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Mind the Gap: Technology as a Lifeline for Pro Se Child Custody Appeals

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Mind the Gap: Technology as a Lifeline for Pro Se Child Custody Appeals

*Katherine L.W. Norton**

ABSTRACT

As the justice gap continues to grow, and because there is no federal constitutional right to counsel in civil cases, there is an ongoing need to develop solutions to assist those who cannot afford attorneys to navigate the difficult procedural issues associated with their legal matters. Appellate procedure is difficult to comply with even when a person has legal training, and for the pro se litigant it can be particularly difficult to articulate a meritorious claim and draft the documents required to initiate an appeal. Failure to comply with the procedural requirements for an appeal can result in the appellate court finding waiver or even dismissing the case prior to it being heard on the merits. Artificial intelligence systems and technology have been identified as a means to help close the justice gap. Through a case vignette, this article will explore the need for additional options to help close the justice gap and will exemplify how technology can assist with the justice gap by presenting an application designed to assist pro se litigants in the creation of the initiating documents for Pennsylvania child custody appeals.

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I. INTRODUCTION

“[Seven] in [ten] low-income Americans with recent personal experience of a civil legal problem say a problem has significantly affected their lives.”¹ “[Seventy-one percent] of low-income households have experienced at least one civil legal problem in the past year.”² Of those civil issues experienced, 27% of the households were dealing with matters relating to children or custody.³ Self-represented litigants “are prone to committing administrative, procedural and substantive errors.”⁴ These facts and statistics are just a few examples illustrating the breadth of the justice gap in the United States. Those in need of legal services cannot afford them or face other barriers to access. The justice gap is a complex problem which will not be fixed easily, but technology can significantly assist those who lack the means to have counsel to effectively navigate procedural matters. Technology applications, such as the proposed program application below, will help put a band-aid on the ever-increasing justice gap and can help litigants navigate difficult procedural issues.⁵

As the Director of Clinical and International Programs at Duquesne University School of Law, and the supervising attorney of our Family Law Clinic, I observe the procedural difficulties faced by low income litigants who do not have the means to hire private counsel. This becomes especially apparent when dealing with child custody cases and appeals. To more effectively illustrate the problem, I have compiled a case vignette below incorporating many of the procedural issues faced by pro se litigants in real cases presented to the Duquesne University School of Law Family Law Clinic in the Fall 2018 Semester.⁶

Betty is a grandmother and loves her grandchildren, Barbara and Gail. She took care of Barbara and Gail for the past year because their parents have been struggling with an opioid addiction. During this time, Betty has done everything for the girls. She made sure that they attended school each day, had regular doctor and dentist appointments, and provided for their daily needs. Barbara struggled in school the prior year due to the problems her parents

1. LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 7 (2017), <https://www.lsc.gov/justicegap2017>.

2. *Id.* at 21.

3. *Id.* at 23.

4. Ayelet Sela, *Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation*, 26 CORNELL J.L. & PUB. POL’Y 331, 339 (2016).

5. See LEGAL SERVS. CORP., *supra* note 1, at 9.

6. Names and facts have been modified to protect confidentiality, but the facts as presented are frequently seen across Pennsylvania courts.

were having, but with Betty's help, Barbara is getting straight A's as a fourth grader. Gail is in kindergarten, and if not for Betty, she would have missed the enrollment period and would be a grade behind. During this time, Betty has also been able to help the girls' parents by making sure that they are successful in their rehabilitation program. Things were going well for this family despite the hardships that they have faced.

However, a month ago, Barbara's and Gail's father completed rehabilitation and immediately came to pick up the girls from Betty. Betty does not know what to do, as the girls' father says that they are leaving and will never see Betty again as he is angry with her because she is still helping the girls' mother. Father's anger stems from the mother's decision to end her relationship with father. The police tell Betty they cannot help as she does not have a custody order, and they have to protect the father's interests. Betty does not understand what has happened but knows she needs legal help.

