

S.W. v. L.W.
Pa. Super. 2019
Case No.: 1744 MDA 2018
Judge: Bowes

This case confirms what we all suspected: a trial court may refuse to follow a guardian *ad litem* (GAL)'s recommendations. In *S.W. v. L.W.*, the Superior Court, in a Non-Precedential Memorandum Decision, held that 23 Pa.C.S. §5323(d) "requires the trial court to set forth its mandatory assessment of the 16 factors prior to the deadline by which a litigant must file a notice of appeal." Also, the Court found no abuse of discretion by the trial court's conclusions regarding the four year old's best interests during the school year, contrary to the recommendation of the GAL.

Both parents requested primary physical custody in cross-petitions. Father filed a petition for the appointment of a GAL and Mother agreed.

The GAL filed her report in October 2017. She recommended that father have primary physical custody during the school year and that mother exercise partial physical custody every weekend. The GAL recommended that the parties share physical custody on an alternating weekly basis during the summer months.

In a substantial departure from the GAL's conclusions regarding the school year, the trial court instead awarded mother primary physical custody and granted father partial physical custody on alternating weekends. The trial court adopted the GAL's recommendation for the summer months. Father appealed, arguing that the trial court committed an error of law and/or an abuse of discretion by failing to attach any weight to the GAL's report.

The Court rejected father's contention that the trial court failed to adequately detail its reasons for the custody award on the record in open court within the appeal deadline. The Court declared that it did set forth its assessment of the relevant statutory factors. Similar to the appellant in *C.B. v. J.B.*, 65 A.3d 946 (Pa. Super. 2013), appeal denied, 70 A.3d 808 (Pa. 2013), father did not allege or demonstrate that any of his issues were forfeited on appeal due to the asserted error by the court. Although, in addressing the factors, the Court did not identify them by citation, it discussed the factors using the key language provided in the statute for each of them. The Court concluded that the trial court adequately addressed the §5328(a) factors on the record in open court before the expiration of the appeal deadline.

Weber v. Weber
2019 PA Super 133
Judge: Murray

This Superior Court case reminds us to review our Marital Settlement Agreements' language regarding post-secondary expense and to be mindful of the applicable statute of limitations. In *Weber v. Weber*, the Superior Court affirmed the trial court's dismissal of a child's petition for parents' payment of college expenses pursuant to a property settlement agreement based on the statute of limitations running from the completion of undergraduate work.

Mother and father executed an agreement that provided for equal payment of college expenses. The trial court granted intervenor status to their son based on his interest as an intended beneficiary of the agreement. The amount at issue was more than \$100,000.

Father filed an Answer and New Matter, averring that son's claim was barred by the four-year statute of limitations at 42 Pa.C.S. §5225(a)(8). Son responded that the Agreement was continuing in nature and thus not subject to the statute of limitations. Son also sought one half of his graduate school expenses.

The trial court granted father's Motion for Summary Judgment. The trial court also ruled that graduate school was not included under the agreement and concluded that the statute of limitations began to run on son's claim when he completed his undergraduate degree.

A majority of the Superior Court held that the agreement was a continuing contract. However, the Court found that these obligations were nonetheless subject to the statute of limitations, which began to run when each child received his or her college degree.

The majority rejected son's contention that the agreement's use of the phrase "college or other post-secondary education" included both undergraduate and graduate studies, citing *delCastillo v. delCastillo*, 617 A.2d 26, 28-29 (Pa. Super. 1992). The majority ruled that, in the absence of express language requiring father and mother to pay for any graduate program, the trial court did not abuse its discretion in declining to read such a requirement into the agreement.

The majority also rejected son's argument that the agreement constituted a continuing contract because there were no specified deadlines for payment or no specific amounts. Instead, the majority held that even if the agreement were a continuing contract, it was subject to the statute of limitations that would run upon a breach occurring or when the contract was in some way terminated, citing *Crispo v. Crispo*, 909 A.2d 308, 313 (Pa. Super. 2006).