The court finds from a review of the evidence that the land in question is, in fact, a common driveway. The court grants both parties the right to use the driveway and prohibits either party from closing or blocking the other party's use of the driveway.

STOUFFER v. STOUFFER, C.P. Franklin County Branch, F.R. 1986-832S
Support - Spouse - Grandchild - In Loco Parentis

1. When a wife voluntarily leaves her husband the burden is upon her to establish justification for leaving or that the husband consented to the separation.
2. Following a nonconsensual, voluntary withdrawal of wife from the marital home it is not necessary for the wife to present grounds for leaving her husband which would entitle her to divorce, only that she had reasonable cause.
3. The status of "in loco parentis" embodies the assumption of parental status and the discharge of parental duties.
4. Where defendant stepped into the position of primary caretaker immediately following the birth of a child and entered into a custody agreement with the natural parents, the defendant is liable for support.

Sally J. Winder, Esquire, Counsel for Plaintiff
Bradley R. Bolinger, Esquire, Counsel for Defendant

OPINION AND ORDER

KELLER, P.J. May 28, 1987:

Helen E. Stouffer filed a complaint for support against Donald E. Stouffer for the support of herself and the child, Amy L. Stouffer. An order of court was entered on November 26, 1986 ordering the parties to appear for a conference before a Domestic Relations Hearing Officer on December 23, 1986. On December 29, 1986, the hearing officer entered an order continuing the case because it appeared that the parties resided in the same household and the defendant was providing adequate support and maintenance. On January 21, 1987 an order of court was entered rescheduled the office conference on February 11, 1987. An order following the office conference was entered on February 17, 1987 requiring the defendant to pay support in the amount of $116.00.

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The Commission members are:

James F. Mundy, Esquire, (Chair), Raynes, McCarty, Binder, Ross & Mundy, 1845 Walnut Street, Suite 2000, Philadelphia, PA 19103

Carol Brown, President, Trust for Cultural Resources, 1300 Benedum-Trees Building, 223 Fourth Avenue, Pittsburgh, PA 15222

Ida Chen, Esquire, 211 South Broad Street, 8th Floor, Philadelphia, PA 19107

Leon Haley, President and Chief Executive Officer, Urban League of Pittsburgh, 200 Ross Street, Pittsburgh, PA 15219

Robert J. Landy, Esquire, Landy & Zeller, 228 Desmond Street, Sayre, PA 18840

Edward M. Mead, President, Times Publishing Company, 205 West 12th Street, Erie, PA 16534

Fred Speaker, Esquire, Pepper, Hamilton & Scheetz, 10 South Market Square, Harrisburg, PA 17108

No child support was specifically ordered or apportioned between spouse and child. The defendant was further ordered to maintain the spouse and child on his employment medical coverage. On February 18, 1987, the plaintiff advised that she was demanding a hearing de novo before the court "because of the hearing officer's failure to find that the defendant owed a duty of support to the child . . ." On March 10, 1987 an order of court set the support apeal heasring for April8, 1987. Testimony was heard and counsel for the parties submitted proposed findings of fact, arguments and conclusions of law on April 24, 1987.

FINDINGS OF FACT

1. The plaintiff, Helen E. Stouffer, is fifty-nine years of age and resides at 201 Meadow Drive, Roxbury Ridge Apartments, Shippensburg, PA since January 2, 1987.
2. The defendant, Donald R. Stouffer, is sixty-one years of age and resides at 214 Lurgan Avenue, Shippensburg, PA.
3. The parties are the natural parents of Darlene M. Stouffer who is about thirty-five years of age and resides at North Queen Street, Shippensburg, PA.
4. Darlene M. Stouffer and Curtis O. Dacus, who resides at 404 Dacus Drive, Mini Farms, Sikeston, Missouri are the natural parents of Amy L. Stouffer. They are not married.
5. Amy L. Stouffer was born out of wedlock on April 16, 1976.
6. The child has resided with the maternal grandparents Helen and Donald Stouffer, the plaintiff and defendant, since birth.
7. The mother lived with the grandparents for approximately six weeks after the child's birth until she went to live with the natural father in Missouri.
8. Darlene Stouffer told the plaintiff and defendant that unless they assumed the care of Amy, that she would put the child up for adoption.
9. There is a custody agreement dated December 6, 1976 which provides that the plaintiff and defendant shall have primary custody of the child subject to the parents' visitation rights. Visitation to be agreed upon between the parties.
10. The agreement may be terminated by either party giving to the other party a thirty-day written notice. There has never been any discussion of termination.
11. At the time of the agreement, the defendant stated that he would raise Amy as if she were his own child.
12. There is no court order relating to custody of the child.
13. The natural father, Curtis O. Dacus, has not seen the child since she was three months old.
14. The natural mother has exercised infrequent visitation with the child.

