

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

W.F.	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
T.C.	:	No. 733 WDA 2026
v.	:	
	:	
B.H.	:	

Appeal from the Order Entered May 22, 2026
In the Court of Common Pleas of Westmoreland County Civil Division at
No(s): 112 of 2026-D

BEFORE: KING, J., NEUMAN, J., and BENDER, P.J.E.

MEMORANDUM BY KING, J.:

FILED: SEPTEMBER 23, 2026

Appellant, W.F.,¹ appeals *pro se* from the order entered in the Westmoreland County Court of Common Pleas, which dismissed his complaint for custody for lack of standing. We affirm.

The relevant facts and procedural history of this case are as follows. On January 22, 2026, Appellant, an adult child of T.C. ("Mother"), filed a complaint for custody against Mother and B.H. ("Father"),² seeking visitation with his two younger siblings, Mother's children, J.C. born in February 2016,

¹ We have amended the caption to reflect the parties' initials to protect the identity of the minor children involved in this dispute.

² Father did not participate in this case.

and I.C. born in April 2018 (“Children”). Appellant resided with Mother and Children from 2022 until 2023 but has not seen the Children since 2025.

On May 18, 2026, the court conducted an evidentiary hearing to determine whether Appellant had standing to pursue any form of custody. At the start of the hearing, Appellant clarified that, although the complaint avers that Appellant has standing pursuant to Section 5324(4) of the Domestic Relations Code, he intended to seek standing only under Section 5324(2) based on his *in loco parentis* status. Appellant testified that when he lived with Mother and Children, he cared for Children while Mother worked and was the adult responsible for Children’s needs and any issues that arose. Mother testified that Appellant only had the responsibilities of a babysitter and not a parent. The trial court dismissed Appellant’s complaint on May 22, 2026, finding that Appellant lacked standing to pursue custody of Children under either Section 5324(2) or (4). Appellant timely filed a *pro se* notice of appeal.³

Appellant raises the following issues on appeal:

I. Whether the trial court committed an error of law by denying Appellant *in loco parentis* standing under 23 Pa.C.S. § 5324(2) on the basis that Appellant is the biological sibling of the minor children, where biological relationship is not a

³ Appellant did not file a concise statement of errors contemporaneously with his notice of appeal per Pa.R.A.P. 1925(a)(2)(i). On June 9, 2026, this Court ordered Appellant to file a concise statement, and Appellant complied. We decline to find waiver for Appellant’s technical noncompliance with the rules. **See *In re K.T.E.L.***, 983 A.2d 745, 747 (Pa.Super. 2009) (declining to dismiss appeal for appellant’s failure to file Rule 1925 statement concomitantly with children’s fast track appeal because such failure results in defective notice of appeal and is violation of procedural rule and not order of court).

cognizable element of the *in loco parentis* analysis under Pennsylvania law.

II. Whether the trial court abused its discretion, and whether its finding that Appellant failed to establish *in loco parentis* standing was against the weight of the evidence, where the uncontroverted record — including Appellant’s sworn testimony and documentary evidence admitted without objection — established both prongs of the ***T.B. v. L.R.M.***, [567 Pa. 222, 786 A.2d 913 (2001)] test.

III. Whether the trial court committed an error of law by failing to apply the two-part *in loco parentis* test established by the Pennsylvania Supreme Court in ***T.B. v. L.R.M.***..., and its progeny, and instead substituting biological relationship as the operative criterion for denying standing.

IV. Whether the trial court committed an error of law by analyzing Appellant’s claim under 23 Pa.C.S. § 5324(4) after Appellant unambiguously clarified on the record — prior to the commencement of testimony — that he was proceeding solely under 23 Pa.C.S. § 5324(2), and thereby applying elements of an expressly abandoned claim to the claim actually before the court.

V. Whether the trial court abused its discretion by declining to hear Appellant’s legal argument on the controlling standard for *in loco parentis* standing after announcing its ruling, thereby denying Appellant a meaningful opportunity to be heard on the issue dispositive of his claim.

(Appellant’s Brief at unnumbered pages 13-15).

Appellant’s issues combined relate to the central issue of standing, so we address them together. Appellant contends that the trial court erred in denying Appellant standing based on *in loco parentis* status under 23 Pa.C.S.A. § 5324(2) and dismissing his complaint. Appellant argues that the court denied him *in loco parentis* status solely because Appellant is Children’s biological sibling. Appellant insists that no such limitation exists under

Pennsylvania law. Appellant maintains that under the legal standard set forth in ***T.B., supra***, the trial court was required to evaluate *in loco parentis* status based on whether Appellant assumed parental duties, and whether he had parental acquiescence to do so. Appellant claims that rather than simply look at those two factors, the court treated Appellant's status as a biological sibling as either a dispositive or heavily weighted factor against standing.

