THE STATE OF NEW HAMPSHIRE

SUPREME COURT

DOCKET 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 COURTNEY CROSATO (FORMERLY CRABTREE-SATAS),

APPELLANT

****

Counsel for Appellant:
William D. Woodbury, Esq. (16195)
Normandin, Cheney & O'Neil, PLLC
PO Box 575
Laconia NH 03247-0575
(603-524-4380)
wwoodbury@nco-law.com

TABLE OF CONTENTS

TABLE OF CASES……4

TABLE OF STATUTES AND OTHER AUTHORITIES……..5

QUESTIONS PRESENTED FOR REVIEW……..6

STATUTORY AND CONSTITUTIONAL PROVISIONS……8

OTHER AUTHORITIES……...12

STATEMENT OF THE CASE……..13

STATEMENT OF FACTS……15

SUMMARY OF ARGUMENT……19

ARGUMENT……23

I. The Court Erred When It Found Appellee To Be D.B.'s Stepparent...24

A. Appellee's status as a stepparent ended upon dissolution of the parties' marriage……24

B. There is no statutory basis to find that Appellee remains the stepparent of D.B. for purposes of asserting parental rights…..29

II. The Court Erred When It Held That Appellee Had Standing To Petition for Parenting Rights With Respect To Appellant's Son, D.B. When It Adopted Appellee's Theory That Appellee Stood *In Loco Parentis* With Respect To D.B. ……..…...32

A. Appellee does not currently stand *in loco parentis* with respect to D.B., nor did he at the time of his Petition due to his ouster of D.B. from his care……...32

B. Even if Appellee stood *in loco parentis* at one time, this does not confer standing as he is no longer a contemplated third party for purposes of asserting parental rights under New Hampshire law……34

III. The Trial Court Violated 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 U.S. Constitution, When It Held That Appellee Had Standing To Petition For Parenting Rights With Respect To Appellant's Son, D.B. ……..36

A. The Court erred 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……38

B. The awarding of parenting rights to the Appellee is unsustainable pursuant to the Broderick Test……...40

CONCLUSION……..41

REQUEST FOR ORAL ARGUMENT…….41

RULE 16(11) CERTIFICATION……..42

CERTIFICATE OF SERVICE……..…42

TABLE OF CASES

Bodwell v Brooks, 141 NH 508 (1996)……...…….2,33,34,38
Estate of Robitaille, 149 NH 595 (2003)……...37
In re Bordalo & Carter, 164 N.H. 310 (2012)……39
In re Estate of Bordeaux, 37 Wn.2d 561 (1950)……37
In re Jeffrey G., 153 NH 200 (2006)……..33
In re Kerry D., 144 NH 146 (1999)……...……36
In re Nelson, 149 NH 545 (2003)……35,36,37
In re Reena D., 163 NH 107 (2011)……...38
In re Samantha L., 145 NH 408 (2000)…….36
In the Matter of Morris, 174 NH 562 (2021)……39,40
In the Matter of Muchmore & Jaycox, 159 NH 470 (2009)…..…….29
Preston v. Mercieri, 133 NH 36 (1990)…….38
Ruben v. Ruben, 123 NH 358 (1983)……...24,25
St. Pierre and Thatcher, 172 NH 209 (2019)……26,27
Stanley D. v Deborah D., 124 NH 138 (1983)……...25,26,28,32,35
Troxel v. Granville, 530 U.S. 57 (2000)……..36,38,39

TABLE OF STATUTES AND OTHER AUTHORITIES

Generally Applicable Chapters:

RSA 458

RSA 461-A

RSA 169-C

RSA 170-C

RSA 546-A

Statutes Specifically Referenced:

RSA 458: 17 (VI)……...33

RSA 461-A:1 (V)…….…..30

RSA 461-A:3 (I)……30

RSA 461-A:3 (II)…….…..30

RSA 461-A:6 (V)……6,20,29,30,31,35

RSA 461-A:11…….17,20,29

RSA 461-A:13……...……...30,31

Part I, Article 2, New Hampshire Constitution……..7,22,36

14th Amendment, United States Constitution…...…… 7,22,36

Other Authorities:

26 CFR § 1.152-2 (d)…….37

Black's Law Dictionary, 10th Edition (page 1288)……...……14,31

QUESTIONS PRESENTED FOR REVIEW

I. 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? ***Referenced in the record at: Transcript of May 28, 2021, Hearing: Page 14, Lines 8-11; Page 15, Line 15, through Page 19, Line 16; Page 19 Line 22- Page 20, Line 4; Page 20, Line 12-Page 24, Line 3; Objection to Motion for Temporary Parenting Order, App. Page 31, Paras. 6 and 9; Motion to Dismiss Parenting Petition, App. Page 38, Paras. 12-14; Proposed Order, App. Page 89; Motion to Clarify/Reconsider, App. Page 145, Paras. 17-41; Reply to Objection to Motion to Clarify/Reconsider, App. Page 165.***

II. 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. ***Referenced in the record at: Transcript of May 28, 2021, Hearing: Page 14, Lines 8-11; Page 15, Line 15, through Page 19, Line 16; Page 19 Line 22- Page 20, Line 4; Page 20, Line 12-Page 24, Line 3. Objection to Motion for Temporary Parenting Order, App. Page 31, Paras. 6-9;***

Motion to Dismiss Parenting Petition, App. Page 38, Para. 12; Motion to Clarify/Reconsider, App. Page 145, Paras. 42-44.

III. 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. ***Referenced in the record at: Transcript of May 28, 2021, Hearing: Page 19, Lines 17-21; Objection to Motion for Temporary Parenting Order, App. Page 31, Para. 16; Motion to Dismiss Parenting Petition, App. Page 38, Paras. 16-19; Proposed Order, App. Page 98; Motion to Clarify/Reconsider, App. Page 145, Paras. 45-46; Reply to Objection to Motion to Clarify/Reconsider, App. Page 165.***

STATUTORY PROVISIONS

RSA 458:17 Support and Custody of Children
(2004, [repealed 2005])

458:17 (VI) In making any order relative to such custody, the court shall not give any preference to either parent of the children because of the parent's sex. The paramount and controlling consideration in deciding child custody is the overall welfare of the child, and there is no one formula for all cases, each case being determined by its particular facts. Considerable weight may be given to the stated preference of a mature minor, provided that preference was not unduly influenced. If the court determines that it is in the best interest and welfare of the children, it shall in its decree grant reasonable visitation privileges to a party who is a stepparent of the children or to the grandparents of the children pursuant to RSA 458:17-d. Nothing in this paragraph shall be construed to prohibit or require an award of custody to a stepparent or grandparent if the court determines that such an award is in the best interest of the child.

461-A Parental Rights and Responsibilities

461-A:1 (V) “Parental rights and responsibilities” means all rights and responsibilities parents have concerning their child.

461-A:3 (I) The procedure in cases concerning parental rights and responsibilities, including child support, shall be the same as the procedure for petitions for divorce and legal separation under RSA 458. Except as otherwise provided in this chapter, the court, upon proper application and notice to the adverse party, may revise and modify any order made by it, make such new orders as may be necessary, and may award costs as justice may require.

461-A:3 (II) The jurisdiction granted by this section shall be limited by the Uniform Child Custody Jurisdiction and Enforcement Act, if another state has jurisdiction as provided in that act. For the purposes of interpreting that act and any other provision of law which refers to a custodial parent, including but not limited to RSA 458-A, any parent with 50 percent or more of the residential responsibility shall be considered a custodial parent.

