

**LEGAL NOTICES, cont.**

Harper Weber Kling, late of Guilford Township, Franklin County, Pennsylvania, deceased.

MULL First and final account, statement of proposed distribution and notice to the creditors of Grace M. Rotz, executrix of the estate of Iva B. Mull, late of Greene Township, Franklin County, Pennsylvania, deceased.

SIERER First and final account, statement of proposed distribution and notice to the creditors of Wilbur N. Kauffman, executor of the estate of Beulah M. Sierer, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

STATLER First and final account, statement of proposed distribution and notice to the creditors of Anna R. Statler, administratrix of the estate of Warren W. Statler, late of Guilford Township, Franklin County, Pennsylvania, deceased.

WOOD, JR. First and final account, statement of proposed distribution and notice to the creditors of Carolyn M. Wood and Charles O. Wood, III, executors of the estate of Charles O. Wood, Jr., late of Guilford Township, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle  
Clerk of Orphans' Court of  
Franklin County, Pennsylvania

(1-8-82, 1-15-82, 1-22-82, 1-29-82)

The father is directed to make as equal a division of the child's clothing with the mother and thereafter each parent shall provide clothing for the child while in his or her custody.

Costs of this proceeding shall be paid by the father.

COMMONWEALTH v. BURKE, C.P. Fulton County Branch,  
Non-support Action, No. 105 of 1981-O

*Non-support - Illegitimate Child - Support of Stepchild*

1. Generally, a stepparent is under no obligation to support and educate the children of his or her spouse by a former marriage, especially if the children have some income.
2. Where a stepparent assumes a parental relation to the children and holds them out to the world as family members, the relationship of loco parentis arises, and the stepparent incurs the same liability with respect to their support and education as if they were his or her own children.
3. The single fact of marriage to a man or woman who has children at the time of the marriage, whether or not being supported by one or both natural parents, does not establish the in loco parentis relationship entitling said children to support or to inherit from a stepparent.
4. A stepparent who provides shelter and necessities to his stepchildren, without more, is not liable for their support.

*Merrill W. Kerlin, District Attorney, Counsel for Commonwealth*

*Robert D. Kodak, Esq., Counsel for Defendant*

OPINION AND ORDER

KELLER, J., October 20, 1981:

This action for support was commenced by the filing of a complaint under Chapter 67, Subchapter A of the Judicial Code, 42 Pa. C.S.A. 6701, et seq. in the Court of Common Pleas of Dauphin County, Pennsylvania and by order of that Court three copies of the Complaint in support were transmitted to this Court. The plaintiff alleged in said complaint inter alia that she and the defendant were the natural parents of Aaron

Johnson, born out of lawful wedlock on June 24, 1970, and also the natural parents of Cynthia Burke, born February 6, 1973, and Terry Burke, born July 27, 1976, legitimate children. The testimony of the plaintiff herein sworn to March 6, 1981 again alleges that Cynthia E. M. Burke and Terry Lee Burke, Jr. were born in wedlock and of the marriage of the parties, and that the defendant is the father of Aaron Johnson, born out of wedlock. On April 21, 1981 this Court entered an order directing the defendant to appear for a hearing on May 19, 1981 at 9:30 o'clock a.m. and directed service by registered mail. Service was made upon the defendant by registered mail on April 23, 1981. A hearing was held as scheduled and it was determined that the defendant did not deny responsibility for the support of his daughter, Cynthia E. M. Burke, born February 6, 1973, and his son, Terry Lee Burke, born July 27, 1976; but he denied being the father of Aaron Johnson, born June 24, 1970, and denied the responsibility for the support of him. It was determined that the defendant had a net weekly take-home pay of \$196.98, and the plaintiff a net weekly take-home pay after payment of child care expenses of \$174.97. At the conclusion of the hearing the defendant was ordered to pay the costs of the proceedings, enter into his own bond in the amount of \$3,000 to guarantee faithful compliance with the order, and commencing Monday, May 25, 1981 pay to the plaintiff via the Collection Officer the sum of \$58.50 plus \$.50 service charge and a like sum each Monday thereafter until further Order of Court for the support of Cynthia E. M. Burke and Terry Lee Burke, Jr. The order specifically provided: "The issue of the responsibility of the defendant to provide support for Aaron Johnson D.O.B. 6-24-71 will be briefed and argued at the regular argument court scheduled for 6-23-81."