Betty cannot afford an attorney due to her limited means. But Betty has a number of options for assistance with her trial court legal needs due to the active pro bono community and two law schools in the Pittsburgh area providing limited representation to those who cannot afford an attorney. Betty walks into a family law clinic, where law students help prepare documents and give advice to those seeking assistance. The student attorneys⁷ prepare a custody pleading asking for Betty to have custody rights as the girls' grandparent.⁸ As the next step in the process, the court schedules a hearing for Betty to explain how she has standing. There are no available pro bono programs that can help Betty with this hearing, but Betty feels well prepared so she heads to court confident that she will get an order allowing her to see her grandchildren. When she gets to court, the judge asks her why she has standing to see the children. She tells the court that all she wants to do is see her grandchildren. The judge asks if Betty still has custody of the children, and she admits that she does not.

The judge tells Betty she does not have standing and cannot ask the court for custody of the children. Her case is over before it began. Betty leaves court, unsure about what happened or what, if anything, she can do now. She knows the custody complaint that the students created for her raises a number of bases for standing that the court did not address when dismissing her case. She talks

7. See PA. B. ADMISSION R. 321.

8. See 23 PA. CONS. STAT. §§ 5324-5325 (2014).

to several pro bono programs. They tell her she should file an appeal as long as she has a “meritorious claim.” However, she does not even know where to start. Betty inquires to see if anyone can help her. No attorneys are available to take on a pro bono custody appeal. The law schools do not take appellate cases, but they inform her that she needs to get a number of documents filed within thirty days of the trial court’s order.

Betty’s situation is not unusual. In general, resources are not available for pro bono attorneys to take on appellate cases.⁹ So Betty is left out in the cold unless she can find someone to help her quickly, due to the appellate timing and filing requirements. She must file her Notice of Appeal and Statement of Errors Complained of on Appeal simultaneously.¹⁰ If she had assistance in the preparation of these documents, she may be able to proceed with her case, as her issues would be preserved. The appellate court would hear the merits of her case, and because the Pennsylvania statute governing standing for grandparents seeking partial physical custody and supervised physical custody allows Betty to proceed with her request for custody time with her grandchildren, Betty would likely be successful.¹¹

Research suggests one of the largest hurdles pro se litigants face are those involving procedural issues.¹² Initially, a custody complaint requires that a person includes all demographic information: who the potential parties may be, their residences, and a basic reason for why it is in the best interest of the child to spend time with the requesting party.¹³ Yet, if the case does not go as anticipated, the appellate process often has significant procedural pitfalls.¹⁴ A litigant is given only thirty days from the date of the order’s entry to file an appeal and list the perceived trial court errors.¹⁵ This is a potential pitfall for a pro se litigant because if the litigant fails to raise issues properly, it can result in the appellate court finding waiver or dismissing the appeal.¹⁶

9. While the state of Colorado has a successful appellate pro bono program, it has only accepted 18% of applications over the past five years. See Marcy G. Glenn, *Pro Se Civil Appeals—Resources and Opportunities*, COLO. LAW., June 2016, at 57, 58. The California courts have also recently developed an online self-help center focusing on appeals assistance for pro se litigants. See *Self Help Resources*, CAL. CTS., <https://www.courts.ca.gov/2148.htm> (last visited Oct. 5, 2019).

10. See PA. R. APP. P. 1925(a)(2)(i).

11. See 23 PA. CONS. STAT. §§ 5324-5325.

12. Tori R.A. Kricken, *The Justice Gap: The Impact of Self-Representation on the Legal System and Judicial System (and Beyond)*, WYO. LAW., Oct. 2016, at 16, 19.

13. See PA. R. CIV. P. 1915.15(a).

14. See generally PA. R. APP. P. 1925.

15. See *id.* at 903.

16. *Id.*

The initial filings in the appeal process are a significant hurdle for those who do not practice law given the timing and the technicalities involved. With respect to Pennsylvania, technology would assure that the litigant has completed a Notice of Appeal¹⁷ and a Concise Statement of Errors Complained of on Appeal.¹⁸ Specifically, technology could assure that Betty avoids the procedural minefields of the initial appellate filings. The Notice of Appeal itself requires a significant amount of both demographic and procedural information. The Concise Statement of Errors Complained of on Appeal requires a litigant to cite specific errors, identifying how the trial court made a legal error or abused its discretion.¹⁹ An inappropriately drafted Concise Statement of Errors Complained of on Appeal leads to a finding of waiver (dismissal of the case) when:²⁰ it is vague;²¹ it is not in the correct form;²² it is not filed timely;²³ not all issues are raised prior to briefing;²⁴ issues are not ripe;²⁵ issues

17. See *id.* at 904, 905.

18. See *id.* at 1925. Rule 1925 provides:

(a)(2)(i) The concise statement of errors complained of on appeal shall be filed and served with the notice of appeal required by Rule 905. See PA. R. APP. P. 905(a)(2). . . .

