

2026 PA Super 210

KIMBERLY COLEMAN	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
DARLENE PINTO	:	
	:	
	:	No. 170 EDA 2026
APPEAL OF: DARLENE PINTO AND	:	
THOMAS HANCEWICZ	:	

Appeal from the Order Entered December 29, 2025
In the Court of Common Pleas of Lehigh County Civil Division at No(s):
2025-FC-0217

BEFORE: LAZARUS, P.J., SULLIVAN, J., and STEVENS, P.J.E.*

OPINION BY SULLIVAN, J.:

FILED SEPTEMBER 21, 2026

Darlene Pinto and Thomas Hancewicz (collectively “Parents,” singly “Pinto” and “Hancewicz”) appeal from the order denying their exceptions to the proposed order of the hearing officer granting extensive partial custody rights to Kimberly Coleman, maternal grandmother (“MGM”) regarding S.K. (“Child”), born in September 2020.¹ For the reasons discussed below, we conclude the trial court was without jurisdiction to enter the December 29,

* Former Justice specially assigned to the Superior Court.

¹ Pinto is the biological paternal grandmother of Child and Hancewicz is the step-grandfather and her husband. They adopted Child on August 29, 2025; therefore, they are Child’s parents. **See** Decree of Adoption, 8/29/25, at 1 (unnumbered). Hancewicz petitioned to intervene in the custody matter and the trial court granted the motion on December 22, 2025. **See** Order, 12/22/25, at 1 (unnumbered). Except for the final decree, none of the adoption pleadings were entered into evidence and were not forwarded to this Court.

2025 order denying exceptions and adopting the hearing officer's proposed custody order, we therefore conclude the order was a legal nullity and remand with instructions.

Child was born in 2020; both his biological parents were drug addicted. **See** Report of Hearing Officer, 9/30/25, at 7, 15. Mother died of a drug overdose in early July 2023. **See id.** at 15. At that juncture, Lehigh County Children and Youth Services ("LCCYS") initiated dependency proceedings and placed Child in kinship care with Parents. **See id.** at 15.² Father died in December 2024. **See id.** The parties dispute the amount of contact Child had with MGM prior to his placement with Parents and dispute the reasons for MGM's lack of contact with Child after his placement with Parents. **See** Parents' Answer and Counterclaim, 3/31/25, at 2-4 (unnumbered); MGM's Brief at 3-4. However, it is undisputed MGM had, at most, minimal contact with Child for approximately two years between 2023 and 2025. **See id.**

In February 2025, MGM filed a complaint against Pinto seeking partial physical custody of Child. **See** Complaint, 2/25/25, at 1-3. Pinto filed an answer and counterclaim for primary physical and sole legal custody. **See** Answer and Counterclaim, 3/31/25, at 1-4 (unnumbered). At some point

² The dependency file was also not entered into evidence and was not forwarded to this Court on appeal.

during the pendency of the custody proceedings,³ Parents filed an unopposed petition to adopt Child.⁴ **See** N.T., 12/19/25, at 3-5. Following briefing, the trial court issued an order finding Pinto had standing to seek “any form of legal and physical custody[,]” while MGM had standing to seek “partial physical custody only.” Order, 5/16/25, at 1 (unnumbered). In May 2025, following a conference before a hearing officer, the trial court entered an interim order (“interim order”) granting Pinto primary physical and sole legal custody. **See** Interim Order, 5/20/25, at 1. Despite this decision, the interim order curiously required Pinto to “notify” MGM about all major decisions effecting Child’s life and gave MGM direct access to Child’s educational and medical records, allowed MGM one two-hour dinner each week with Child so long as either Carolyn Coleman, Child’s maternal aunt (“MA”) **or** Pinto was “present for the purpose of ensuring the comfort level of the minor child” and allowed MGM to

³ As noted **supra** fn.1, apart from the final adoption decree entered in August 2025, none of the adoption pleadings are included in the certified record and we are unable to locate the date Parents started the adoption process in the record, the trial court opinion, or the briefs of the parties. In a petition to intervene filed in June 2025, Hancewicz indicated the adoption proceedings began in June 2025. However, he withdrew the petition the same day and his November 2025 petition to intervene does not mention the date of onset of the adoption proceedings. Given this, we do not consider the date mentioned by Hancewicz to be conclusive.

