

Is Blood Really Thicker Than Water? The Significance of Biological Family Ties for Foster Children Hoping to be Adopted

In re: Adoption of K.B.
311 A.3d 1166 (Pa. Super. 2024)
By Caitlin Foley

Factual and Procedural Background

This case is, in many ways, a sibling case, to *in re: Adoption of N.M.*, which was decided on the same set of facts on the same day. The cases dealt with a pair of siblings, K.B. and N.M. (“the Children”), who were placed in foster care due to their biological parents’ drug use and neglect. The Children were two and four years old at the time they were placed with the Foster Parents.

Indiana County Children and Youth Services adjudicated the Children dependent soon after their placement with the Foster Parents. Meanwhile, the Children’s biological Maternal Aunt initiated contact with the Children and participated in bi-weekly, supervised visits.

Twenty-one months after the Children were removed from their care, the parental rights of the biological parents were terminated. Shortly thereafter, the Foster Parents filed petitions to adopt the Children. Maternal Aunt filed a counter-petition for adoption, and the trial court consolidated the cases.

At trial, the Foster Parents relied on expert testimony from psychologists who evaluated the relationship between the Foster Parents and the Children, and who unanimously testified that it was in the best interests of the Children to be adopted by the Foster Parents. By all accounts, the Children were thriving in the Foster Parents’ care. The experts conceded that a relationship with Maternal Aunt could be beneficial to the Children and recommended that they remain in contact with her “in a typical aunt role.” The Foster Parents testified at trial that they would not cut off the Children’s relationship with Maternal Aunt.

The trial court ultimately denied both Foster Parents’ and Maternal Aunt’s petitions for adoption. It reasoned that if they granted Foster Parents’ petition, then the Children’s interests in having a relationship with their biological family would be stymied. Alternatively, if they granted Maternal Aunt’s Petition, the Children would be removed from the secure and stable life they had established with their Foster Parents. The trial court refused to make a choice between “the lesser of two evils.” In its decision, the trial court ordered the Children stay in the care of the Foster Parents indefinitely, and that the Foster Parents continue to facilitate contact with Maternal Aunt. The Foster Parents appealed.

Issue on Appeal

How much weight should a trial court place on an adoptee child’s relationship with their biological family when determining whether it is in that child’s best interest to be adopted?

Scope of Review

Pursuant to the Adoption Act, an appellate court will review whether the record supports the trial court’s findings and its credibility determinations, as well as whether the trial court abused its discretion. If the appellate court finds that the record was adequately developed, and that the trial court’s decision was “manifestly unreasonable,” the appellate court may modify the trial court’s order. The primary consideration in adoption matters is the best interest of the children.

Holding

In determining the best interest of the children in an adoption, the appellate court clarified how this standard should be applied under the Adoption Act. The appellate court explained that a child’s relationship with their biological family is merely one piece of the analysis. Pennsylvania courts also have held that a child has an interest in permanency. Additionally, a court should consider other factors relevant to the best interest of the child, and specifically, whether the adoption would serve the child’s physical, mental and emotional needs.

Despite the fact that the best interest of the Children might have been served by keeping them at home with the Foster Parents and maintaining a relationship with Maternal Aunt, the appellate court disagreed that choosing one petition for adoption over the other would do more harm than good. In fact, the appellate court agreed with the Foster Parents, who argued that the trial court’s decision effectively made the Children “unadoptable orphans,” doomed to an adolescence of permanency hearings and instability. The appellate court opined that the trial court’s decision was actually the most harmful outcome for the Children. The appellate court further explained that ordering adoptive parents to maintain contact with the child’s biological family is not permitted under the Adoption Act.

The appellate court reversed the decision and remanded the case to the trial court for the entry of the Foster Parents’ adoption decrees.

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Commentary

In re: Adoption of K.B. underlines important distinctions, as well as crucial similarities, between adoption and custody cases. The effect of an adoption case is much different than that of a custody case for all parties involved. Custody rights can exist on a spectrum. A mother can have physical custody of the child certain days, and a father other days. Parties sharing legal custody can both make decisions on behalf of the child. A grandparent might have custody in addition to the parents. Because custodial rights are not mutually exclusive, courts can craft unique solutions for each family that cater to the best interest of a specific child. On the other hand, adoptive parents are granted the same rights to the child as a child born to them. At this point in time, a child cannot, by law, have more than one set of parents. In this way, adoption is a zero-sum game: one party gets the rights to the child to the exclusion of the other. In its decision, the trial court asked the Foster Parents to act as parents to the children in virtually every way, but stripped them of the right to determine who their children would spend time with. Such a holding would cheapen the rights of adoptive parents to the detriment of the children.

At the same time, in both custody and adoption cases, a court's analysis takes into consideration all factors related to the best interest of the child. In its decision

here, the trial court erroneously placed undue weight on Maternal Aunt's biological relationship with the children. The opinion does not cite any ways that Maternal Aunt had materially enhanced the Children's lives, but vaguely predicts that her involvement might be beneficial solely due to their biological relationship with her. Meanwhile, the Foster Parents took the children into their home after they were traumatically removed from their birth parents' care, provided medical care, enrolled them in school, facilitated playdates, and demonstrated their willingness to step up to the plate as stable, dedicated parents.

By watering down the significance of Maternal Aunt's biological connection to the Children, the appellate court's choice was clear. The Foster Parents were, in every way, better suited to provide for the Children. This pair of cases leaves us with a simple lesson: a system designed to protect the "best interests of the child" must resist the urge to limit the definition of a "family" to a shared bloodline.

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When Time is of the Essence: *In Loco Parentis* Standing

***Hunt v. Vardaro,*
317 A.3d 1046 (Pa. Super. 2024)**

By Mathew Gomez

Issue(s)

Stepfather appealed raising two issues before the Superior Court: 1) Whether the Trial Court erred by sustaining Father's preliminary objections; 2) Whether the Trial Court erred by determining Stepfather lacked *in loco parentis* standing to pursue custody.

Facts/Procedural History

In May 2023, Stepfather filed a Complaint for Custody against Father seeking primary physical custody of the child pursuant to Section 5324(2) of the Child Custody Act. Stepfather specifically alleged that he, the child, and the child's Mother had resided together and raised the child from 2011 through April 2019. However, Stepfather failed

to mention that in April 2019 the child and the child's younger half-brother were removed from Stepfather and Mother's care following an Office of Children and Youth ("CYS") investigation. CYS initiated a dependency matter against Mother and Father, but the court ultimately found that the child was not dependent and released the child to Father's legal and physical custody. Following the incident involving CYS removing the children from Stepfather and Mother's care (which the Superior Court noted CYS initial involvement was for "unspecified reasons"), Stepfather was incarcerated until his release in March 2020. At some point Mother stopped exercising any custodial time with the Child after April 2019. Mother died in September 2020.

In response to Stepfather's Complaint for Custody, Father filed preliminary objections to the custody complaint arguing that Stepfather did not stand *in loco parentis* to the child and lacked standing, so consequently, the Complaint should be dismissed. Father argued that the child

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