461-A:6 (V) If the court determines that it is in the best interest of the children, it shall in its decree grant reasonable visitation privileges to a party who is a stepparent of the

children or to the grandparents of the children pursuant to RSA 461-A:13. Nothing in this paragraph shall be construed to prohibit or require an award of parental rights and responsibilities to a stepparent or grandparent if the court determines that such an award is in the best interest of the child.

461-A:11

I. The court may issue an order modifying a permanent order concerning parental rights and responsibilities under any of the following circumstances:

(a) The parties agree to a modification.

(b) If the court finds repeated, intentional, and unwarranted interference by a parent with the residential responsibilities of the other parent, the court may order a change in the parental rights and responsibilities without the necessity of showing harm to the child, if the court determines that such change would be in accordance with the best interests of the child.

(c) If the court finds by clear and convincing evidence that the child's present environment is detrimental to the child's physical, mental, or emotional health, and the advantage to the child of modifying the order outweighs the harm likely to be caused by a change in environment.

(d) If the parties have substantially equal periods of residential responsibility for the child and either each asserts or the court finds that the original allocation of parental rights and responsibilities is not working, the court may order a change in allocation of parental rights and responsibilities based on a finding that the change is in the best interests of the child.

(e) If the court finds by clear and convincing evidence that a minor child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature minor child as to the parent with whom he or she wants to live. Under these circumstances, the court shall also give due consideration to other factors which may have affected the minor child's preference, including whether the minor child's preference was based on undesirable or improper influences.

(f) The modification makes either a minimal change or no change in the allocation of parenting time between the parents, and the court determines that such change would be in the best interests of the child.

(g) If one parent's allocation of parenting time was based in whole or in part on the travel time between the parents' residences at the time of the order and the parents are now

living either closer to each other or further from each other by such distance that the existing order is not in the child's best interest.

(h) If one parent's allocation or schedule of parenting time was based in whole or in part on his or her work schedule and there has been a substantial change in that work schedule such that the existing order is not in the child's best interest.

(i) If one parent's allocation or schedule of parenting time was based in whole or in part on the young age of the child, the court may modify the allocation or schedule or both based on a finding that the change is in the best interests of the child, provided that the request is at least 5 years after the prior order.

II. Except as provided in RSA 461-A:11, I(b)-(i) for parenting schedules and RSA 461-A:12 for a request to relocate the residence of a child, the court may issue an order modifying any section of a permanent parenting plan based on the best interest of the child. RSA 461-A:5, III shall apply to any request to modify decision-making responsibility.

III. For the purposes of this section, the burden of proof shall be on the moving party.

461-A:13

I. Grandparents, whether adoptive or natural, may petition the court for reasonable rights of visitation with the minor child as provided in paragraph III. The provisions of this section shall not apply in cases where access by the grandparent or grandparents to the minor child has been restricted for any reason prior to or contemporaneous with the divorce, death, relinquishment or termination of parental rights, or other cause of the absence of a nuclear family.

II. The court shall consider the following criteria in making an order relative to a grandparent's visitation rights to the minor child:

(a) Whether such visitation would be in the best interest of the child.

(b) Whether such visitation would interfere with any parent-child relationship or with a parent's authority over the child.

(c) The nature of the relationship between the grandparent and the minor child, including but not limited to, the frequency of contact, and whether the child has lived with the grandparent and length of time of such residence, and when there is no reasonable cause

to believe that the child's physical and emotional health would be endangered by such visitation or lack of it.

(d) The nature of the relationship between the grandparent and the parent of the minor child, including friction between the grandparent and the parent, and the effect such friction would have on the child.

(e) The circumstances which resulted in the absence of a nuclear family, whether divorce, death, relinquishment or termination of parental rights, or other cause.

(f) The recommendation regarding visitation made by any guardian ad litem appointed for the child pursuant to RSA 461-A:16.

(g) Any preference or wishes expressed by the child.

(h) Any such other factors as the court may find appropriate or relevant to the petition for visitation.

III. The petition for visitation shall be entered in the court which has jurisdiction over the divorce, legal separation, or a proceeding brought under this chapter. In the case of death of a parent, stepparent adoption, or unwed parents, subject to paragraph IV, the petition shall be entered in the court having jurisdiction to hear divorce cases from the town or city where the child resides.

IV. If the parent of the minor child is unwed, then any grandparent filing a petition under this section shall attach with the petition proof of legitimation by the parent pursuant to RSA 460:29 or establishment of paternity pursuant to RSA 168-A.

V. Upon the motion of any original party, the court may modify or terminate any order made pursuant to this section to reflect changed circumstances of the parties involved.

VI. Nothing contained in this section shall be construed to affect the rights of a child or natural parent or guardian under RSA 463 or adoptive parent under RSA 170-B:20.

Part I [Art.] 2. New Hampshire Constitution

[Natural Rights.] All men have certain natural, essential, and inherent rights among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.

United States Constitution, 14th Amendment

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

OTHER AUTHORITIES

26 CFR § 1.152-2 Rules relating to general definition of dependent

(d) In the case of a joint return it is not necessary that the prescribed relationship exist between the person claimed as a dependent and the spouse who furnishes the support; it is sufficient if the prescribed relationship exists with respect to either spouse. Thus, a husband and wife making a joint return may claim as a dependent a daughter of the wife's brother (wife's niece) even though the husband is the one who furnishes the chief support. The relationship of affinity once existing will not terminate by divorce or the death of a spouse. For example, a widower may continue to claim his deceased wife's father (his father-in-law) as a dependent provided he meets the other requirements of section 151 [26 USCS § 151].

Black's Law Dictionary, 10th Edition, at page 1288

Stepparent. (1840) The spouse of one's mother or father by a later marriage.

STATEMENT OF THE CASE

The Parties were married in May of 2012, when Appellant's son, D.B. was approximately 2 ½ years old. The Parties separated in April of 2016. Appellee filed for divorce in August of 2016 (Appellant's Appendix [hereinafter, App.] at 110) and, by Notice, dated February 24, 2017, the court issued a Final Decree on Petition for Divorce, Parenting Plan and Uniform Support Order. The Parties' sole mutual child, J.S., is the only child referenced in, and subject to, the parenting orders in that case (#649-2016-DM-00341, hereinafter, "J.S.'s case"). (Id. at 115)

On or about November 17, 2020, Appellee filed multiple petitions/motions in J.S.'s case, including a Petition for Contempt (with respect to the USO), and a Petition to Change Court Order (App. at 17), seeking, among other things, "*Step-parent visitation*" over Appellant's child. (Id. at 19)

Appellee then filed a Parenting Petition, initiating case #669-2020-DM-00132, [hereinafter, "D.B.'s case"] (App. at 21) seeking ''*A parenting plan which describes the parties' parental rights and responsibilities*" with respect to Appellant's son, D.B. (Id. at 23) Thereafter, Appellee withdrew the Petition to Change Court Order advising the trial court that he had "*originally intended to add his stepchild, [D.B.], to the parties' existing divorce Order*'' however, upon closer consideration, acknowledging that "*there is no statutory authorization under RSA 461-A: 11 to modify the existing Parenting Plan under the divorce*." (Id. at 24) Appellant filed an Objection and Motion to Dismiss Parenting Petition, (Id. at 38), setting forth the facts that: D.B.'s biological father's parental rights have never been subject to termination proceedings, voluntary or otherwise, and that Appellee had not adopted D.B. Appellant further argued that, as Appellee's status as a stepparent to D.B. had ended nearly 4 years prior to the filing of the Parenting Petition, Appellee had no standing to pursue the same, and that the Family Division did not have jurisdictional authority to consider an award of custody of Appellant's child to Appellee.

(Id. at 39) Appellant was also remarried on November 15, 2020, prior to the Appellee's Petition for parenting rights with respect to D.B.

