**IN THE SUPREME COURT OF MONTANA**
**CAUSE NO. DA 08-0483**

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BARBARA L. MANIACI,
*Respondent-Appellant,*

v.

MICHELLE KULSTAD,
*Petitioner-Appellee.*

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On Appeal from the Fourth Judicial District Court
Cause No. DR-07-34
Hon. Edward P. McLean

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# APPELLEE'S BRIEF

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*Attorneys for Appellant:*

Linda Osorio St. Peter
ST. PETER LAW OFFICES
2620 Radio Way
P.O. Box 17255
Missoula, MT 59809
(406) 782-8282

Austin R. Nimocks
Amy Smith
ALLIANCE DEFENSE FUND
15100 North 90th St.
Scottsdale, AZ 85260
(480) 444-0200

*Attorneys for Appellee:*

Elizabeth L. Griffing
ACLU OF MONTANA FOUNDATION
P.O. Box 9138
Missoula, MT 59807
(406) 830-3009

Susan G. Ridgeway
SUSAN G. RIDGEWAY, PLLC
210 East Pine, Suite 200
P.O. Box 8242
Missoula, MT 59807
(406) 541-8882

Kevin H. Lewis
HOWARD, RICE, NEMEROVSKI,
CANADY, FALK & RABKIN
3 Embarcadero Center, 7th Fl.
San Francisco, CA 94111
(415) 434-1600

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## STATEMENT OF THE ISSUES

1. Did the District Court abuse its discretion in awarding partial custody of the minor children to Ms. Kulstad?

2. Does § 40-4-228, MCA, constitutionally recognize that the rights of children to maintain parent-child relationships formed with the consent and encouragement of their natural parent must be balanced against the rights of the natural parent?

3. Did the District Court abuse its discretion in its evidentiary rulings?

4. Did the District Court abuse its discretion in finding that Ms. Maniaci had been unjustly enriched and awarding a constructive trust?

## STATEMENT OF THE CASE

On January 19, 2007, Petitioner-Appellee, Michelle Kulstad filed a petition against Respondent-Appellant, Barbara Maniaci, seeking, among other things, an award of a "parental interest" under § 40-4-228, MCA, with respect to LM and AM, the two children who were adopted during the course of the couple's relationship, and equitable distribution of Ms. Kulstad's share of the parties' assets and debts. D.C. Doc. 1.[1]

Ms. Maniaci moved to dismiss, arguing that Ms. Kulstad could not maintain an action for a parental interest absent a termination of Ms. Maniaci's parental interest, and that a claim of unjust enrichment and equitable distribution of the property was improperly pled. D.C. Doc. 9 at 2, 4. The parenting claims were briefed first by the parties, and the District Court issued its order denying the motion to dismiss with respect to those claims on February 13, 2007. D.C. Doc. 15 at 2.

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[1] Ms. Kulstad's original petition was captioned "Petition for Dissolution of Marriage and Parenting." D.C. Doc. 1. In her Petition, Ms. Kulstad alleged that she and Ms. Maniaci, had agreed to assume toward one another all of the responsibilities of married people, exchanged rings, opened a joint checking account and held themselves out to people close to them as married. Id. at 2. The District Court rejected this claim on the grounds that "same sex marriage is not recognized in Montana," but allowed the remaining claims to go forward. D.C. Doc. 59 at 1-2.

Ms. Kulstad sought an Interim Parenting Plan. D.C. Doc. 16. The transcript of that hearing, held March 20, 2007, is part of the record on appeal. D.C. Doc. 62.[2] Extensive evidence was received concerning the parent-child relationship between Ms. Kulstad and the two young children. The evidence was so compelling that the District Court ruled from the bench: "This Court recognizes Michelle Kulstad as having a parental interest." Tr. 3/20/2007 at 256. On March 22, 2007, the District Court issued its Findings of Fact, Conclusions of Law and Order on the interim parenting plan, finding that the parties shared parenting duties and each had a parent-child relationship with the children. D.C. Doc. 46, Findings of Fact, Conclusions of Law and Order at 3. The Court thereafter adopted an interim parenting plan maintaining the relationship between the children and Ms. Kulstad. Id. at 7-10.

