

HHD-FA-23-6175367-S	:	SUPERIOR COURT
JESSICA RANSOM	:	JUDICIAL DISTRICT OF HARTFORD
V.	:	AT HARTFORD
STEVEN CONTRERAS	:	MAY 14, 2024

FILED

MAY 14 2024

HARTFORD J.D.

MEMORANDUM OF DECISION RE STANDARD OF REVIEW APPLICABLE TO

INTERIM ORDERS OF CONTACT/VISITATION

This matter appears to be one of first impression under the statutes commonly referred to as the Connecticut Parentage Act (the "CPA"). The CPA was enacted as Public Act No. 21-15, with most sections effective January 1, 2022, and the remainder effective July 1, 2022. The CPA is codified in Connecticut General Statutes Chapter 818, Sections 46b-450 et seq.

The petitioner has filed a petition for adjudication of parentage, claiming to be a de facto parent of the minor child, A.C., pursuant to the CPA, C.G.S. Sections 46-490 and 491. On January 24, 2024, the petitioner filed a motion for an interim order for contact/visitation with A.C. (#111) to which the respondent objected (#114). On March 5, 2024, the motion and objection was scheduled for a hearing. At that time, the court, sua sponte, requested that the parties brief the issue of what standard of proof the court should apply to petitioner's motion for interim order of contact/visitation. The parties filed briefs on April 3, 2024.

STATUTORY BACKGROUND

After many years of advocacy, the Connecticut legislature passed the Connecticut Parentage Act, a comprehensive act designed to revise and modernize the statutes regarding the creation and maintenance of legal parent-child relationships, in 2022. The CPA retained much of its prior statutory and case law, while updating the statutes to protect gender equality in parentage. For example, the CPA uses gender-neutral terms in place of previously gender-specific terms. The CPA also created a cohesive statutory framework applicable to methods of

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assisted reproduction, providing newfound security for families using these methods and established new definitions of parentage, new categories of potentially nonbiological parents, and new causes of action relating to parentage. These critical changes recognize the diversity of families in Connecticut and ensure that children can have their legal parentage established and enforced, regardless of the circumstances of their birth.

PROCEDURAL BACKGROUND

Pursuant to General Statutes Section 46b-491(f), “[t]he court may enter an interim order concerning contact between the child and a person with standing seeking adjudication under this section and section 46b-490 as a de facto parent of the child.” The CPA is silent as to the standard of proof to be applied when considering this issue. In this matter, the petitioner claims that the fair preponderance of the evidence standard, while applying the “best interests of the child” factors outlined in C.G.S. Section 46b-56(c), should be applied when considering her request for interim orders of contact/visitation. The respondent claims that the standard to be applied is clear and convincing evidence that the petitioner has a parent-like relationship with the child, and that contact is necessary to prevent real and significant harm to the child.

DISCUSSION AND FINDINGS

There is an absence of statutory language or binding or persuasive authority that might inform the court as to what standard of proof should be applied in this matter. “Where no standard of proof is provided in a statute, due process requires that the court apply a standard which is appropriate to the issues involved... In [a] civil case, there are only two choices: the preponderance of the evidence or the clear and convincing evidence standard.” (Internal quotation marks omitted.) *In re Zakai F.*, 336 Conn. 272, 290, 255 A.3d 767 (2020). “In any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a

societal judgment about how the risk of error should be distributed between the litigants...[A]pplication of a fair preponderance of the evidence standard indicates both society's minimal concern with the outcome, and a conclusion that the litigants should share the risk of error in roughly equal fashion...[The United States Supreme] Court has mandated an intermediate standard of proof- clear and convincing evidence- when the individual interests at stake in a state proceeding are both particularly important and more substantial than mere loss of money." (Internal quotation marks omitted.) *Fish v Fish*, 285 Conn. 24, 69-70, 939 A.2d 1040 (2008).

The petitioner's motion for interim contact/visitation calls upon this court to consider and balance the rights of a parent and the claims of a person claiming that they are a de facto parent while considering the best interests of the minor child. In *Roth v Weston*, 259 Conn. 202 (2002), the court considered a visitation petition between a third party and a parent. Admittedly, *Roth* did not consider the concept of de facto parentage nor could it have foreseen the CPA and its changes and effects to statutes and its acknowledgement of modern families. The *Roth* court found that a "...parents' interest in the care, custody and control of their children, ...was perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court." *Roth* at 216, quoting *Troxel v Granville*, 530 U.S. 57, 65 (2000). This notion remains true today. The court adopted the clear and convincing standard of proof where a third party moves for visitation "because of the ease with which a petitioning party could otherwise intrude upon parental prerogative." *Roth v Weston*, supra, 259 Conn. 232. The court was specifically concerned that in the context of third-party requests for visitation, since "there is no real barrier to prevent a [party], who has more time and money than the child's parents, from petitioning the court for visitation rights. A parent who does not have the up-front-out-of-pocket expense to defend against the ...petition may have to bow under the pressure even if the parent honestly believes it is not in the best interest of the child...The prospect of competent parents potentially getting caught up in the crossfire of lawsuits by relatives and other interested parties demanding visitation is too real a threat to be tolerated in the absence of protection afforded through a stricter burden of proof." (Citation omitted; internal quotation marks omitted.) *Id.* Likewise, under the provisions of the CPA, a petitioner pursuing de facto parenthood can move for an order of interim visitation with similar ease. In the matter of *Fish v Fish*, 285 Conn. 24, 72

