THE STATE OF NEW HAMPSHIRE

SUPREME COURT

DOCKET NO. 2021-0419

In the Matter of Alden Satas and Courtney Crabtree-Satas

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APPEAL FROM THE 2ND CIRCUIT FAMILY DIVISION

PLYMOUTH, GRAFTON COUNTY

REPLY BRIEF OF COURTNEY CROSATO (FORMERLY CRABTREE-SATAS), APPELLANT

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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. (Appellant's Appendix [hereinafter, App.] at 4, ORDER issued 06/01/21, page 1). 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 and was on 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 thus Appellant was able 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 gas 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) Appellee's inability to parent D.B. resulted in D.B. residing full time with the Appellant. 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))

On June 21, 2020, Appellant retrieved D.B. from Appellee's home after Appellee angrily ousted D.B. (App. at pg 67-68) Since that time, D.B. has resided, and thrived, with the Appellant.

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 17)

Appellee then filed a Parenting Petition, initiating case #669-2020-DM-00132, [hereinafter, "D.B.'s case"] seeking a ''*parenting plan which describes the parties' parental rights and responsibilities*" with respect to Appellant's son, D.B., (App. at 21), to which Appellant vehemently objected as set forth in the pleadings enumerated above. Thereafter, Appellee withdrew the Petition to Change 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 Appellee's unfounded reports 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 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 incorporated and adopted several of Appellee's factually inaccurate and/or misleading statements. As detailed in Appellant's Notice of Factually Inaccurate and/or Misleading Statements within Appellee's Proposed Order, (App. at 107), and as evidenced by Respondent's exhibits, (Id. at 43) as well as Appellee's own contradictory testimony, (App. at 4, ORDER pg 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 2021.*", 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 12, ORDER issued 07/21/21, pg 4, referencing Appellant's Motion to Clarify and Reconsider, App. 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.

Further, 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.

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*".

ARGUMENT

This Reply Brief is not submitted for purposes of refuting all arguments set forth in Appellee's Brief as the same have been comprehensively addressed in Appellant's prior submissions. Appellee's Response Brief presents no authority or persuasive argument to support Appellee's positions that Appellee remains a stepparent and, therefore, maintains standing to demand parental rights with regard to D.B., thus there is little utility in repeating the content of Appellant's Brief.

Appellant chooses to focus the content of this Reply Brief on responding to Appellee's unsupported suggestion that affirmation by the Court that stepparent status ends upon divorce "would lead to an absurd result." (Appellee's Brief, Page 10). Appellant respectfully reiterates her assertion that a holding to the contrary would constitute a legal absurdity.

I. Stepparent Status Need Not Endure Following Divorce In Order For A Non-Parent To Seek Rights Supplementing Those Of A Fit Parent

Divorces occur for myriad reasons, but there can be little dispute that most result when there is, at least, tacit concurrence that remaining together serves no one's best interests, including those of the parties' children. Where it has been agreed upon by the parties, and ratified by the Court, that a divorce is appropriate due to the inviability of a marriage, it would be reasonable for there to be, at the very least, a rebuttable presumption that allowing the non-biological parent ex-spouse to maintain quasi-parent status would be contrary to the best interests of the child(ren).

Appellee repeatedly invokes the second sentence, ignoring the first, of RSA 461-A:6(V), which states in full:

> *"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."*

N.H. Rev. Stat. Ann. § 461-A:6, Emphasis added. Appellee argues that the Court's acknowledgment that the stepparent status ends upon divorce would mean that:

> *"[A]ll 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."*

(Appellee's Brief, Page 11) This is hyperbolic and fails to acknowledge practical reality. RSA 461-A:6(V) is not a blanket acknowledgement that awarding parental rights to a stepparent is, per se, in the best interests of a child.

Appellee misapplies the case of State v. Breest for the prospect that this Court's agreement with Appellant's position that stepparent status ends upon divorce, vis-à-vis RSA N.H. Rev. Stat. Ann. § 461-A:6, would be absurd. (Appellee's Brief, Page 11, citing State v. Breest, 167 N.H. 210, 212 (2014) In Breest, the issue was whether or not acceptance of DNA results obtained by consent of the parties, rather than Court Order pursuant to the applicable statute, could lawfully be treated differently. State v. Breest, 167 N.H. 210, 213 (2014). The Court refused to treat these instances differently as to do so would lead to an absurd result, i.e., two equally favorable DNA results leading to

vindication for one defendant and not for another. Id. at 214. The issues in the instant matter are not remotely analogous to those in Breest.

Appellant asserts that, in the course of divorce proceedings, if the parties agree, and the court finds, it is in the best interest of a child for a relationship with a stepparent to continue, then that relationship would endure by virtue of, and for the duration of, that order. However, if, following divorce, a former stepparent who did not seek parental rights during divorce proceedings, as occurred in the instant case, seeks to supplement the parenting of the former stepchild, the former stepparent could avail him/herself of the potential relief already available under New Hampshire law, thus no absurdity exists.

The New Hampshire Guardianship statute already provides for "any person… whose appointment is appropriate", including a former stepparent, to seek Guardianship over a child. NH RSA 463:10 (I) For Guardianship to be awarded to a non-parent:

> *"III. (a) Except as set forth in subparagraph (b), the burden of proof shall be on the petitioner to establish by a preponderance of the evidence that a guardianship of the person is in the best interests of the minor.*
> *(b) If a parent objects to the establishment of the guardianship of the person requested by a non-parent, the court shall set a date for the hearing specified in this section. Except as otherwise provided in this subparagraph,* ***the burden of proof shall be on the petitioner to establish by clear and convincing evidence that the best interests of the minor require substitution or supplementation of parental care and supervision to provide for the essential physical and safety needs of the minor or to prevent specific, significant psychological harm to the minor****. If guardianship is sought by the minor's grandparent as the result of the parent's substance abuse or dependence, the burden of proof shall be on the petitioner to establish by a preponderance of the evidence that a guardianship of the person is in the best interests of the minor."*

N.H. Rev. Stat. Ann. § 463:8, Emphasis added.

The Appellee asks this Court to find that the Appellee has standing to petition for parental rights over D.B., equal to hers, simply by virtue of having been married to Appellant in the past. To hold that former stepparents may petition for parental rights at any time following a divorce, even when, as here, there is a new current stepparent, would deeply undermine a parent's Constitutional right to raise a child as that parent deems appropriate and would open the floodgates to unnecessary and potentially abusive litigation. N.H. Const. Part I, Article 2; In re Nelson, 149 NH 545, 548 (2003), citing In re Kerry D. (New Hampshire Div. for Children, Youth and Families), 144 NH 146, 149 (1999). For example, if a person were to remarry two or more times during the course of a child's minority, Appellee's position would suggest that all the former stepparents would have standing to assert parenting rights. This would constitute true absurdity. Given the relief already available under New Hampshire law as outlined above, there need not be a ruling of this nature.

CONCLUSION

Appellant respectfully requests that the Court reverse the rulings of the Circuit Court, Family Division, and hold that Appellee is without standing to Petition the Court for parental rights over Appellant's child.

RULE 16(11) CERTIFICATION

I hereby certify that, in compliance with New Hampshire Supreme Court Rule 16(11), this brief contains 2,514 words, exclusive of table of contents, tables of citations, statutory text and addendum.

Respectfully submitted,
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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: 08/03/2023 /s/ William D. Woodbury