On April 23, 2007, the District Court issued its Opinion and Order, allowing the parties to move forward on the following two issues:

> 1. Have the parties commingled assets that require the Court to equitably divide the assets; and
> 2. Do both parties have a parental relationship with the children.

D.C. Doc. 59 at 3.

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[2] References to "Tr. 3/20/2007 __" are to the hearing held on March 20, 2007.

On May 22-23, 2008, a two-day final dispositional hearing was held on these issues. The District Court subsequently issued a 48-page decision on September 29, 2008, awarding Ms. Kulstad joint custody of the children and an equitable interest in the property developed and shared through the course of their domestic partnership. D.C. Doc. 368. Ms. Maniaci now appeals from that decision.

## STATEMENT OF THE FACTS

### I. Ms. Kulstad's Parental Relationship with LM and AM.

Ms. Kulstad and Ms. Maniaci met in 1995, and moved in together in 1996. In February 2001, Ms. Maniaci and Ms. Kulstad had the opportunity to adopt a son, LM. Tr. 68.[3] Ms. Maniaci knew the child's grandmother, who had suggested that they adopt the child. Tr. 70-71. Ms. Kulstad suggested that they set up a meeting and discuss the adoption. Tr. 74. The couple met the baby and both felt "very, very connected" to him. Tr. 75. Ms. Kulstad testified: "We both decided that we wanted [LM] in our family." Tr. 76.

Shortly thereafter, the grandmother called to say she believed the baby was in danger. Id. The baby needed medical care when Ms. Kulstad and Ms. Maniaci took custody. Tr. 77-78. He was severely asthmatic and had projectile vomiting. Tr. 78. His clothes smelled of vomit and smoke. Tr. 77. They soon took the child to the hospital. In filling out the forms for the baby's admission, the couple listed the child's last name as hyphenated "Maniaci-Kulstad." Pl. Ex. 10 (hospital admission form); Tr. 78-81.

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[3] References to "Tr. __" are to the transcript of the May 22-23, 2008 hearing.

The couple hyphenated LM's name at the time of admission to the hospital because they believed they would both be adopting LM together. Tr. 82. After Ms. Maniaci spoke with an attorney who advised them that same-sex couples could not both legally adopt,[4] they together decided that Ms. Maniaci would be the adoptive parent, because she would be the child's primary caregiver during the day while Ms. Kulstad worked outside of the home to support the family. Tr. 85. Ms. Kulstad was told she could be the baby's guardian and she believed that gave her some rights as a parent. Tr. 84. They together decided that LM would call Ms. Maniaci "Mom" and Ms. Kulstad "Shelly," not to differentiate their relationship with their son, but to protect him because they did not want "our family to be in kind of a retaliation– sort-of-thing with homophobic people." Tr. 86-87.

A home study was done for LM's adoption by Cindy Garthwait in June 2001. Tr. 87, 143; Pl's Exs. 22 and 23. Ms. Garthwait concluded after her investigation that Ms. Kulstad was "involved in the parenting of [LM] and planned to continue." Tr. 151. Ms. Garthwait testified at the hearing in this matter that although she knew she was doing the adoption homestudy "[l]egally . . . for Barbara...it was clear to me that it was considered a committed couple. And, so, I was interviewing and doing background on both of them." Tr. 141. Ms. Garthwait

[4] Ms. Kulstad is not suggesting that is the actual legal situation in the state, only that this was the representation made to the couple by an attorney.

assumed based on statements made by both parties that both Ms. Kulstad and Ms. Maniaci would be parents to the baby. Id. Ms. Maniaci admitted at trial that she had told Ms. Garthwait she and Ms. Kulstad would both be parenting the baby, although she attempted to characterize her prior statements as a "lie." Tr. 525. As part of Ms. Garthwait's investigation, she confirmed that the prospective parents had made "their commitment for a lifetime" and had made plans if one of the parents died. Tr. 151. Ms. Garthwait affirmed that Ms. Kulstad was committed to LM both emotionally and financially. Tr. 152.