(b)(4) *Requirements; waiver.*

(i) The Statement shall set forth only those rulings or errors that the appellant intends to challenge.

(ii) The Statement shall concisely identify each ruling or error that the appellant intends to challenge with sufficient detail to identify all pertinent issues for the judge. The judge shall not require the citation to authorities; however, appellant may choose to include pertinent authorities in the Statement.

(iii) The judge shall not require appellant or appellee to file a brief, memorandum of law, or response as part of or in conjunction with the Statement.

(iv) The Statement should not be redundant or provide lengthy explanations as to any error. Where non-redundant, non-frivolous issues are set forth in an appropriately concise manner, the number of errors raised will not alone be grounds for finding waiver.

(v) Each error identified in the Statement will be deemed to include every subsidiary issue contained therein which was raised in the trial court; this provision does not in any way limit the obligation of a criminal appellant to delineate clearly the scope of claimed constitutional errors on appeal.

(vi) If the appellant in a civil case cannot readily discern the basis for the judge's decision, the appellant shall preface the Statement with an explanation as to why the Statement has identified the errors in only general terms. In such a case, the generality of the Statement will not be grounds for finding waiver.

(vii) Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.

19. Commonwealth v. Hansley, 24 A.3d 410, 415 (Pa. Super. Ct. 2011).

20. PA. R. APP. P. 1925(b)(4).

21. See *Hansley*, 24 A.3d at 415.

22. *Id.*

23. See *In re L.M.*, 923 A.2d 505, 508-09 (Pa. Super. Ct. 2007). While this is not a bright line rule in family law cases, it does pose a hurdle as it is within the discretion of the court to find waiver.

24. PA. R. APP. P. 1925(b)(4)(vii).

25. See *Bayada Nurses, Inc. v. Commonwealth of Pa. Dep't of Lab. and Indus.*, 8 A.3d 866, 874 (Pa. 2010).

are moot;²⁶ and issues are not limited, and are therefore deemed to be meritless.²⁷

Betty's legal issue should be straight forward so long as she complies with the specific rules and facts that must be pled. However, the standard is not easily understood. With this in mind, it becomes even more concerning that in family law cases at least one party appears pro se approximately 80% of the time.²⁸ As a result, there is an ongoing effort to design methods to address what is becoming a "pro se problem" in the United States regarding appeals.²⁹ All of the alternatives, including lawyers taking pro bono cases, self-help centers and ghost writing, have fallen short. In fact, while the American Bar Association calls on attorneys to dedicate time to pro bono services, there are limitations in available time and resources on private attorneys' ability to take on those cases³⁰

In 2017, Legal Services Corporation (LSC) reported that 86% of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help.³¹ Due to the ongoing need and issues that litigants like Betty face, many jurisdictions have begun to explore non-attorney solutions to assist pro se litigants.

Artificial intelligence systems can be useful as a remedy to this problem, and have been identified as an asset for the delivery of legal services to low-income clients. In 2017, LSC funded twenty-five Technology Initiative Grants to twenty-two legal service organizations to develop technologies to improve efficiency and provide greater assistance for low-income Americans.³²

By providing pro se litigants support through the use of technology, issues surrounding access to justice in appeals may be mitigated. Artificial intelligence systems can guide litigants through

26. See *Driscoll v. Zoning Bd. of Adjustment of Phila.*, 201 A.3d 265, 266 (Pa. Commw. Ct. 2018).

27. *Id.* at 268 n.2.

28. Deborah L. Rhode et al., *Access to Justice Through Limited Legal Assistance*, 16 NW. J. HUM. RTS. 1, 3 (2018); see also Michele N. Struffolino, *Taking Limited Representation to the Limits: The Efficacy of Using Unbundled Legal Services in Domestic-Relations Matters Involving Litigation*, 2 ST. MARY'S J. LEGAL MALPRACTICE & ETHICS 166, 197-98 (2012) ("In some states, as many as 80% of cases in family court involve at least one unrepresented party.")

