Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/03/2026 06:27 PM CST

the sentence is vacated, and the district court is directed on remand to resentence Huff on that conviction consistent with this opinion.

AFFIRMED IN PART, AND IN PART VACATED AND REMANDED FOR RESENTENCING.

TERI A. LATHAM, APPELLANT, V. SUSAN RAE SCHWERDTFEGER, APPELLEE.

802 N.W.2d 66

Filed August 26, 2011. No. S-10-742.

1. **Child Custody: Visitation: Appeal and Error.** Child custody determinations, and visitation determinations, are matters initially entrusted to the discretion of the trial court, and although reviewed de novo on the record, the trial court's determination will normally be affirmed absent an abuse of discretion.
2. **Summary Judgment: Appeal and Error.** An appellate court will affirm a lower court's granting of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.
3. **Standing: Jurisdiction.** Standing relates to a court's power, that is, jurisdiction, to address issues presented and serves to identify those disputes which are appropriately resolved through the judicial process.
4. **Standing.** Under the doctrine of standing, a court may decline to determine the merits of a legal claim because the party advancing it is not properly situated to be entitled to its judicial determination.
5. **Standing: Jurisdiction.** Standing requires that a litigant have such a personal stake in the outcome of a controversy as to warrant invocation of a court's jurisdiction and justify exercise of the court's remedial powers on the litigant's behalf.
6. **Standing: Claims: Parties.** To have standing, a litigant must assert the litigant's own rights and interests.
7. **Parent and Child: Words and Phrases.** A person standing in loco parentis to a child is one who has put himself or herself in the situation of a lawful parent by assuming the obligations incident to the parental relationship, without going through the formalities necessary to a legal adoption, and the rights, duties, and liabilities of such person are the same as those of the lawful parent.
8. **Parent and Child.** The primary determination in an in loco parentis analysis is whether the person seeking in loco parentis status assumed the obligations incident to a parental relationship.
9. **Parent and Child: Intent.** The assumption of the parental relationship is largely a question of fact which should not lightly or hastily be inferred.

10. **Summary Judgment: Appeal and Error.** In reviewing a summary judgment, an appellate court views the evidence in a light most favorable to the party against whom the judgment is granted and gives such party the benefit of all reasonable inferences deducible from the evidence.

Appeal from the District Court for Douglas County: MARLON A. POLK, Judge. Reversed and remanded for further proceedings.

Tyler C. Block and Elizabeth Stuht Borchers, of Marks, Clare & Richards, for appellant.

Angela Dunne Tiritilli and Susan A. Koenig, of Koenig & Tiritilli, P.C., L.L.O., for appellee.

Kelle Westland, of Raynor, Rensch & Pfeiffer, for amicus curiae National Center for Lesbian Rights.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MILLER-LERMAN, J.

NATURE OF THE CASE

Appellant, Teri A. Latham, and appellee, Susan Rae Schwerdtfeger, were in a relationship from 1985 until 2006. After discussing having a child, Schwerdtfeger became pregnant by in vitro fertilization. In January 2001, Schwerdtfeger gave birth to P.S. Latham, Schwerdtfeger, and the minor child lived together from 2001 until 2006, when the parties separated and Latham moved out of the home. Latham continued to have visitation with P.S. until 2009. Visitation was thereafter reduced for reasons in dispute.

After visitation stopped, Latham brought an action in the district court for Douglas County seeking custody and visitation. Latham alleged that she had standing based on the doctrine of in loco parentis. Schwerdtfeger moved for summary judgment. In its order of dismissal filed July 2, 2010, the district court concluded that "the *in loco parentis* doctrine does not apply" and dismissed the case with prejudice. Latham appeals. We conclude that the district court erred when it concluded that the doctrine of in loco parentis did not apply to these facts.

We further determine based on essentially undisputed facts that Latham has standing to seek custody and visitation of P.S. and that there are genuine issues of material fact whether Latham should be granted custody and/or visitation of P.S. We reverse the order granting summary judgment in favor of Schwerdtfeger and the order dismissing Latham's complaint, and we remand the cause for further proceedings.

STATEMENT OF FACTS

Latham and Schwerdtfeger met in college and moved in together in 1985. At that time, the parties began sharing their finances. After several years of living together, the parties discussed having a child. They ruled out adoption, and instead, it was decided that Schwerdtfeger would be the birth parent of the child. The parties chose a sperm donor, and after several unsuccessful attempts at artificial insemination, Schwerdtfeger underwent in vitro fertilization, which was successful. The cost of these procedures was shared by both parties.