15. Neither mother nor father has contributed to the financial support of the child. The plaintiff and defendant have never sought support for the child from the natural parents.
16. The plaintiff and defendant grandparents have raised and supported the child since her birth. The grandfather testified that he treated her as his own child.
17. The child refers to her grandmother as "Mom" and to her grandfather as "Dad". The grandparents never discouraged the child from using those names.
18. Both grandparents took care of the child.
19. The defendant claimed the child as a dependent on his federal income tax returns.
20. The grandparents have not legally adopted the child because the natural parents would not consent.
21. The child's last name was changed to "Stouffer" when she began school to avoid causing the child confusion and/or to add her to the defendant's employment insurance coverage.
22. The grandparents and Amy resided together until January 2, 1987.
23. The grandmother was last employed as a part-time clerk/cashier at Dollar General Stores in 1981. She quit this job because it required lifting which she was unable to do due to her health.
24. The grandmother has not looked for a job since that time; the grandfather did not request her to work or tell her not to work.
25. The grandmother has an earning capacity of $100.00 per week.
26. Since 1981, the grandfather has provided the sole support for the grandmother and the child.
27. The grandfather is employed by SKF Industries, Inc., Shippensburg, PA and his current income is approximately $330.00 per week.
28. The grandparents separated on January 2, 1987 when the grandmother moved out of the marital residence. The grandfather did not know that she planned to move out.
29. The grandfather testified that he never told his wife she had to leave. He denied abusing her, knocking her glasses off or making sexual advances to the child. His wife left the home because they could not get along.
30. The grandmother testified that she left the home because of her spouse's changeable moods: he threatened to leave; to smash her face in. He got on her nerves and the child could not sleep. He finally told her to "go ahead and go, you go, I won't." She withdrew because they could not get along.

We note preliminarily that in her brief plaintiff attempted, based on her letter of February 18, 1987 giving notice to the Domestic Relations Section of the

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We note preliminarily that in her brief plaintiff attempted, based on her letter of February 18, 1987 giving notice to the Domestic Relations Section of the appeal because of the denial of child support, to limit our consideration of this matter to the issue of child support. At the hearing, she made no objection to the introduction of testimony relating to spousal support nor made any other effort to limit the hearing to consideration of child support only. The result of an appeal from a Domestic Relations order is a trial de novo and under the circumstances, we will consider both issues open for fresh consideration.

The plaintiff asserts that she is entitled to spousal support following her withdrawal from the home. When a wife voluntarily leaves her husband the burden is upon her to establish justification for leaving or that the husband consented to the separation. In *Commonwealth ex rel. Brown v. Brown,* 195 Pa. Super. 324 (1961), the wife testified that during an agrument the husband requested her to leave. The record disclosed that the wife actually left without the knowledge of the husband and without his consent. The Court stated,

> "Such words, spoken as they were, in the heat of argument and on occasions stretching over a period of years, are insufficient to warrant the conclusion that respondent's final departure was with her husband's consent." 195 Pa. Super. at 329 citing *Mertz v. Mertz,* 119 Pa. Super. 538, 180A. 708, 710 ( ).

The facts of the present case are analogous to the facts in *Brown.* The wife testified that following disagreements and in the course of arguments, the husband said "Go ahead and go," and "You leave, I won't." The husband denied making these statements. He testified that he did not tell his wife to leave or force her to leave by his conduct. The defendant did not know that his wife was leaving until he came home from work on January 2, 1987, and saw her loading the truck. The wife did not contradict this testimony. In these circumstances, we are unable to conclude the husband gave his consent to the separation.

