

**Philadelphia Bar Association – Family Law Section
June 2021 - Case Law Summaries**

In Re. Estate of Renwick, No. 631 WDA 2020 (*Pa. Super. March 22, 2021*)

Wife appealed an order granting the petition to vacate her elective share filed by the co-executors of Husband's estate.

Wife and Husband (Decedent) married in 2000. The parties executed an antenuptial agreement (Agreement) on the day of their wedding. In February of 2019, Decedent executed a will excluding Wife before passing away two months later. The will was admitted to probate and Wife filed an election of surviving spouse. The estate then filed a petition to vacate the spousal election. The Orphans' Court held a hearing to determine whether: 1) the Agreement was void *ab initio* because Wife was never shown a final version; 2) the Agreement was void for lack of consideration; and 3) if valid, did the Agreement only foreclose Wife from taking the spousal election on "separate property" as defined in the Agreement. The Orphan's Court entered an order finding for the estate and vacating Wife's spousal election.

Wife appealed, arguing, *inter alia*, that the trial court erred in vacating her statutory spousal election when it failed to follow precedent that the failure of consideration in a purported antenuptial agreement entitles the surviving spouse to disregard the agreement and take against the deceased husband's will.

The Superior Court reversed and agreed with Wife that the Orphans' Court had disregarded longstanding precedent in finding that the Agreement was not void for lack of consideration. In its decision to reverse, the Court noted that Decedent was required under the Agreement to contribute each year to a retirement account in Wife's name, which he failed to do. The Orphans' Court had cited Wife's failure to seek enforcement of the Agreement during the Decedent's lifetime, but the Superior Court disagreed and cited the precedent established in Estate of Harrison, 319 A.2d 5 (Pa. 1974) that Pennsylvania law allows spouses to challenge agreements lacking consideration during probate.

The Decedent's estate attempted to argue that Harrison was "tacitly overrule[d]" by Simeone v. Simeone, 581 A.2d 162 (Pa. 1990), but the Superior Court disagreed, noting that Harrison remains good law. The Court ultimately applied Harrison to find that Decedent had failed to comply with the consideration requirement of the parties' Agreement, rendering it void for lack of consideration, and remanded the case with instructions to reinstate Wife's petition for elective share.

P.G. v. A.C. and D.H., Memorandum Decision
No. 947 WDA 2020 (Pa. Super. April 23, 2021)
Non-precedential

PG, appellant, appeals an order granting Mother's preliminary objections that provided that Appellant lacked *in loco parentis* standing to pursue custody of the Child.

Child is the daughter of Mother and DH, who did not participate in the proceedings. PG and Mother were friends, who engaged in "one or two sexual encounters", but were never in a prolonged relationship. Following the Child's birth, Mother stayed home to care for the Child until returning to work later that year. While Mother was at work, Mother's grandmother initially cared for the Child before grandmother passed away. PG then offered to care for the Child and Mother accepted PG's assistance. PG cared for the Child regularly for several years, including at least two or three overnight periods each week."

PG filed a complaint seeking shared legal and physical custody of the Child, averring that he stood *in loco parentis* with respect to the Child as he had exercised extensive caretaking and provided for her medical, emotional and financial needs. Mother filed preliminary objections challenging PG's standing, averring that PG "merely was a childcare provider."

At the hearing, the parties testified that PG initially cared for the Child while Mother worked double shifts at the hospital, and that he continued to care for the Child during the same periods even after Mother stopped working double shifts. It was not disputed that PG had a bond with the Child. PG had refused compensation for the childcare and paid for certain necessities for the Child with his own funds. Mother also authorized PG to take the Child to the hospital in the event of an emergency and PG did take the Child to doctor's appointments when Mother was working. PG also cared for the Child when Mother was not working. The trial court ultimately found that PG did not possess *in loco parentis* standing with respect to the Child and entered an order granting Mother's preliminary objections.

PG appealed, challenging the trial court's finding that he lacked *in loco parentis*, citing: 1) his continued care for the Child; 2) Mother "discharging her parental duties" by having PG care for the Child when she was not working; and 3) his argument that the court did not consider the best interests of the Child in making its decision.

In affirming the trial court's decision, the Superior Court first examined the limited circumstances under which an individual other than a parent might pursue custody of a child as set forth in 23 Pa.C.S.A. §§ 5324 – 5325. The Court acknowledged that *in loco parentis* status has been found in cases where the party seeking custody was a former stepparent, romantic partner or primary/sole caregiver, but not for part-time caregivers. The Court further reasoned that applicable case law specifically rejected requests for *in loco parentis* status for part-time caregivers. In its conclusion, the Superior Court ultimately affirmed the trial court, finding that PG's relationship with the Child qualified as that of a part-time caregiver (despite their bond), which did not confer *in loco parentis* standing.