Both parties attended doctors' appointments, and both parties were present at the birth of P.S. The parties are not married. Latham took maternity leave to care for Schwerdtfeger and the baby.

After the birth, Latham continued her role as coparent, helping to raise the minor child and supporting him both emotionally and financially. Latham claims that P.S. identified her as "Mom" and that she would assist P.S. in getting ready for school, was involved in disciplining P.S., took P.S. to medical appointments, and helped him with his homework.

In 2005, Latham and Schwerdtfeger separated, and Latham moved out of the family home in 2006. Latham claims that even though she was not living in the home, she continued her role as coparent to the minor child. Latham states that in 2006, Schwerdtfeger was cooperative in allowing her to see P.S. and she spent one-on-one time parenting P.S. three to five times per week at her home and at Schwerdtfeger's home. Latham states that she continued to take P.S. to medical appointments and support him financially and that Schwerdtfeger and she shared finances through the summer of 2007.

Schwerdtfeger claims that after Latham moved out, Latham primarily saw P.S. on Thursday afternoons after school until dinnertime. Schwerdtfeger further states that since the closing of the combined checking account in 2007, Latham has not contributed monthly financial support for P.S., stating that Latham does not pay for the minor child's medical expenses or educational expenses. Latham does not pay child support. Both parties agree that after Latham moved out of the family home, there was no set parenting schedule agreed upon by the parties.

Latham claims that beginning in 2007, Schwerdtfeger began to arbitrarily cut down on Latham's parenting time with P.S. Latham claims that she saw P.S. only two times per week but that she continued to attend many of P.S.' activities outside of her scheduled parenting time with him, continued to support him emotionally and financially, and participated in discipline.

Schwerdtfeger stated that in 2008 and 2009, P.S. spent a total of four overnights with Latham. Schwerdtfeger stated that Latham did not attend parent-teacher conferences for P.S. in 2007, 2008, or 2009 and that she attended only one parent-teacher conference for P.S.' preschool class. Schwerdtfeger further stated that the only time Latham took P.S. to the doctor since she moved out of the residence was on one occasion in 2007, at which time she took P.S. to the doctor at Schwerdtfeger's request.

Latham stated that beginning in October 2009, Schwerdtfeger significantly restricted Latham's parenting time, and that since October 2009, Latham has been able to spend in-person parenting time with P.S. on only three occasions. Latham contends that she has continued to try to reach out to P.S. Schwerdtfeger stated that P.S. does not miss Latham and does not want to spend time with her.

On December 14, 2009, Latham filed a complaint for custody and visitation in the district court for Douglas County. On January 7, 2010, Latham filed a motion for parenting time. On February 12, Schwerdtfeger filed a motion for summary judgment. On February 26, a hearing was held on the motion for summary judgment. After the hearing, the court overruled the motion from the bench. The court awarded Latham telephonic

parenting time with P.S. for 30 minutes, three times per week. The court ordered the parties to submit briefs on the issue of the in loco parentis status of Latham and scheduled an in camera interview with P.S. The court conducted the interview with P.S. on March 23.

On July 2, 2010, the court filed an order of dismissal. In its order, the district court determined that "the *in loco parentis* doctrine does not apply" to Latham and that "there is no genuine issue [as] to a material fact as related to" Latham's standing. The district court reversed its prior ruling, granted Schwerdtfeger's motion for summary judgment, and ordered that Latham's complaint for custody and visitation "should be dismissed with prejudice." Latham appeals.

ASSIGNMENTS OF ERROR

Latham claims, restated and summarized, the district court erred when it determined that the doctrine of in loco parentis does not apply, that there were no genuine issues of material fact, and that Latham lacked standing to seek custody and visitation of the minor child.

STANDARD OF REVIEW

[1] Child custody determinations, and visitation determinations, are matters initially entrusted to the discretion of the trial court, and although reviewed de novo on the record, the trial court's determination will normally be affirmed absent an abuse of discretion. *Farnsworth v. Farnsworth*, 276 Neb. 653, 756 N.W.2d 522 (2008).

[2] An appellate court will affirm a lower court's granting of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. *Wilson v. Fieldgrove*, 280 Neb. 548, 787 N.W.2d 707 (2010).

ANALYSIS

Standing.