Subsequently, the trial court issued two separate Notice(s) of Hearing, one in D.B.'s case, and the other in J.S.'s case, with both matters to be heard on May 28, 2021. The Parties, through Counsel, submitted various documents and pleadings prior to the hearing. (App. at 38, 43, 98, 100) At the hearing on May 28, 2021, Appellant also filed a Notice of Factually Inaccurate and/or Misleading Statements within Appellee's Proposed Order, attaching evidence of the same to the pleading. (Id. at 107)

By Notice dated June l, 2021, the trial court issued its combined ORDER (including the caption for both cases), incorporating Appellee's proposed order with respect to D.B.'s case. (App. at 4) The trial court did not reference, incorporate and/or adopt proposed orders in J.S.'s case submitted by Appellant. Appellee did not file proposed orders in J.S.'s case.

On June 11, 2021, Appellant filed a timely Motion to Clarify and Reconsider, (App. at 145), asserting that the trial court had erred in combining D.B.'s and J.S.'s cases, in issuing findings/orders in J.S.'s case when the hearing was focused (almost) exclusively on D.B.'s case, granting Appellee standing to seek parenting rights and responsibilities over D.B., and finding that the Family Division had jurisdiction to consider an award of custody of Appellant's child, over her objections, to Appellee.

On June 24, 2021, the trial court ordered Appellee to file a response to Appellant's Motion to Clarify and Reconsider by July 10, 2021, (App. at 155), and Appellee filed an Objection on July 12, 2021. (Id. at 157) Appellant then filed a Brief Reply to Appellee's Objection on July 15, 2021. (Id. at 165) By Notice dated July 21, 2021, (App. at 12) the trial court maintained its prior findings and ruling(s), finding that "*A 'stepparent' is defined as, 'the spouse of one's [here, [D.B.] mother or father by a later marriage. Black's Law Dictionary, 10th Edition, page 1288*." and that "*Mr. Satas is the Stepparent of [D.B.]*", (Id. at 14), and concluding, in part, "***Regardless of Mr. Satas' standing or***

any other legal issues in this case, the fact of the matter is that Mr. Satas and [D.B.] have had a strong relationship for several years*. The Court believes it would clearly be in [D.B.]'s best interest to keep that bond intact, which would also keep the bond between [J.S.] and [D.B.] intact* ...". (Id. at 16, emphasis added) This interlocutory appeal follows.

STATEMENT OF FACTS

The Parties were married in 2012 when D.B., Appellant's biological son from a prior relationship was two and a half years old. (App. at 5). The Parties also have a child in common, J.S., who was born in 2013. Id.

Appellee filed for divorce in August of 2016 and, at the end of October in 2016, the Appellant allowed both children to remain with Appellee while she sought treatment for substance misuse/addiction.

By Notice, dated February 24, 2017, the court issued a Final Decree on Petition for Divorce, Parenting Plan and Uniform Support Order. (App. at 98). Although both J.S. and D.B. are listed in the Petition for Divorce as a "*minor children born to or adopted by the parties either before or during the marriage*", it was not by mistake that D.B. was not on the Parenting Plan. (App. at 165)

Appellee did not adopt D.B. Appellee was never granted guardianship of D.B. No orders, regarding any alleged parenting rights asserted by the Appellee with respect to D.B., were created or issued by any court, during the marriage, during divorce proceedings, or at any time thereafter. (App. at 32)

While both boys continued to live with Appellee, Appellant stayed with friends and in a homeless shelter in Claremont, NH. Appellant visited with her children approximately once per month. As Appellant did not have a vehicle, Appellee would transport the children for visits. During this period, Appellant was not able to pay child

support (as ordered in J.S.'s case) and was receiving Government assistance (SNAP). The homeless shelter in which she stayed had a program that assisted the Appellant to obtain an apartment in November of 2017 where she remained for one year while working at a restaurant that was walking distance from her residence. During this period, Appellant paid Appellee child support as she was able.

In November of 2018, Appellant moved into another apartment in Claremont, but was still without transportation. Appellant remained in this apartment until mid-June of 2019, during which time she obtained a better paying job at another restaurant close to her residence. Unfortunately, Appellant was unable to afford the apartment and was forced to live in a tent in her sister's yard in Canaan, NH. At that time, Appellant lived with a significant other who owned a vehicle allowing her to continue working at her job in Claremont.

In July of 2019, a severe storm caused flooding in Canaan which resulted in the loss of nearly all of the Appellant's belongings. Thereafter, Appellant and her significant other stayed with friends until they were able to obtain an apartment in Ashland, NH. Appellant was then able to transfer her employment to an affiliated restaurant in Plymouth, NH, and began sharing equal/near equal parenting time with Appellee (App. at 107). In January of 2020, Appellant began working at a convenience store and filling station in Ashland, NH.

In May of 2020, Appellee expressed, through a series of angry text messages, that D.B. was having behavioral issues and being "disrespectful" to him. (App. at 46-61) On or about May 23, 2020, Appellee forwarded a text message to Appellant which stated in part:

> "*I'm not tolerating it anymore hes terrible, hes an asshole and hes so disrespectful. Right now I don't want anything to do with him and he needs to understand that*…"

(App. at 61 (reproduced as written)) Since that time, D.B. has resided, and thrived, with the Appellant. (Transcript at 22, Lines 17-18)

On or about November 17, 2020, Appellee filed multiple petitions/motions in J.S.'s case, including a Petition for Contempt (with respect to the USO), and a Petition to Change Court Order, seeking, among other things, "*step-parent visitation*". (App, at 19)

Appellee then filed a Parenting Petition, (App. at 21), initiating D.B.'s case #669-2020-DM-00132, seeking a ''*parenting plan which describes the parties' parental rights and responsibilities*" with respect to Appellant's son, D.B., (Id. at 23) Thereafter, Appellee withdrew the Petition to Change Court Order advising the trial court that he had "*originally intended to add his stepchild, [D.B.], to the parties' existing divorce Order*'' and acknowledging that "*there is no statutory authorization under RSA 461-A:11 to modify the existing Parenting Plan under the divorce*." (Id. at 24)

A hearing was held on May 28, 2021, during which testimony of Division for Children, Youth and Families [DCYF] Child Protective Services Worker [CPSW] Mara Rouleau-Matheson, received by the Court via offer of proof, revealed that significant concerns exist with respect to unfounded reports by Appellee to DCYF against the Appellant. Appellant's Counsel provided the following offer of proof as to what CPSW, Mara Rouleau-Matheson, who was present in the Courtroom, would testify to:

> *"Your Honor, it is my understanding that it is -- that Ms. Rulo-Matthewson [sic] is of the opinion that* ***Mr. Satas has utilized the DCYF system and process for the purpose of continuing to perpetuate domestic violence against the [Appellant] and that that is also -- based on my understanding of the record, that is also the opinion of other CPSWs at DCYF and domestic violence advocates consulted by DCYF on this issue****. Again, the Petitioner is using the system through these complaints to perpetuate domestic violence against the Respondent. We see this as a very serious situation."*

(Transcript at Page 34, Lines 8-18, emphasis added)

Appellant asserts that by adopting and incorporating Appellee's proposed Order into its own ORDER of June 1, 2021, the trial court ignored the offer of proof above, while incorporating and adopting several factually inaccurate and/or misleading statements presented by the Appellee. As detailed in Appellant's Notice of Factually Inaccurate and/or Misleading Statements within Appellee's Proposed Order, and the documents attached thereto, (App. at 107), and as evidenced by Respondent's exhibits, (Id. at 43), as well as Appellee's own contradictory testimony, (Id. at 6), Appellee's presentation of facts in the proposed Order, subsequently adopted by the court, was inaccurate and/or misleading. Specifically:

Contrary to Appellee's assertion that he filed for divorce in "*early 2016*" and that Respondent had left both boys in his sole care and custody by "*February 2016*", the evidence presented shows that both Parties were caring for the children at the time the Petition for Divorce was filed in **August 2016**. (App. at 107, 111)

Contrary to Appellee's assertion that the Parenting Plan (in J.S.'s case) awarded him "*sole decision-making authority",* the evidence presented shows that the Parenting Plan provides for "***Joint** Decision-Making*". (App. at 107, 116)

Contrary to Appellee's representation that the Parties' son, J.S., and Appellant's son, D.B., continued to live with and be cared for by Appellee "*until approximately March of 202l*.", the evidence and testimony presented showed that, **beginning in 2019,** the Parties began sharing equal/nearly equal parenting time and that D.B. has resided primarily/nearly exclusively with the Appellant **since June 2020**. (App. at 107, 125)

The Court acknowledged and accepted these corrections in its Order on Reconsideration, issued on July 21, 2021. (App. at 15-16, referencing Appellant's Motion to Clarify and Reconsider, App. at 145)

Other Factual Inaccuracies in the Record

Appellant further wishes to bring to the attention of the Court that Page 1 of the May 28, 2021, hearing transcript states that Ralph Morin, GAL, was also present at the hearing on May 28, 2021. He was not. As of that date, Mr. Morin had not yet been appointed.

Page 2 of the transcript indicates there were no witnesses for the Respondent/Appellant. This is incorrect. As the transcript indicates, Appellant produced CPSW, Mara Rouleau-Matheson of DCYF who provided testimony in Court and was present for Appellant's counsel's offer of proof with respect to her expected testimony.

Further, Page 2 of the transcript indicates there were no exhibits. This is incorrect. Appellant submitted an entire evidentiary packet (App. at 43) that was fully accepted and acknowledged by the Court. (Id. at 6)

Finally, at Page 30, Line 15, the transcript quotes Appellant's counsel as using the term "*false incorporation*". This is incorrect. The term used was "*false equilibration*".

SUMMARY OF ARGUMENT

I. The Court Erred When It Found Appellee To Be D.B.'s Stepparent.

Appellee is not D.B.'s stepparent. Appellant respectfully asserts that the trial court overlooked or misapprehended critical facts of this case in applying the law cited in Appellee's proposed Order, as the facts and circumstances of those cases are clearly and materially distinguishable from those present in this case.

A. Appellee's status as a stepparent ended upon dissolution of the parties' marriage.

The Parties in this matter have been divorced since February of 2017. Appellee is not the biological father of D.B. Appellee did not adopt D.B. Appellee does not have guardianship of D.B.. No orders, regarding any alleged parenting rights asserted by the Appellee with respect to D.B. were created or issued by the court during the marriage, during divorce proceedings, or at any time thereafter. At the time of Appellee's Petition for parenting rights with respect to D.B., Appellant was remarried. Under New Hampshire law, the stepparent relationship ceases upon dissolution of marriage.

B. There is no statutory basis to find that Appellee remains the stepparent of D.B. for purposes of asserting parental rights.

Appellee has acknowledged that there is "*no statutory authorization under RSA 461-A:11 to modify the existing Parenting Plan under the divorce*" to request parenting time with Appellant's child who was not addressed in that Parenting Plan. Further, there is no statutory authorization to grant standing to a former stepparent under RSA 461-A:6 V. In interpreting statutes, the Supreme Court will ascribe the plain and ordinary meaning of the words used. All related statutory references to the rights of non-parents refer to individuals who have a current stepparent relationship. Here, the Parties were divorced for nearly four years before the Appellee filed his Petition requesting parental rights with respect to the Appellant's son, D.B. Appellees position is unsupported by New Hampshire statutory and common law.

II. The Court Erred When It Held That Appellee Had Standing To Petition For Parenting Rights With Respect To Appellant's Son, D.B. When It Adopted Appellee's Theory That Appellee Stood *In Loco Parentis* With Respect To D.B.

The Appellee does not have standing to request parenting rights with respect to D.B. as he is neither a current stepparent, nor does he stand *in loco parentis*. Even if the court found that Appellee previously stood *in loco parentis*, he did not at the time of his

Petition. In any event, Appellee is not currently a third party contemplated pursuant to New Hampshire law for purposes of seeking ongoing parental rights.

A. **Appellee does not currently stand *in loco parentis* with respect to D.B., nor did he at the time of his Petition due to his ouster of D.B. from his care.**

Although Appellee cared for D.B. for a period of time, with Appellant's express permission while Appellant addressed significant personal issues, Appellee does not maintain *in loco parentis* status. In May of 2020, Appellee relinquished his *in loco parentis* status by ousting D.B. from his home and advising Appellant that he wanted nothing to do with D.B. At the time Appellee petitioned the court for parental rights with respect to D.B., the child had been living exclusively with the Appellant, his biological mother, for approximately six months. There is no legal basis to support the notion that one who is not a stepparent and voluntarily relinquishes *in loco parentis* status may be able to assert parenting rights at some later date.

B. **Even if Appellee stood *in loco parentis* at one time, this does not confer standing as he is no longer a contemplated 3rd party for purposes of asserting parental rights under New Hampshire law.**

New Hampshire has long been reluctant to elevate the rights of non-parents over those of natural parents. It would be illogical to allow one who voluntarily relinquished his/her *in loco parentis* status to later claim parental rights and responsibilities based on previous *in loco parentis* status. Appellant asserts that to hold otherwise would leave parties in these situations in a perpetual state of uncertainty. In this case, even if the court believed Appellee once stood *in loco parentis*, Appellant asserts that Appellee's

voluntary forfeiture of that status by angrily ousting D.B. from his home precludes him from basing a claim of parental rights upon said status.

III. The Trial Court Violated 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 U.S. Constitution, When It Held That Appellee Had Standing To Petition For Parenting Rights With Respect To Appellant's Son, D.B.

The Constitutional rights of a natural parent over her children are not easily set aside and, only in the most unusual and serious of cases may these fundamental rights be abrogated in favor of an unrelated third person; a former stepparent in this case. While the best interest of the child guides all custody matters, there is a presumption that fit parents act in the best interests of their children. There have been no proceedings finding that Appellant is unfit or unable to parent D.B. To the contrary, the trial court received evidence at the hearing of May 28, 2021, that concerns have arisen with respect to Appellee and his unfounded reports against Appellant to DCYF.

A. The Court erred 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

Though the trial court has a duty to consider the best interests of the child, it is clear that the Court's decision rested solely on its best interests analysis. As the Court has held that decisions based on best interests alone are unsustainable pursuant to the applicable constitutional analysis, the trial court's decision must be reversed.

B. The awarding of parenting rights to the Appellee is unsustainable pursuant to the Broderick Test.

Here, even if the Court finds that certain criteria of the Broderick test have been met, there has been no finding that Appellant is in any way unfit as a parent, nor has there been any failure on her part to accept parental responsibilities. Moreover, it was Appellee who ousted D.B. from his home months before he filed his Petition, therefore further emotional harm will not occur due to separation. Appellee has failed to show clear and convincing evidence of requirements of four criteria of the Broderick test, thus the trial court's ruling must be reversed.