In 2003, Ms. Maniaci suggested adopting another child. Ms. Kulstad was initially opposed. Tr. 96-97; Tr. 3/20/2007 at 218. However, Ms. Maniaci told her she "had to get on board," Tr. 95, and Ms. Kulstad helped complete the paperwork required for that adoption. Tr. 95-96. As part of Ms. Maniaci's research into adopting another child, she sought advice from an organization that advocates for rights for same-sex couples. Pl's Ex. 36. In her inquiry, Ms. Maniaci referred to Ms. Kulstad as her "partner", and stated that they together completed a private adoption of their previous child and together, "we" would like to adopt a baby girl. Id.

In connection with the second adoption, a home study was done by Dennis Radtke in April 2003. Tr. 268; Pl's Ex. 40. The home study report shows that

both Ms. Maniaci and Ms. Kulstad were intended parents to AM. See Pl. Ex. 40 at 1 ("An Adoptive Home Study was conducted on behalf of Barbara Maniaci and Michelle Kulstad."); id. at 6 ("Assessment of Barbara Maniaci's and Michelle Kulstad's Ability to Provide an Adoptive Home"). AM was adopted from Guatemala in May 2004. Despite her initial hesitation, Ms. Kulstad soon formed a close parent-child bond with AM, just as she had with LM. Tr. 95-96.

In his testimony at trial, Mr. Radtke stated that Ms. Kulstad and Ms. Maniaci were deeply committed to the welfare of LM. Tr. 273. He believed they demonstrated unequivocally that they were able to organize their lives and priorities around their children's well being. Id. As such, Mr. Radtke found Ms. Kulstad and Ms. Maniaci to be an "ideal family to adopt." Id. Ms. Maniaci testified at trial, however, that she had "lied" to Mr. Radtke, in the same way that she had "lied" to Ms. Garthwait during the first home study. Tr. 526.

Unfortunately, after deterioration in the couple's relationship, the parties began to separate in the fall of 2006, after LM had been in the family for five years and AM for over two years. This action was filed in January 2007. During the proceedings below, Ms. Kulstad and other witnesses confirmed that she was a parent in every way to the children, that the children viewed her as a parent, and that Ms. Maniaci held Ms. Kulstad out as a parent to LM and AM.

*The March 20, 2007 Hearing on an Interim Parenting Plan*

The District Court held an initial hearing on Ms. Kulstad's petition for a temporary parenting plan on March 20, 2007. D.C. Doc. 62. At that hearing, Ms. Kulstad presented extensive testimony about her parental relationship with her son and daughter, as did a friend of both parties, and two of LM's teachers.

Ms. Kulstad described her day-to-day parental relationship with the children at this hearing. She noted that she worked during the day to support the family, and cared for the children in the evening, when Ms. Maniaci would see her chiropractic patients. Tr. 3/20/2007 at 190-191. She was often the primary caregiver on weekends. Id. at 191-192. Ms. Kulstad confirmed, "I absolutely have a promise to those children that I will look after them for as long as I live... I'm totally committed to those children." Id. at 213.

One of LM's teachers, Carrie Brunger, from the Clark Fork School, testified that the people she understood to be part of LM's family were "Barbara and Shelly (Michelle)." Id. at 101. Ms. Brunger said that when LM was asked to draw a picture of his favorite summer experience, he drew a picture of "his moms, Shelly and Barbara, and [AM] down in the lower corner of the piece." Id. at 102. Another teacher, Laura Loveland, confirmed LM perceived his family to be "Barbara, Shelly and [AM]." Id. at 164. Both Ms. Kulstad and Ms. Maniaci

picked up LM after school, and Ms. Kulstad often would drop off LM and stay with him to help him in school. Id. at 166. Ms. Maniaci was a parent driver on a field trip and came to family activities at the school. Id. at 167.

