

State of New Hampshire Supreme Court

No. 2021-0419

**In the Matter of Alden Satas and Courtney
Crabtree-Satas**

APPEAL FROM THE 2ND CIRCUIT FAMILY DIVISION
PLYMOUTH. GRAFTON COUNTY

BRIEF OF PETITIONER/APPELLEE, ALDEN SATAS

Counsel for Petitioner/Appellee
John T. Katsirebas Jr.
Bar #20102
Schwartzberg Law
572 Tenney Mountain Highway
Plymouth, NH 03264
(603) 536-2700

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QUESTIONS PRESENTED

1. Did the trial court err when it found that Appellee “*is the stepparent*” of D.B., pursuant to RSA 461-A:6(V), which allows for reasonable visitation privileges to a party “*who is a stepparent*” if the same is in the best interests of the children, given that the definition of stepparent cited by the trial court specifies that a stepparent is “*the spouse of one’s [D.B.]’s mother*” and Appellant and Appellee have been divorced since 2017 and the Appellant is now remarried?
2. Did the Court err when it held that the Appellee had standing to bring a petition for parenting rights and responsibilities with respect to D.B., Appellant’s son from a prior relationship, by adopting Appellee’s theory that Appellee “*established the status of in loco parentis between himself and [D.B.]*” when the Parties divorced more than three years and eight months prior to the Appellee’s petition, no parenting order regarding D.B. was ever proposed or pursued by either Party, and Appellee ousted D.B. from his home in May of 2020, nearly six months prior to the filing of Appellee’s petition?
3. Did the trial court violate the Appellant’s Constitutional rights under Part I, Article 2, of the New Hampshire Constitution, as well as under the due process clause of the 14th Amendment to the United States Constitution, when it held that the Appellee had standing to bring a petition for parenting rights and responsibilities with respect to D.B., Appellant’s son from a prior relationship, by adopting Appellee’s theory that

Appellee “*established the status of in loco parentis between himself and [D.B.]*” when the Parties divorced more than three years and eight months prior to the Appellee’s petition, no parenting order regarding D.B. was ever proposed or pursued by either Party and Appellee ousted D.B. from his home in May of 2020, nearly six months prior to the filing of Appellee’s petition?

STATEMENT OF FACTS AS FOUND BY THE TRIAL COURT

DB, the offspring of a previous relationship between Appellant and another man, was approximately 2 ½ years old when the parties were married in May of 2012. DB was readily assimilated as part of a family later being joined on 1/21/2013 by a half-brother conceived of the parties named JS. (Court's Order Dated May 28, 2021) (findings amended by Court's Order dated July 21, 2021)

In August 2016, Appellee filed for divorce due to what he claims was Appellant's uncontrolled addiction to drugs. By February 2017, Appellant had relocated and left both boys in the sole care and custody of Appellee. *Id.*

The divorce was ultimately resolved by *pro-se* agreement, and the marriage ended in February of 2017 with a Final Divorce Decree and Parenting Plan issued by the Keene Family Division. The Parenting Plan awarded Appellee joint decision-making authority and primary residential responsibility for JS allowing for one weekend per month visitation with Appellant with additional time as the parties may agree. *Id.*

There was no provision in the Parenting Plan for DB, but DB continued to live with and was cared for exclusively by Appellee until 2019. Mr. Satas is the only father DB has ever known. *Id.*

Appellee has taken DB into his family when the parties were married, and DB remained in Appellee's household under his care during and for several years following the divorce. *Id.*

For several years prior to this action, Appellee has been the primary care giver and has, by consent of Appellant, contributed substantially and almost exclusively, to the raising, supporting, and nurturing of the child. From the information available to the Court, DB

recognizes no other father figure than Appellee.

The Court finds that Appellee has established the status of *in loco parentis* between himself and DB.

STATEMENT OF THE CASE

The issue at bar is whether Appellee, has standing to bring a petition for parenting rights and responsibilities over a child to whom he has no biological relation. Appellee is not a biological parent to DB but argues that as a stepparent who has established an *in loco parentis* relationship with DB, the Court may grant him parenting rights over Appellant's objection.