Counsel, with the approval of the Court, agreed that the issue of the defendant's responsibility to support Aaron Johnson would be submitted on briefs alone. The plaintiff's brief was received by the Clerk of the Court on June 12, 1981. Despite the efforts of the Court Administrator and finally the insistence of the Court, the District Attorney of Fulton County did not file his brief on behalf of the plaintiff until October 13, 1981. Notwithstanding the pressures of the District Attorney's Office, we find such total non-compliance with the orders of Court inexcusable.

#### FINDINGS OF FACT

1. Susan Ann Burke, plaintiff, resides at 80 North 18th Street, Harrisburg, Pa.

2. Terry Lee Burke, Sr., defendant, resides at Southern Fulton Terrace Apartments, McConnellsburg, Pa.

3. The plaintiff and defendant were married on February 26, 1970 after living together for approximately one year.

4. Aaron Johnson was born to the plaintiff on June 24, 1970. The plaintiff identified the father of Aaron as a Mr. Koenig.

5. The defendant was in the United States Army at the time he commenced living with the plaintiff, and was discharged in October 1976.

6. When the plaintiff and defendant commenced living together Aaron lived with the plaintiff's mother two blocks away. Subsequently, the plaintiff, defendant and Aaron lived with the maternal grandmother in Mercersburg for approximately seven months prior to their marriage.

7. Two children were born to the marriage; Cynthia on February 6, 1973, and Terry, Jr. on July 27, 1976.

8. After the parties were married and while the defendant was still in the army and lived with the plaintiff, he was for an unspecified period of time assigned to Fort Belvoir Virginia and a base in Germany.

9. Aaron's natural father visited with him from time to time subsequent to the marriage of the parties.

10. Aaron referred to his natural father, his maternal grandfather and the defendant as "Daddy" or "Dad."

11. Aaron came to live with the parties and their children subsequent to their marriage, and the defendant provided him with food, clothing, shelter and care and did not treat him differently from his own children.

12. The defendant called Aaron by his given name and never referred to him as his son.

13. After the defendant was discharged from the service in 1976, the parties, their two children and Aaron lived together in Mercersburg.

14. In 1978 the plaintiff left the defendant and moved to Dauphin County.

15. For an unspecified period of time described by the defendant as a "long" time before the separation, Aaron lived with his maternal grandmother in Mercersburg because the grandmother did not want him with the defendant.

16. After the plaintiff left the defendant Aaron remained with his maternal grandmother, and the children of the parties remained with the defendant.

17. Subsequent to the separation and prior to February 1980, the defendant took the two children of the marriage to visit the plaintiff and on a few occasions when the plaintiff requested it, the defendant would take Aaron along to visit his mother.

18. At a date unknown to the defendant and described by the plaintiff as about a year after the separation, the plaintiff took Aaron to live with her.

19. In February 1980 the plaintiff removed the two children of the marriage from the home of the defendant and his mother in McConnellsburg and took them to live with her in Harrisburg. In June 1980, she secured an order from the Court of Common Pleas of Dauphin County awarding custody of the two children to her, and the plaintiff has visitation custody only with his two children every two weeks.

20. The defendant provided support for the plaintiff, their two children and Aaron during the times when they were living with him. The defendant testified that he provided for Aaron when he was under his roof because he "just happened to be there." He denied that he ever agreed to support and care for Aaron.