Latham claims the district court erred when it concluded that the doctrine of in loco parentis did not apply, that there

were no genuine issues of material fact, and that Latham lacked standing to seek custody and visitation of the minor child.

[3-6] Standing relates to a court's power, that is, jurisdiction, to address issues presented and serves to identify those disputes which are appropriately resolved through the judicial process. *In re Interest of Meridian H.*, 281 Neb. 465, 798 N.W.2d 96 (2011). Under the doctrine of standing, a court may decline to determine the merits of a legal claim because the party advancing it is not properly situated to be entitled to its judicial determination. The focus is on the party, not the claim itself. *Id*. Standing requires that a litigant have such a personal stake in the outcome of a controversy as to warrant invocation of a court's jurisdiction and justify exercise of the court's remedial powers on the litigant's behalf. *Id*. To have standing, a litigant must assert the litigant's own rights and interests. See *Central Neb. Pub. Power Dist. v. North Platte NRD*, 280 Neb. 533, 788 N.W.2d 252 (2010).

One court has explained that "[i]n the area of child custody, principles of standing have been applied with particular scrupulousness . . . ." *J.A.L. v. E.P.H.*, 453 Pa. Super. 78, 86, 682 A.2d 1314, 1318-19 (1996). It has been further observed that "'[t]he *in loco parentis* basis for standing recognizes that the need to guard the family from intrusions by third parties and to protect the rights of the natural parent must be tempered by the paramount need to protect the child's best interest. . . .'" *T.B. v. L.R.M.*, 567 Pa. 222, 230, 786 A.2d 913, 917 (2001). Thus, as explained below, any argument that a nonparent cannot seek custody or visitation because to do so would interfere with a parent's rights to parent is unavailing where the evidence shows that the primary consideration, the best interests of the child, are served by recognizing the standing of a nonparent to seek custody or visitation. *Id.* See *Bethany v. Jones*, 2011 Ark. 67, 378 S.W.3d 731 (2011). See, also, e.g., *State on behalf of Combs v. O'Neal*, 11 Neb. App. 890, 662 N.W.2d 231 (2003).

No Statutory Basis for Standing.

We have recognized that a child has a "'right to be raised and nurtured by a biological or adoptive parent. . . .'" *In re*

Guardianship of D.J., 268 Neb. 239, 246, 682 N.W.2d 238, 244 (2004) (quoting *Uhing v. Uhing*, 241 Neb. 368, 488 N.W.2d 366 (1992)). As a corollary, a biological or adoptive parent has a right to seek custody and visitation of his or her minor child. Latham is neither a biological nor an adoptive parent. Accordingly, we must ascertain what authority, if any, affords Latham a basis to seek custody and visitation of the minor child. We look initially for statutory authority as a basis for standing.

In Nebraska, various statutes establish a means for seeking custody and visitation of a minor child. These statutes include dissolution actions pursuant to Neb. Rev. Stat. §§ 42-341 to 42-381 (Reissue 2008 & Cum. Supp. 2010); paternity actions pursuant to Neb. Rev. Stat. §§ 43-1401 to 43-1418 (Reissue 2008); juvenile proceedings pursuant to Neb. Rev. Stat. §§ 43-245 to 43-2,130 (Reissue 2008 & Supp. 2009); guardianship proceedings pursuant to Neb. Rev. Stat. §§ 30-2601 to 30-2616 (Reissue 2008 & Cum. Supp. 2010); adoption proceedings pursuant to Neb. Rev. Stat. §§ 43-101 to 43-165 (Reissue 2008 & Cum. Supp. 2010); and actions under the Uniform Child Custody Jurisdiction and Enforcement Act, Neb. Rev. Stat. §§ 43-1226 to 43-1266 (Reissue 2008 & Cum. Supp. 2010).

Latham conceded at oral argument that she did not have standing pursuant to any of the above-referenced provisions. After reviewing these statutory authorities, we agree with Latham that there is no explicit statutory basis to support her claim of standing. Accordingly, we examine Nebraska common law to determine whether there is a basis for Latham's standing.

Common-Law Right to Standing Based on the Doctrine of In Loco Parentis.

In her complaint for custody and visitation, Latham alleged that she was in loco parentis to P.S. However, the district court concluded that the in loco parentis doctrine did not apply and dismissed the case. Latham challenges this ruling on appeal. We find merit to this assignment of error. Contrary to the district court's conclusion, we conclude that the doctrine of in

loco parentis applies and that Latham has demonstrated standing to seek custody and visitation.