Appellant argues that Appellee ceased to be DB's stepparent as of the date of the parties' divorce leaving the Court without jurisdiction to grant the relief requested.

SUMMARY OF ARGUMENT

Appellee is DB's stepparent by virtue of having been married to DB's mother. Stepparent status is a relationship, not a legal status that is extinguished upon divorce.

I. The Court was correct when it found Appellee to be DB's stepparent.

a. **Appellee's status as DB's stepparent was not extinguished upon the disillusion of the marriage.**

It is undisputed that the Court does not violate the constitutional protections of a fit parent, when it, under certain circumstances, awards parenting rights and responsibilities to a stepparent or a grandparent over the objection of said fit parent. It is also undisputed that stepparents and grandparents are the ONLY third parties to whom the Court may make such an award without violating the fit parent/s constitutional rights. If Appellant's argument is correct, then all stepparents who have been awarded parenting rights and responsibilities under any circumstances must be immediately divested of all such rights and responsibilities the moment they become, "former stepparents" as they would no longer be stepparents.

b. **There is no statutory basis to find that Appellee's stepparent relationship with DB was extinguished by divorce.**

There is no statutory definition of "former stepparent." There is no statutory limitation placed upon the timing of a stepparent's request for parenting rights. The trial Court addressed the timing in this case and ruled that it "fails to see that [Appellee's failure to seek parenting rights over DB when the parties divorced]"

would permanently extinguish or foreclose his right to do so.” (Courts Order dated July 20, 2021)

II. The Court was correct in finding Appellee had standing to petition for parenting rights with respect to Appellant’s son, DB when it found that Appellee stood *in loco parentis* with respect to DB.

a. Appellee does stand *in loco parentis* with respect to DB and continued to so stand at the time of his Petition. There was no “ouster” of DB from Appellee’s care.

The issue of “ouster” was argued at trial. The Court heard counter testimony which categorized the disputed dialog as frustration on the part of Appellee in his effort to encourage Appellant to “step up and be a mother” and to assist Appellee with raising her son. The Court was invited to find that DB was “ousted” but no such finding was made by the Court nor is the Court required to make such a finding.

b. Appellee stands *in loco parentis* with DB and his status as DB’s stepparent confers standing to request parental rights under New Hampshire law.

Appellee asserts and the trial Court found that Appellee stands *in loco parentis* with DB and is DB’s stepparent. The Court made no findings regarding the forfeiture of either of these relationships or statuses by way of “ouster” or any other operation of fact or law.

III. The trial court did not violate Appellant’s constitutional rights the New Hampshire Constitution, nor under the U.S. Constitution, when it held that

appellee had standing to petition for parenting rights with respect to Appellant's son, DB.

It is beyond dispute that the Court has the authority to, and maintains constitutional muster when, it grants parenting rights and responsibilities to stepparents or grandparents who stand *in loco parentis* to the children.

- a. **The Court did not err by applying solely a best-interests-of-the-child standard in determining that Appellee was able to Petition for parental rights over the objection of the natural mother.**

The Court did not apply solely a best-interests-of-the-child standard. The record clearly reflects that the Court made ample requisite findings to support that Appellee is DB's stepparent, stands *in loco parentis* to DB, and it is in DB's best interest for Appellee to have parenting rights and responsibilities over him.

- b. **The temporary awarding of parenting rights to Appellee is sustainable.**

The present award of parenting rights was made on a temporary basis. The only issue currently at bar is the issue of standing. The Broderick Test is not applicable because the parties have not yet argued any of the Broderick principals nor has the Court made any findings. This is an interlocutory appeal to determine standing only. The satisfaction of the Broderick test was not brought up at trial, in Appellant's Motion to Reconsider, or in her Interlocutory Appeal Statement.