Kelly Chadwick, long-time friend and neighbor of both parties, confirmed that they represented themselves as a couple, and had intended to raise both of the children together. Id. at 170. Ms. Chadwick testified that she frequently saw Ms. Kulstad caring for the children as a parent would. Id. at 176.

At the conclusion of this hearing, the District Court ruled from the bench that Ms. Kulstad had a parental interest, and established an interim parenting plan granting Ms. Kulstad regular visitation with the children. Id. at 256-58.

***The final dispositional hearing***

Additional testimony about the close parental relationship between Ms. Kulstad and the children was heard during the two-day hearing in May 2008. Ms. Kulstad testified in greater detail about her relationship with the children. Tr. 74-96, 103-07, 440-42. Dr. Cindy Miller, the court-appointed parenting expert who had performed a parental evaluation of the family in accordance with the order of the District Court (D. C. Doc. 230), testified that the children had a "strong relationship and attachment to Ms. Kulstad, and enjoyed and appreciated their time with her." Tr. 316-17. She confirmed that Ms. Kulstad was a "psychological

parent" to the children both before and after the separation from Ms. Maniaci. Tr. 320. Dr. Miller stressed that Ms. Kulstad was a "stabilizing force in the children's lives." Tr. 323.

Dr. Miller also testified about the extensive psychological harm the children could suffer if Ms. Maniaci were allowed to sever their relationship with Ms. Kulstad. Tr. 318. She believed it would negatively affect their model of relationships and impair their ability to have stable and healthy relationships in the future. Tr. 319. Dr. Miller confirmed that separation of the children from Ms. Kulstad could "have profound effects down the road" that were likely "permanent." Tr. 344-45.

Dr. Paul Silverman, the court-appointed therapist who began seeing LM in April 2007 and AM in October 2007, testified that Ms. Kulstad had a parent-child relationship with both children and provided a secure base for them. Tr. 469, 477. He confirmed that Ms. Maniaci shows a great deal of animosity toward Ms. Kulstad, which she communicates to the children. Tr. 473-75. Dr. Silverman further testified that he believed the children should have continued contact with Ms. Kulstad and that terminating the relationship "would be detrimental to them." Tr. 477.

In reaching this conclusion, the Court relied upon testimony and exhibits from Ms. Kulstad that showed she had spent funds acquired prior to the relationship to support herself and Ms. Maniaci. FOF at ¶ 7; Pl's Ex. 13. Deducting a family loan, and dividing the pre-relationship funds in half to account for expenditures Ms. Kulstad had made for her own support, the Court concluded that Ms. Maniaci owed Ms. Kulstad an amount equal to $101,824.43, and placed a judgment lien on the real property in that amount. COL at ¶¶ 38-39.

## SUMMARY OF ARGUMENT

Michelle Kulstad and Barbara Maniaci lived together in a committed relationship from 1996 until 2006, when they separated. During the course of the relationship, they brought two children, LM and AM, into their home. While Ms. Maniaci was the adoptive parent to the children, Ms. Kulstad is every bit as much their mother. As the District Court found, with Ms. Maniaci's consent, Ms. Kulstad functioned as a parent to the children and was–and is–viewed by them as a parent. Ms. Maniaci cannot now change her mind, and separate the children from the person they know as their other parent, just because her relationship with Ms. Kulstad has ended.