⁴ There is no indication in the record that MGM ever sought to intervene in the adoption proceedings.

have four-hour visits on alternating Saturdays with the same provisions regarding the presence of either MA or Pinto.⁵ **See id.** at 1-2

A custody hearing took place in July and August 2025 before the hearing officer. Because of our disposition of this appeal, we need not address the details of the evidence or testimony at the hearing. In late August 2025, ten days after the final day of testimony in the custody matter, the Orphans' court finalized the adoption. **See** Decree of Adoption, 8/29/25, at 1-2 (unnumbered). Approximately one month after the adoption was finalized, the hearing officer issued a report and a proposed order, giving Pinto, who had already adopted Child, primary physical and sole legal custody of Child but continuing to require Pinto to notify MGM regarding all major issues in Child's life, allowed MGM direct access to Child's medical and school records, and gradually **increased** MGM's periods of partial custody until she received partial physical custody of Child for two hours each week and on the first and third weekend of every month from Friday night until Sunday night. **See** Proposed Order, 9/30/25, at 1-3. Despite the finalization of the adoption, the proposed order refers to Pinto as "Paternal Grandmother." **Id.** at 1. In the report, the hearing officer did not discuss the adoption and specifically rejected Pinto's argument that she should be treated as Child's mother and, instead, maintains the parties are on equal legal footing with respect to Child.

⁵ The order specified neither MA nor Pinto were "considered" to be supervising the visit. **Id.**

See Report of Hearing Officer, 9/30/25, at 30. In its analysis of the custody factors, the hearing officer neglected to consider the statutory custody factors concerning grandparents. **See id.**

Subsequently, Pinto filed exceptions and Hancewicz sought to intervene in the matter. The trial court held argument on the exceptions in mid-December 2025, nearly three months after the finalization of the adoption. Thereafter, the trial court granted Hancewicz's petition to intervene, denied Parents' exceptions, and affirmed the hearing officer's report and proposed order. **See** Order, 12/22/25, at 1 (unnumbered); Order, 12/29/25, at 1-2 (renumbered). Other than a single brief footnote, the order did not contain any independent discussion of the record and no discussion of the legal effect, if any, of Child's adoption on the proceedings. **See id.** The instant appeal followed.⁶

On appeal, Parents raise the following issues for our review:

- A. Did the trial court err in affirming the [hearing officer's] proposed order recommending prolonged periods of partial physical custody in [MGM] that interferes with the parental rights of [Parents] as parents of [] Child?
- B. Did the [hearing officer] fail to properly weigh the degree of drug use by, and manufacturing of hallucinogenic mushrooms in [MGM's] home by her son with her knowledge representing a safety issue to [] Child?
- C. Did the [hearing officer] improperly weigh the evidence that [MGM] was not permitted to see [] Child for a protracted period

⁶ Parents complied with Rule 1925. The trial court issued a single page "statement" adopting its ruling on the exceptions.

when it was a direct result of her failure to comply with drug testing as required by [LCCYS]?

Parents' Brief at 4 (capitalization and punctuation regularized).

Prior to discussing the merits of the order, we must consider *sua sponte* whether the trial court possessed jurisdiction to enter any of the orders in this matter. ***See Turner Const. v. Plumbers Local 690***, 130 A.3d 47, 63 (Pa. Super. 2015) ("[W]e can raise the issue of jurisdiction *sua sponte*").

Due to the multi-faceted legal and procedural posture of this custody action, multiple statutes are implicated, namely the Custody Act, the Adoption Act, and Title 20 Pa.C.S.A., Chapter 7 entitled Orphans' Court Divisions. The Custody Act provides in pertinent part:

In addition to situations set forth in section 5324 (relating to standing for any form of physical custody or legal custody), grandparents and great-grandparents may file an action under this chapter for partial physical custody or supervised physical custody in the following situations:

(1) where the parent of the child is deceased, a parent or grandparent of the deceased parent may file an action under this section;

(2) where the relationship with the child began either with the consent of a parent of the child or under a court order and where the parents of the child:

(i) have commenced a proceeding for custody; and

(ii) do not agree as to whether the grandparents or great-grandparents should have custody under this section[.]