ARGUMENT

I. The Court was correct when it found Appellee to be DB's stepparent.

a. **Appellee's status as DB's stepparent was not extinguished upon the disillusion of the marriage.**

It is undisputed that the Court does not violate the constitutional protections of a fit parent, when it, under certain circumstances, awards parenting rights and responsibilities to a stepparent or a grandparent over the objection of said fit parent. It is also undisputed that stepparents and grandparents are the ONLY third parties to whom the Court may make such an award without violating a fit parent's constitutional rights. If Appellant's argument is correct, then all stepparents who have been awarded parenting rights and responsibilities under any circumstances must be immediately divested of all such rights and responsibilities the moment they become, "former stepparents" as they would no longer be stepparents.

There is no NH history squarely on point with this specific issue of when, if at all, a relationship by affinity is terminated. NH has settled the issue in the context of a stepparent's duty to support his or her stepchildren but has not established any bright line rule.

Other states have considered the effect of dissolution of marriage on family relationships in several legal contexts such as taxes, inheritance, and incest. The courts have come up with different conclusions as justice required. The consensus across the board appears to be that it depends on the totality of the prevailing circumstances and the overall context of the purpose for which such a determination

is being made. NH has no legal definition for stepparent nor is there a definition for “former stepparent.” There is no dispute that the Court has the authority to, and maintains constitutional muster when, it grants parenting rights and responsibilities to stepparents or grandparents who stand *in loco parentis* to the children. The Court has found that Appellee stands *in loco parentis* to DB.

Appellee’s *in loco parentis* standing originated during the marriage, continued, and strengthened during the divorce, and continued for years following the divorce. In light of the timing of the *in loco parentis* standing was created, the ongoing characteristic of that standing, the absence of a biological father in DB’s life, the fact that Appellee is the only father figure DB has ever known, the fact that there still exists a relationship of consanguinity between DB and his half-brother JS and they have remained essentially together for the majority of this time, when viewed as a totality, it is clear that the family structure overall has remained intact as to DB, JS, and Appellee. When these facts are viewed in totality, Appellee is still DB’s stepfather.

A ruling that stepparent status ends upon divorce would lead to an absurd result. NH law plainly allows the awarding of parental rights and responsibilities to a stepparent. RSA 461-A:6 V. If the law views, in light of this issue, that stepparent status is terminated upon divorce, then all awards made by the Court granting parenting rights and responsibilities to stepparents cannot, as a matter of law, survive the Court’s final decree of divorce because the stepparent who lawfully received parenting rights and responsibilities over their step child would, by the same stroke of

the judicial officer's pen, then become legal strangers to their stepchildren thereby making the Court's award of parenting rights and responsibilities unconstitutional and void. This result would certainly be absurd.

"[W]e will not interpret statutory language in a literal manner when such a reading would lead to an absurd result." *State v. Brest*, 167 N.H. 210, 212, 108 A.3d 623, 626 (2014)

The Court is not required to adopt Appellee's proposal that, "clearly, and logically, a distinction between the status of stepparent and relationship of stepparent. Though the stepparent/child **relationship** ends upon divorce, the **status** of stepparent is bestowed upon marriage and endures, at least for the purposes of parenting rights, beyond divorce." To reach the same conclusion the Court may simply find that divorce, does not necessarily terminate the stepparent-stepchild relationship status in the context of parenting rights and responsibilities.

Appellant's claim that awarding parenting rights and responsibilities to a "former stepparent" years after the divorce would be absurd, is without merit. To date there has been no need for Appellee to seek a court order to obtain what he and DB already had. The timing of the Court's involvement has no bearing on what is best for DB.

Conversely, awarding parenting rights and responsibilities to a loving father who has been an important part of DB's life, provides unconditional love and guidance, is the child's only known father figure, has maintained a relationship between the child and his half-brother as part of the same household for years beyond

the parents' divorce, is not absurd, but, "comports with the expansion in this State of the rights and duties of stepparents in recognition of the ever-changing variety of "family" or "family-like" relationships commonplace in today's society." *Estate of Robitaille v. New Hampshire Dept. of Revenue Admin.*, 149 N.H. 595, 598, 827 A.2d 981, 984 (N.H. 2003)

b. There is no statutory basis to find that Appellee's stepparent relationship or status with DB was extinguished by divorce.