ARGUMENT

The trial court's narrative ORDER issued June 1, 2021, begins, in part: "*At the hearing on 5/28/21, the only matter that the Court heard was the issue of 'standing' of Mr. Satas to bring a Petition for parenting rights and responsibilities, given that he is a stepfather to [D.B.], who is the biological son of Ms. Crosato (f/k/a Satas). Following a finding by the Court that Mr. Satas does have standing, the Court then heard argument about TEMPORARY parenting time for the Parties*." (App. at 4)

The court's ORDER goes on to state, in pertinent part, "*For reasons stated by the Court in the Hearing and in Mr. Satas' proposed Order, which cites various case law from the NH Supreme Court, the Court is persuaded that Mr. Satas has standing to seek parenting responsibilities. The Court ADOPTS the proposed narrative Order submitted by Mr. Satas.*" (App. at 6)

Appellant respectfully asserts that the court overlooked or misapprehended the facts of this case in applying the law cited in Appellee's proposed Order, as the facts and circumstances of those cases are clearly and materially distinguishable from those present in this case.

I. The Court Erred When It Found Appellee To Be D.B.'s Stepparent.

The Parties in this matter have been divorced since February of 2017. (App. at 32) Appellee is not the biological father of D.B. (Id.) Appellee did not adopt D.B. (Id.) Appellee does not have guardianship of D.B. (Id.) No Orders, regarding any alleged parenting rights asserted by the Appellee with respect to D.B. were created or issued by the Court during the marriage, during divorce proceedings, or at any time thereafter. (Id.) Appellant had remarried prior to Appellee's Petition for parenting rights over D.B.

A. Appellee's status as a stepparent ended upon dissolution of the Parties' marriage.

The trial court, in its initial ORDER of June 1, 2021, simply adopted the Appellee's analysis as set forth in Appellee's proposed Order. (App. at 6) The court offered no additional or corroborating analysis. In his proposed Order (captioned only as Order and affixed to the court's narrative), Appellee first takes issue with Appellant's reliance upon the case of Ruben v. Ruben for the premise that the stepparent relationship ended at the time of the Parties' divorce. (App. at 100). Appellant asserts that Appellee's position is without merit.

"*[T]he stepparent relationship ceases upon dissolution of the marriage*." Ruben v. Ruben, 123 N.H. 358, 362 (1983). In Ruben, Defendant, Mother, appealed the trial court's approval of the Master's recommendation that, *inter alia*, support not be provided by the Plaintiff Father for the Mother's daughter from a prior marriage. Id. at 360. The Ruben Court observed that, while a few jurisdictions have adopted statutes imposing an obligation to support a stepchild, the majority of those jurisdictions have held that the obligation is "*collateral to the existence of a valid marriage and that once the marriage*

is dissolved, the stepparent relationship ceases and with it the obligation to support the stepchild." Id. at 362 (citation omitted, emphasis added).

The Ruben Court stated unequivocally:

> *"[U]pon the dissolution of a marriage,* ***absent a valid adoption****, a stepparent's duty to support a stepchild pursuant to RSA chapter 546-A ceases,* ***because the stepparent relationship ceases upon dissolution of the marriage****."*

Id., emphasis added.

Appellee argues that Appellant's citation of Ruben was "out of context." (App. at 101) Appellee suggests that Ruben dealt only with the duty of ongoing child support for stepchildren following divorce. (Id.) This reading of Ruben is far too narrow. In the quotation above, the Ruben Court was careful to explain that the cessation of a stepparent's duty to provide child support occurs at the time of divorce because this is when the stepparent relationship ceases. Ruben, *supra* at 362.

Appellee incorrectly argues that the holding in Ruben v. Ruben was "clarified" in the case of Stanley D. v. Deborah D., (App. at 101), however that case specifically refers to current/pending divorce proceedings, not situations where, as here, a stepparent attempts to obtain parental rights four years after a divorce was finalized. (*See generally*, Stanley D. v. Deborah D. 124 NH 138, 140 (1983))

The question on appeal in Stanley D. was whether the court had the power to award joint legal custody of a minor child to her natural mother and her stepfather, and physical custody to the stepfather. Stanley D., *supra* at 140. The facts in Stanley D. are similar to those of the instant case only insofar as the parties there had two children, one the biological child of the mother only and one the biological child of both parties. Id. The Stanley D. holding was narrower than Appellee would have the Court believe. Specifically, the court held that "*upon a finding that* ***the best interests of the child***

***require that her natural mother be denied physical custody**, the Court has the power to award physical custody to the stepfather*." Id. at 143, emphasis added.

In this case, there is no finding that the natural mother is not fit or able to maintain physical custody of D.B. To the contrary, testimony was offered by a CPSW at DCYF at the hearing of May 28, 2021, that concerns exist with respect to Appellee's unfounded reports to DCYF against the Appellant. Appellant's Counsel provided an offer of proof, as to what CPSW, Mara Rouleau-Matheson, who was present in the Courtroom, would testify to:

> *"Your Honor, it is my understanding that it is -- that Ms. Rulo-Matthewson [sic] is of the opinion that **Mr. Satas has utilized the DCYF system and process for the purpose of continuing to perpetuate domestic violence against the Respondent and that that is also -- based on my understanding of the record, that is also the opinion of other CPSWs at DCYF and domestic violence advocates consulted by DCYF on this issue**. Again, the Petitioner is using the system through these complaints to perpetuate domestic violence against the Respondent. We see this as a very serious situation."*

(Transcript, Page 34, Lines 8-18, emphasis added)

The Stanley D. Court also reiterated the well-settled principle that it *"will not overturn a master's findings and rulings unless they are unsupported by existence or are erroneous as a matter of law."* Id. at 143. In this case, reversal is appropriate as the trial court's findings are clearly erroneous as a matter of law and, given the evidence presented at the temporary hearing, are unsustainable.

Appellee further sought justification for his position in the case of In the Matter of St. Pierre and Thatcher, 172 N.H. 209 (2019). (App. at 101) Appellee's reliance upon St. Pierre is misplaced. The issue on appeal in St. Pierre, was St. Pierre's emergency motion to relocate with her child over the objections of Thatcher. St. Pierre, *supra* at

213. There, St. Pierre became pregnant while in a relationship with Thatcher and assured Thatcher that he was the father. Id. at 211. St. Pierre and Thatcher completed an affidavit of paternity when the child was born and married a few months later. Id. at 212. St. Pierre and Thatcher subsequently developed a parenting plan with respect to the child in conjunction with their divorce. When the child was approximately 2 years old, after St. Pierre had resumed a relationship with a prior partner (Santaw), genetic testing was conducted at Santaw's urging and revealed that he was the child's biological father. Id. Thereafter, St. Pierre filed a Petition to Change Court Order, seeking to amend the parenting plan in the divorce action by removing Thatcher's name from the birth certificate, changing the child's last name, and obtaining full custody. Id.

Appellee cites to a mere recitation of procedural history in St. Pierre, which includes findings from the trial court **which were not at issue on appeal, nor part of the end ruling, including**: "*The court further found that Santaw was the child's biological father, and ordered that the paternity affidavit be and rescinded the birth certificate amended to reflect this fact.*" *** "*The trial court also ruled that, because the respondent had been married to the Appellee, he would retain his status as a stepparent and therefore would 'not lose his ability to ask for parenting rights and responsibilities' over the child*." Id. at 213.

The Appellee's cited passage from St. Pierre is pure *dicta*, not a substantive holding in the St. Pierre case. Id. The St. Pierre Court does not relate that the trial court cited binding authority for this assertion, nor does the Court comment further on this specific finding by the trial court for the remainder of the case.

The facts here are readily distinguishable from those in St. Pierre as Appellee was never led to believe he was D.B.'s biological parent, never completed an affidavit of paternity, was never named on the birth certificate, and D.B. has never been the subject of a Parenting Plan between the Parties. (App. 148)

Through its acceptance of Appellee's proposed Order, the trial court further erred by adopting Appellee's theory that:

> "*There is clearly logically a distinction between the status of a stepparent and relationship of stepparent. Though the relationship ends upon divorce, the status of stepparent is bestowed upon marriage and endures, at least for purposes of parenting rights, beyond divorce*."