Following a nonconsensual, voluntary withdrawal of the wife from the marital home, it is not necessary for the wife to present grounds for leaving her husband which would entitle her to divorce in order to procure an order for support.

> "The wife need only show by sufficient evidence a reasonable cause that would justify her voluntary withdrawal from the common domicile." *Commonwealth ex rel Loosely v. Loosely,* 236 Pa. Super. 389, 391, A.2d (1975).

In *Loosely,* the wife was justified in leaving where there were frequent angry fights, the defendant had struck the wife, expressed anger at her dependence on her family; knew that his wife was under treatment for a psychiatric disorder and that his conduct, such as moving to a separate bedroom made her quite nervous. Other situations which were sufficiently difficult as to justify the wife's withdrawal were abuse of alcohol *Krug v. Krug,* 224 Pa. Super. 100, 303 A. 2d 52 (1973); and use of excessive physical force on the children, *Commonwealth ex rel. Halderman v. Halderman,* 230 Pa. Super. 125, 326 A. 2d 908 (1974). Disagreements over financial matters was an insufficient reason. *Brown,* supra. In the present case, according to her own testimony and that of her husband, the wife left the common abode because the parties did not get along. She testified that her husband's moods were changeable and he got on her nerves. The husband admitted that he had clenched his fists in reponse to his wife's provocations, but denied threatening her. Although there was disharmony, the evidence failed to describe the type of egregious circumstances that would justify the wife's departure. Therefore, in the face of the plaintiff's voluntary withdrawal without sufficient legal reason, we are without power to order the defendant to pay spousal support to the plaintiff.

The issue is raised whether the defendant/grandfather should be required pursuant to the theory of "in loco parentis" to pay child support for a child he neither created nor adopted.

> "The status of 'in loco parentis' embodies two ideas: first, the assumption of a parental status, and, second, the discharge of parental duties." *Commonwealth ex rel. Morgan v. Smith,* 429 Pa. 561, 569, 241 A.2d 531 (1968).

In the absence of eveidence relating to that status, the Court declined to pass upon the question of whether a person standing in such a relation is liable for the support of a child. The Superior Court has considered the issue in several instances: *Commonwealth v. Cameron,* 197 Pa. Super. 403, 179 A. 2d270 (1962); *Commonwealth ex rel. Bulson v. Bulson,* 278 Pa. Super. 6, 419 A.2d 327 (1980), and *Kelin v. Sarubin,* 325 Pa. Super. 363, 471 A.2d 881 (1984).

In *Cameron,* the natural mother and her second husband executed a release which in consideration of a certain sum relieved the natural father of his child's support obligation. The release recited that the child was living with the mother and her new husband in the relationship of parents and child, and that the husband desired to assume the duties of parent and father to the child. They lived together as a family for approximately fourteen

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years. Both under the contract and by reason of their relationship the husband and wife were obligated to support the child. The natural father would not be exposed to liability for payment of support until it was shown that the mother and her husband were unable to provide the requisite support.

In *Bulson,* the court affirmed the trial court's conclusion that the husband assumed the obligation to support his stepchild when he married the child's natural mother knowing that she had a child in need of support.

In *Klein,* the court emphasized that the existence of the status of in loco parentis is largely dependent upon the intention of the person assuming the status. They refused to apply the theory to obligate a step-parent to pay support where he married the mother while a support order against the natural father was in effect.