21. Subsequent to the separation of plaintiff and defendant, the defendant did not provide any support for the plaintiff or for Aaron. He did support his two children while they lived with him but not thereafter.

22. The plaintiff provided no support to the defendant for their two children from the time she left the defendant until she took the children to Dauphin County in February 1980.

23. At the conclusion of the hearing on this matter the defendant was ordered to pay on May 25, 1981 to the plaintiff the sum of \$58.50 and a like sum each Monday thereafter for the support of Cynthia and Terry Lee, Jr.

---

# FIRST NATIONAL

*bank and trust co.*

13 West Main St.  
WAYNESBORO, PA. 17268  
717-762-3161



**TRUST SERVICES  
COMPETENT AND COMPLETE**

---

**CITIZENS** *National Bank*  
OF **AND TRUST COMPANY**

WAYNESBORO, PENNSYLVANIA  
17268

Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS

POTOMAC SHOPPING CENTER — CENTER SQUARE  
WAYNESBORO MALL

---

**LEGAL NOTICES, cont.**

WOOD, JR. First and final account, statement of proposed distribution and notice to the creditors of Carolyn M. Wood and Charles O. Wood, III, executors of the estate of Charles O. Wood, Jr., late of Guilford Township, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle  
Clerk of Orphans' Court of  
Franklin County, Pennsylvania  
(1-8-82, 1-15-82, 1-22-82, 1-29-82)

NOTICE IS HEREBY GIVEN THAT Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on Wednesday, September 30, 1981, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933, as amended.

The name of the proposed corporation is WIRING HARNESSES INCORPORATED.

The corporation shall have unlimited power to engage in and to do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of 1933, as amended. Without limiting the generality of the foregoing, the corporation shall have the power to manufacture wiring harnesses and related items for truck and heavy equipment industries.

W. H. CLAY KEEN, Esquire  
P. O. Box 1133  
Harrisburg, PA 17108  
(1-15-82)

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P.L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on or after January 18, 1982, an application for a certificate for the conducting of a business under the assumed or fictitious name of S & S WELDING with its principal place of business at 3091 Williamson Road, Green-

**LEGAL NOTICES, cont.**

castle, PA 17225. The name and address of the person owning or interested in said business is Harold E. Stine, Jr., 3091 Williamson Road, Greencastle, PA 17225.  
(1-15-82)

**NOTICE**

Notice is hereby given that the Franklin County Commissioners, Salary Board, Election Board, Retirement Board and the Board of Assessment and Revision of Taxes will meet in the Commissioners Office on Tuesdays and Fridays of each week beginning at 9:00 o'clock A.M., for the year 1982, with the exception of the following dates: Friday, April 9, and Friday, December 24, 1982.

Fred J. Rock  
J. Edward Beck, Jr.  
J. Byers Schlichter  
FRANKLIN COUNTY  
COMMISSIONERS  
(1-15-82)

NOTICE is hereby given that Articles of Incorporation were filed with the Commonwealth of Pennsylvania, Department of State, Harrisburg, Pennsylvania, on December 21, 1981, for the proposed corporation to be organized under the Commonwealth of Pennsylvania Business Corporation Law, approved May 5, 1933, P.L. 364, as amended, as AGH ENTERPRISES, INC. The purpose or purposes for which the corporation will be organized is that the corporation shall have unlimited power to engage in and to do any lawful act concerning any or all lawful business for which corporations may be organized under the Business Corporation Law.

A. Gregory Henderson  
Box 94  
Quincy, Pennsylvania 17247  
(1-15-82)

**DISCUSSION**

The sole issue in this segment of this non-support action is whether Terry Lee Burke, Sr. has a legal duty to provide support for the illegitimate child of his wife, Susan Ann Burke, when he knew at the time he commenced living with her and thereafter married her that she had this child, and he did provide shelter, food, care and other necessities for the child during part but not all of the time that he and his wife lived together with the two children of the marriage.