23 Pa.C.S.A. § 5325(1), (2).

With respect to the adoption of a child during custody proceedings, the Custody Act provides:

Any rights to seek physical custody or legal custody rights and any custody rights that ***have been granted*** under section 5324 (relating to standing for any form of physical custody or legal custody) or 5325 (relating to standing for partial physical custody and supervised physical custody) to a grandparent or great-grandparent ***prior to the adoption of the child by an individual other than a stepparent, grandparent or great-grandparent shall be automatically terminated upon such adoption.***

23 Pa.C.S.A. § 5326 (emphases added).

Under Title 20 Pa.C.S.A., Chapter 7 relating to Orphans' Court Division, § 711, however, the Orphans' court has ***mandatory*** jurisdiction over certain cases, including:

(7) Adoptions.--Adoptions, subject to the provisions of section 713.

(8) Custody of minors.--The determination of the right to the custody of a minor in connection with any proceeding for his adoption or for the appointment of a guardian of his person, except as provided in section 713.

20 Pa.C.S.A. § 711(7), (8).⁷

While the Adoption Act provides for the possibility of continuing contact between an adopted child and birth relatives and/or adoptive parents and birth relatives through a post-adoption contact agreement ("PACA"), it is not mandated. **See** 23 Pa.C.S.A. §§ 2731, 2735(b)(1).

⁷ 20 Pa.C.S.A. § 713 only applies to cases arising out of Philadelphia County.

This Court has stated:

A PACA is a statutory creation, which allows adoptive parents and birth relatives to participate in **voluntary** post-adoption contact agreements. **See** 23 Pa.C.S.A. §§ 2731-2742; **see also Adoption of A.W.**, 230 A.3d [1139, 1144 (Pa. Super. 2020) (stating “an adoptive parent **is not required** to allow post-adoption contact.” (emphasis added)). Section 2731 provides:

The purpose of this subchapter is to provide an option for adoptive parents and birth relatives to enter into a voluntary agreement for ongoing communication or contact that:

- (1) is in the best interest of the child;
- (2) recognizes the parties’ interests and desires for ongoing communication or contact;
- (3) is appropriate given the role of the parties in the child’s life; and
- (4) is subject to approval by the courts.

23 Pa.C.S.A. § 2731 (emphasis added).

If the parties elect to enter a PACA under Subchapter D of the Adoption Act, the agreement “shall be filed with the court that finalizes the adoption of the child.” **Id.** at § 2735(a). The court “shall approve the agreement” if the conditions for approval identified in section 2735(b) are satisfied. Those conditions are:

- (1) The agreement has been entered into knowingly and voluntarily by all parties. An affidavit made under oath must accompany the agreement affirmatively stating that the agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud or duress. The affidavit may be executed jointly or separately.
- (2) **The agreement is in the best interest of the child.** In making that determination, factors that the court may consider include, but are not limited to, the following:

(i) The length of time that the child has been under actual care, custody and control of a person other than a birth parent and the circumstances relating thereto.

(ii) The interaction and interrelationship of the child with birth relatives and other persons who routinely interact with the birth relatives and may significantly affect the child's best interests.

(iii) The adjustment to the child's home, school and community.

(iv) The willingness and ability of the birth relative to respect and appreciate the bond between the child and prospective adoptive parent.

(v) The willingness and ability of the prospective adoptive parent to respect and appreciate the bond between the child and the birth relative.

(vi) Any evidence of abuse or neglect of the child.

23 Pa.C.S.A. § 2735(b) (emphasis added). Further, "[a]n agreement shall not be legally enforceable unless approved by the court." 23 Pa.C.S.A. § 2735(c).

In re Adoption of S.A.S., 335 A.3d 25, 29-30 (Pa. Super. 2025) (some emphases in original, some emphases added).