(App. at 101)

Appellee presented no statute or case law to support the alleged distinction between the stepparent "*status*" and stepparent "*relationship*", or his theory that "*the status of stepparent…endures, at least for purposes of parenting rights, beyond divorce*", especially when such status was not pursued, preserved, or memorialized in orders related to the divorce and the instant matter (D.B.'s case) was brought in an action separate and apart from the divorce action.

While Appellee urged the trial court to conclude that a failure to adopt a distinction between the stepparent "*status*" and stepparent "*relationship*" would lead to an absurd result of parenting rights awarded to a stepparent "*during, prior to, or at the conclusion of a divorce*" being invalidated upon the final decree of divorce, there is no authority establishing such precedent.

In fact, relevant cases, including those cited by Appellee, highlight the distinct differences Appellee has ignored as those actions involved stepparents who were **still married to the natural parent** (*See* Bodwell, 141 NH 508), and/or **in the context of a current/active divorce** proceeding (*See* Stanley D, 124 NH 138), and/or were **related to modification of an established Parenting Plan** (*See* St. Pierre, 172 NH 209).

Appellant asserts that the true absurdity emerges when suggesting that a former stepparent may, nearly four years after divorce, seek full parental rights and responsibilities against the objection of the natural parent, who has remarried, and is caring for the subject child on a full-time basis. Further, as there was no order issued

awarding Appellee parenting rights with respect to D.B. during, prior to, or at the conclusion of (the Parties') divorce, Appellee's theoretical argument is not applicable to this matter.

B. There is no statutory basis to find that Appellee remains the stepparent of D.B. for purposes of asserting parental rights

Appellee has acknowledged that there is *"no statutory authorization under RSA 461-A:11 to modify the existing Parenting Plan under the divorce"* to request parenting time with Appellant's child. (App. at 24) Appellant further asserts that there is no statutory authorization to grant standing to a former stepparent under RSA 461-A:6 V.

The New Hampshire Supreme Court has held that:

> *"[W]hen examining the language of the statute, we ascribe the plain and ordinary meaning to the words used. We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. If the language is plain and unambiguous, then we need not look beyond it for further indication of legislative intent. We interpret a statute in the context of the overall statutory scheme and not in isolation."*

In the Matter of Muchmore & Jaycox, 159 NH 470, 472 (2009), citations omitted.

The decision in Muchmore, specifically with respect to the plain meaning of the statute governing the instant matter, concludes, in pertinent part:

> *"[S]everal provisions in RSA chapter 461-A make clear that the terms 'visitation' and 'custody', referring to parental rights and responsibilities, are anachronisms. The word* ***'visitation' is used in RSA chapter 461 to refer to privileges granted to non-parents, such as stepparents and grandparents****."*

Id. at 475, emphasis added.

Here, the applicable statute states, in full:

> *"If the court determines that it is in the best interest of the children, it shall in its decree grant reasonable visitation privileges* ***to a party who is a stepparent*** *of the children or to the grandparents of the children pursuant to RSA 461-A:13. Nothing in this paragraph shall be construed to prohibit or require an award of parental rights and responsibilities to a stepparent or grandparent if the court determines that such an award is in the best interest of the child."*

(RSA 461-A:6 V, emphasis added).

Within the context of RSA chapter 461-A: "'*Parental rights and responsibilities' means all rights and responsibilities parents have concerning their child*." (RSA 461-A:1 V). The procedure for handling cases concerning parental rights and responsibilities *"shall be the same as the procedure for petitions for divorce and legal separation under RSA 458*." RSA 461-A:3(I). However, for cases outside of divorce or legal separation, paragraph II only provides a procedure for *"cases where husband and wife or unwed parents are living apart"*. RSA 461-A:3(II) The statute, as written, does not provide the procedure and/or jurisdiction for a stepparent to pursue parental rights and responsibilities outside the scope of divorce proceedings.

Considered in the statutory scheme, an order concerning parental rights and responsibilities, of parent(s), must be pending or anticipated in order for the court to *"**in its decree** grant reasonable visitation privileges to a party **who is a stepparent**..."* (RSA 461-A:6 V, emphasis added).

In its ORDER on Appellant's Motion for Reconsideration and Clarification, with respect to the issue of Appellee's stepparent status, the trial court quoted RSA 461-A:6 V as follows:

> *"If the Court determines that it is in the best interest of the children, it shall in its decree grant reasonable visitation privileges to a party who is stepparent of the children or to the grandparents of the children pursuant to RSA 461-A:13.*

> *Nothing in this paragraph shall be construed to prohibit or require an award of parental rights and responsibility to a stepparent or grandparent if the Court determines that such an award is in the best interest of the child."*

(App. at 14, emphasis in original).

This intent of the statute is clear given that RSA 461-A:6 V provides no mechanism or right for a stepparent to separately petition the court for visitation (in an action with respect to parental rights and responsibilities), while, within the same sentence, that right is specifically granted "*to the grandparents of the children* ***pursuant to RSA 461-A:13***." Id., emphasis added. RSA chapter 461-A:13 is entitled "*Grandparents' Visitation Rights*".

The trial court reiterated the case citations put forth in Appellee's proposed Order and then referred to Black's Law Dictionary to reinforce that: "*A 'stepparent' is defined as 'the spouse of one's [here, D.B.] mother or father by a later marriage*.'" (App. at 12) From there, the Court drew its conclusion that: "*Mr. Satas is the stepparent of [D.B.]*" (App. at 12). This conclusion is in error. Black's Law Dictionary, 10th Edition, at page 1288, sets forth the following: "*stepparent. (1840)* ***The spouse*** *of one's mother or father by a later marriage*." (App. at 188, emphasis added) Appellee had not been "the spouse" of Appellant for nearly four years when he filed his Parenting Petition. In fact, Appellant is remarried, making her current spouse D.B.'s, and J.S.'s, stepparent.

As the Parenting Plan in the Parties' divorce (J.S.'s case) did not address parenting rights and/or responsibilities in the context of Appellee's (then existing) status as stepparent to D.B., (App. at 115), and Appellee has acknowledged he has no statutory authority "*to modify the existing Parenting Plan under the divorce*", (App. at 24), Appellant asserts that the court misapprehended the facts and misapplied the law by granting Appellee standing to seek parental rights and/or responsibilities, as a

"stepparent", outside the scope of the Parties' divorce proceedings which had concluded nearly four years prior to the initiation of this case.

Appellant asserts that neither Appellee's legal status, nor legal relationship, as a stepparent, can be claimed or maintained separate and apart from the Parties' divorce proceedings, thus Appellee is not entitled to bring a petition, seeking "parenting rights and responsibilities" such as joint decision making, outside said divorce proceedings.

In Stanley D., the Court specifically found that "***In a divorce proceeding***, *a stepparent cannot be required after the divorce to support the child of his former spouse; however, the same stepparent may request custody of the stepchildren*." Stanley D. *supra* 124 NH 142, emphasis added. The divorce proceedings in this matter ended in 2017 and those proceedings did not include parenting rights and/or responsibilities with respect to D.B.

II. The Court Erred When It Held That Appellee Had Standing To Petition for Parenting Rights with respect to Appellant's son, D.B. When It Adopted Appellee's Theory that Appellee Stood *In Loco Parentis* with Respect to D.B.

The Appellee does not have standing to request parenting rights with respect to D.B. as he is neither a current stepparent, nor does he stand *in loco parentis*. Even if Appellee did once stand *in loco parentis*, he did not at the time of his Petition. In any event, Appellee is not currently a third party contemplated pursuant to New Hampshire law for purposes of seeking ongoing parental rights.

