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### More Than Kin: Pennsylvania Supreme Court Rules That Stepfather Granted Custody Rights Also Owes Child Support

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# Verdict

JANUARY 5, 2016

JOANNA L. GROSSMAN

## More Than Kin: Pennsylvania Supreme Court Rules That Stepfather Granted Custody Rights Also Owes Child Support

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With rights comes obligation. That is the lesson of a recent ruling from the Pennsylvania Supreme Court, [A.S. v. I.S.](http://law.justia.com/cases/pennsylvania/supreme-court/2015/8-map-2015.html)



(<http://law.justia.com/cases/pennsylvania/supreme-court/2015/8-map-2015.html>), which held that a stepfather who fought for and won shared custody of his former stepchildren must also pay child support. Reaching the right result, this court nonetheless provides a cautionary tale for parents and stepparents about the future consequences of choices about childrearing during marriage.

### ***A.S. v. I.S.***

I.S. gave birth to twin boys in Serbia in 1998. Seven years later, and in the United States, she married A.S. After relocating to Pennsylvania, the couple lived together and raised the children. After they separated in 2009, the couple, by agreement, shared physical custody for a time. A year later, A.S. sued for divorce and, upon learning that his ex-wife planned to relocate to California (she had graduated from law school and taken the California bar in the interim), filed a complaint for custody.

An emergency ruling prevented I.S. from moving with her children, and a temporary custody order gave her primary physical custody, but with generous visitation to A.S. But he wanted even more parenting time, and the parties participated in court-ordered mediation, a parenting seminar, and custody conciliation.

A.S.'s claim to custodial rights rested on one basic claim: that he stood *in loco parentis* to his ex-wife's children. This status, he argued, gave him standing to seek custody even though the children had a fit legal parent (their mother). He prevailed at trial, and the court ordered I.S. to share physical (residential) and legal (decision-making) custody with A.S. The children were to alternate weeks with each adult, and neither adult was to relocate without court permission.

After A.S. obtained the emergency order preventing I.S. from moving to California—because doing so might compromise the custodial rights he was claiming—I.S. filed a complaint for child support. Somewhat ironically, her complaint was dismissed on the grounds that a stepparent does not owe any duty of support to his stepchildren. But neither, in the usual case, does he have any basis for obtaining custody of those same stepchildren.

I.S. appealed the denial of child support—and that is the issue that reached the state's highest court. Perhaps the more interesting question, though, is why a former stepparent was given not just visitation with his former stepchildren, but the same custody rights as those of their biological mother.

## **A Word About Stepparent-Stepchildren Relationships**

Custody fights in most cases are between two fit, legal parents. A legal parent is someone who, by virtue of a particular tie to a child, is endowed with constitutionally protected rights, and subject to potentially onerous obligations such as child support. A biological mother is a legal parent unless and until her parental rights are terminated. A biological father is a legal parent if he is married to the child's mother at the time of conception or birth, or if some other criterion for fatherhood is met such as an adjudication of paternity.

In the Pennsylvania case, the children did have two legal parents—their mother, I.S., and their biological father, who lived in Serbia. The father had never had any involvement with the children, however, and I.S. had never sought financial support from him. In the ordinary course of things, I.S. would have exclusive rights of custody, given their father's lack of interest, and perhaps the legal, if impractical, right to pursue him for child support.

How does her ex-husband, and their former stepfather, factor into the equation?

As a general matter, stepparents have control over stepchildren at the discretion of the children's parent to whom they are married. In many families, stepparents act very much like parents. But they have no childrearing rights, nor any obligation to provide financial support for their stepchildren.

Upon dissolution of the adult relationship, the legal relationship between stepparents and stepchildren goes from tenuous to non-existent. It is no longer proper, legally speaking, even to call them "stepparents" or "stepchildren," because a relationship that is created by marriage terminates when the marriage is dissolved. A stepparent becomes, in essence, a legal stranger to his or her stepchildren upon divorce from the children's parent.

Unless state law provides otherwise, the end of the marriage spells the end of any contact with the children without the continuing acquiescence of the parent. In California, for example, a statute allows a court to grant "reasonable visitation" by a stepparent when he or she divorces a child's legal parent. Third parties like former stepparents can also, in some states, petition for nonparent custody. The State of Washington provides for this possibility. But because of the special constitutional protection given to legal parents, the statute precludes granting nonparent custody without a showing that the legal parent is unfit (a tough standard) or that custody with a parent would result in "actual detriment to the child's growth and development."