Generally, our scope and standard of review in custody cases "is of the broadest type and our standard is abuse of discretion." ***C.R.F., III v. S.E.F.***, 45 A.3d 441, 443 (Pa. Super. 2012). We are required to accept the findings of the trial court which are supported by evidence of record and defer to the

trial court regarding weight of the evidence and credibility determinations. **See id.** However, because the instant case involves questions pertaining to standing, jurisdiction, and the proper interpretation of statutes, our standard of review is *de novo* and our scope of review is plenary. **See In re Adoption of A.M.W.**, 289 A.3d 109, 116 (Pa. Super. 2023) (*en banc*) (“Issues of standing generally raise pure questions of law for which we employ *de novo* review of a trial court’s decision.”); **Interest of J.M.**, 219 A.3d 645, 650 (Pa. Super. 2019) (“Jurisdiction is purely a question of law; the appellate standard of review is *de novo* and the scope of review [is] plenary.”).

This Court has discussed a trial court’s responsibilities with respect to custody actions that proceed before a hearing officer:

[w]here the parties proceed by agreement before a hearing officer on the issues of standing and partial custody for purposes of visitation, the trial court ***is required to make an independent review of the record to determine whether the hearing officer’s findings and recommendations are appropriate.*** Although advisory, the hearing officer’s report and recommendations are given the fullest consideration particularly on the issue of credibility of witnesses, which the trial court is not empowered to second-guess.

K.B. v. M.F., 247 A.3d 1146, 1150 (Pa. Super. 2021) (citations, ellipsis, and footnote omitted; emphasis added).

That did not occur in the present case.⁸ Here, the trial court issued a two-page order with three footnotes, the first concerns the granting of Hancewicz's petition to intervene; the second lists the standard of review; and the third is a conclusory statement that Parents' exceptions do not merit relief. **See** Order, 12/29/25, at 3-4. This Court has found cursory reviews such as this to be unacceptable. **See K.B.**, 247 A.3d at 1154-55 (vacating award of partial custody to grandparents where hearing officer improperly shifted the burden of proof to mother, did not apply the grandparent custody factors, and the trial court failed to make an independent review of the hearing officer's report).

Both the Custody Act and the Adoption Act are codified within Title 23 of the Pennsylvania Consolidated Statutes. The Adoption Act is found at 23 Pa.C.S. §§ 2101–2938 and The Custody Act is found at 23 Pa.C.S. §§ 5321–5340. Because both statutes occupy the same title and address the welfare of children, we must read them together. **See Deforte v. Borough of Worthington**, 212 A.3d 1018, 1022 (Pa. 2019). However, although adoption

⁸ This Court wishes to express its concern about the legal morass the parties and the trial court have created. This matter seems to have proceeded on three different trains running on parallel tracks: dependency, custody, and adoption – with none of the “engineers” recognizing the existence of the other trains, let alone analyzing their effect upon each other, or consideration of the possible statutory implications-resulting in a collision of law and a record which is missing salient details. It is baffling that no one took note of the fact the adoption would significantly alter the legal landscape or, at the very least, communicate to officers of the court the concurrent proceedings under way.

is purely a statutory right, the provisions of the Adoption Act must be strictly complied with, and “[t]he law is not to be construed unreasonably and thus defeat the express purposes of the Act.” ***In re Adoption of D.G.J.***, 277 A.3d 1204, 1208 (Pa. Super. 2022) (citations omitted).

Thus, the Adoption Act, which does not differentiate between categories of adoptive parents, unlike Section 5326, contemplates the severing of all ties between the former biological families and the newly constituted family unless the parties have agreed to a PACA. ***See In re Adoption of R.J.S.***, 889 A.2d 92, 100 n.7 (Pa. Super. 2005) (“A decree of adoption terminates forever all relations between a child and his biological parents and severs the child entirely from its own family tree and engrafts it upon its new parentage.” (citation omitted)).

Further,

“The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.” 1 Pa.C.S. § 1921(a). The plain language of the statute is generally the best indicator of legislative intent, and the words of a statute “shall be construed according to rules of grammar and according to their common and approved usage[.]” 1 Pa.C.S. § 1903(a). We generally look beyond the plain language of the statute only where the words are unclear or ambiguous, or the plain meaning would lead to “a result that is absurd, impossible of execution or unreasonable.” 1 Pa.C.S. § 1922.

In re C.L.P., 126 A.3d 985, 989 (Pa. Super. 2015) (some citations omitted).