Initially, we consider it necessary to observe that the credibility of the plaintiff is seriously damaged by the fact that in the complaint and testimony attached to the complaint Mrs. Burke stated under oath that Aaron Johnson was the son of the defendant born out of wedlock to them; but at the hearing on the matter she testified that the defendant was not Aaron's natural father, and on cross-examination identified the natural father as a Mr. Koenig. We also feel it important to note that the evidence indicated the mother of Mrs. Burke and maternal grandmother of Aaron was very much involved in also providing shelter, care and other necessities for Aaron during substantial time periods here relevant, was aware of the living arrangements of the parties, and the relationship of the defendant to Aaron, and presently looks after the three children in Dauphin County while the plaintiff works; but she was not called as a witness for the plaintiff. It also appears that Aaron's natural father has maintained contact with him, but has never provided support for the child.

"In order for a person to be regarded as a step-parent, he or she must be married to the natural parent of the child. A step-parent does not merely by reason of the relation, stand in loco parentis to the stepchild, although it has been held that a stepmother owes the duty of nurture and maternal advice to her stepchildren, so that rights cannot be predicated on an agreement to perform such duty. However, a step-parent who voluntarily receives the stepchild into the family and treats the child as a member thereof stands in the place of the natural parent, and the reciprocal rights, duties, and obligations of parent and child subsist, and continue as long as such relation continues.

"Whether a step-parent has admitted a stepchild into the family and treated such child as a member thereof, so as to create the reciprocal rights and obligations of natural parent

*Trust Us For Complete Financial  
Planning And Trust Services!*

Trust Department  
**CHAMBERSBURG TRUST COMPANY**  
CHAMBERSBURG, PENNSYLVANIA  
Telephone (717) 263-9201

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

and child, is to a great extent a question of intention. The existence of such intention has been held to be a question of fact to be determined in light of the particular circumstances of each case, and should not lightly or hastily be inferred. There is a presumption that a step-parent who voluntarily assumes the care and custody of a stepchild intends to assume the duties and obligations of a natural parent. . .” 67A CJS Sec. 159.

“Generally, a step-parent is under no obligation to support and educate the child of her or her spouse by a former marriage, especially if the children have some income. Under certain circumstances, however, a step-parent may become liable for the support of a stepchild. So, where a step-parent has assumed a parental relation to the children and holds them out to the world as family members, the relationship of loco parentis arises, and the step-parent incurs the same liability with respect to their support and education as if they were his or her own children. So a step-parent may become liable to a third person for services rendered to a minor stepchild.” 67A CJS Sec. 161.

In *Commonwealth ex rel. Stack v. Stack*, 141 Pa. Super. 147, 154, the Superior Court held:

A stepfather as such is under no obligation to support the children of his spouse by a former marriage. This is especially true if the children have some income. Notwithstanding they may be taken into the stepfather’s house, there is no presumption that such support is gratuitous on the husband’s part: 46 C.J. Sec. 183, P. 1388; 20 R.C.L. Sec. 10, P. 594; *Estate of McCormick Minors*, 18 Phila. Reports 60.

However, the courts in Pennsylvania have long recognized that a step-parent may become legally liable for the support of his stepchild. In *Commonwealth v. Behmer*, 20 D&C 664 (1934) the Court of Quarter Sessions of Centre County concluded that one who, without formal adoption proceedings, takes a child into his home, where he lives with his wife, and provides clothing, food, and shelter, stands in loco parentis to the child and is liable for support notwithstanding a subsequent separation from his wife. In *Commonwealth v. Benjamin*, 76 D&C 47, 48, the Municipal Court of Philadelphia held:

“The law clearly says that where, as here, defendant received the children into his home when they were infants, raised and treated them as his own, that relation arose (in loco parentis) and the law presumes the continuance of the status shown to exist.”

