

ARKANSAS SUPREME COURT HOLDS THAT A STEPPARENT WHO ASSUMES THE ROLE OF A CARING STEPPARENT DOES NOT MEET THE REQUIREMENTS TO ESTABLISH THAT HE STOOD IN LOCO PARENTIS TO THE CHILD ABSENT A SHOWING THAT HE FULLY EMBRACED THE RIGHTS, DUTIES, AND RESPONSIBILITIES OF A PARENT

In *Daniel v. Spivey*,¹ the Arkansas Supreme Court held that a stepparent does not stand in loco parentis to a stepchild even if the stepparent contributes financially to the child's expenses, they have a parent-child relationship for most of the child's life, the stepparent transports the child to and from daycare, the child calls the stepparent "dad" or "daddy," and the child and stepparent spend a significant amount of time together.²

On June 13, 2003, S.B., the child in question was born to appellant, Stephanie Spivey Daniel ("Daniel"), and her former husband Jeremy Bunch.³ In 2004, Daniel and Bunch divorced, and in 2009, Daniel married Darrell Spivey ("Spivey"), the appellee, after the couple had been in a relationship for approximately four years.⁴ In August of 2010, Daniel filed for divorce, and Spivey answered and counterclaimed for divorce and requested structured visitation with S.B.⁵ The circuit court found that Spivey's relationship with the child rose to the level of a person in loco parentis, or "in the place of a parent" and ordered that Spivey receive visitation with S.B.⁶ Thereafter, Daniel appealed the circuit court's decree, contending that the circuit court erred in finding that Spivey stood in loco parentis to S.B. and that Spivey's request for structured visitation should have been denied.⁷

A person stands in loco parentis to a child when he assumes all the obligations of a lawful parent without going through the formalities necessary to effect a legal adoption, and this relationship must rise above mere kindness and affection toward the child.⁸ Visitation will be granted if the court decides it is in the best interests of the child.⁹

In this case, the record of the circuit court hearing showed that Spivey's job as a welder required travel and kept him from home regularly, sometimes for several weeks at a time.¹⁰ However, when Spivey was home

1. 2012 Ark. 39, 386 S.W.3d 424.
2. *Id.* at 9, 386 S.W.3d at 429–30.
3. *Id.* at 1, 386 S.W.3d at 425–26.
4. *Id.* at 1–2, 386 S.W.3d at 426.
5. *Id.* at 2, 386 S.W.3d at 426.
6. *Daniel*, 2012 Ark. 39, at 4–6, 386 S.W.3d at 427–28.
7. *Id.* at 5, 386 S.W.3d at 427.
8. *Id.* at 6, 386 S.W.3d at 428.
9. *Id.* at 7, 386 S.W.3d at 429.
10. *Id.* at 2, 386 S.W.3d at 426.

and not working, sometimes for significant periods of time, he spent most of his time with Daniel and S.B. Spivey acted as S.B.'s father in many ways.¹¹ He accompanied her on her first day of school, attended a parent-teacher conference, helped her with her homework, watched her overnight a number of times while Daniel was out of town, and contributed to S.B.'s expenses.¹² Spivey testified that when he was at home with S.B., he routinely gave her a bath and brushed her teeth, acting as a typical parent.¹³ The operator of S.B.'s daycare testified that Spivey had taken S.B. home from daycare and that the daycare fees were often paid from a joint checking account of Daniel and Spivey.¹⁴ Additionally, S.B. called Spivey "dad" or "daddy," and witnesses testified that the two shared a loving "father-daughter" relationship.¹⁵

After hearing all testimony and reviewing the evidence, based on the above facts, the circuit court ruled that "the relationship between [Appellee] and S.B. was that of father-child."¹⁶ The court stated in its letter opinion that Spivey "did stand in loco parentis to the child S.B. and that it is in the best interest of the child to continue to have a relationship with [Spivey]."¹⁷

Appellate courts review matters of equity de novo on the record, and they will not reverse factual findings made by the circuit court unless those findings are clearly erroneous.¹⁸ Findings are clearly erroneous when, despite supporting evidence in the record, the appellate court reviews the evidence and is convinced that a mistake has been made.¹⁹ Greater deference is given to circuit courts to hear witnesses and testimony in cases involving child custody or visitation, as circuit courts have a heavy burden to examine evidence and make determinations based on the best interests of the child.²⁰

In its opinion, the Arkansas Supreme Court emphasized that the relationship of a person in loco parentis to a child is more than a duty to aid and assist, and it is more than a "feeling of kindness, affection, or generosity."²¹ Furthermore, merely being a stepparent does not establish a relationship of in loco parentis; rather, something more is required to show such a relationship.²² The Court concluded in its opinion that "all things considered . . . these facts do not rise to the level that is necessary to establish an in loco

11. *Id.*

12. *Daniel*, 2012 Ark. 39, at 2, 386 S.W.3d at 426.