Appellant emphasizes that he assumed primary caregiving and supervision of Children while he lived in the house by caring for Children while Mother was at work, including cooking them meals, making medical judgments, providing academic instruction, supervising speech therapy, and contributing to household bills. Appellant avers that Mother acquiesced to his assumption of parental duties by delegating the care of Children to Appellant while she was at work and when she was ill. Based on the foregoing, Appellant concludes that he established *in loco parentis* status, and the trial court erred in deciding that he lacked standing to file for custody. We disagree.

Our standard of review of a trial court's order dismissing a complaint for lack of standing is well settled:

Issues of standing generally raise pure questions of law for which we employ a *de novo* review of a trial court's decision. As well, a challenge to asserted *in loco parentis* status in a particular context typically involves a fact-intensive inquiry, and may implicate mixed questions of law and fact. Where factual findings and credibility determinations are at issue, we will accept them insofar as they are supported by the record. In matters arising under ... appeals of child custody ... decisions, our plenary scope of review is of the broadest type; that is, an appellate court is not bound by the trial

court's inferences drawn from its findings of fact, and is compelled to perform a comprehensive review of the record for assurance the findings and credibility determinations are competently supported.

Hale v. Hale, 345 A.3d 1234, 1238–39 (Pa.Super. 2025) (quoting **Int. of K.N.L.**, 675 Pa. 17, 35-36, 284 A.3d 121, 132-33 (2022)).

“Standing relates to the capacity of an individual to pursue a particular legal action, and requires the petitioning litigant be adversely affected, or aggrieved, in some way.” **K.N.L., supra** at 42, 284 A.3d at 136. Our Supreme Court has explained that where a statute specifically prescribes parties to an action, those individuals have standing in the action. **Id.** at 45, 284 A.3d at 138.

Section 5324 of the Child Custody Act provides that only the following individuals can file an action for any form of physical or legal custody of a child: (1) a parent of the child; (2) a person who stands *in loco parentis* to the child; (3) a grandparent of the child who is not *in loco parentis* to the child (in certain situations); or (4) an individual who establishes that he has assumed responsibility for the child, has a sustained, substantial and sincere interest in the welfare of the child, and neither parent has any form of care and control over the child. 23 Pa.C.S.A. § 5324.

Instantly, Appellant asserts standing based on *in loco parentis* status.⁴

⁴ The trial court evaluated Appellant's standing under Section 5324(2) and (4), but Appellant has abandoned any claim of standing under Section (Footnote Continued Next Page)

"*In loco parentis* is a legal status, and proof of essential facts is required to support a conclusion that such a relationship exists." ***K.N.L., supra*** at 54, 284 A.3d at 144 (citing ***T.B., supra*** at 227, 786 A.2d at 916). In ***T.B.*** our High Court explained that *in loco parentis* status has two components: 1) the assumption of parental status, and 2) the discharge of parental duties. ***See T.B., supra*** at 228-29, 786 A.2d at 916-17. ***See also K.N.L., supra*** at 54, 284 A.3d at 144 (holding: "The foundational elements of *in loco parentis* status, upon which all other considerations may rise or fall, include the assumption of a parental role, and the discharge of parental duties"). It is well established that the party's assumption of a parental role must originate with the legal parent's assent either through encouragement or acquiescence. ***Id.***

Our Supreme Court has explained that in custody disputes raising claims of *in loco parentis* status standing, courts should examine the parties' conduct for evidence of an assumed parental role and duties. To meet the requirements of *in loco parentis* status, a litigant must establish that "a

5324(4), so we give that particular subsection no further attention. Furthermore, we note that although Appellant suggests that the court conflated the requirements for the two subsections, the record reflects that the court independently ruled that Appellant did not have *in loco parentis* standing under Section 5324(2) or standing under Section 5324(4). Finally, it is well settled that this Court may affirm the trial court's ruling on any basis supported by the record on appeal. ***See In re A.J.R.-H.***, 647 Pa. 256, 289, 188 A.3d 1157, 1176 (2018) (holding that appellate court may affirm on any basis "if the established facts support a legal conclusion producing the same outcome").

parent-like relationship has been forged through the parties' conduct." **Hale**, **supra** at 1239.

While this test is "stringent" to "prevent intrusion into fundamental parental rights" by "those who are merely strangers," our Supreme Court has cautioned it must not be interpreted "so rigidly or absolutely as to deny one acting *in loco parentis* an opportunity to be heard[.]" **K.N.L.**, [**supra** at 46,] 284 A.3d at 139. We also remain especially mindful that a third-party litigant, ... "who is not biologically related to the child but [who] has established a parent-like relationship with the child [and] seeks not to supplant the natural parent, but only to maintain [her] relationship with the child through reasonable visitation or partial custody, has an easier burden to meet." **J.A.L. v. E.P.H.**, [682 A.2d 1314, 1320 (Pa.Super. 1996)].

Id.