The treatment of stepparents may seem harsh, but it derives from the Constitution's protection for parental rights. With respect to children, adults are divided into two categories: parents and non-parents. And this distinction matters because parents are imbued with robust rights to the care, custody, and control of children; an important aspect of those rights is exclusivity—the right to prevent contact between children and other adults.

Because of this constitutional structure, it is virtually impossible for a non-parent to successfully obtain legal custody of a child who has at least one fit parent. Visitation is sometimes possible—but may also be hard to come by. The leading ruling on third-party visitation was handed down in 2000 by the U.S. Supreme Court in ***Troxel v. Granville*** (<https://supreme.justia.com/cases/federal/us/530/57/>). That case concerned a Washington State law that allowed any third party to petition for visitation with a child at any time. It also permitted courts to grant such petitions over parental objection as long as it was in the best interests of the child. (The statute was not limited to any special situations—such as where one parent had been declared unfit or was divorced or widowed.) A plurality of the court held the statute unconstitutional as applied to the mother in that case, who had allowed visitation with the children's paternal grandparents after their father's suicide, but objected to their ever-increasing demands for more time. At a minimum, the plurality wrote, a fit parent must be presumed to act in her children's

best interests, and her decision to deny visitation must be given “special weight.”

In the wake of *Troxel*, many state courts have ruled on the validity of their respective third-party visitation statutes. The statutes that survived review built in a strong preference for deferring to a legal parent’s decision about visitation with third parties. Those that fell failed to draw a sufficiently clear distinction between parents and non-parents.

### **Former Stepparents as De Facto Parents**

The concept of “de facto” parentage recognizes that sometimes adults who are not legal parents nonetheless serve import parental functions for children. This doctrine was first recognized in a 1995 Wisconsin case, *In re Custody of H.S.H.-K* ([http://scholar.google.com/scholar\\_case?case=9444398073080790210](http://scholar.google.com/scholar_case?case=9444398073080790210)), and has been adopted in a few other jurisdictions since then. In its typical formulation, the doctrine requires not only that the co-parent function as a parent, but also that the legal parent consented to the creation of the functional parent–child relationship and actively fostered its growth. Although the doctrine varies from state to state, it typically does not give rise to rights equivalent to a legal parent’s. Rather, it allows the de facto parent to seek visitation, but not custody. Courts in states that recognize de facto parentage justify the intrusion into the legal mother’s constitutionally protected parental rights by pointing to her role in creating and fostering the relationship with the co-parent.

The doctrine has gained most traction in cases brought by lesbian co-parents who participated in every aspect of planning for and raising the biological child of a partner. Several states allow courts to recognize—typically in limited circumstances—the parental rights of such an adult, deeming the adult a “de facto parent,” and granting the adult more rights than a stepparent would otherwise enjoy. But even states that recognize the doctrine of de facto parentage have been hesitant to apply it to former stepparents. Doing so would enlarge the former stepparent’s rights at the expense of the legal parent’s rights. Moreover, it would undermine the usual expectations as to stepparent status. Courts in Washington State and California have refused to recognize former stepparents as de facto parents, despite recognizing that status for others without legal-parent status. (These cases are discussed [here \(https://verdict.justia.com/2013/12/10/de-facto-parentage-rights-former-stepparents\)](https://verdict.justia.com/2013/12/10/de-facto-parentage-rights-former-stepparents).)

The main concern in allowing former stepparents to seek de facto parent status is that the mere possibility of such a claim would deter parents from encouraging a loving and close relationship between children and a stepparent. If such encouragement could result in a lifelong obligation to share custody of one’s children, it would not be undertaken lightly. Moreover, in the usual case, there is no basis for drawing an inference of consent to

permanent child-sharing from the behavior during a marriage. Thus, the granting of rights to a former stepparent raises serious constitutional concerns.

### **Now Back to *A.S. v. I.S.***

This may have seemed like quiet a detour from the Pennsylvania case, given that the only issue on appeal is whether the former stepfather should be obligated to pay child support. But the answer to this question is obviously yes after one considers how extraordinary it was for the court to grant him equal custody rights in the first place. If the trial court believed this case was unusual enough to grant a non-parent rights that are co-extensive with that of a parent (I have my doubts as to whether this determination was warranted), then it is not a stretch to conclude that the usual rule relieving former stepparents of support obligations is inapplicable as well.