There is no statutory definition of "former stepparent." There is no statutory limitation placed upon the timing of a stepparent's request for parenting rights. The trial Court addressed the timing in this case and ruled that it "fails to see that [Appellee's failure to seek parenting rights over DB when the parties divorced] would permanently extinguish or foreclose his right to do so." (Courts Order dated July 20, 2021)

Stepparents and Grandparents, under certain circumstances, survive Constitutional prohibition of court granting parenting rights to non-parents, based upon their intimate familial relationship with the child not a rigid analysis of their supposed legal title. The relationship between Appellee and DB has not changed since prior to the parties' divorce.

II. **The Court was correct in finding Appellee had standing to petition for parenting rights with respect to Appellant’s son, DB when it found that appellee stood *in loco parentis* with respect to DB.**

a. **Appellee does stand *in loco parentis* with respect to DB and continues to so stand since the time of his Petition. There was no “ouster” of DB from Appellee’s care.**

The issue of “ouster” was argued at trial. The Court heard counter testimony which categorized the disputed dialog as frustration on the part of Appellee in his effort to encourage Appellant to “step up and be a mother” and to assist Appellee with raising her son.

The Court was invited to find that DB was “ousted” but no such finding was made by the Court nor is the Court required to make such a finding. Appellant suggests that because certain “evidence” was presented, the Court is somehow obligated to accept it and assign it a determinative weight. This is not the case. The Court was offered evidence, the Court received it along with a counter argument, and the Court rendered its decision. The fact that Appellant does not agree with the Court’s findings does not mean the Court “ignored” the evidence proffered.

Though the facts may be distinguishable from the case at bar, the standing issue in *Bodwell* was whether a stepparent had standing outside the context of a divorce. The statutory provision granting subject matter jurisdiction over child custody determinations at the time was RSA 458:17 which restricted jurisdiction to cases “where there shall be a decree of divorce or nullity,” RSA 458:17, I (Supp.1996)

Bodwell v. Brooks, 141 N.H. 508, 686 A.2d 1179, (NH 1996) RSA 458:17 has been repealed. (2005)

The *Bodwell* custody dispute was between two unmarried biological parents. There was no divorce involved. The *Bodwell* ruling extended jurisdiction for the Court to award parenting rights to a stepparent outside the context of divorce.

The quote identified by Appellant, “the superior court also has the authority to include, as an intervenor, a stepparent who is married to the natural parent in the custody determination” is not restrictive language limiting stepparent rights to just intervening in the biological parents’ divorce. The language ADDS this class of stepparent to the already established class of stepparents who are eligible to petition for parenting rights and responsibilities.

The quote Appellant chose, actually strengthens Appellee’s argument that his stepparent status remains intact. If Appellant’s assertion is correct, the words “who is married to the biological parent” would be superfluous since according to Appellant, a stepparent who is not married to a biological parent is not a stepparent. Therefore, under Appellant’s analysis, the *Bodwell* court has clearly identified two types of stepparents, those who are still married to the biological parent and those who are not.

The authority of the Court to grant parenting rights and responsibilities to stepparents is well established. Said the *Bodwell* Court, “In certain circumstances, we have recognized that an individual who is not the natural parent of the child may assert legal rights with respect to that child. The New Hampshire Legislature and Judiciary have consistently expanded the rights and duties of stepparents. See RSA

546-A:3 (1974) (obligation of stepparents to support stepchildren); RSA 458:17-c (1992) (stepparent authority to make emergency medical decisions); RSA 86:6, II(h)(Supp.1996) (permitting stepchildren and their spouses to inherit tax-free from stepparents); *Ruben v. Ruben*, 123 N.H. 358, 362, 461 A.2d733, 735 (1983); *Logan v. Logan*, 120 N.H. 839,842-43, 424 A.2d 403, 404-05 (1980). Statutory and case law support the right of stepparents to seek custody or visitation of children in some situations. See RSA 458:17, VI; *Stanley D. v. Deborah D.*, 124 N.H. 138, 467 A.2d 249 (1983). Moreover, in the divorce context we recognized the power of the court to award custody to a stepparent in preference even to a natural parent based on the best interests of the child. *Stanley D.*, 124 N.H. at 142, 467 A.2d at 251.” *Id.* at 512.