In **Hale**, this Court considered whether a non-biological former spouse of a child's mother had *in loco parentis* status to seek custody of the child. There, the appellant was included in decision-making concerning the selection of the child's medical providers and involved in taking the child to medical, dental, and therapy appointments. The appellant was also responsible for registering the child for school and sports activities, had independent access to the school's parent portal, and was listed as a "secondary parent" on some of the child's educational paperwork. The appellant was included in communications regarding the child's education and regularly attended parent-teacher conferences and school functions, at times as the sole parental representative from the household. The appellant volunteered weekly with the child's parent teacher organization and served as "homeroom mom" when

the child entered first grade. Finally, the appellant contributed financially to the child's wellbeing, including paying for clothing, sports programs, and groceries. On appeal, this Court reversed the order denying the appellant's petition to intervene in custody proceedings. We concluded that the appellant had *in loco parentis* status because her involvement with the child was more akin to a co-parent than a babysitter or occasional caregiver. ***See Hale, supra.***

Here, the trial court explained its reasoning for concluding that Appellant did not have *in loco parentis* status as follows:

[Appellant] testified that he resided with Mother, along with the two minor [C]hildren, from April 2022 until April 2023. During that period of time, [Appellant] would be the responsible adult for [C]hildren while Mother was at work or otherwise unavailable. [Appellant] would prepare home cooked meals, help with homework and help [C]hildren get ready for bed. He also made financial contributions to the household, such as helping with rent or other household expenses. [Appellant] further stated he last saw [C]hildren in March 2025. [Appellant] expressed he does not wish to take [C]hildren away from Mother, but be afforded visitation with them. Mother does not dispute that [Appellant] did perform those various tasks, but characterized his assistance as babysitting services, in line with being an adult residing in the home and helping with the care of [C]hildren.

There was no testimony or other evidence that [Appellant] was in charge of any medical, educational or other legal decision making for [C]hildren or that he ever demonstrated an intent to act as a parent.

(Trial Court Opinion, 5/22/26, at 1-2).

In this case, [Appellant] provided childcare to his siblings when Mother was unavailable. While the care he provided to [C]hildren was a benefit to his Mother, it does not rise to

the level of assuming the rights and liabilities akin to a parent and child relationship. It was not Mother's intention to have [Appellant] assume a parental role or discharge her own parental duties. Therefore, [Appellant] does not have standing under the doctrine of *in loco parentis*.

(***Id.*** at 3).

The record supports the trial court's well-reasoned decision. We agree with the trial court that Appellant did provide care to Children, watching them while Mother was at work and performing the basic tasks that one would perform while watching children. However, his caregiving was temporary and restricted to providing childcare while Mother was at work. (**See** N.T. Hearing, 5/18/26, at 5-10, 13). Appellant's testimony established that he was able to provide for Children's needs while Mother was at work, a task that parents regularly delegate to a caregiver, whether that caregiver is a babysitter, a nanny, or an older sibling. During those periods when Appellant was caregiver, he provided meals, helped with schoolwork, and took care of minor medical issues—again tasks that would be expected of any individual providing childcare services for a working parent. This case is distinguishable from ***Hale***, because here Appellant provided care for Children when Mother was working. Appellant offered no evidence of assuming the role of a parent for Children or the full-time responsibility that parenting entails. ***Compare Hale, supra.***

As our Supreme Court explained, *in loco parentis* status applies where the relationship between the individual and child was forged "through

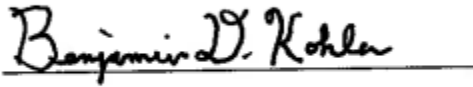
assented assumption of a position **more significant to the child than a frequent caretaker.**” *K.N.L., supra* at 56, 284 A.3d at 145 (emphasis added; citation omitted). Here, Appellant has not established a relationship with Children that is any more significant than a frequent caretaker. Therefore, the court did not err when it dismissed Appellant’s petition based on Appellant’s lack of standing. ***See id.***

Finally, to the extent Appellant argues that the trial court erred in denying him an opportunity to be heard, the record belies Appellant’s claim. At the hearing on May 18, 2026, the trial court permitted Appellant to make an oral statement on the record and did not restrict either the length or the substance of Appellant’s statement in any respect. (***See*** N.T. Hearing, 5/18/26, at 5-10). At the end of Appellant’s statement, the court asked Appellant whether there was anything else he wanted to add, and Appellant had nothing further. Appellant answered all of the court’s questions and then was permitted to cross-examine Mother as well. Prior to ruling, the trial court verified that no party had any other witnesses to call. At the close of the hearing, the court made its ruling that Appellant lacked standing to pursue custody. Appellant then clarified that he was only seeking *in loco parentis* standing, and the court explained that it denied standing based on *in loco parentis* and also under Section 5324(4) because that was pled as a basis for standing in the complaint. Appellant attempted to re-argue his claim that he should have standing, and the court stated that it had already made its

decision. Under these circumstances, we conclude that the trial court provided Appellant a full opportunity to be heard, and to the extent that the court declined hearing additional argument after its ruling, Appellant suffered no prejudice because he had already fully presented his claim. Accordingly, we affirm.

Order affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 9/23/2026