Although Latham is neither a biological nor an adoptive parent of P.S., and although we have concluded no statutory authority directly confers standing on Latham, a review of our jurisprudence indicates that the Legislature did not intend that statutory authority be the exclusive basis of obtaining court-ordered visitation. As explained below, we have long applied the common-law doctrine of in loco parentis to afford rights to nonparents where the exercise of those rights is in the best interests of the child. We conclude that the doctrine of in loco parentis applies to the facts of this case.

[7] We have explained the doctrine of in loco parentis, stating that

> a person standing in loco parentis to a child is one who has put himself or herself in the situation of a lawful parent by assuming the obligations incident to the parental relationship, without going through the formalities necessary to a legal adoption, and the rights, duties, and liabilities of such person are the same as those of the lawful parent.

Weinand v. Weinand, 260 Neb. 146, 152-53, 616 N.W.2d 1, 6 (2000) (emphasis omitted).

In *Hickenbottom v. Hickenbottom*, 239 Neb. 579, 477 N.W.2d 8 (1991), we determined that the doctrine of in loco parentis, although not enumerated in the statutes, is a proper consideration when determining stepparent visitation with due consideration to the best interests of the child. Similarly, in *Weinand v. Weinand, supra*, we explained that in the absence of a statute, child support may properly be imposed in cases where a stepparent has voluntarily taken the child into his or her home and acted in loco parentis. In *State on behalf of Combs v. O'Neal*, 11 Neb. App. 890, 622 N.W.2d 231 (2003), the Nebraska Court of Appeals affirmed an order granting custody of a minor to the grandmother based on the doctrine of in loco parentis, notwithstanding a claim of parental preference urged by the biological father.

Other courts have applied similar reasoning and determined that standing exists and custody and visitation may be

considered although not explicitly provided for in statutes. See, e.g., *T.B. v. L.R.M.*, 567 Pa. 222, 230, 786 A.2d 913, 917-18 (2001) (where nonparent invoked common-law doctrine of in loco parentis, court rejected "contention that [nonparent] lacks standing because the statutory scheme does not encompass former partners or paramours of biological parents"); *In re Parentage of L.B.*, 155 Wash. 2d 679, 706-07, 122 P.3d 161, 176 (2005) (stating "state's current statutory scheme reflects the unsurprising fact that statutes often fail to contemplate all potential scenarios which may arise in the ever changing and evolving notion of familial relations"); *Custody of H.S.H.-K.*, 193 Wis. 2d 649, 682-83, 533 N.W.2d 419, 431 (1995) (explaining "[i]t is reasonable to infer that the legislature did not intend the visitation statutes to bar the courts from exercising their equitable power to order visitation in circumstances not included within the statutes but in conformity with the policy directives set forth in the statutes"). Thus, in the absence of direct statutory authority, but with due regard for existing statutory directives, we must consider whether Latham has standing to seek custody and visitation of the minor child under our jurisprudence applying the doctrine of in loco parentis.

As noted, Nebraska appellate courts have applied the doctrine of in loco parentis in the cases of stepparents and grandparents. See, e.g., *Weinand v. Weinand, supra*; *Hickenbottom v. Hickenbottom, supra*; *State on behalf of Combs v. O'Neal, supra*. Because we have not used the doctrine in a case such as the one presently before us, we turn to other jurisdictions that have applied the doctrine in cases similar to the one under consideration in which a nonbiological parent seeks custody and visitation and examine the reasoning of these courts. See *Mullins v. Picklesimer*, 317 S.W.3d 569, 575 (Ky. 2010) (stating "[s]everal of our sister states have found that the nonparent has standing to seek custody and visitation of the child when the child was conceived by artificial insemination with the intent that the child would be co-parented by the parent and her partner") (cases collected). As other courts have done, we have also considered scholarly articles in this area. See *A.C. v. C.B.*, 113 N.M. 581, 829 P.2d 660 (N.M. App. 1992) (articles collected).

The courts that have applied the doctrine of in loco parentis in cases such as ours have looked to the purpose of the doctrine and noted that the focus of an in loco parentis analysis must be on the relationship between the child and the party seeking in loco parentis status. It has been stated that, simply put, the focus of the doctrine of in loco parentis "should be on what, if any, bond has formed between the child and the nonparent." *Bethany v. Jones*, 2011 Ark. 67, 11, 378 S.W.3d 731, 737 (2011).