29. Rhode, *supra* note 28, at 4-6.

30. See AM. BAR ASSOC. STANDING COMM. ON PRO BONO & PUB. SERV., SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 20 (2018), https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lsc_pb_supporting_justice_iv_final.pdf.

31. See LEGAL SERVS. CORP., *supra* note 1, at 6.

32. 2017 *Annual Report Pro Bono and Tech*, LEGAL SERVS. CORP., <https://www.lsc.gov/media-center/publications/2017-annual-report-pro-bono-and-tech> (last visited Nov. 15, 2019).

procedural traps and formalities, and assure that pro se litigants are able to move their appellate issues forward, placing a band-aid on the significant justice gap associated with custody appeals.

For Betty, to avoid her appeal being dismissed due to the failure to comply with these requirements, decision tree algorithms³³ can be utilized to create a program that is easy for her to use so she may properly file the appeal-initiating documentation and avoid having her case dismissed prior to it being heard on the merits. The proposed program is a low cost, simple to use, and efficient way to remove a significant hurdle placed before the pro se litigant who desires to challenge a trial court's determination regarding the custody of a minor child.

II. THE LAW, DESIGN, AND IMPLEMENTATION PROCESS

In an effort to try to help bridge this justice gap, even in the smallest of ways, a program is being developed for litigants to appropriately comply with the initial filing procedures for appeals in child custody cases, using Pennsylvania as a test jurisdiction.³⁴ Pennsylvania appellate procedure for child custody actions is being utilized to complete this program.

Procedurally, there are two documents that must be completed and filed for the initiation of a child custody appeal in Pennsylvania. The first is the Notice of Appeal,³⁵ and the second is the Concise Statement of Errors Complained of on Appeal.³⁶ As child custody appeals are deemed part of the Children's Fast Track cases in Pennsylvania, these documents must be filed simultaneously, within thirty days of the entry of the trial court's decision.³⁷ The Notice of Appeal requires specific information, such as: litigant names, docket number, caption, indication of a transcript request, a copy of the order, docket entries, and an indication that the case is a "Children's Fast Track" case.³⁸ The Concise Statement of Errors Complained of on Appeal has similar specific requirements regarding what must be included in the document, such as requiring the litigant to identify the errors of the trial court.³⁹ In order to identify potential errors, the litigant is required to understand what a trial

33. Generally, a decision tree algorithm is where the branches represent decisions and their potential outcomes or consequence. See Bogumil Kaminski et al., *A Framework for Sensitivity Analysis of Decision Trees*, 26 CENT. EUR. J. OPERATIONS RES. 135, 138 (2018).

34. The program is being developed with Crivella Technologies.

35. See PA. R. APP. P. 905(a)(1).

36. See *id.* at 905(a)(2); *Id.* at 1925(a)(2)(i).

37. *Id.* at 1925(a)(2)(ii).

38. See *id.* at 905(b).

39. *Id.* at 1925(b).

court is required to consider when making determinations relating to a litigant's child custody action.

Given the difficulties that can occur with determining the areas of potential errors, the program is being designed using decision tree algorithms. As a pilot, we are starting by addressing claims relating to standing, which was Betty's issue. To ultimately understand the design, it is necessary to begin by explaining the requirements Betty must meet in order to proceed with the litigation at the trial court level.

There are four groups of parties that are permitted to move forward with custody litigation in Pennsylvania.⁴⁰ These include: a parent of the child, a person who stands *in loco parentis*, individuals meeting certain requirements when the parents are unavailable, and grandparents/great-grandparents.⁴¹ While there is no standard to meet for a parent to proceed with litigation aside from being "the parent," it becomes more complicated for third parties, such as grandparents and persons acting *in loco parentis*.⁴²

Specifically, the law requires a person standing *in loco parentis* to plead that the relationship began with the consent of the parents and that they have acted as if they were a parent.⁴³ Both of these requirements are defined in the common law and require specific factual pleadings, such as how the party obtained consent from the parent, or how they have acted as a parent.⁴⁴

A grandparent seeking custody who is not *in loco parentis* must show: the relationship began with the consent of a parent or by court order; they are willing to assume responsibility for their grandchild; and the child is determined to be dependent, at risk, or has lived with the grandparent for a minimum of twelve consecutive months.⁴⁵

For grandparents or great-grandparents seeking partial custody, they must show one of the following: the parent of the child is deceased and the deceased parent is their child or grandchild; the grandparent's relationship with the child began with the consent of the parent or by court order, a custody action by the parents has commenced, and the parents do not agree with the grandparent having any custody of the child; or the child has resided with the

40. 23 PA. CONS. STAT. § 5324 (2014).