Reading 23 Pa.C.S.A. § 5325, 23 Pa.C.S.A. § 5326, 20 Pa.C.S.A. § 711, and 23 Pa.C.S.A. § 2731, in conjunction, as we must, we reach the following

conclusions. Once an adoption proceeding commences, the Orphan's court has mandatory jurisdiction of not only the adoption, but also any existing and/or on-going custody petition of the minor. **See** 20 Pa.C.S.A. § 711. Therefore, upon being notified by the parties of the pending adoption, the custody court should transfer the active custody matter to the Orphans' court or at the very least stay the proceedings pending a resolution of the adoption proceedings so that the custody proceedings can be held in conjunction with the adoption proceedings. **See id.** **See also R.J.S.**, 889 A.2d at 95 (noting consolidation of adoption and custody proceedings in Orphans' court); **In re Adoption of K.S.**, 581 A.2d 659, 660-61 (Pa. Super. 1990) (discussing that while Orphans' Court initially had jurisdiction over a custody petition filed by biological father during the pendency of an adoption proceeding pursuant to Section 711(8), once that adoption failed, Orphans' court was divested of jurisdiction and correctly transferred custody case to family court).

Section 5326 discusses the effects of an adoption on custodial rights already been adjudicated. **See** 23 Pa.C.S.A. § 5326. When an adoption occurs and the adoptive parent(s) are not a stepparent, grandparent, or great-grandparent, it provides for the automatic termination of a custody order.⁹

⁹ We do not address, as the issue is not properly before us, whether Section 5326's distinction between adoption by biological strangers, relatives such as siblings, aunts, uncles, or cousins, and adoption by a stepparent, grandparent, or great-grandparent is constitutional. **See Selembo v. Mariani**, 313 A.3d 157 (Pa. Super. 2024) (unpublished memorandum at **6-10) (declining to *(Footnote Continued Next Page)*)

See id. Thus, if there is a previous grant of rights in a custody proceeding and the adoptive parents were not a stepparent, grandparent, or great-grandparent, the custody order automatically terminates and either the custody court or the Orphans' court is required to dismiss the custody action. **See Interest of K.L.**, 343 A.3d 187 (Pa. Super. 2025) (unpublished memorandum), at *11 (holding trial court correctly dismissed custody case following adoption of child by her foster mother). Nonetheless, Section 5326 does not say that such an order cannot be terminated in cases of adoption by a stepparent, grandparent, or great-grandparent, only that such termination does not occur automatically. **See id.**

In a situation where there is a prior determination of custody rights to a third-party, and the adoptive parent(s) is (are) a stepparent, grandparent, or great-grandparent, and the parties have not negotiated a PACA, as set forth in the Adoption Act, then depending on whether the action was stayed or transferred, either the custody court or the Orphans' court must decide whether the third-party seeking custody continues to have standing pursuant to either 23 Pa.C.S.A. §§ 5324 or 5325. The burden, and it is a heavy one, **see R.J.S.**, 889 A.2d at 100 n.7, is on the party seeking custody not only to

address the constitutionality of Section 5326 where appellant failed to preserve the issue) (Pa.R.A.P. 126(b) unpublished non-precedential memoranda decision of Superior Court filed after May 1, 2019, may be cited for persuasive value).

show standing but to demonstrate that it is in the best interest of the child to disrupt the security and stability of an intact adoptive family by permitting **limited contact** with the child and allowing the new family to be haled into court. While this may seem a harsh result, to find otherwise would allow a provision of the Custody Act to utterly frustrate the purpose of the Adoption Act and essentially create three separate classes of adoptive parents: (1) biological strangers; (2) stepparent(s), grandparents, and great-grandparents; and (3) other relations such as adult siblings, aunts, uncles, and cousins, etc. These separate classifications are not contemplated by the Adoption Act and are of questionable constitutional validity.

