

## Domestic violence protective orders: when is a stepparent acting in loco parentis?

A plaintiff cannot obtain a Civil No-Contact Order pursuant to [GS Chapter 50C](#) against a defendant younger than 16 years of age. [GS 50C-1\(7\)](#). There is no similar general restriction on the age of defendants for claims brought pursuant to [GS Chapter 50B](#) seeking a Domestic Violence Protective Order. So, for example, a plaintiff may seek [Chapter 50B](#) protection against a current or former household member who is 13 years old or against someone 15 years old with whom plaintiff has been in a dating relationship. See blog post, March 13, 2015, [Minor Parties in 50B Cases](#).

However, one personal relationship covered by [Chapter 50B](#) does contain an age limitation. When plaintiff is the parent, grandparent or person acting in loco parentis to the defendant, the defendant must be at least 16 years old. [GS 50B-1\(a\)\(3\)](#). The General Assembly decided to prohibit parents, grandparents and persons acting in loco parentis from obtaining domestic violence protective orders against their children under 16 but decided not to limit actions against other minor defendants.

In an opinion published on October 6, 2020, the court of appeals addressed this provision in [Chapter 50B](#) for the first time and provided guidance on determining whether a plaintiff is a 'person acting in loco parentis' to a defendant and therefore subject to the restriction in [GS 50B-3\(a\)\(1\)](#).

### [Gibson v. Lopez](#)

Defendant was the 14-year old stepson of plaintiff. The trial court entered a DVPO against defendant after concluding defendant committed an act of domestic violence. The trial court rejected defendant's argument that because plaintiff stepmother was a person acting in loco parentis to him, no domestic violence protective order could be entered against him because of the limitation in [GS 50B-1\(a\)\(3\)](#). The trial court concluded that while plaintiff was defendant's stepmother and resided in the same house with him for extended periods of time, she was "never able to act in loco parentis" to defendant due to his violent behavior towards her and due to his absence from her home for a 2-year period of time while he resided in a treatment facility.

The court of appeals vacated the DVPO after concluding the trial court erred in concluding plaintiff never acted in loco parentis to defendant and remanded the case back to the trial court to determine if plaintiff was acting in loco parentis at the time the complaint requesting the DVPO was filed.

### Stepparents as plaintiffs

The court of appeals first noted that [GS 50B-3\(a\)\(1\)](#) excludes only three relationships when defendant is under the age of 16:

- (1) parents and children;
- (2) others acting in loco parentis to a child; and
- 3) grandparents and grandchildren.

The court pointed out that the statute does not include an automatic exclusion for a stepparent; a stepparent is subject to this limitation only when “acting in loco parentis” to defendant.

In a footnote the court of appeals explained that a stepparent acting in loco parentis would not be able to use one of the other relationships to seek protection, such as “current or former household members,” because the specific provision in [GS 50B-1\(a\)\(3\)](#) would control and prohibit the use of other relationships to support a DVPO. However, if a stepparent is not acting in loco parentis when the complaint is filed, she can proceed based on another authorized relationship, such as a current or former household member, not subject to the age limitation contained in [GS 50B-1\(a\)\(3\)](#).

### **In loco parentis status**

The court in [Gibson](#) explained:

“While N.C. Gen. Stat. § 50B-1 does not define “in loco parentis,” the term has been defined by our Court to “mean in the place of a parent, and a ‘person in loco parentis’ . . . [is] one who has assumed the status and obligations of a parent without a formal adoption.” . . . A person does not stand in loco parentis from the mere placing of a child in the temporary care of other persons by a parent or guardian of such child. This relationship is established only when the person with whom the child is placed intends to assume the status of a parent—by taking on the obligations incidental to the parental relationship, particularly that of support and maintenance. . . . Our Court has further elaborated that whether a person stands in loco parentis “is a question of intent to assume parental status and depends on all the facts and circumstances of th[e] case.”

The court of appeals held that the evidence in this case clearly established plaintiff intended to assume parental status and did assume parental responsibilities when she married defendant's father and moved into defendant's home. Plaintiff testified that she quit her job to care for defendant and cared for defendant by, for example, cooking of him and taking him to school and to doctor's appointments. She also admitted that at one time, she had considered herself as parenting her husband's children.

The court of appeals rejected the argument that defendant's acts of violence kept plaintiff from acquiring the status of in loco parentis, pointing to the language of [GS 50B-1\(3\)\(a\)](#) itself:

“Instances of domestic violence between a child under the age of 16 and the person asserted to be acting in loco parentis cannot alone determine whether or not that status exists—to hold otherwise

would contravene the statutory exemption categorically prohibiting those acting in loco parentis from “obtain[ing] an order of protection against a child . . . under the age of 16.” [N.C. Gen. Stat. § 50B-1\(b\)\(3\) \(2019\)](#). Put another way, if domestic violence by itself could serve as the basis for concluding that an in loco parentis relationship did not exist, then the rule could swallow the exception in cases like the current controversy.”

### Not necessarily a permanent status

While the court of appeals disagreed with the trial court's conclusion plaintiff never stood in loco parentis to defendant, the court also held that evidence plaintiff stood in loco parentis to defendant in the past did not necessarily mean she held that same status at the time she filed the [Chapter 50B](#) complaint.

The court explained that while stepparents often act in loco parentis during marriage, the status generally ends upon separation and divorce unless the stepparent voluntarily continues the relationship and/or agrees to support the child. According to the court of appeals, this means that “a change in circumstances can impact the assessment of whether an in loco parentis relationship continues.”

The court also pointed to specific language in [Chapter 50B](#) to support the conclusion that the status is fluid and to support the conclusion that a plaintiff must be acting in loco parentis at the time of filing for the age limitation to apply. In footnotes the court of appeals stated first that “those falling in the in loco parentis category are only barred from obtaining a DVPO so long as they are “acting in loco parentis to a minor child . . . under the age of 16.” The court then explained:

“[\[GS 50B-1\]](#) in some instances looks not only to current but also to past circumstances in defining those personal relationships that can serve as the basis for seeking a DVPO. See [N.C. Gen. Stat. § 50B-1\(b\)\(2\), \(5\), \(6\)](#) (defining “personal relationships” to include “persons of opposite sex who *live together or have lived together*[,]” “*current or former household members*[,]” and “persons of the opposite sex who *are in a dating relationship or have been in a dating relationship*”). Notably, however, the exception prohibiting the issuance of a DVPO against a child under the age of 16 applies only, in pertinent part, to those “acting in loco parentis” as opposed to those “acting or who have acted in loco parentis.”

The court of appeals in [Gibson](#) remanded the matter to the trial court for a determination of whether plaintiff continued to act in loco parentis to defendant at the time plaintiff filed her complaint. If she was acting in loco parentis, the action must be dismissed due to defendant's age at the time of filing. If she was not, the trial court could grant her a DVPO based on her relationship as a current or former household member of defendant.