In *J.A.L. v. E.P.H.*, 453 Pa. Super. 78, 88, 682 A.2d 1314, 1319-20 (1996), the court explained:

> The in loco parentis basis for standing recognizes the need to guard the family from intrusions by third parties and to protect the rights of the natural parent must be tempered by the paramount need to protect the child's best interest. Thus, while it is presumed that a child's best interest is served by maintaining the family's privacy and autonomy, that presumption must give way where the child has established strong psychological bonds with a person who, although not a biological parent, has lived with the child and provided care, nurture, and affection, assuming in the child's eye a stature like that of a parent. Where such a relationship is shown, our courts recognize that the child's best interest requires that the third party be granted standing so as to have the opportunity to litigate fully the issue of whether that relationship should be maintained even over a natural parent's objection.

The court in *J.A.L.* went on to state that when the doctrine of in loco parentis is viewed in the context of standing principles in general, its purpose is to ensure that actions are brought only by those with a genuine substantial interest. Accordingly, the doctrine must be applied flexibly and is dependent upon the particular facts of each case. *Id.* Noting that because "a wide spectrum of arrangements [have filled] the role of the traditional nuclear family, flexibility in the application of standing principles is required in order to adapt those principles to the interests of each particular child." *Id.* at 89-90, 682 A.2d at 1320. In *J.A.L.*, the court concluded that based on the relationship

between the nonbiological parent and the child, the doctrine of in loco parentis conferred standing on the nonbiological parent seeking partial custody, and the cause was remanded for a full hearing on whether awarding partial custody in favor of the individual with in loco parentis status was in the best interests of the minor child.

In *Bethany v. Jones, supra*, the Arkansas Supreme Court determined that the doctrine of in loco parentis applied because the focus of the in loco parentis analysis is on the relationship between the nonparent adult and the child, not on the relationship between the biological parent and the nonparent adult. Therefore, the court in *Bethany* determined that it was obligated to look at the relationship between the party seeking standing based on in loco parentis status and the child to determine if such relationship met the definition of in loco parentis.

Similarly, in *In re Custody of H.S.H.-K.*, 193 Wis. 2d 649, 533 N.W.2d 419 (1995), the Wisconsin Supreme Court, in a case not relying explicitly on the doctrine of in loco parentis but instead looking to whether a parent-like relationship existed, determined that a trial court may determine whether visitation with the nonbiological parent is in the best interests of a child, if the individual could establish that she had a parent-like relationship with the child and that there was a triggering event by which the biological parent substantially interfered with the parent-like relationship.

[8] We agree with the reasoning of these courts and conclude, contrary to the district court, that the doctrine of in loco parentis applies to this case. Because the purpose of the doctrine of in loco parentis is to serve the best interests of the child, it is necessary to assess the relationship established between the child and the individual seeking in loco parentis status. The primary determination in an in loco parentis analysis is whether the person seeking in loco parentis status assumed the obligations incident to a parental relationship. Application of the doctrine protects the family from allowing intervention by individuals who have not established an intimate relationship with the child while at the same time affording rights to a person who has established an intimate parent-like relationship

with a child, the termination of which would not be in the best interests of the child. See *J.A.L. v. E.P.H.*, 453 Pa. Super. 78, 682 A.2d 1314 (1996).

The district court erred when it concluded that the doctrine of in loco parentis did not apply to this case. The undisputed facts show that Latham has rights which are entitled to consideration and has standing based on the doctrine of in loco parentis. We reverse the order of dismissal, which was based on the incorrect conclusions that the doctrine of in loco parentis did not apply and that Latham lacked standing.

Application of the Law to This Case.

Having concluded that the doctrine of in loco parentis is applicable to the standing analysis in this case and that Latham has standing, we examine the record made at the summary judgment hearing to determine whether Latham is entitled to custody or visitation as one who stands in loco parentis. If Latham can establish that she has met the standard our jurisprudence has set forth for granting relief to one who stands in loco parentis, there is no reason to exclude this case from the benefits of the doctrine afforded to stepparents and grandparents who have created similar relationships with a minor child. We determine that there are genuine issues of material fact which preclude entry of summary judgment and that the district court erred when it granted summary judgment in favor of Schwerdtfeger. We reverse the order granting summary judgment in favor of Schwerdtfeger.