In *Young v. Hipple*, 273 Pa. Super. 439 (1922), a step-daughter was refused payment on insurance policies of her step-father wherein she was named as beneficiary on the grounds that she had no insurable interests in his life. The Supreme Court of Pennsylvania held:

Upon a consideration of the decisions in other branches of the law, it appears that where one stands in loco parentis to another, the rights and liabilities arising out of that relation, are, as the words imply, exactly the same as between parent and child. Thus the rule that, for services rendered, a parent cannot recover from a child, or child from a parent, in the absence of an express contract to pay for them, even though the child is of full age and lives in a home of his own. . . , applies with equal force to cases of step-parent and stepchild. . . ; the reason being because “it was a family relation entirely equivalent, while it lasted, to that of parent and child; the law implies no mutual responsibilities inconsistent with that relationship’ . . . No reason exists why any different rules should be applied in cases of insurance from that in a claim for services; and the necessity for adhering to legal principles, and consistently applying them whenever the same facts exist, furnishes the strongest kind of an argument why the same conclusion should be reached in both classes of cases.

In *Commonwealth v. Cameron*, 197 Pa. Super. 403 (1962), the Superior Court affirmed the decision of the Court of Quarter Sessions of Washington County which had refused to impose a support order on the natural father of the minor child because the new husband of the natural mother had put himself in loco parentis to the child by entering into an agreement with the natural father releasing him from all obligations for her support and assuming the duties of parent and father to her. (The Superior Court observed that the natural mother and her second husband had assumed a primary obligation for the support of the child, but the natural father’s responsibility could be enforced upon their failure to support her.)

In *Commonwealth ex rel. Morgan v. Smith*, 429 Pa. 561 (1968), the Supreme Court reversed the trial court’s order imposing support upon the defendant on the grounds he stood in the position of in loco parentis to the child on the grounds that the record did not sustain the lower court’s conclusion that the defendant occupied that status. The Supreme Court did hold:

“The phrase ‘in loco parentis’ refers to a person who puts

himself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of a legal adoption. The status of 'in loco parentis' embodies two ideas; first, the assumption of a parental status, and, second the discharge of parental duties." (At page 565)

The case of *Spells v. Spells*, 250 Pa. Super. 168, 378 A. 2d 879 (1977), addresses the issue of the right of one in loco parentis to an order for visitation with his stepchildren. Judge Hoffman speaking for the court stated:

Pennsylvania courts recognize that a person may 'put himself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of a legal adoption. This status, (known as 'in loco parentis') embodies two ideas; first, the assumption of a parental status, and second, the discharge of parental duties'. . . 'the rights and liabilities arising out of that relation are as the words imply, exactly the same as between parent and child'. . . A stepfather who lives with his spouse and her natural children may assume the status 'in loco parentis'.

In *Commonwealth ex rel. Patricia L.F. v. Malbert J.F., Jr.*, Pa. Super. , 420 A. 2d 572, 574 (1980), the Superior Court observed that "Anyone can assume in loco parentis status: a putative father, a paramour, or a school."

The most recent appellate court decision on the subject is *Commonwealth ex rel. Bulson v. Bulson*, Pa. Super. , 419 A. 2d 1327 decided May 16, 1980. In this case the trial court received evidence of the net earnings of the husband and wife, and the expenses of the wife including the cost of supporting her child by a prior marriage and entered an order of support for the wife. The evidence also established that the defendant knew at the time of his marriage that the child's father was paying no support for the child. The primary issue on appeal was whether the trial court abused its discretion in taking into account the cost to the appellee of supporting her child. The majority of the Superior Court panel affirmed the trial court and held:

It is true that appellant has not adopted appellee's child. However, this court has stated that a stepfather who lives with his wife and her natural child may assume the relationship to the child of in loco parentis. . . The rights and liabilities arising out of that relationship are in many respects the same as between parent and child. . . While here there was

---

# FIRST NATIONAL

bank and trust co.