41. *Id.*

42. *Id.*

43. *K.W. v. S.L.*, 157 A.3d 498, 505 (Pa. Super. Ct. 2017).

44. *Id.* at 507.

45. 23 PA. CONS. STAT. § 5324.

grandparent or great-grandparent for at least twelve consecutive months.⁴⁶

The last group who may seek custody are “individuals who meet certain criteria.”⁴⁷ This requires the individual to show, by clear and convincing evidence: they have or are willing to assume responsibility for the child; the individual has an interest in the welfare of the child (and the court can consider the “nature, quality, extent and length” of involvement with the child); and neither parent has care and control of the child.⁴⁸ Notably, this type of standing is not available if there is a dependency proceeding or an order for permanent legal custody.⁴⁹

When a party is not permitted to proceed with the litigation, such as the case with standing matters, it can be difficult to determine if there is a meritorious basis to file an appeal. This is a result of the limited record that is created in standing proceedings as well as the difficulties that individuals have explaining their circumstances when they do not understand the requirements for standing. This is generally the result of a litigant’s lack of understanding of the steps necessary to prove that they have standing *in loco parentis*, as a grandparent, or as an “individual who meets certain criteria,” and their ability to provide the necessary information to the court. Given the potential options for someone to have standing to proceed with custody litigation in Pennsylvania, it is easy to see how a pro se litigant may not be able to adequately articulate the error by the trial court, should one exist.

If the litigant does not accurately evaluate standing, the litigant’s failure to raise it in a Concise Statement of Errors Complained of on Appeal may result in waiver and a refusal by the appellate court to address the issue.⁵⁰ Additionally, the failure to contemporaneously file this statement, which most pro se litigants are unaware of, can result in dismissal of the appeal in its entirety.⁵¹ While the court is discouraged from dismissing a case in this manner, it is within the court’s discretion to do so.⁵² Further, given that standing is required for a person such as Betty to move forward with an action, the failure to raise the issue through the appeal process would

46. *Id.* § 5325.

47. *See id.* § 5324(4).

48. *Id.*

49. *See id.* § 5324(5).

50. *See* M.G. v. L.D., 155 A.3d 1083, 1099 (Pa. Super. Ct. 2017), *appeal denied*, 169 A.3d 522 (Pa. 2017); *see also* PA. R. APP. P. 1925(b)(4)(vii).

51. *In re* K.T.E.L., 983 A.2d 745, 747 (Pa. Super. Ct. 2009).

52. *Id.*

effectively preclude the individual from making a request for custody of the child.

The development of the program is focused on Pennsylvania law because the inspiration came from the experiences faced by people like Betty. The jurisdiction is also an ideal setting for the initial tests of the program, given the limited and repetitive nature of issues raised in child custody appeals in Pennsylvania.

Looking at the past year, Pennsylvania child custody appeals that proceeded to argument in the intermediate appellate court (the Pennsylvania Superior Court) can be broken down into five areas. These areas involved issues dealing with: standing (who can bring the action), jurisdiction (what location is appropriate to hear the case), the factors utilized to determine the best interest of the child,⁵³ procedural errors with issues such as service and notice, and evidentiary issues. Utilizing these areas, we are designing the program to evaluate and determine if there is a meritorious claim for appeal to be raised in the Concise Statement of Errors Complained of on Appeal.

The program will take a litigant through prompts, leading the litigant to provide the necessary information for a complete Notice of Appeal. Following the completion of this document, the litigant will move through the decision tree to evaluate if the litigant meets the criteria for a meritorious claim in any of the five child custody areas that can be ripe for appeal. If the litigant does meet the criteria, language will be added to the Concise Statement of Errors Complained of on Appeal stating the litigant's meritorious claim(s). In the end, a litigant would have both a Notice of Appeal and a Concise Statement of Errors Complained of on Appeal completed and ready to be filed with the court within the designated time period.