The *Stanley D* Court did not place any limiting language that would suggest that the Court’s authority to award parenting rights to stepparents is restricted to only during the divorce. In fact, though the quoted texts refer to “in a divorce proceeding,” it goes on to define the stepparent’s rights “after the divorce.” *Stanley D. v. Deborah D.*, 124 N.H. 138, 142, 467 A.2d 249, 250 (1983). The Court makes specific reference to the rights and responsibilities of a “stepparent” to “the children of his former spouse...” *Id.* If Appellant is correct, this reference makes no sense because if the stepparent’s spouse is his “former spouse” then he is, according to Appellant, not a stepparent. *Id.*

- b. **Appellee stands *in loco parentis* with DB and his status as DB’s stepparent confers standing to request parental rights under New Hampshire law.**

Appellee asserts and the trial Court found that Appellee stands *in loco parentis* with DB and is DB's stepparent. The Court made no findings regarding the forfeiture of either of these relationships or statuses by way of ouster or any other operation of fact or law. Appellant repeatedly cites these proposed facts which have NOT been found by the Court. There is no finding on the record that Appellee "ousted" DB. The purpose of an Interlocutory Appeal is to settle issues of law, not to second guess the trial Court's factual findings.

III. The trial court did not violate Appellant's constitutional rights the New Hampshire Constitution, nor under the U.S. Constitution, when it held that Appellee had standing to petition for parenting rights with respect to Appellant's son, DB.

The Court has the authority to, and maintains constitutional muster when, it grants parenting rights and responsibilities to stepparents or grandparents who stand *in loco parentis* to the children. "An award of custody to a stepparent or a grandparent over the objection of a fit natural or adoptive parent is not unreasonable or unduly restrictive of parental rights..." under certain circumstances. *In the Matter of R.A. & J.M.*, 153 N.H. 82 at 110.

a. The Court did not err by applying solely a best-interests-of-the-child standard in determining that Appellee was able to Petition for parental rights over the objection of the natural mother.

The Court did not apply solely a best-interests-of-the-child standard. The record

clearly reflects that the Court made ample requisite findings to support that Appellee is DB's stepparent, stands *in loco parentis* to DB, and it is in DB's best interest for Appellee to have parenting rights and responsibilities over him.

Appellant has isolated a portion of the trial Court's order and presents it as the trial Court's ruling. The reality is that the Court was making a statement about the best interests of the child for the purpose of encouraging the parents to settle. The Court was not dismissing the issue of Appellee's status as a stepparent or his *in loco parentis* standing with DB but in fact made those specific findings in support of its temporary order.

b. The temporary awarding of parenting rights to Appellee is sustainable.

The present award of parenting rights was made on a temporary basis. The only issue currently at bar is the issue of standing. The Broderick Test is not applicable because the parties have not yet argued any of the Broderick principals nor has the Court made any findings. This is an interlocutory appeal to determine standing only. The satisfaction of the Broderick test was not brought up at trial, in Appellant's Motion to Reconsider, or in her Interlocutory Appeal Statement. This question is not properly before the Court.

CONCLUSION

In accordance with the foregoing, Appellee requests that the order of the Circuit Court be affirmed, and that the case be remanded for further action.

Dated: June 29, 2023

Respectfully submitted,
Alden Satas,
By his Attorneys,
Schwartzberg Law

/s/ John T. Katsirebas Jr.

John T. Katsirebas Jr, NH Bar ID NO. 20102
572 Tenney Mountain Highway
Plymouth, NH 03264
603-536-2700

REQUEST FOR ORAL ARGUMENT AND CERTIFICATION

Counsel for Alden Satas requests that Attorney John T. Katsirebas Jr. be allowed 15 minutes for oral argument.

CERTIFICATE OF SERVICE

I state that on June 29, 2023 I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's electronic filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case. I am mailing or hand-delivering copies to all other interested parties.

/s/ John T. Katsirebas Jr.

John T. Katsirebas Jr.