13. *Id.* at 3, 386 S.W.3d at 426–27.

14. *Id.*, 386 S.W.3d at 426.

15. *Id.*

16. *Id.* at 4, 386 S.W.3d at 427.

17. *Id.* at 4–5, 386 S.W.3d at 427.

18. *Daniel*, 2012 Ark. 39, at 5, 386 S.W.3d at 428.

19. *Id.*

20. *Id.* at 6, 386 S.W.3d at 428.

21. *Id.*

22. *Id.*, 386 S.W.3d at 428–29.

parentis relationship.”²³ The Court found that Spivey had “assumed the role of a caring stepparent,” but he had not “embraced the rights, duties, and responsibilities of a parent.”²⁴

The Court cited to previous cases in which it had reversed similar holdings based on an error by the circuit court, not in fact-finding, but in characterizing the relationship as one in loco parentis.²⁵ Thus, in this case, the Court reversed on the basis that the circuit court’s finding that Spivey was in loco parentis to S.B. was clearly erroneous.

In this 4-3 decision, there were two dissenting opinions, both of which expressed strong opposition to the majority’s ruling due to what the dissenting justices believed was a misinterpretation of the standard of review. Justice Donald L. Corbin, writing the first dissent, wrote that he has “never witnessed a case where the well-established principle of stare decisis is so carelessly ignored.”²⁶ He went on to say that the majority was “purposefully vague” regarding the standard of review and that the Court’s reversal of the circuit court’s findings was contrary to case precedent.²⁷ Justice Corbin lamented that the majority had given no deference to the circuit court’s finding of in loco parentis.²⁸ He felt that the majority had not made clear the reasons for its decision to reverse the circuit court’s factual findings, and he pointed out that the majority does not even clearly state in its opinion that that is precisely what it has done.²⁹ Rather, Corbin opined, the majority vaguely stated the standard of review and supported its reversal by citing cases that are not at all on point.³⁰

Justice Danielson wrote the second dissent, in which he echoed Justice Corbin’s concerns regarding the standard of review.³¹ Justice Danielson also challenged the majority’s conclusion that the facts in this case did not establish in loco parentis.³² He asked of the majority what facts, if not those in this case, would establish an in loco parentis relationship.³³

Danielson pointed out that courts generally consider four factors when determining whether this relationship exists: (1) support and maintenance for the child; (2) day-to-day care for the child; (3) a display of a true interest

23. *Id.* at 9, 386 S.W.3d at 429.

24. *Daniel*, 2012 Ark. 39, at 9, 386 S.W.3d at 429.

25. *Id.* at 8–9, 386 S.W.3d at 430 (citing *Hetman v. Schwade*, 2009 Ark. 302, 317 S.W.3d 559; *Standridge v. Standridge*, 304 Ark. 364, 803 S.W.2d 496 (1991); *Winn v. Chateau Cantrell Apartment Co.*, 304 Ark. 146, 801 S.W.2d 261 (1990)).

26. *Id.* at 10, 386 S.W.3d at 430.

27. *Id.*

28. *Id.*

29. *Id.* at 10–11, 386 S.W.3d at 430.

30. *Daniel*, 2012 Ark. 39, at 11, 386 S.W.3d at 430.

31. *Id.* 386 S.W.3d at 431.

32. *Id.* at 13, 386 S.W.3d at 431.

33. *Id.*

in the child's general welfare and well-being; and (4) the education, instruction, and care for the child by the person claiming to stand in loco parentis.³⁴ Danielson concluded that Spivey had fulfilled all four of these factors. He also emphasized that the testimony in the circuit court "made more than clear that Spivey and S.B. enjoyed a parent-child relationship that went well beyond a typical stepfather-stepchild relationship."³⁵

At its core, this case reinforces that there exists a high burden placed upon people seeking visitation or custody based on a relationship of in loco parentis. Unfortunately, the majority gives little guidance as to what, exactly, will establish this relationship. Based on this opinion, however, claimants will struggle to meet the high standard the Court has established in this case.

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34. *Id.*

35. *Id.*, 386 S.W.3d at 431–32.