The Pennsylvania Supreme Court reversed the trial court's dismissal of the child support complaint and held that a child support order is appropriate. After all, A.S. is not an ordinary stepparent who waltzed in and out of his stepchildren's lives. After his marriage to their mother broke up, he aggressively and successfully litigated for custody, winning rights equal to those of the children's mother and significantly impairing her ability to make choices about her own life and her children's lives. And in the cases holding that stepparents have no child support obligations, they also had no significant rights. Those cases are, therefore, distinguishable.

The state child support statute provides that "[p]arents are liable for the support of their children," but does not define "parent." Clearly, the court noted, the meaning of "parent" has expanded in the age of the new American family, which has forced courts and legislatures to look beyond biology and adoption to ascertain parentage. Moreover, principles of estoppel have been used to impose parental support obligation on non-parents, such as a man who has held out a child as his own despite the lack of a genetic tie. Men in that situation are held to their conduct, rather than their genes, in order to protect children's security in knowing who their parents are. In Pennsylvania, this doctrine of paternity by estoppel has been applied to a former stepfather, who held out the child as his own and continued the relationship after his separation from the child's mother.

Pennsylvania courts have also seen fit to impose support obligations on non-parents who have taken "affirmative steps to act as a parent, under general principles of equity, even where the child would not confuse that individual with a biological parent." A lesbian partner, in one such case, was held responsible for supporting a child born to her partner because she was equally involved in bringing the child into the world and raising it. If she was enough of a parent to obtain custodial rights, she was enough of a parent to help

support them.

The court in *A.S.* was clear that not all parent-like behavior by a stepparent will be sufficient to justify a child support obligation.

Upon consideration of these two lines of cases, we agree and, accordingly, reiterate that *in loco parentis* status alone and/or reasonable acts to maintain a post-separation relationship with stepchildren are insufficient to obligate a stepparent to pay child support for those children. But this case involved “a far greater assumption, indeed, a relentless pursuit, of parental duties than that of a stepparent desiring a continuing relationship with a former spouse’s children.” Rather, the court observed, “we have a stepfather who haled a fit parent into court, repeatedly litigating to achieve the same legal and physical custodial rights as would naturally accrue to any biological parent,” and successfully preventing “a competent biological mother from relocating with her children.” Damn straight he should be responsible for supporting them as well. Or, in the more judicious phrasing of the Pennsylvania court: “Equity prohibits Stepfather from disavowing his parental status to avoid a support obligation to the children he so vigorously sought to parent.”

The court emphasized the limits of its ruling, with an embedded cautionary tale:

“[W]e are not creating a new class of stepparent obligors and our decision today comports with the line of cases that have held that *in loco parentis* standing alone is insufficient to hold a stepparent liable for support. The public policy behind encouraging stepparents to love and care for their stepchildren remains just as relevant and important today as [ever]. However, when a stepparent does substantially more than offer gratuitous love and care for his stepchildren, when he instigates litigation to achieve all the rights of parenthood at the cost of interfering with the rights of a fit parent, then the same public policy attendant to the doctrine of paternity by estoppel is implicated: that it is in the best interests of children to have stability and continuity in their parent-child relationships. By holding a person such as Stepfather liable for child support, we increase the likelihood that only individuals who are truly dedicated and intend to be a stable fixture in a child’s life will take the steps to litigate and obtain rights equal to those of the child’s parent.”

One justice **dissented** (<http://law.justia.com/cases/pennsylvania/supreme-court/2015/8-map-2015-o.html>), expressing (reasonable) concern as to why *A.S.* was granted such expansive custody rights in the first instance, particularly without legislative authorization to adopt a new quasi-parent status.



## Conclusion

No one would advocate for a return to more Cinderella-type stepparenting. Children unquestionably benefit from loving and close relationships with stepparents, and this is particularly important given that American children will see their parents go in and out of more relationships than will children in most other countries. But this ruling provides a cautionary tale for both parents—who risk losing their exclusive control—and stepparents—who risk financial obligation. Blended families beware.

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