "Out-of-home placement," and "Reasonable and prudent parent standard."
- Makes changes to the determination required to place a child in Another Planned Permanent Living Arrangement (APPLA).

**Rules of Juvenile Court Procedure** was amended December 9, 2015 and became effective January 1, 2016. These amendments modify the Rules of Juvenile Court Procedure to include the changes of the two acts listed above (Act 75 of 2015 and Act 94 of 2015). These amendments:

- Modify **Rule 1120. Definitions** to include the definitions for "Age-appropriate or developmentally-appropriate activities," "Caregiver," and "Reasonable and Prudent Parent Standard."
- Modify **Rule 1608. Permanency Hearing** by requiring additional considerations be made at *each* six month hearing regarding application of the reasonable and prudent parent standard and use of APPLA as a permanency goal.

## More Exciting News

The Every Student Succeeds Act (ESSA) was signed by President Obama on December 10, 2015. This Act is the reauthorization of the Elementary and Secondary Education Act, a key federal law governing education, originally signed into law in 1965 and last reauthorized as No Child Left Behind in 2002. The ESSA is the first major overhaul of federal education law in more than a decade. Among many new provisions, the law now requires states to ensure certain protections for vulnerable youth in the foster care and juvenile justice systems. For more information, the complete Act can be found [here](#).