When contemplating the design of the program, we wanted the program to be easy to use, readily available, and understandable to a non-lawyer. Accordingly, we determined it was best to design the program as a cell phone or tablet style application. Focusing on the issue that Betty presents, we chose the issue of standing in child custody actions because it is primarily statutorily driven and steps are available to determine if a litigant has standing to move forward. This process starts by having the application ask if the litigant is a parent and if the judge allowed a third party to participate in the litigation or if the litigant is a third party and the judge prevented the litigant from participating in the litigation. Once this determination is made, the application walks the litigant through

53. See 23 PA. CONS. STAT. §§ 5324-5325, 5421.

the different areas where the trial court may have erred in making a standing determination.

Application of this program to Betty’s situation is illustrated in the wire frames below, which show how Betty can reach her meritorious issue (in legal terminology) for the Concise Statement of Errors Complained of on Appeal. Betty, a grandmother, who was denied standing by the trial court, would start with the middle path of the wire frame in Figure 1. Because Betty was requesting less than 50% of the overnights with the children, the next step proceeds to the A-1 wire frame, continuing through the prompts to lead Betty down the path of determining if she has a meritorious issue for appeal.

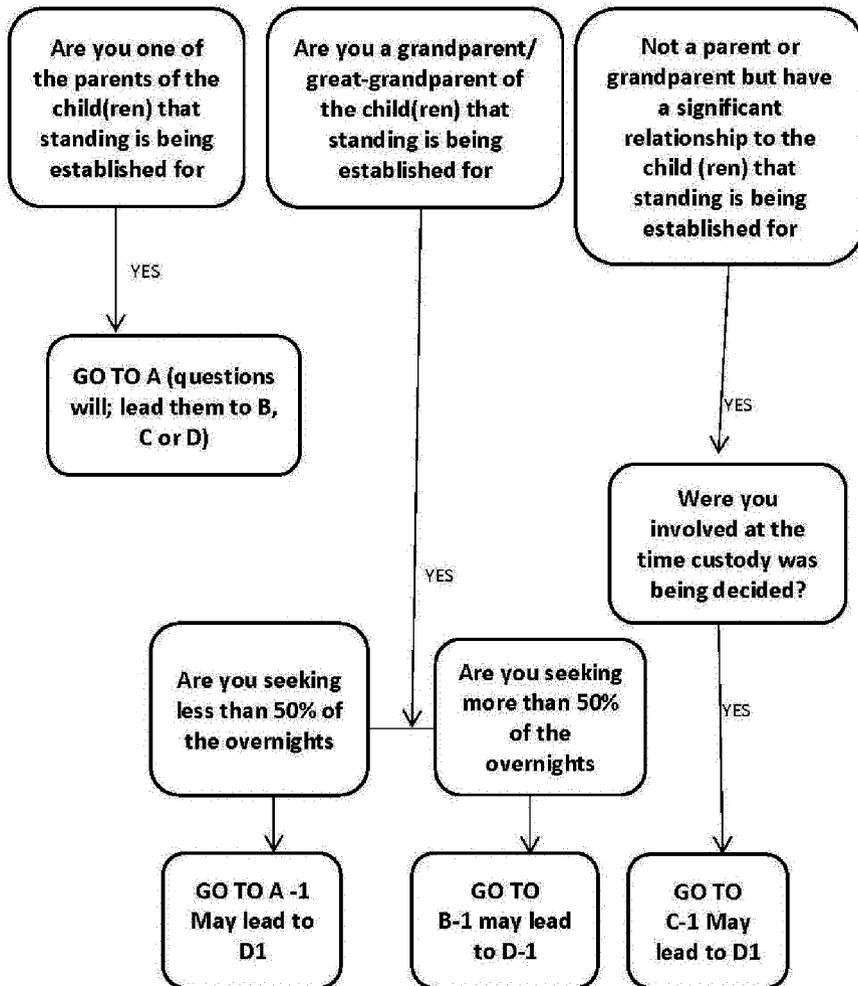


Figure 1: Wire Frame: Individual Standing Starting Point⁵⁴

54. Wire frame designed by Crivella Technologies.

Betty will work her way through the A-1 wire frame in Figure 2 below: she is a grandparent; neither one of the parents is deceased; her relationship with the children began with the consent of the parents; the parents have not commenced a custody action; the children have lived with her for twelve months and she filed her action within six months from the children being removed; and, as the court did not let her participate in the litigation, she now has an error that she may raise on appeal. As a result, an appropriate issue will be placed on her Concise Statement of Errors Complained of on Appeal.