In the present case, the plaintiff and defendant stepped into the position of primary caretakers immediately following the birth of the child. Approximately eight months later, they entered into a custody agreement which gave them primary care of the child. At the time, the defendant agreed to raise the child as if she was his own. No adoption took place, largely because the natural parents would not consent to it. The child has resided with the plaintiff and defendant continuously from her birth until the parties separation a period of almost twelve years. The defendant testified that he treated her just like his own child. There was never any discussion of returning the child to her natural parents, and the grandparents assumed full responsibility for nurturing the child and providing her support. Her surname was changed to theirs when she entered school. The natural father has not visited the child in about eleven years, the natural mother visits the child infrequently. The relationship contemplated by the custody agreement and that which has actually developed goes beyond the discharge of a grandparents' duties. The plaintiff and defendant, as described in *Morgan,* supra, have assumed parental status and discharged parental duties for almost twelve years. The status of "in loco parentis" carries with it a continuing obligation of support. *Cameron,* supra. There is no evidence of record to indicate that they are financially unable to fulfill their obligations.

We accept the hearing officer's finding that the plaintiff has an earning capacity of $100 per week. In February 1987, the hearing officer found the defendant's net weekly income to be

$370.00. At the hearing the defendant testified that he had not overtime work since November or December 1986, and that his earnings decreased. He testified that his average monthly take-home pay is presently $1,325 but his weekly net income is $330.00. This testimony was uncontradicted.

The Franklin County Support Guidelines are based on the parties; income and are designed to furnish the child's reasonalbe needs as mandated by our Supreme Court. *Melzer v. Witsberger,* 505 Pa. 462, 480 A.2d 991 (1984). The guidline amount in this case is $64.00 per week. This amount may be adjusted upward to take into consideration the fact that older children are more expensive to raise than younger ones. The child in this instance is entering her teenage years and will require some additional expenses. We find that $67.50 a week is a reasonable amount for the defendant to contribute to the support of the child. In addition, he will continue to provide medical coverage for her through his employment.

ORDER OF COURT

NOW, this 28th day of May, 1987, IT IS ORDERED AND DECREED THAT:

1. The order of February 17, 1987 is vacated for the reasons set forth in the within Opinion and because it appears to order support for the plaintiff and the child without apportionment.
2. No spousal support shall be ordered for the reasons set forth in the within Opinion.
3. The Court finds Donald R. Stouffer, defendant, owes a duty of support to his grandchild and has a net weekly take home pay of $330.00 and that plaintiff has a weekly earning capacity of $100.00.

It is ordered that the defendant pay the costs of these proceedings and continue his own bond in the amount of $3,000 to guarantee faithful compliance with this order, and commencing Monday, January 5, 1987, pay to Helen E. Stouffer via the Collection Officer of this Court the sum of $67.50 plus $.50 service charge and a like sum of $68.00 each Monday thereafter until further order of the Court for the support of Amy L. Stouffer born 4/16/76. The defendant will continue to provide medical insurance coverage as heretofore.

It is further ordered that the above sum shall be approtioned as follows: For the support of grandchild $67.50, and that upon

Defendant's failure to comply with this order in an amount equal or greater than one month's support obligation or such date as the Court may designate an attachment of income shall automatically issue.

The Defendant and Plaintiff are further ordered to advise the Domestic Relations Section at Court House Annex, 100 Lincoln Way East, Chambersburg, PA 17201, every change of address or employment, including the name and address of new employer. Costs shall be paid by Donald R. Stouffer within thirty (30) days.

SKVARKA V. HAWKINS, C.P. Fulton County Branch, No. 133 of 1986-C

Expert Witness - Permanent Injuries

1. As long as the expert, at some point, states his opinion with sufficient definiteness the opinion will not be held inadmissible merely because it is expressed in weaker terms in other portions of his testimony.

2. A party must identify specifically which of his alleged injuries are permanent and which are not.

Bradley R. Bolinger, Esquire, Counsel for the Plaintiffs

Daniel W. Long, Esquire, Counsel for the Defendant

OPINION AND ORDER

WALKER, J., August 11, 1987:

Plaintiffs, Mary and John Skvarka, filed suit against defendant, Olive Hawkins, for injuries arising out of an automobile accident. A jury trial was requested; at the pre-trial conference, two issues remained unresolved. Both parties submitted briefs on the matter.

The first issue presented deals with the admissibility of the testimony of plaintiff's expert witness with regard to carpal tunnel syndrome. Specifically, defendant contends that the plaintiff's expert could not state to the requisite degree of certainty

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