A. Appellee does not currently stand *in loco parentis* with respect to D.B., nor did he at the time of his Petition due to his ouster of D.B. from his care.

In the case of In re Jeffrey G., the New Hampshire Supreme Court held that:

> "*We have narrowly interpreted RSA 458:17, VI [Prior Law: Repealed] to protect the fundamental liberty interests of biological and adoptive parents while balancing the state's interest in protecting the welfare of children within its jurisdiction.* ***Therefore, in the context of a custody determination****,* ***unless a third party is*** *either* ***a*** *grandparent or* ***stepparent****, who has established in loco parentis status, he or she may not obtain custody of the child over a biological or adoptive parent*."

In re Jeffrey G., 153 NH 200, 203 (2006), citations omitted, emphasis added.

In his proposed Order, Appellee misapplies Bodwell v. Brooks in attempt to show that he demonstrated *in loco parentis* status with respect to D.B. (App. 100) Appellee incorporates the following quotation from Bodwell: "*For several years he has raised the child as his own son and provided both financial and emotional support*." (Id.) The trial court adopted Appellee's reliance on Bodwell when it stated:

"*It can be said Mr. Satas was acting in loco parentis for Dominic*."

(App. at 15, citing Bodwell v. Brooks, 141 N.H. 508, 213 (1996)). Not only are the facts of Bodwell distinguishable from those in the instant case, but the court's reliance is misplaced as the court has ignored the Appellee's ousting of D.B. from his care and into the sole care of the Appellant.

An individual "*may assert legal rights to a child not biologically his own if that person stands in loco parentis toward the child*." Bodwell v Brooks, 141 NH 508, 513 (1996). In Bodwell, Erica and Mark Bodwell were separated, but not yet divorced, when Erica became pregnant with Brooks's child. Id. at 509. Shortly after the Bodwells were divorced, and just 6 months after the child was born, the Bodwells re-married and Mark Bodwell filed an affidavit avowing his paternity of the child. Id. at 510. There, the Bodwell Court stated that the Court "*has the authority to include, as an intervenor, a*

stepparent ***who is married to the natural parent*** *in the custody determination if the court finds that inclusion would serve the child's best interests*." Id. at 512, emphasis added.

In this matter, Appellee has never claimed paternity of D.B., he is not married to D.B.'s natural parent, and he is not seeking to intervene in a custody proceeding between D.B.'s natural parents. Rather, he is seeking parental rights over Respondent's child, over the objection of the natural mother, who is remarried, four years after his legal status as stepparent terminated and after voluntarily relinquishing any *in loco parentis* status he may have claimed by ousting D.B. from his care.

B. Even if Appellee stood *in loco parentis* at one time, this does not confer standing as he is no longer a contemplated third party for purposes of asserting parental rights under New Hampshire law.

Even if Appellee once stood *in loco parentis* with respect to D.B., Appellant asserts that Appellee voluntarily relinquished this status and is no longer a third party eligible to claim parental rights under New Hampshire law.

It would be illogical to allow one who voluntarily relinquished his/her *in loco parentis* status to later claim parental rights and responsibilities based on that past *in loco parentis* status. Appellant asserts that to hold otherwise would leave similarly situated parties in a perpetual state of uncertainty. In this case, even if the court believed Appellee once stood *in loco parentis*, Appellant asserts that Appellee's voluntary forfeiture of that status by ousting D.B. from his home precludes him from basing a claim of parental rights upon said status.

As discussed, above, stepparents have been granted standing in matters related to parental rights and responsibilities, **while still married to the natural parent** (Bodwell,141 NH 508), and/or **in the context of a current/active divorce** proceeding

(Stanley D., 124 NH 138). There is no statutory or common law right to confer and expand the standing upon a party who is no longer married to the natural/adoptive parent of the subject child and is not currently standing *in loco parentis*. The Appellee's status as a stepparent of D.B. ended when the Parties' Decree of Divorce was issued on February 24, 2017, and his ouster of D.B. from his care ended his *in loco parentis* status, assuming the same had once existed.

Even if the court found that Appellee's relationship with D.B. emerged via *in loco parentis* status, Appellee now stands as an unrelated third party seeking parental rights. New Hampshire has shown reluctance to favor such third parties above natural parents.

> "*[W]*e *have never expressly held that an unrelated third person standing in loco parentis has the same constitutionally protected rights to custody as a natural or adoptive parent, nor are we persuaded to do so here.* ***To do so could elevate the rights of any unrelated third person who has spent considerable time caring for a child over the fundamental liberty interest of natural or adoptive parents***."

In re Nelson, 149 NH 545, 548 (2003), Emphasis added.

Although the Nelson Court noted that "*this decision does not affect stepparents, who under certain circumstances have been recognized as having the right to seek custody if it is in the best interests of the child*.", Id., as discussed herein above, Appellee is not "*a party* ***who is*** *a stepparent*" pursuant to the applicable statute. (RSA 461-A:6 V, emphasis added)

To grant parental rights to the Appellee, a former stepparent who does not stand *in loco parentis*, even if he once did, would unduly elevate the rights of the Appellee above those of the Appellant natural mother and her husband, the current stepparent of D.B. (Nelson, *supra* at 548)

III. The Trial Court Violated 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 U.S. Constitution, When It Held That Appellee Had Standing To Petition For Parenting Rights With Respect To Appellant's Son, D.B.

The Constitutional rights of a natural parent over her children are not easily set aside and, only in the most unusual and serious of cases may these fundamental rights be abrogated in favor of an unrelated third person; a former stepparent in this case. In re Nelson, 149 NH 545, 548 (2003), citing In re Samantha L., 145 NH 408 (2000).

Appellant is D.B.'s natural parent and Appellee has no standing to infringe upon Appellant's parental rights. The New Hampshire Supreme Court has "*long recognized the right to raise and care for one's children as a fundamental liberty interest protected by Part I, Article 2 of the State Constitution*." Id. at 547 (2003), citing In re: Kerry D. (New Hampshire Div. for Children, Youth and Families), 144 NH 146, 149 (1999). This protection is extended to both natural and adoptive parents. Id., citing *Cf.* In re Bill F., 145 NH 267, 276 (2000). Further, "*the due process clause of the Fourteenth Amendment [to the Federal Constitution] protects the fundamental right of parents to make decisions concerning the care, custody and control of their children*." Id., citing Troxel v. Granville, 530 U.S. 57, 66 (2000).

There is no legitimate basis for the trial court to have infringed upon the Appellant's Constitutional right to determine who may care for her child:

> *"[A] natural or adoptive parent who has not been found to have abused or neglected his or her child may not be deprived of custody of the child unless it is proven that the parent is unfit to exercise custody of the child. The right of parents to raise their children without interference is a*

> *fundamental liberty interest deserving of the highest level of protection*."

In re Nelson, 149 NH 545, 548 (2003), citations omitted. There have been no proceedings finding that Appellant is unfit or unable to parent D.B. To the contrary, the trial court received evidence that concerns have arisen with respect to Appellee's fitness to care for D.B. (Transcript at 34, Lines 8-18) Thus, the court erred when it allowed Appellee to interfere with Appellant's parental rights.

In his Objection to Motion to Clarify and Reconsider, Appellee purports that the 1950, Washington, case of In re Estate of Bordeaux, 37 Wn.2d 561, (1950), as referenced in Estate of Robitaille, 149 NH 595, (2003), is on point in this matter, claiming that "*the case shows that the status of a relationship by affinity can and often does survive the termination of the marriage that created it…*". (App. at 161) Appellee's reliance on Bordeaux is inappropriate in that the Bordeaux Court specifically found that the termination of the marriage, **caused by the death of a natural parent**, does not necessarily sever the stepparent/stepchild relationship, rendering the same readily distinguishable from the instant matter.