At the end of reviewing these prompts, Betty would have a document stating the following: “The trial court erred in determining that Grandmother did not have standing to petition for grandparent custody rights under 23 Pa. Cons. Stat. § 5325(3).”⁵⁵ For Betty, this means she will be able to pursue her argument that the trial court erred in denying her standing, as she had primary custody of Barbara and Gail for twelve months and she filed her custody action within six months of the children’s removal from her house.

55. A Concise Statement of Errors Complained of on Appeal would include this language to preserve Betty’s issue for appeal regarding the trial court’s error in denying her standing request. See *Grom v. Burgoon*, 672 A.2d 823, 825 (Pa. Super. Ct. 1996).

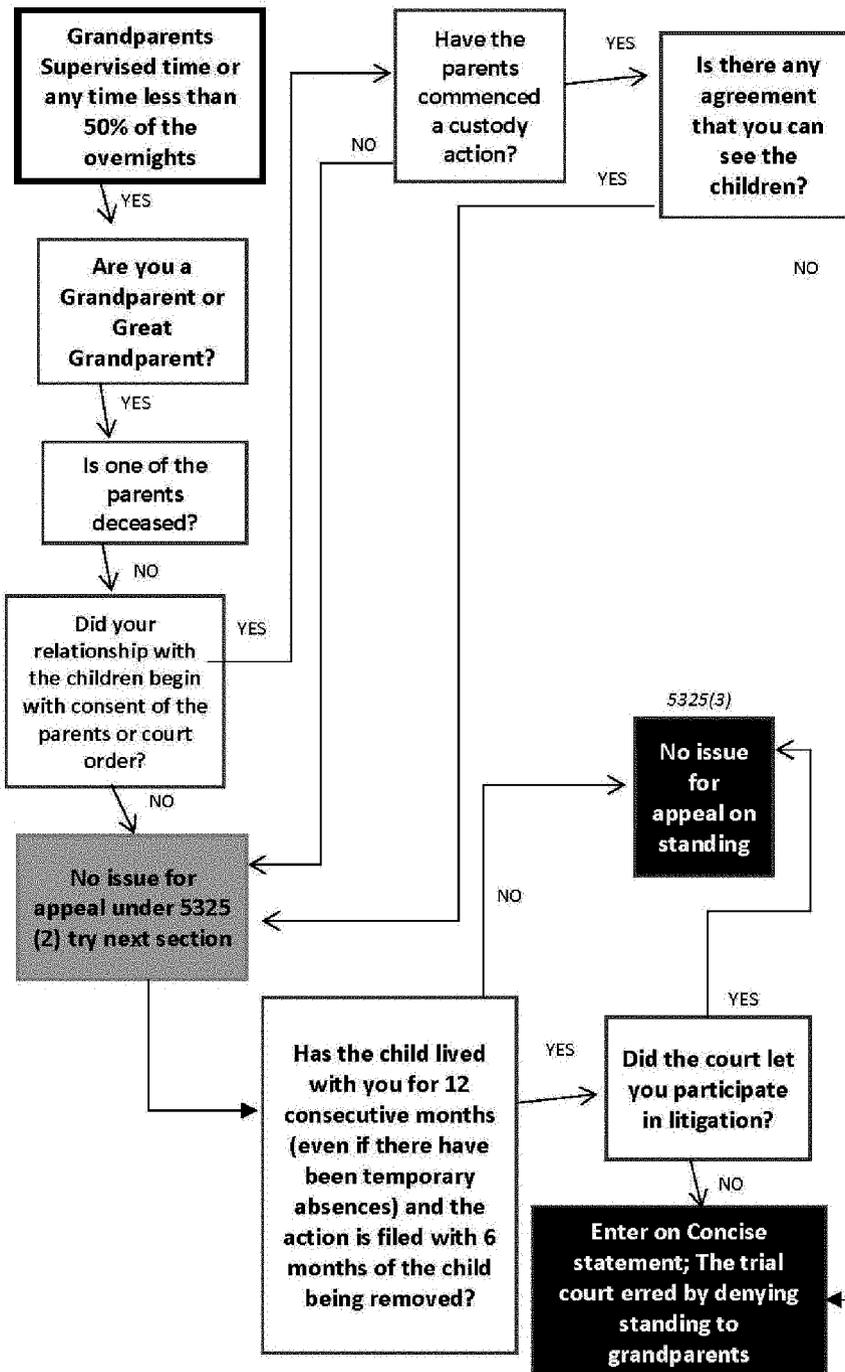


Figure 2: A-1 Wire Frame: Grandparent Partial Custody Standing Pursuant to 23 Pa. Cons. Stat. § 5325(3)⁵⁶

