IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

IN RE: T.A.	:	APPEAL NO. C-150002 TRIAL NO. F14-700Z
	:	*JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This case involves an appeal by appellant Felicia Enninful from the judgment of the juvenile court affirming the magistrate's decision finding T.A. to be an abused and dependent child. Because we hold that Enninful did not have standing to object to the magistrate's decision, we affirm the trial court's judgment.

T.A. was born in Ghana on September 2, 2005. In 2012, she immigrated to the United States with Enninful and her husband, Daniel Atuwein, and their son, A.A. Initially, T.A. was cared for by both Atuwein and Enninful. However, Enninful separated from Atuwein in early February of 2014. During their separation, T.A. lived with Atuwein, while Enninful and A.A. lived in another apartment. T.A. remained in the care of Atuwein until March 24, 2014.

On March 25, 2014, the Hamilton County Department of Job and Family Services ("HCJFS") filed a complaint alleging that T.A. was a dependent, abused, and neglected child based on reports that T.A. had been left home alone on two occasions and had been sexually abused. HCJFS moved for and was granted temporary custody of T.A. Atuwein and Enninful were listed in the complaint as the biological parents of T.A., and held themselves out to be such in the proceedings. However,

after receiving information from T.A. that Atuwein and Enninful were not her actual birth parents, T.A.'s guardian ad litem challenged Atuwein's and Enninful's standing as parties to the action. DNA testing confirmed that Enninful had no relation to the child. Atuwein was determined to be T.A.'s half-brother. Enninful then claimed to be T.A.'s adoptive mother through an adoption proceeding in Ghana. The magistrate allowed Enninful to remain a party to the proceeding, finding that she stood in loco parentis to T.A. The magistrate eventually adjudicated T.A. to be an abused and dependent child.

Enninful and Atuwein objected to the magistrate's decision. Following a hearing, the trial court determined that Enninful was not a proper party and did not have standing to object to the magistrate's decision since (1) she was not related to T.A and (2) did not stand in loco parentis to T.A. The trial court also adopted the magistrate's decision adjudicating T.A. to be an abused and dependent child.

Enninful timely appealed the trial court's judgment, and now asserts two assignments of error. Atuwein did not appeal.

In her first assignment of error, Enninful argues that she had standing to object to the magistrate's decision as an adoptive parent under R.C. 3107.18(A) or as a person in loco parentis to the child under R.C. 3127.01(B)(13). These arguments are without merit.

Standing presents a question of law that is reviewed de novo. *See LULAC v. Kasich*, 10th Dist. Franklin No. 10AP-639, 2012-Ohio-947, ¶ 23. However, we note that "the weight to be given to the evidence and the credibility of the witness is primarily for the trier of fact." *See State v. DeHass,* 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967).

To have standing in a case, a person must be a party to the action. *Lopez v. Vietran*, 1st Dist. Hamilton No. C-110511, 2012-Ohio-1216, ¶ 10. Juv.R. 2(Y) defines "party" as "the child's parent or parents * * * in appropriate cases, the child's

custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court."

Enninful argues that she has standing as T.A.'s adoptive mother, and should be recognized as such under R.C. 3107.18(A). That statute provides "a decree or certificate of adoption that is issued under the laws of a foreign country and that is verified and approved by the immigration and naturalization service of the United States shall be recognized in this state." In this case, there was no such "decree or certificate of adoption" for T.A. Enninful did file with the trial court, but did not have admitted into evidence, a Ghanaian document styled "Certified Copy of Entry in Register of Births," which was completed six years after T.A's birth and incorrectly listed Enninful as her birth mother. This document does not trigger recognition of an adoption under R.C. 3107.18(A). We therefore find that R.C. 3107.18(A) does not apply, and agree with the trial court that Enninful cannot be recognized as the adoptive mother of T.A.

Enninful next argues that she had standing because she was in loco parentis to T.A.[1] In loco parentis means a "person in place of a parent." *See State v. Erwin*, 1st Dist. Hamilton No. C-920293, 1993 Ohio App. LEXIS 1127, *5 (Feb. 24, 1993); *State v. Hayes,* 31 Ohio App.3d 40, 43, 507 N.E.2d 1176 (1st Dist.1987); *State v. Caton*, 137 Ohio App.3d 742, 750, 739 N.E.2d 1176 (1st Dist.2000). An "in loco parentis relationship is primarily a question of intention, which is shown by the 'acts, conduct, and declaration of the person [allegedly standing] in that relationship.' " *State v. Funk*, 10th Dist. Franklin No. 05-AP-230, 2006-Ohio-2068, ¶ 71, citing *Leyerly v. United States*, 162 F.2d 79, 85 (10th Cir.1947); *Banks v. United States*, 267 F.2d 535 (2d. Cir.1959); *Meisner v. United States*, 295 F. 866 (W.D.Mo.1924);

[1] Enninful cites the definition of "person acting as a parent" in R.C. 3127.01(B)(13). R.C. Chapter 3127 is the Uniform Child Custody and Enforcement Act, which addresses interstate recognition and enforcement of child-custody orders. *See* R.C. 3127.01(A). This statute and the definition of "person acting as a parent" in R.C. 3127.01(B)(13) do not apply to these proceedings.

Miller v. United States, 123 F.2d 715 (8th Cir.1942). Whether a person stands in loco parentis is a factual issue. *Erwin* at *5; *Caton* at 750.

Enninful claims that she stands in loco parentis to T.A. because, prior to her separation from Atuwein, she had provided care and supervision for T.A. However, Enninful lived separate and apart from Atuwein beginning in February 2014, and continuing past March 25, 2015. Enninful was not initially aware of the two occasions that T.A. was left home alone in March 2014 that resulted in police intervention. When asked by police for Enninful's contact information, T.A. did not know Enninful's phone number or address. The trial court did not err in finding that Enninful did not stand in loco parentis to T.A. S*ee In re C.M.,* 10th Dist. Franklin No. 07AP-933, 2008-Ohio-2977, ¶ 41-43 (appellant's former status of in loco parentis did not qualify appellant to counsel under R.C. 2151.352, because appellant was not presently in loco parentis). We overrule Enninful's first assignment of error.

In her second assignment of error, Enninful asserts that the trial court erred when it adopted the magistrate's decision adjudicating T.A. to be an abused and dependent child. We have determined that Enninful was not a proper party to the proceedings below. We therefore hold that she does not have standing to challenge the trial court's judgment adjudicating T.A. abused and dependent. Enninful's second assignment of error is overruled.

We affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., DEWINE and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on December 16, 2015
per order of the court _____.

Presiding Judge