In a further attempt to justify the continuation of a stepparent relationship following divorce from the natural parent, Appellee takes 26 CFR § 1.152-2 (d) out of context by quoting the following passage: "*the relationship of affinity once existing will not terminate by divorce or the death of a spouse*" (App. at 161). This regulation speaks specifically to an individual being able to continue to claim, **as a tax dependent**, a relative of one's current or former spouse.

Further, Appellant disputes Appellee's assertion that he is seeking "*a court order to obtain what he and D.B. already had.*" (App. at 163). Appellee is seeking "*parenting rights and responsibilities over D.B.*" (Id. at 157) which far exceed the legal rights he could otherwise claim following the Parties' divorce and would infringe heavily upon the Constitutional rights of the Appellant and those of her husband, D.B.'s current stepfather.

As evidenced by the fact that Respondent did not permit Appellee to adopt D.B., did not enter into a parenting plan regarding D.B., and did not grant Appellee guardianship over D.B., Appellant consciously and purposely avoided expanding Appellee's rights and authority over her son. Appellee has failed to prove that he has standing to assert such rights and/or authority now.

While the best interest of the child guides all custody matters, there is a presumption that fit parents act in the best interests of their children. Id., citing Bodwell v. Brooks, 141 NH 508, 512 (1996); Troxel, 530 U.S. at 68. "*Judicial reluctance to interfere with parental prerogatives derives, historically, from the notion that parents have a natural entitlement to the exclusive companionship, care, custody, and management of their children*." Id. citing Preston v. Mercieri, 133 NH 36, 40 (1990).

Finally, to the extent that the trial court granted Appellee standing upon finding that "*D.B. remained living with Mr. Satas as Ms. Crosato straightened out issues in her life*." (App. at 4), even if the court considered that arrangement as that akin to the establishment of a voluntary guardianship, Appellant, as a natural, fit, parent has the right to terminate that arrangement. In re Reena D., 163 NH 107, 113 (2011), (following In re DIS, 249 P.3d at 783), citations omitted. ("*Failure to accord fit parents a presumption in favor of their decision to terminate a guardianship established by parental consent would penalize their initial decision to establish the guardianship and deter parents form invoking the guardianship laws as a means to care for the child while they address significant problems that could impair the parent-child relationship or the child's development*.")

A. The Court erred 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.

In In the Matter of Morris, a natural father appealed the decision of the Circuit Court awarding parenting rights with respect to father's biological child, specifically custody and school placement, to his ex-wife, the child's stepmother. In the Matter of Morris, 174 NH 562, 564 (2021) There, stepmother had raised the child as her own for the duration of the relationship and marriage with father, but had not adopted the child. Id.

Considering Father's challenging work and travel schedule, the distance between residences of the parties, and the child's relationship with Stepmother, the trial court held it was not in the child's best interests to live with Father. Id. While the trial court was critical of Father's effectiveness as a parent, it noted that Father had not been found unfit as a parent under RSA Chapter 169-C or RSA Chapter 170-C. Id. On appeal, Father argued that the court's awarding of custody solely upon a best interests standard was impermissible where Stepmother was not the child's biological or adoptive mother and Father was presumed to be a fit parent acting in the child's best interests. Id. at 565.

Cases involving stepparent rights are evaluated under the same constitutional backdrop as those involving grandparents rights. Id., citing In re Bordalo & Carter, 164 N.H. 310, 314 (2012)("*applying solely a best-interests standard to adjudicate disputes concerning parental rights and responsibilities between a grandparent and a fit natural or adoptive parent does not comport either with Troxel, 530 U.S. at 66, or our precedents recognizing parents' fundamental liberty interest in raising and caring for their children*.") The Morris Court found that the trial court erred by applying solely a best-interests-of-the-child standard in determining that Stepmother was entitled to parental rights over the objection of the natural Father.

Here, in its ORDER on Appellant's Motion for Reconsideration, the trial court states:

> *"**Regardless of Mr. Satas' standing or any other legal issues in this case, the fact of the matter is that Mr. Satas and [D.B.] have had a strong relationship for several years. The Court believes it would clearly be in [D.B.'s] best interest to keep that bond intact**, which would also keep the bond between [J.S.] and [D.B.] intact, something the Court deems to be in both boys' best interest. The Parties are encouraged to put their differences aside and come up with an agreement that will continue to serve both boys' interests."*

(ORDER of July 20, 2021, App. at 16, emphasis added). From this statement, though it has a duty to consider the best interests of the child, it is clear that the court's decision rested solely on its best interests analysis and must be reversed.

B. The awarding of parenting rights to the Appellee is unsustainable pursuant to the Broderick Test.

Further, Appellant asserts that, as it was in Morris, the application of the "Broderick test" to the instant matter is appropriate. Id. at 568. Pursuant to the Broderick test, awarding custody to a stepparent over the objection of a natural parent is unreasonable unless the petitioning party is able to show by clear and convincing evidence that:

> *"(1) the custody award would specifically be in the child's best interest because of a significant psychological parent-child relationship; (2) … the family is already in the process of dissolution; and (3) there is some additional overriding factor justifying intrusion into the parent's rights, such as a significant failure by the opposing parent to accept parental responsibilities[; and (4)] the custody award [is] necessary for the State to enforce its compelling interest in protecting the child from the emotional harm that would result if the child were forced to leave the significant psychological parent-child relationship between the child and the stepparent or grandparent."*

Id. at 568, citing In re R.A., 153 N.H. 82, 101 (2005). In Morris, under the Broderick test, the evidence was insufficient to sustain a finding that Appellee was entitled to parenting rights over the objection of the Appellant natural mother. Id. at 569. There, though the Court assumed that the first two criteria of the test had been met, the Court could not conclude that there was some other overriding factor justifying intrusion into Father's rights, or could they conclude that awarding custody to Stepmother was necessary to enforce the State's compelling interest to protect the child from the emotional harm of leaving the significant psychological parent-child relationship with Stepmother. Id. at 569. Such is the situation in the instant matter.

Here, even if the Court finds that the first two criteria of the Broderick test have been met, there has been no finding that Appellant is in any way unfit as a parent, nor has there been any failure on her part to accept parental responsibilities. Moreover, it was Appellee who ousted D.B. from his home months before he filed his Petition, therefore further emotional harm will not occur due to separation. Appellant has made it clear that she does not wish to terminate Appellee's contact with D.B., but that contact must occur in the manner in which Appellant deems to be in D.B.'s best interests.

CONCLUSION

Appellant respectfully requests that the Court reverse the rulings of the Circuit Court, Family Division, and hold that, for the reasons set forth herein, Appellee is not a stepparent and/or is without standing to Petition the Court for establishment and/or enforcement of Parenting rights of D.B. over the objection of the Appellant.

REQUEST FOR ORAL ARGUMENT

Appellant requests 15 minutes for oral argument.

RULE 16(11) CERTIFICATION

I hereby certify that, in compliance with New Hampshire Supreme Court Rule 16(11), this brief contains 8,964 words, exclusive of table of contents, tables of citations, statutory text and addendum.

Respectfully submitted,
Appellant, Courtney Crosato, formerly Crabtree-Satas
By her Attorneys
Normandin, Cheney & O'Neil, PLLC
213 Union Avenue
P.O. Box 575
Laconia, N.H. 03247
(603) 524-4380

Date: 05/30/2023

/s/ William D. Woodbury

William D. Woodbury, Esq.
NH Bar No.: 16195
wwoodbury@nco-law.com

CERTIFICATION OF SERVICE

I hereby certify that copies of this brief were served upon all Parties via the Supreme Court's electronic filing system.

Date: 05/30/2023

/s/ William D. Woodbury