56. Wire frame designed by Crivella Technologies.

When the remaining decision trees are completed, the most common meritorious issues that can be raised for a child custody appeal will be able to be evaluated for a pro se litigant. In the end, the program will generate a comprehensive Notice of Appeal and Concise Statement of Errors Complained of on Appeal for the litigant. These can then be reviewed by an attorney and filed with the court, and the appeal process will move to the next step without the risk of the appellate court finding waiver. Any self-help material or program designed to be used by a non-attorney must be designed to avoid legalese and to be user friendly.⁵⁷ Given the accessibility of smart phones and computer applications, the design will mirror the common applications that litigants are exposed to on a regular basis, such as online food ordering programs.

We are currently in the application development process and are not yet testing the program. To test, we hope to implement the program in a local Pittsburgh Appellate Pro Bono Program whereby attorneys will represent a litigant in a child custody appeal if there is a meritorious claim.⁵⁸ Part of the program requires that the pro se litigant fill out an application explaining their appellate issues.⁵⁹ In addition to completing the application, we will ask the litigant to utilize the program to generate their Notice of Appeal and Concise Statement of Errors Complained of on Appeal. These documents will be sent to the attorney reviewing the case for merit, in conjunction with the client's application. The attorney will then indicate whether they believe the case had a greater likelihood of surviving waiver based on the prepared documents. The ultimate goal is for these cases to proceed to the appellate court on issues of merit and not to be waived due to a pro se litigant's inability to complete procedural requirements.

III. APPLICATION EVOLUTION

While the program is using Pennsylvania law for the test version of the application, it is designed in a manner that can be utilized by other states by simply changing the prompts embedded in the decision trees. This is, in part, why we have focused on utilizing commonly available technologies at this point. As this will be a helpful tool for pro se litigants to overcome procedural hurdles, we want to make sure that the technology is easily adaptable and available

57. James D. Greiner et al., *Self-Help, Reimagined*, 92 IND. L.J. 1119, 1156 (2017).

58. *Family Law Appellate Pro Bono Pilot Project*, ALLEGHENY COUNTY B. FOUND., http://www.pittsburghprobono.org/Family_Law_Appellate_Pro_Bono_Pilot_Project.asp (last visited Oct. 23, 2019).

59. *Id.*

without the need for significant funding sources, personnel resources, or any of the challenges we already have in addressing the ongoing justice gap.

The application has the potential to evolve beyond the initial appellate procedural filings. We are simultaneously compiling data on the success of each child custody action brought before the appellate court in Pennsylvania over the past five years. The goal is to identify winning arguments before the appellate court and to transpose those into the program so, at the time of filing the Notice of Appeal and Concise Statement of Errors Complained of on Appeal, the arguments in favor of or against the appeal themselves are evaluated for their likelihood of success. While this is a more complicated use of technology, which would impact the ease of use and potentially implicate the Rules of Professional Conduct, this is a particularly important evolution for child custody cases as a pro se litigant should have the opportunity to evaluate the pros and cons of their potential appeal given the potential ramifications of filing an appeal. While an appeal is pending, the underlying child custody order remains in effect and is non-modifiable.⁶⁰ As appeals can be lengthy, even when on a “fast track,” this can leave a pro se litigant an extended period without the ability to seek modification of a child custody order and this ultimately may make an appeal unwise when evaluating it against the needs of the family and the factual scenario of the case. Evaluating the expansion of the use of artificial intelligence and technology in legal matters, such as this, is important given the ongoing needs of those who cannot afford counsel.

IV. CONCLUSION

Given the ongoing need for creative solutions to address the growing justice gap, it is necessary to assess non-traditional options for assisting litigants. With the difficulties pro se litigants face with procedural legal matters, programs such as the one proposed can help litigants avoid the procedural pitfalls in appeals, assuring that cases such as Betty’s are heard on the merits and are not dismissed for procedural errors.

60. PA. R. APP. P. 1701.