The District Court properly found that Ms. Kulstad has satisfied the statutory requirements to seek a parental interest under §§ 40-4-211, 228, MCA. By allowing Ms. Kulstad to be a parent to these children, and to form a committed parent-child relationship over many years, Ms. Maniaci engaged in conduct inconsistent with her parental interest, within the meaning of § 40-4-228(2)(a), MCA. Alternatively, the District Court correctly held that equitable principles would prevent Ms. Maniaci from denying the *de facto* parent-child relationship that she created. The District Court's award of joint custody to Ms. Kulstad is fully supported by the

evidence, which included extensive expert testimony about the harm to the children that would ensue if they lose their relationship with Ms. Kulstad.

While the rights of parents to control the upbringing of their children are constitutionally protected, they are not unlimited. Section 40-4-228, MCA, balances the rights of parents against the competing constitutional rights of children to maintain important parent-child relationships, and requires a showing that an award of custody or visitation under the statute be supported by clear and convincing evidence. Contrary to Ms. Maniaci's assertions, this Court's prior cases have never held that a person who allows another person to jointly parent her children with her, as one of their two parents, has a constitutional right to sever the parental ties that she herself helped forge.

Similarly, the District Court's rulings that Ms. Kulstad is entitled to a constructive trust to prevent unjust enrichment of Ms. Maniaci are fully supported by the record, and the findings are not an abuse of discretion. Ms. Kulstad spent her life-savings supporting Ms. Maniaci and herself, including making extensive improvements to the home they lived in together, in reliance on promises made by Ms. Maniaci that the property would be equally divided in the event that the couple broke up. Rather than honor her promise, Ms. Maniaci now attempts to argue that she is owed "rent" by her

former partner. The District Court properly rejected Ms. Maniaci's claims and the constructive trust award should be affirmed.

## ARGUMENT

### I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN AWARDING MS. KULSTAD PARTIAL CUSTODY OF THE CHILDREN.

#### A. The District Court Properly Found That Ms. Kulstad Satisfied The Statutory Requirements To Establish A Parental Interest In The Children.

The general standard for review of child custody decisions is whether the trial court abused its discretion. In re the Marriage of Graham, 2008 MT 435, ¶ 8, 347 Mont. 483, 484, 199 P.3d 211, 213. When the findings are supported by substantial credible evidence, this Court will affirm the district court's decision unless a clear abuse of discretion is shown. Toavs v. Buls, 2006 MT 68, ¶ 7, 331 Mont. 437, 438, 133 P.3d 202, 203. In deciding whether the trial court abused its discretion, this Court reviews whether the trial court "acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice." Albrecht v. Albrecht, 2002 MT 227, ¶ 7, 311 Mont. 412, 415, 56 P.3d 339, 342.

Section 40-4-228, MCA, requires that a petitioner seeking a parental interest demonstrate three elements by clear and convincing evidence: (1) that the natural parent engaged in conduct contrary to the parent-child relationship; (2) that the petitioner has established a parent-child relationship

as defined in § 40-4-211, MCA; and (3) that it is in the child's best interests for the relationship to continue. § 40-4-228, MCA.

Although § 40-4-228 requires a showing of clear and convincing evidence, that does not alter *this Court's* standard of review of the District Court's decision. See, e.g., Czapranski v. Czapranski, 2003 MT 14, ¶¶ 17, 19, 314 Mont. 55, 61-62, 63 P.3d 499, 503-04 (rejecting argument that there is a higher standard for appellate review in parental termination cases, which also require a showing of clear and convincing evidence before the district court, and applying abuse of discretion standard in appellate review). Thus, the only question here is whether the District Court abused its discretion in finding clear and convincing evidence of a parental relationship and awarding joint custody to Ms. Kulstad.

The findings challenged here are soundly supported by the evidence in the record, and there is no indication that the District Court misapprehended or otherwise erred in weighing that evidence. Cf. Columbia Grain Intern. v. Cereck (1993), 258 Mont. 414, 418, 852 P.2d 676, 678 (describing clear error standard of review). Accordingly, there is no basis for Ms. Maniaci's claim that the District Court abused its discretion.

