In Re: Involuntary Termination of Parental Rights, J.R.E., A Minor, Appeal of: D.E., Mother
Superior Court of Pennsylvania
No.: 1674 MDA 2018
2019 Pa.Super. 269
September 3, 2019
Before: Bowes, Olson, Stabile
Opinion by: Olson

Mother appealed from an order involuntarily terminating her parental rights. Superior Court reversed the order. The child was born in 2006 and by mid-2007 the child was removed from Mother as he was a victim of shaken baby syndrome as perpetrated by Mother's paramour. By 2008 Mother was on the path of reunification and enjoyed unsupervised visits until she was discovered allowing the child to be in the company of an "unapproved person" (believed to be the paramour). Upon this incident, the child was placed with Father who has retained custody until the present time. From 2008 to the present, Mother has only had sporadic contact with Father and indirect contact with the child, however, what efforts Mother has made to make contact with the child were consistently impeded and blocked by Father. In 2017 Mother filed for custody and that action is still pending, while Father filed a petition to involuntarily terminate Mother's parental rights. The guardian *ad litem* supports Father's petition, and the trial court granted his petition accordingly. Superior Court ruled that Father did not meet his burden to prove Mother refused or failed to perform her parental duties for the six months prior to the filing of his petition. The Court believed Father effectively frustrated Mother's efforts to perform parental duties and consequently her lack of contact with the child was not due to her inaction, which is not what the applicable statute contemplates. Furthermore, the trial court never examined Mother to get an explanation for her conduct. Finally, the trial court did not consider whether termination serves the needs and welfare of the child and instead merely did a "best interest" analysis. Superior Court observed that introducing a child to his biological parent typically serves the needs and welfare better than keeping this information from the child as Father has tried to do thus far.

Farrell v. Farrell
Superior Court of Pennsylvania
No.: 1424 WDA 2018
2019 Pa.Super. 267
September 3, 2019
Before: Bender, Nichols, Colins
Opinion by: Nichols

The attorney for Wife appealed an order directing her to pay counsel fees to Husband's attorney after a finding of contempt. Superior Court affirmed the trial court's decision. Husband's attorney issued Wife's attorney discovery requests. Wife prepared her own answers in which she refused to disclose some information, deemed some requests not applicable, and included personal attacks on her Husband in others responses. Wife's attorney furnished Wife's answers unedited to Husband's counsel who prompted her to file a motion to compel, for sanctions, and attorney's fees. Wife then filed a motion to compel of her own against Husband. The hearing for the above motions was scheduled the day before the divorce master's hearing. At the

motion hearing, it was revealed that Wife never actually issued Husband any discovery requests. The judge dismissed Wife's motion, but granted Husband's motion which resulted in Wife's *attorney* being sanctioned in the amount of $1,500. Wife's attorney filed for reconsideration (which was denied) and ultimately appealed, arguing that she could not be held in contempt as she, herself, was not subject to any court order. On appeal, Superior Court ruled that as Wife's attorney cited to no authority for her proposition that she could not be in contempt as she was not subject to any court order, that issue is considered waived. Regardless, the Court noted that the trial court acted within the bounds of Pa.R.C.P. 4019 and that she can be found personally responsible for filing a baseless motion and furnishing unedited discovery responses which "attacked" the opposing party and included refusals to provide documents.

In the Interest of: J.M., a Minor, In the Interest of: D.M., a Minor, In the Interest of: A.M., a Minor, In the Interest of: J.M., a Minor, Appeal of: L.M.-M., Mother
Superior Court of Pennsylvania
No.: 260 WDA 2018, 262 WDA 2018, 264 WDA 2018
2019 Pa.Super. 280
September 13, 2019
Before: Shogan, Nichols, Strassburger
Opinion by: Strassburger

Mother appealed from three orders in dependency matters. The Superior Court quashed all the appeals on the basis that none of the orders were appealable. Over the course of the dependency litigation of each matter, the trial court entered an order to allow Mother home visits conditioned on negative drug screens. After a subsequent positive drug screen, the trial court entered an order restricting visits at Mother's home only (not visits in general) which Mother appealed. Superior Court observed that the order in this matter was neither a "status change" nor a order which disposed of all issues for all parties. Indeed, the trial court itself was open to revisiting the matter and continued the matter accordingly. Superior Court then determined if this order was a "collateral order" according to a three prong test. The first prong is to discern whether this order is an issue that is the cause of action or merely collateral to it. Superior Court conceded that the answer to this question in the context of a dependency case is extremely unclear: is a visitation order separable from the underlying merits of a dependency case? It then looked to the second prong: is the right too important to be denied review? Superior Court distinguished between the right to visit with one's child and the right to visit without regard to sobriety. The former is a critical right while the latter is not. As the children are in dependency, Mother, by definition, does not have unfettered rights to her children. Mother was never denied the right to visit with her children and the right to visit with them in her home was not denied indefinitely. As a corollary, then, Mother does not meet the third prong: that she would experience irreparable loss. Instead, as noted above, Mother's opportunity for home visits were not denied indefinitely and could be restored, therefore her loss was not irreparable. As at least two of the three prongs of the collateral order test are met, the orders in this matter are unappealable,

In Re: Adoption of K.M.G., In Re: Adoption of A.M.G., In Re: Adoption of S.A.G., and In Re: Adoption of J.C.C.
Appeal of T.L.G., Mother,

Superior Court of Pennsylvania
No.: 580 WDA 2018, 581 WDA 2018, 582 WDA 2018, 583 WDA 2018
2019 Pa.Super. 281
September 13, 2019
Before: Panella, Bender, Lazarus, Olson, Dubow, Kunselman, Murray, McLaughlin
Opinion by: Dubow

Mother's parental rights were terminated, which she appealed. The primary issue before the Court was to determine if it could review, *sua sponte*, whether a guardian *ad litem* had a conflict of interest at the trial level. The guardian *ad litem* is to represent both a child's legal interests and best interests, but at times those interests could be in conflict. When the interests conflict, the guardian *ad litem* must notify the Court. The Superior Court inquired as to whether it must, *sua sponte*, review every termination case to make an independent determination as to whether there was such a conflict. In entering its ruling, Superior Court specifically overruled *In re Adoption of T.M.L.M.*, 184 A.3d 585 (Pa.Super.2018) by deciding that the only issue it has the authority to raise *sua sponte* is whether a child has a guardian *ad litem* at all, and does not have the authority to delve into the quality of the representation (including as to whether there is a conflict) on a *sua sponte* basis. Indeed, in this case the parties could have raised the conflict issue at the trial level, but chose not to do so. Further, the Court also noted that there are already numerous protections that exist that make such *sua sponte* authority unnecessary (e.g.: objection by a party, the guardian *ad litem*'s legal obligation to give notice, etc). As the determination of whether a guardian *ad litem* has a conflict is a factual one, the Superior Court further ruled that it must give great deference to the trial court's factual finding that there was not a conflict. If the issue is raised for the first time by a party when on appeal, then the Superior Court must review the record to determine if it is clear and undisputed as to whether there is a conflict. Finally, the Court indicated that the best practices for a trial court is for it to determine if the guardian *ad litem* has spoken with the child about his preferences and if that presents a conflict. If there is no conflict, the trial court should permit any other party to submit evidence to the contrary. Regarding Mother's appeal of the termination of her rights, the Court ultimately ruled that the trial court correctly ruled that Child and Youth Services met its burden of proof that Mother had serious parental deficiencies that did not appear she could remedy, and it would not disturb the factual findings of the lower court.