Case Summaries for January 2019

Fetters v. Fetters, No. 332 MDA 2018 (Superior Court - filed January 7, 2019)
Non-Precedential

Husband appealed a January 2018 order directing him to pay Wife "$115,000 from an American Funds IRA for attorney's fees, interest, *et cetera*." The parties had entered into a settlement agreement on the record before the Divorce Master, requiring, inter alia, that Husband transfer various retirement assets of specified amounts to Wife via multiple QDROs. Wife had the QDROs drafted for Husband to sign. Wife subsequently filed a Petition for Contempt to force Husband to sign the QDROs as required by the settlement agreement. At the hearing, Husband signed one of the QDROs and informed the Court that he had combined the other accounts into an IRA so he could transfer the required amount to Wife without a QDRO. The trial court found Husband in contempt for failing to comply with the agreement by unilaterally combining the funds to obviate the need for a QDRO and ordered Husband to pay Wife the original sum from the new combined account plus $2,669 in combined interest and attorney's fees. The trial court also required Husband to reimburse Wife for the cost of preparation of the QDROs. Husband appealed, claiming, inter alia, that the trial court erred in awarding attorney's fees and interest: (i) due to breach of contract or contempt; (ii) without reviewing the invoices from the attorney/actuary; (iii) absent a "scintilla of evidence for IRA and 401k stock and mutual fund accounts which did not accrue interest"; (iv) without referencing a lodestar calculation; and (v) without holding an evidentiary hearing. The Superior Court disagreed with Husband and affirmed the trial court on each argument, including the trial court's decision to award fees and interest, except for the fact that the trial court determined the amount of the award of interest and attorney's fees without holding an evidentiary hearing as required pursuant to 23 Pa.C.S.A. §3502. Accordingly, the Superior Court reversed the trial court's order with respect to the amount of fees and interest and remanded for an evidentiary hearing.

Griffith v. Griffith, No. 343 WDA 2018 (Superior Court - filed January 7, 2019)
Non-Precedential

Husband appealed a February 2018 order denying his petition for modification of support. Wife filed for divorce and a consent ordered was entered, requiring, inter alia, that the current APL order be reduced to $500/month in unmodifiable alimony, terminating on May 31, 2020 . . . and that Husband shall be permitted to seek a modification in the event he became disabled or lost his job through no fault of his own. The consent order was handwritten and signed by both parties and their attorneys. Wife filed for special relief, asserting that the Consent Order was "based on the mutual mistake assumption by the parties that Wife could collect Social Security benefits under Husband's account at one-half of his projected amount." Upon application for benefits, Wife realized she could not collect benefits under his account. The trial court entered an order modifying the consent order to require Husband to pay $600 per month in nonmodifiable alimony, terminating on May 31, 2020 [but that] all other terms of the [Consent Order] will remain unchanged." Husband filed a petition for modification from this order after being laid off at work. The master recommended dismissal, citing the "nonmodificable" nature of the alimony. The Superior Court ultimately vacated the interim order, finding that the trial court erred in failing to consider the provision from the original Consent Order allowing

Husband to seek a modification of otherwise nonmodifiable alimony in the event that he lost his job at no fault of his own.

T.T. v. L.M., No. 966 WDA 2018 (filed February 4, 2019)
Non-Precedential

Mother appealed from the custody order denying her request to relocate with the parties' 13 year-old child from Allegheny County (where the child resided with Father) to her home in Las Vegas. Mother had been the primary custodian of the child in Pennsylvania until 2014, when she moved to Las Vegas, at which point the child moved in with Father where he remained until July 2017. The child went back to live with Mother in Las Vegas for 5 months before returning to Pennsylvania to move back in with Father. Mother filed a Petition for Relocation. Father did not file a Counter Affidavit – filing a Complaint for Custody instead. The trial court held a hearing and denied Mother's request for relocation because the child preferred to live in Pennsylvania with Father. On appeal, Mother first argued that Father's failure to file a Counter Affidavit should have precluded him from opposing her proposed relocation at trial. The Superior Court rejected Mother's argument for three reasons: 1) Father did not substantially affect Mother's rights because he put her on sufficient notice that he opposed the relocation and, in fact, "did one better" by challenging the proposed relocation in his own Custody Complaint; 2) Mother incorrectly relied on 23 Pa.C.S.A. § 5337(d), which is not *per se* triggered when only the child (not either parent) stands to relocate a significant distance; and 3) Father was entitled to his own custody hearing on account of his Complaint for Custody and judicial economy warranted the consolidation of the two matters to hold a single hearing as soon as possible. The Superior Court ultimately vacated the trial court's order because the trial court did not analyze the requisite relocation factors. The trial court focused only on the custody factors after it determined that this was not a relocation case because Mother had already moved. Accordingly, the matter was remanded for further proceedings with instructions to consider all of the best interests and relocation factors.