(2008), the court adopted the "fair preponderance of the evidence" standard as it related to instances where a third-party moves for custody only because of the protections afforded to respondents by "the standing requirement, the fact that third parties cannot initiate custody proceedings, unlike third parties who are permitted to initiate proceedings in visitation cases...and the substantive standard of harm that requires a third-party seeking custody to allege and prove detriment to the child should the parent retain custody. This significant burden should discourage third parties without close relationships to the child from engaging in frivolous attempts to obtain custody and thus preclude repeated and unnecessary litigation." No such restrictive "standing requirement" exists in the CPA. As such, any third-party may file a petition to adjudicate parentage claiming to be a de facto parent, and then file a motion for interim visitation. The *Fish* court distinguished custody and visitation decisions between parents, and third-party custody and visitation decisions, explaining that such a "comparison is overly simplistic...because...third party visitation and custody intrude on the parental liberty interest in entirely different ways." *Id* at 47.

The petitioner argues that the lesser "fair preponderance of the evidence" standard should be applied while applying the best interests of the child factors outlined in C.G.S. Section 46b-56(c) and that she should be treated as a parent for the purposes of the temporary order at issue. Conversely, the respondent argues that the clear and convincing standard should be applied and that petitioner should be treated as a third party moving for same.

The CPA's definition of a "parent" is "a person who has established a parent-child like relationship under [General Statutes Section 46b-471]" General Statutes Section 46b-451(14). However, until a successful adjudication occurs, a petitioner claiming de facto parent status cannot be considered a "parent" as defined in General Statutes Section 46b-451(14). Rather, they must be considered "a person who claims to be a de facto parent..." General Statutes Section 46b-490(a). The CPA defines a "person" as "a natural person of any age." General Statutes 46b-451(16). Therefore, a petitioner that seeks to be adjudicated a de facto parent, is not considered a parent as defined by the CPA until a court adjudicates and determines that they are a de facto parent. Petitioner has a pending claim for de facto parentage but has not yet established the necessary requirements of a "parent-child relationship" under General Statutes 46b-471. Accordingly, pursuant to the CPA definitions, the petitioner is not a *parent*, she is a

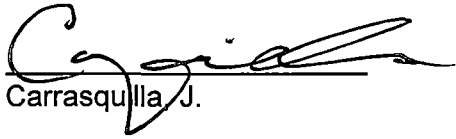
person. More specifically, a person who claims to be a de facto parent as demonstrated by her amended petition, paragraphs 1 and 5. A non-parent, such as the petitioner, cannot be considered a parent for any purposes under the CPA until a court adjudicates them a de facto parent. Therefore, petitioner is a third-party seeking interim visitation.

The lower standard of "fair preponderance of the evidence" that petitioner suggests has the very real potential for public policy concerns due to the CPA's broad standing provisions which permit any party with standing to file a motion for interim visitation. As previously discussed, General Statutes Section 46b-458(4) provides standing to any "person who seeks to be adjudicated a parent" under the CPA; and Section 46b-491(f) allows any "person with standing seeking adjudication...as a de facto parent of the child" to move for an order claiming interim visitation. This broad standing provision allows virtually any person the ability to bring a claim for de facto parentage pursuant to General Statutes Section 46b-458(4), and then immediately file a motion for interim visitation orders pursuant to Section 46b-491(f). The practical implications of this demonstrate that under the CPA, even a person with no relationship with the child and based on an ultimately frivolous claim, has standing to bring forth a petition to adjudicate parentage and to file a motion for interim contact/visitation. The petitioner could be a relative, a friend, a neighbor or a babysitter. The only requirement being, that they claim to seek de facto parentage and thus they are provided standing. Petitioner in this matter is asking to be "treated as a parent for the purposes of the temporary order." (Docket entry #125, p.7) A temporary order involving children and visitation is no less important than a final order. Granting this request would result in every future petitioner with standing that files a motion for interim contact/visitation orders be treated as having an equal claim to parentage as the respondent parent, all while being subject to the lower and more forgiving legal standard. Adopting the lower standard of proof might allow the CPA and the courts to be weaponized against parents, particularly single parents; see General Statutes Section 46b-490(a); in ways that the legislature did not intend and that impedes the important public policy of protecting the parent-child relationship from outside interference. To allow this treatment for petitioner is contrary to statutory authority, case law and public policy.

The standard of proof of "clear and convincing evidence" that applies to third-party visitation requests shall apply to petitioners' motion for interim contact/visitation brought in this proceeding under the CPA.

SO ORDERED

BY THE COURT,



Carrasquilla, J.