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Introduction

My name is Aaron Ludwig, and I am an attorney practicing law in Indiana County. I attended Duquesne School of Law and was admitted to the BAR in 2011. Since that time, have practiced in a variety of areas of law. I was an assistant public defender from 2013 until last October. Currently, my private practice includes representing clients in criminal matters and family law issues.

I also currently serve as the President of the United Way of Indiana County. I was asked to testify today, given my experience representing grandparents in custody matters, my knowledge from working with nonprofits in dealing with the growing issues created by grandparents raising their grandchildren, and because of my understanding of the growing heroin epidemic from my firsthand representation of these clients through the public defender's office.

I am going to review the statute which gives any party the right to seek custody in the courts and its pitfalls, specifically as it relates to grandparents. I will also discuss the other issues I've encounter through my experiences. Finally, I will make some suggestions as to how grandparents could be helped through legislation or assistance.

First, I would like to thank all those here today, as this is the first step in recognizing there is an issue and bringing more attention to it. I had not realized this issue was growing as quickly as it was until our United Way procured a "needs assessment" study for the county and one of the identified needs was caregiver support, specifically for grandparents.

Like many attorneys in rural areas, I do my share of custody work. Many of these cases involve grandparents seeking or intervening in a custody case. This is mostly due to the grandparents increased role in providing primary care for their grandchildren, either individually or with the adult parent remaining in their home. In most of these cases, this is due to the parents drug addiction. The stories are usually similar:

Grandmother finds out that her daughter is pregnant. The mother has been in and out of trouble for several years, and her mother has felt like she tried everything to help her. The child is born, most likely with a drug addiction, and spends time in the hospital. CYS is involved, but as long as the grandmother can care for the child they do not take any further action. The mother decides she wants to take child out of the grandparent's home or becomes disruptive.

Also, it is very common for the grandparent to attempt to tackle the legal filing on their own. They file a custody action, seeking special relief in the form of an order granting them temporary custody.

The Statute -Standing

Standing is a legal concept which means a party has the right to be in court and to pursue a claim. If you do not have legal standing, you are out of court.

23 Pa. Cons. Stat. §5324 states that the following individuals may seek any form of physical custody, including primary (full) custody or partial custody (visitation) or legal custody:

- (1) A parent of the child;
- (2) A person who stands *in loco parentis* to the child; [meaning he/she performs parental duties]
- (3) A grandparent of the child who is not *in loco parentis* to the child:
 - (i) whose relationship with the child began either with the consent of a parent of the child or under a court order;
 - (ii) who assumes or is willing to assume responsibility for the child; **and**
 - (iii) when one of the following conditions is met:
 - (A) the child has been determined to be a "dependent" child;
 - (B) the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; **or**
 - (C) the child has, for a period of at least 12 consecutive months, resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case the action must be filed within six months after the removal of the child from the home.

Issues that arise:

- (A) Under paragraph 2, the question becomes when does a person "stand in place of the parents?" The cases vary by facts using this standard, and navigating this claim can be burdensome. Also, in most instances, the grandparents are not yet standing *in loco parentis* at the time they wish to seek custody and for standing purposes, it goes back to the time of the initial filing.
- (B) In order to have standing under paragraph 3, even more problems arise. Most instances, the children were never adjudicated dependent as required by 3(iii)(A). CYS, and rightly so, tries to avoid such a finding, and instead attempts to put in place a family plan where the grandparent and parent agree to certain conditions.
- (C) Under subparagraph 3(iii)(B), in order to attain standing, there must be a finding that the children are "substantially at risk" based on abuse, neglect, drug or alcohol abuse or incapacity. In many instances, this is what the grandparent is trying to avoid. They do not want the child to be placed in any risk nor do they want such a finding against their own child. Also, what is "substantially at risk?" Is this too high of a burden? Finally, 3(iii)(C) creates hurdles. Most

instances, the child has not yet resided with the grandparent for 12 “consecutive months. Many times, the child is still in its infancy.

- (D) The Missing Link: What about parental death? Opioid deaths are on the rise and this further complicates the grandparent standing issue. As you can see from the statute, there is a significant gap for grandparents with the result being that a grandparent cannot fit in any of the options of 5324, and therefore cannot pursue primary custody. In the case of parental death, they would be unable to seek primary custody given the many issues presented previously. In such instances, a third party that stood *in loco parentis*, whether a non-blood paramour or friend of the deceased parent, would have standing to seek physical custody while a grandparent would not.
- (E) Another gap is step-grandparents. With the number of extended families growing, the statute is silent on including step-grandparents.

Other Barriers

1. The complete realigning of relationships. Many grandparents want to be just that.
2. Conflicts with their children. Grandparent custody cases tend to be the most contentious and highly litigated from beginning to end.
3. Logistics of day to day care. Daycare, meals, etc.
4. Grandparent health issues: Can they see the child to majority. If in 60s, will they be able to see that the child to 18? What if they have health issues, nursing home, etc.
5. Without access to courts, informal custody agreements:
 - Access to child’s information; medical, dental, school records
 - Sign absentee forms
 - Travel
 - Parents serving jail sentences
6. Financial difficulties:
 - Fixed incomes
 - Daycare
 - Attorney costs/filing fees
 - Food, clothing, diapers

Moving Forward

I don’t know how we solve these problems. From addressing the opioid epidemic to helping with the other issues it has created. The tasks and challenges seem daunting.

I have identified several areas of the statute that creates barriers and hurdles for grandparents. I do not know what changes could be made to the statute to address them, and which ones would pass constitution muster, but there are significant gaps. Specifically, the statute does not address instances where the parents are deceased and the grandparents are not given a favored position.

Aside from the legal challenges, grandparents are in great need of access to information and support. Many do not know where to turn. This isn’t even just from a legal standpoint, but also a financial and emotional support. I believe that the creation of support groups and local “navigators” or people that could be an information hub would greatly help those who are thrust into this situation. A “navigator” could provide information on local services, financial and otherwise, specifically for these

grandparents. Support groups could be created where the grandparents could share stories and offer each other help in raising their grandchildren.

Aaron F. Ludwig, Esquire