*1. Ms. Maniaci engaged in conduct contrary to the parent-child relationship.*

With respect to the first element, showing the natural parent engaged in conduct contrary to the child-parent relationship, the District Court held that Ms. Maniaci acted contrary to the parent-child relationship by allowing Ms. Kulstad to form a parent-child relationship with the children and assume a full parental role. The District Court acknowledged that Ms. Maniaci was granted the right to be the children's exclusive legal parent when she adopted them, and found that Ms. Maniaci's own actions, from the time the children entered the home and were later adopted, were entirely inconsistent with an exclusive parent-child relationship because she and Ms. Kulstad co-parented the children as a family unit. COL at ¶¶ 15-20. The District Court's interpretation of the statute and its application of it are reasonable and supported by the record, and certainly cannot be characterized as "clearly erroneous."Ms. Maniaci admittedly represented to both people performing the home studies that she would co-parent with Ms. Kulstad.[5] The children were brought into the home that she and Ms. Maniaci shared. Ms. Kulstad cared for the children on a daily basis as any parent would. She

[5] While Ms. Maniaci argued at the hearing in this action that those statements were "lies," Tr. at 526-26, the District Court was well within its discretion to disbelieve her self-serving recharacterization of her previous statements.

worked outside the home to support the family, and took care of the children in the evenings and on weekends. In short, it was the clear intention of Ms. Maniaci and Ms. Kulstad that they would both be parents to the children, and both did indeed form a shared parental relationship with the children consistent with that intent. Such conduct is, as the District Court found, contrary to the exclusive parental interest that Ms. Maniaci acquired at the time of the adoptions.

Ms. Maniaci argues on appeal that the District Court erred because, she claims, there are only two ways of showing conduct contrary to her parental interest: under § 40-4-228(2)(a), MCA, which Ms. Maniaci contends is restricted to a showing of abuse and neglect, and under § 40-4-228(4), MCA, which she claims requires a showing that she allowed another person to stand *in loco parentis* to the exclusion of the parent. Ms. Maniaci's arguments are without merit.

Section 40-4-228, MCA, provides, in subsection (2), that a court may award parental interest to a person other than a natural parent when

> (a) the natural parent has engaged in conduct that is contrary to the child-parent relationship; and
>
> (b) the nonparent has established with the child a child-parent relationship . . .

Id. Nothing in this section contains any suggestion that it is limited to a finding of abuse or neglect.[6] This Court may not insert its own limitations into the plain wording of the statute. See § 1-2-101, MCA (The "office of the judge is simply to ascertain and declare what is...contained therein, not to insert what has been omitted or to omit what has been inserted."); State v. Merry, 2008 MT 288, ¶ 12, 345 Mont. 390, 392, 191 P.3d 428, 430. Accordingly, the District Court properly interpreted the statute to include a situation where a parent acts contrary to her exclusive parental interest by consenting to and encouraging the development of a parent-child relationship between another and her children.[7]

Ms. Maniaci also argues that subsection 4, 40-4-228, MCA, is the only way to establish conduct contrary to a parental interest. Subsection 4 states that "[f]or purposes of this section, voluntarily permitting a child to remain continuously in the care of others for a significant period of time so that the others stand in loco parentis to the child *is conduct that is* contrary to the parent-child relationship." § 40-4-228(4), MCA (emphasis added). By

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[6] Indeed, § 40-4-228(5), MCA, states "[i]t is not necessary for the court to find a natural parent unfit before awarding a parental interest to a third party under this section."