13 West Main St.  
WAYNESBORO, PA. 17268  
717-762-3161



TRUST SERVICES  
COMPETENT AND COMPLETE

---

CITIZENS *National Bank*  
OF AND TRUST COMPANY

WAYNESBORO, PENNSYLVANIA  
17268

Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS

POTOMAC SHOPPING CENTER — CENTER SQUARE  
WAYNESBORO MALL

---



no evidence that appellant released the child's father-appellee's first husband from any obligations to support the child, the lower court nevertheless had ample evidence from which to infer that appellant assumed the obligation himself when he married appellee, knowing that she had a child in need of support. . .

Based upon the foregoing analysis of the law of Pennsylvania, we feel it reasonable to conclude that:

1. A step-parent may be legally liable for the support of his or her stepchild on the same basis and for the same duration as for a natural child if he or she has specifically declared orally or in writing an intention to assume the rights, privileges, duties and responsibilities of a parent.

2. A step-parent may be legally liable for the support of his or her stepchild on the same basis and for the same duration as for a natural child if:

(a) he or she has taken the child into his or her home and regularly provided the necessaries of life or more to the child; and

(b) has by his or her conduct held the child out to the public as his son or daughter thus evidencing an intention to enter into and maintain the relationship of in loco parentis.

Until more explicit guidance is given us by our Legislature or our appellate courts, we do not conclude that the single fact of marriage to a man or woman who has children at the time of the marriage, whether or not being supported by one or both natural parents, establishes the in loco parentis relationship entitling that child or children to support or to inherit from the step-parent; nor do we conclude that the fact of such marriage coupled with providing shelter and necessaries without more is legally sufficient to establish the relationship and the attendant rights, privileges, duties and responsibilities. We take this position because we feel that a contrary position would certainly have a chilling effect upon marriages of single parents with a child and would seriously encourage the prospective spouse without a child to reject or at the very least hold at arm's length the other's child; thus depriving that child of the prospects of a home and necessaries and the future possibility of a true in loco parentis relationship. This we perceive to be contrary to public policy.

---

# FIRST NATIONAL

*bank and trust co.*

13 West Main St.  
WAYNESBORO, PA. 17268  
717-762-3161



**TRUST SERVICES**  
**COMPETENT AND COMPLETE**

---

**CITIZENS** *National Bank*  
OF **AND TRUST COMPANY**

WAYNESBORO, PENNSYLVANIA  
17268

Telephone (717) 762-3121

**THREE CONVENIENT LOCATIONS**  
POTOMAC SHOPPING CENTER — CENTER SQUARE  
WAYNESBORO MALL

---

**LEGAL NOTICES, cont.**

within fifteen (15) days after the service of this writ upon you. If no affidavit of defense be filed within said time, judgment may be entered against you for the whole claim and the property described in the claim to be sold to recover the amount thereof.

WITNESS the Honorable George C. Eppinger, President Judge of our said Court this 7th day of January, 1982.

John F. George, Prothonotary

Carla R. Garner  
Deputy Prothonotary  
1-22-82, 1-28-82, 2-5-82

**BAR NEWS ITEM**

**CARLISLE**--The Dickinson School of Law will hold a one-day program, on "Foreign Investment in the United States: The Pennsylvania Perspective" on March 12 at the school.

The seminar will examine the nature of foreign investment in Pennsylvania and will suggest ways for lawyers whose practice includes a business law or municipal government component to counsel foreign investors, U.S. companies, municipal governments and related interests. The program will also be valuable for bank officers, corporate officers and officials of economic development councils.

The Continuing Legal Education Office at (717) 243-5529 has complete registration information.

