

Commonwealth v. Howard
Supreme Court of Pennsylvania
No. 8 WAP 2020
2021 Pa.
August 25, 2021
Opinion by: Todd

In *Commonwealth v. Howard*, the Pennsylvania Supreme Court reversed the Superior Court’s decision that mother’s act of allowing her child to ride in a car-for-hire without a car seat was endangering the welfare of a child

Defendant mother and her three-year-old daughter were riding in a car-for-hire that was involved in a multi-vehicle accident. Defendant was sitting in the front passenger seat of the vehicle, while her child was sitting in the backseat on the passenger side without a car seat or seatbelt. None of the individuals involved sustained serious injuries. A police officer responded to the scene, and, based on his Affidavit of Probable Cause, mother was charged with endangering the welfare of a child under 18 Pa.C.S. §4304(a)(1), a first-degree misdemeanor, and reckless endangerment. Mother was convicted on both charges. The trial court imposed a sentence of one-year probation for mother’s conviction for endangering the welfare of a child. Mother appealed.

The Supreme Court reversed the Superior Court’s judgment and vacated mother’s conviction. The Court held that the Commonwealth was obligated to prove that mother was aware that her conduct endangered the child’s welfare. The test for such conduct involved determining whether it violated the “common sense of the community.” The Court found that mother’s decision to allow her child to ride in a car-for-hire not equipped with a car seat, without other indicia of dangerousness, was insufficient to put mother on notice that her child’s welfare was endangered.

The Court explained that the Vehicle Code imposed a duty to restrain infants and toddlers in car seats upon the operation of a vehicle. However, there was no similar duty under the Vehicle Code imposed upon a non-driving parent. In a footnote, the Court commented that in light of the increased use of ride-share services, the enactment of clear laws pertaining to a parent or guardian’s duty regarding the use of car seats may be warranted.

Farley v. Dorsey-Hurt
C.P. Lycoming County
No. FC-18-21, 524
June 14, 2021
Before: Tira

This trial court decision reminds practitioners of the elements of void and voidable marriages. In *Farley v. Dorsey-Hurt*, the trial court held that plaintiff's marriage to defendant was both void and voidable where she had an existing spouse at the time she married defendant, she lacked the capacity to consent to the marriage, and she was induced into marrying defendant by fraudulent actions.

Plaintiff was married to Farley in Sri Lanka in 2011, and they had a child together. Plaintiff moved from Sri Lanka to the United States in May 2016, to be with her husband. At the time, she spoke very little English. Plaintiff and Farley separated, but never divorced.

Plaintiff began a friendship with defendant's sister. Sister gave plaintiff a place to live, where she eventually met defendant. In September 2016, plaintiff became sick and needed medical care; however, she did not have health insurance. Defendant told plaintiff that he could help her get health insurance and other government benefits. He instructed her to write and sign her name on a document. She did not know what she was signing. Defendant also took plaintiff to the courthouse and then a church.

Once plaintiff learned English, she discovered she was married to defendant and to Farley. Plaintiff then filed a petition for an annulment, which was granted by the trial court. The court first noted that generally, where either party to a marriage desires to have the marriage annulled, he or she must bring an action in annulment and prove that the marriage was either void or voidable, 23 Pa.C.S. §3303(a). A marriage is void when there has been no confirmation by cohabitation following the removal of an impediment and: "(1) Where either party at the time of such marriage had an existing spouse and the former marriage had not been annulled nor had there been a divorce except where that party had obtained a decree of presumed death of the former spouse ...; or (3) Where either party to such marriage was incapable of consenting by reason of insanity or serious mental disorder or otherwise lacked capacity to consent or did not intend to consent to the marriage." 23 Pa.C.S. §3304(a)(1) and (3).

Additionally, the court reiterated, a marriage is voidable "where one party was induced to enter into the marriage due to fraud, duress, coercion or force attributable to the other party, and there has been no subsequent voluntary cohabitation after knowledge of fraud or release from the effects of fraud, duress, coercion or force." 23 Pa.C.S. §3305(a)(5).

K.R.R. v. M.M.R. v. C.R.B.,
Superior Court of Pennsylvania
No.: 135 WDA 2021
2021 Pa. Super.
July 13, 2021
Before: McLaughlin, King, McCaffery
Opinion by: McLaughlin

In *K.R.R. v. M.M.R. v. C.R.B.*, the Superior Court, in a Non-Precedential Memorandum Decision, reversed the trial court's finding that foster mother had *in loco parentis* standing. Foster mother's relationship with the child arose because of the involvement of CYS. The Court disagreed and found that mother's asking foster mother to provide kinship care in the course of dependency proceedings was insufficient to find consent for purposes of *in loco parentis* standing.

The child was born in October 2017. After birth, mother was in a coma, and unable to care for the child. Father was not identified at the time of birth. The trial court granted temporary legal and physical custody of the child to Lawrence County CYS. CYS placed the child in a foster home. Mother asked foster mother to provide kinship care and the child was placed with foster mother. The trial court found the child was not dependent and ordered the child returned to mother.

Foster mother then filed a Complaint in Custody stating that mother and father were the child's biological parents and that she was the child's cousin. She alleged that the child resided with her from June 2018 through January 2019 and May 2019 through August 2019 and that the child's best interest and permanent welfare would be served by granting sole legal and primary physical custody to her. Foster mother asserted that she had standing because her relationship with the child began at parents' request and with their continuing consent, she had assumed and was willing to assume responsibility for the child, and that the child was a dependent substantially at risk due to neglect.

The trial court entered an interim custody order awarding legal and primary physical custody to parents and partial physical custody to foster mother. Foster mother thereafter presented an Emergency Petition for Special Relief, alleging the parents initially refused to conduct a scheduled custody exchange and parents had refused to cooperate and seek medical care for the child. The trial court found that foster mother had standing under the *in loco parentis* doctrine because mother had sought her out for kinship placement and foster mother's relationship with the child would not have proceeded without mother's efforts. The court further found that foster mother had discharged parental duties and assumed parental status.

The parents appealed, challenging the trial court order overruling their preliminary objections to foster mother's standing. The parents argued that there was a "long-standing principle that foster parents do not meet the necessary qualifications to attain the status of *in loco parentis*." The parents noted that in finding otherwise, the trial court relied on cases that did not arise following a finding of dependency. Parents further argued that foster mother could not assert *in loco parentis* standing against their wishes. They stated that although mother suggested foster mother

as kinship care, it was not because mother did not want to parent the child, but rather due to CYS's intervention.