[7] As discussed below, infra 35-36, 44-45, a number of other state courts have recognized that consenting to parent with another person is contrary to an exclusive parent-child relationship.

its plain language, subsection (4) merely illustrates *one example* of actions that would satisfy the requirements of subsection 2(a). If subsection (4) were intended to describe the *only way* in which a parent can act contrary to the parent-child relationship, there would be no reason to include it as a subsection of the statute separate from subsection 2(a), and it would clearly indicate that it was intended to be exhaustive. Moreover, even if § 40-4-228(4), MCA, could be construed as not illustrative but mandatory, it is clear that this record meets that standard. The record uncontrovertedly shows that Ms. Kulstad was a parent to the children for the same period of time as Ms. Maniaci. They were brought into the home that she and Ms. Maniaci shared. Ms. Maniaci allowed Ms. Kulstad to care for the children on a daily basis as any parent would. And, the children view Ms. Kulstad as one of their two parents.

Contrary to Ms. Maniaci's suggestion, the term *in loco parentis* does not require that the children be cared for when Ms. Maniaci is absent, and no such limitation is in § 40-4-228(4), MCA, or any other Montana statute. "*In loco parentis*" means simply "in the place of a parent." Ms. Kulstad certainly acted "in the place of a parent" in this case by co-parenting the children. See, e.g., T.B. v. L.R.M., 567 Pa. 222, 232-33, 786 A.2d 913, 919 (2001) (in determining whether a non-legal parent stood *in loco parentis*,

"whether or not [the child] was left in the 'sole' care of [the non-biological parent] is not controlling as [she] has demonstrated that she assumed a parental status and discharged parental duties").

Ms. Maniaci's reliance on Peterson v. Kabrich (1984), 213 Mont. 401, 691 P.2d 1360, in support of her claim that a person must act as a parent to the exclusion of the natural parent to satisfy the definition of *in loco parentis*, is unavailing. Peterson contains no such requirement or suggestion:

> In order to stand *in loco parentis* to another, a person must intentionally assume the status of a parent by accepting those responsibilities and the obligations incident to the parental relationship without the benefit of legal adoption. [citations omitted].

Id. at 408, 691 P.2d at 1364. As the District Court's found, this is exactly what Ms. Kulstad did here by acting as a parent to LM and AM for the last eight and five years, respectively.[8]

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[8] In Peterson, the question before the Court was whether a transfer of real property from an aunt to her nephew was a gift or a loan. The Court held that the aunt did not stand *in loco parentis* (which would create a presumption that the transfer was a gift), because while she was admittedly close to him, there was no evidence that she had ever acted as his parent. Id. at 408, 691 P.2d at 1364. Similarly, Nieman v. Howell (1988), 234 Mont. 471, 764 P.2d 854, also relied on by Ms. Maniaci, involved the issue of whether payments made by a stepfather were gifts. The Court rejected the argument that he stood *in loco parentis* to his stepson because there was "no evidence in the record which establishes [that] fact." Id. at 475, 764 P.2d at 856. Here, in contrast, the District Court found clear and convincing

Accordingly, the District Court's findings that Ms. Maniaci acted contrary to her parental interests by creating and fostering a co-parenting relationship between Ms. Kulstad and the children, and allowing that relationship to continue for many years, are grounded in the plain language of the statute and are fully supported by the record.

*2. Ms. Kulstad has a parent-child relationship with LM and AM.*

The second factor in § 40-4-228, MCA, requires a finding that the petitioner established a parent-child relationship as defined in § 40-4-211, MCA. Section 40-4-211, MCA, defines parent-child relationship as:

> a relationship that exists or did exist, in whole or in part, preceding the filing of an action under this section, in which a person provides or provided for the physical needs of a child by supplying food, shelter, and clothing and provides or provided the child with necessary care, education, and discipline and which relationship continues or existed on a day-to-day basis through interaction, companionship, interplay, and mutuality that fulfill the child's psychological needs for a parent as well as the child's physical needs.

As the District Court recognized, the parties understood that "they would function equally as parents. FOF at ¶¶ (B)(4) and (6). Moreover, the Court found, Ms. Kulstad has "provided for the children's physical, psychological,

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evidence of a parental relationship, including the assumption of the responsibilities and obligations of parenting.