

In re: K.J.H., a Minor: 2018 Pa.Super. 37

Paternal grandparents appealed from an order denying their petition to involuntarily terminate the parental rights of the mother of their grandchild. The Court vacated the order and remanded it for proceedings consistent with the Court's opinion. The Court's primary focus, which it asserted must be raised on a *sua sponte* basis if not raised by a party, was whether the child at issue was represented at the trial level. The Court noted that failing to appoint counsel for a child in a parental termination case is considered a structural error; the trial court did not appoint counsel for the child in the instant matter. A structural error is defined as one that affects the framework within which the trial proceeds, rather than simply an error in the trial process itself. Structural errors are not subject to harmless error analysis. By failing to appoint counsel to represent a child pursuant to 23 Pa.C.S.A. Section 2313(a) (which creates a statutory right for a child to have court appointed counsel by directing that the Court "shall" appoint such counsel) in the instant matter, the Court committed error of law.

Graham v. Flippen and Flippen v. Graham, 2018 Pa.Super. 20

Graham filed four separate petitions for expungement to seek the expungement of the records of four protection from abuse cases between the parties (Graham was defendant in three of them and plaintiff in one). The trial court denied Graham's petitions and, upon his appeal, Superior Court reversed the trial court's orders and remanded the cases. Pursuant to established case law, a party is entitled to the expungement of protection from abuse records in cases that have not been proven and brought to a final order. In such a case, an expungement is proper as a matter of law. In the instant matter, the first three cases, where Graham was defendant, only temporary PFAs orders were entered and ultimately dismissed before a hearing was held; therefore he was entitled to an expungement of these as a matter of law. The trial court expressed concern that these PFA cases were used as evidence for a criminal matter against Graham and expunging them would essentially serve to destroy evidence in a criminal case. Superior Court disagreed and ruled that, regardless of expungement, the PFAs would still be in the evidentiary record, and despite that, the case law cited above is clear and definitive that Graham was entitled to expungement by the operation of law. The fourth case, in which he was plaintiff, was an unusual expungement request. In this case, a final order was entered, but against Graham and in favor of Flippen. The Court ruled that as the allegations in the underlying PFA were unproven, it comes within the ambit of the case law mentioned above and the PFA ought to be expunged.

J.C. v. K.C., 2018 Pa.Super. 29

J.C. appealed from trial court orders which relinquished jurisdiction to Tompkins County, New York and, accordingly, dismissed his custody complaint filed in Philadelphia Family Court. The child at issue resided in Pennsylvania for approximately nine months whereupon K.C. removed the child to New York and filed for custody and the equivalent of a PFA there. J.C. filed a custody complaint in Pennsylvania, challenged New York's jurisdiction, and argued that Pennsylvania is the child's home state pursuant to 23 Pa.C.S. 5401 - 5482, the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), which applies to both Pennsylvania and New York. The parties engaged in motion practice over the matter of jurisdiction which culminated in a telephone conference between the judges hearing the case in both Pennsylvania and New York. Following the telephone conference, Pennsylvania trial court ceded jurisdiction to New York, leading to the dismissal of J.C.'s complaint for custody, which provoked J.C. to appeal both the jurisdictional issue and the dismissal of his complaint. Superior Court noted that Pennsylvania certainly had

initial jurisdiction as the child lived in Pennsylvania for at least six months. Upon discovering that there was a concomitant Pennsylvania case, the judge in New York was obliged to communicate with his counterpart in Pennsylvania (see 23 Pa.C.S. Section 5424(d)). While the parties are not necessarily entitled participate and/or be included in the call between the two judges, they are entitled to notice of the communication, access to the record, and the option to submit relevant facts and legal arguments prior to the ultimate decision on jurisdiction (see 23 Pa.C.S. Sections 5410(b) and (d) and 5427(b)). On appeal, J.C. first argued that the Pennsylvania judge took too long (44 days) to contact the New York judge. While Superior Court noted that the UCCJEA requires the judges to make contact immediately, J.C. did not articulate how he was harmed by the delay and, therefore, this was harmless error. J.C. also argued that as the Pennsylvania judge took a more passive role between the judges, his case was compromised, as well as arguing that the trial court failed to transcribe the entire telephone conference and provide him prompt access to what was actually transcribed. Superior Court noted, as before, these are harmless errors or mistakes leaving it with no relief to grant. By contrast, Superior Court noted that the trial court, in contravention of the law cited above, did not provide J.C. prompt notice of the telephone conference and neglected to permit him to present facts and law before rendering a decision on jurisdiction. The Court ruled that this was an abuse of discretion and, therefore, reversible error as the trial court denied J.C. a full and fair ability to litigate this case. Superior Court remanded the matter to the trial court with the instruction to follow the requirements of UCCJEA mentioned above.