In the case at bar, we do not find that the defendant ever, before or after the marriage expressly stated his intention or willingness to act as the father of Aaron or accept him and raise him as his son. We do not find that there was any substantial and uninterrupted extended periods of time when Aaron was solely supported by the defendant. We do not find that the defendant ever held Aaron out to the public as his son, and to the contrary never referred to him as his son and called him Aaron. The fact that Aaron called his maternal grandfather, his natural father, and the defendant "Dad" or "Daddy," and the defendant did not object is significant evidence in our judgment of the lack of intention of the defendant to assume the relationship of a father to the child. The fact that Aaron resided with his maternal grandmother and away from the plaintiff and defendant at intervals commencing with their meretricious relationship and continuing throughout their cohabitation as husband and wife including an extended period of time prior to the separation of the parties, and for approximately a year after the separation evidences a lack of continuity of maintenance and support by the defendant, and also a lack of intention on the part of the natural mother, the maternal grandmother, the defendant, and the child to establish a father-son relationship between the defendant and Aaron. That subsequent to the separation of the plaintiff and defendant the two children of the marriage remained with the defendant, but Aaron remained first with his maternal grandmother for about a year and then with his mother, evidences a lack of perception on the part of the plaintiff-mother and maternal grandmother that the defendant had or ever intended to have an in loco parentis relationship with the child; and this is re-enforced by the failure of the plaintiff to demand support for Aaron from the time of the separation in 1978 until the filing of the complaint on March 6, 1981. Finally, and perhaps conclusively, the fact that the plaintiff after removing the two children of the marriage from the custody of the defendant in February 1980 sought and secured an order awarding custody of those two children to her in June 1980 with visitation rights for those two children in the defendant; but no custody award was sought by the plaintiff for Aaron and no visitation of Aaron with the defendant was awarded.

Under all of the circumstances, we do not find that the plaintiff has established the existence of an in loco parentis relationship between the defendant and her son, Aaron Johnson, and will deny her claim for support from the defendant for that child.

**ORDER OF COURT**



NOW, this 20th day of October, 1981, the complaint for support of Aaron Johnson, son of Susan Ann Burke, plaintiff, born June 24, 1970 is denied.

Costs to be paid by the County.

HERMSDORFER ESTATE, ET AL, v. AMERICAN MOTORS CORP., C.P. Franklin County Branch, A.D. 1981 - 102

*Trespass - Discontinuance of Action - Pa. R.C.P. 299(c)*

1. The Court will not strike a discontinuance unless there is a showing of the deprivation of a substantial right or prejudice due to discontinuance.
2. Where plaintiff filed an action in both state and federal court and then sought to discontinue the state action, the differences in the Pennsylvania and federal joinder rules do not constitute prejudice for purposes of Pa. R.C.P. 299 (c).
3. Procedural differences between the Pennsylvania practice and federal practice may not be made the basis of mandating pursuit of an action in state rather than federal practice.

Attorneys for the Parties:

*Charles W. Rubendall, II, Esq.*  
*George F. Douglas, Jr., Esq.*  
*William C. Cramer, Esq.*  
*Edward I. Steckel, Esq.*  
*Larry B. Selkowitz, Esq.*

OPINION AND ORDER

EPPINGER, P.J., December 15, 1981:

This action is one of a number of actions filed as a result of a March 25, 1979 automobile accident in which John William Hermsdorfer was killed. The Plaintiffs, John's parents, suing individually and as administrators of their son's estate, filed a Praecipe for Writ of Summons on March 24, 1981, naming American Motors and others as defendants (American Motors). (One day earlier, Plaintiffs began an action against

---

# FIRST NATIONAL

*bank and trust co.*

13 West Main St.  
WAYNESBORO, PA. 17268  
717-762-3161



**TRUST SERVICES**  
**COMPETENT AND COMPLETE**

---

**CITIZENS** *National Bank*  
OF **AND TRUST COMPANY**

WAYNESBORO, PENNSYLVANIA  
17268

Telephone (717) 762-3121

**THREE CONVENIENT LOCATIONS**  
POTOMAC SHOPPING CENTER — CENTER SQUARE  
WAYNESBORO MALL

---