In its consideration of the merits of the custody and visitation issue, the district court indicated in its remarks that although before 2006, the parties could have been considered to be in a coparenting relationship, as of 2006, at the time of the termination of the relationship between the parties, Latham could not be considered by the court as assuming all the obligations incident to the parental relationship and a parent who was discharging those obligations. Therefore, the court indicated that, even if the doctrine of in loco parentis applied, Latham did not have in loco parentis status with P.S. at the time of the hearing. On the record presented, we believe that this determination is premature and that there are genuine issues of

material fact regarding Latham's continuing relationship with P.S., all of which bear on whether custody and/or visitation by Latham is in the best interests of P.S.

[9,10] In *Weinand v. Weinand*, 260 Neb. 146, 616 N.W.2d 1 (2000), we stated that the assumption of the parental relationship is largely a question of fact which should not lightly or hastily be inferred. Further, in reviewing a summary judgment, an appellate court views the evidence in a light most favorable to the party against whom the judgment is granted and gives such party the benefit of all reasonable inferences deducible from the evidence. *Freedom Fin. Group v. Wooley*, 280 Neb. 825, 792 N.W.2d 134 (2010).

Bearing these principles in mind, and viewing the facts of this case in a light most favorable to Latham, we are persuaded that Latham has raised genuine issues of material fact for trial concerning her continuing relationship with the minor child and what outcome will best serve the child's interests. In reviewing the district court's discussion of this case, it appears that the district court focused on the relationship between the parties and the end of that relationship, rather than placing the emphasis on the relationship between the minor child and Latham and, thus, the best interests of P.S.

The facts taken in a light most favorable to Latham show that she was involved in the decision to conceive the minor child, was present at his birth, spent the first 4 years of his life in the home with him, and took part in parental duties such as feeding, clothing, and disciplining him. When the parties separated, the facts of Latham's involvement and relationship with the minor child become less clear. But viewing the facts in this record in a light most favorable to Latham, for at least 1½ years after the separation, she had regular visits with the minor child three to five times per week and participated in his extracurricular activities. Latham and Schwerdtfeger shared their finances through the summer of 2007. Therefore, Latham continued to assist in supporting P.S. financially until that time. It appears that Latham's visitations with P.S. diminished in 2007 and 2008 and that Latham had, on average, visitation with P.S. two times a week. Recently, visitation between Latham and P.S. has evidently become nonexistent. The amount of

visitation Latham has been afforded does not appear to reflect a lack of desire on her part to be an active part of P.S.' life; rather, that fact appears to be the result of the relationship between the parties and a result of Schwerdtfeger's apparent decision to end Latham's visitation with P.S.

The relationship between Latham and Schwerdtfeger, however, is not the deciding factor. The record is clear that Schwerdtfeger consented to Latham's performance of parental duties. Schwerdtfeger encouraged Latham to assume the status of a parent and acquiesced as Latham carried out day-to-day care of P.S. Latham did not assume a parenting role against the wishes of Schwerdtfeger. It has been observed that "a biological parent's rights do not extend to erasing a relationship between her partner and her child which she voluntarily created and actively fostered simply because after the parties' separation she regretted having done so." *T.B. v. L.R.M.*, 567 Pa. 222, 232, 786 A.2d 913, 919 (2001).

There are material questions of fact concerning the amount of time Latham spent with P.S. and the nature and extent of the relationship between Latham and P.S. after Latham and Schwerdtfeger separated. Whether and to what extent Latham's participation in P.S.' life are in his best interests must await trial.

CONCLUSION

The primary issue in this appeal is one of standing based on the well-established common-law doctrine of in loco parentis. A determination of standing simply implies that a party has a substantial interest in the subject matter of the litigation and that the interest is direct, immediate, and not a remote consequence. We conclude that Latham has standing based on the doctrine of in loco parentis and that the district court erred when it concluded that the doctrine of in loco parentis did not apply to this case. Our opinion does not speak to Latham's chance of success on the merits, but it merely affords her the opportunity to fully litigate the issues. Latham has made a meritorious claim of standing to seek enforcement of her claimed right to custody and visitation of P.S.

The district court erred when it concluded that the doctrine of in loco parentis did not apply and dismissed the case. Latham has standing to seek custody and visitation of P.S., but there remain genuine issues of material fact bearing on whether she should be granted relief and whether the relief she seeks is in the best interests of P.S. Accordingly, we reverse the ruling granting summary judgment in favor of Schwerdtfeger and the order of dismissal, and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

WRIGHT, J., not participating.