Here, it appears the trial court may have jurisdiction over the initial custody petition filed by MGM.¹⁰ However, once the adoption proceeding commenced, the custody action should have been transferred or stayed, as it was without jurisdiction to continue after the petition for adoption was filed, and the Orphans' court obtained mandatory jurisdiction by statute. The court's failure to do so and its act of issuing a **final order** three months **after** the adoption was finalized was legal error. Thus, because trial court acted

¹⁰ As previously noted, beginning following Mother's death in the summer of 2023 LCCYS assumed custody of Child. It is not clear from the record when the dependency action concluded. Again, we note our disapproval that the record does not clarify this point. We also point out that MGM's custody complaint **does not** include the statutory basis for her seeking custody in this matter. **See** Complaint, 2/25/25, at 1-3.

outside its jurisdiction in issuing the final custody order, that Order is a legal nullity. As previously indicated, this Court is unaware when the initial adoption petition was filed due to the parties' failures to put this information in the record, but the trial court issued two prior orders, the May 16, 2025 standing order, and the May 20, 2025 interim order. We are unable to determine from the record if the trial court had jurisdiction to issue those orders.¹¹ Therefore, we are constrained to remand this matter for the trial court to make that determination.

Upon remand, the trial court shall first determine the date when Parents filed the adoption action. If it was prior to May 16, 2025, then the trial court lacked jurisdiction to issue any order and it must dismiss the custody action. If Parents filed the adoption action between May 16, 2025, and May 20, 2025, then the interim custody order is null and void, but the standing order remains. If Parents filed the adoption petition after May 20, 2025, then both orders stand, but must be reviewed in light of the adoption.

If the trial court issued either of the orders prior to the onset of the adoption proceedings the trial court must first determine whether MGM still has standing under 23 Pa.C.S.A. § 5325. We remind the trial court that the burden is on MGM to prove she has standing considering Child's adoption.

¹¹ Given the finalization of the adoption, the custody complaint filed by Parents is moot.

If the court determines MGM has standing, then the trial court shall hold a new custody hearing to determine what, if any, partial custody may be appropriate given Child's adoption, the possibility to negotiate a PACA, and the right of adoptive parents to control who has access to Child.

We note as a general matter, our review of the hearing officer's report and recommendation and the trial court's subsequent adoption of it demonstrates a misunderstanding of the burden of proof in grandparent visitation cases, a failure to apply the proper custody factors, the respective legal positions of the parties, and the limitations inherent in granting visitation to third parties. ***See Douglas v. Wright***, 801 A.2d 586, 590-92 (Pa. Super. 2002) (holding the burden of proof is on the grandparent to demonstrate there are "convincing reasons" which demonstrate it is in the child's best interest to award periods of custody to a third party and upholding an award of partial custody of every other weekend from Friday evening to Sunday afternoon and four hours on the other Sunday where maternal grandparents had served as caregivers to the children when their now-deceased mother was at school and at work, the children spent most of the summers on the grandparents' farm, and children expressed a preference for spending significant amounts of time with maternal grandparents); ***Worner v. Stone***, 315 A.3d 53 (Pa. Super. 2026) (unpublished memorandum at *5 and *7) (discussing the extra custody factors, under Section 5328(c), which must be analyzed when grandparents seek custodial rights and affirming the award of four hours of partial custody

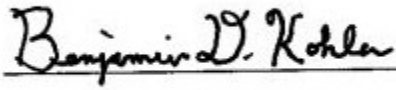
per month where paternal grandparents had spent significant amounts of time with child prior to the death of father); **Selembo**, 313 A.3d 157 (unpublished memorandum at **6-10) (upholding grant of partial custody of four hours per month where children expressed a desire to visit with maternal grandparents and a court-appointed evaluator determined such visitation was in children's best interests).

It is MGM's burden to demonstrate that it is in the best interests of Child to allow her to have some limited contact with Child.¹² If the court determines that any type of partial custody is appropriate, the court must apply both the custody factors in Section 5328(a) and the additional custody factors applicable to grandparent cases in Section 5328(c); further, the court shall consider the differing legal positions of the parties, and whether the adoption terminated all legal ties to former biological relatives.

Order vacated. Case remanded with instructions. Jurisdiction relinquished.

¹² As noted above, the final order issued in this case is inappropriate. Child has been adopted, MGM is not entitled to access to Child's medical and school records, or to be notified about major life decisions. Moreover, she is not entitled to a partial custody schedule of a non-custodial parent.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/21/2026