

Case Summaries for the September 2019 Meeting

C.M. v. M.M., 2019 Pa. Super 216 (filed July 12, 2019)

Mother appealed an October 2018 order denying her petition for modification of a custody order. Mother and Father are the parents of one minor child, born in January of 2014. The initial custody determination provided the parties with shared legal custody of the child and provided Mother with primary physical custody and Father with supervised physical custody for 4 – 5 hours on alternating Saturdays. Father’s supervised visits were ultimately reduced to one Saturday every four weeks. In April 2018, Mother filed a petition to modify custody, seeking sole legal custody, alleging that Father was inconsistent in exercising his limited periods of visitation and that he brought “several partners” around the child. After a custody conciliation conference, the trial court issued an interim order granting Mother sole legal custody of the child, but directing her to inform Father of all decision related to legal custody. After the hearing, the trial court ultimately denied Mother’s petition for modification and restored the parties’ shared legal custody of the child, and actually increased Father’s physical custody time from a single monthly visit to an overnight. Mother appealed, asserting, *inter alia*, that that the trial court failed to utilize the custody factors in its analysis. The Superior Court agreed with Mother and reversed and remanded based on the finding that the trial court did not consider the Section 5328(a) best interest factors in its analysis in open court or in a written opinion or order. The Court cited the standard that the Section 5328(a) best interest factors are not implicated in cases where the order does not change the “type” of the underlying custody award or change the amount of custodial time awarded to a party. Courts are required to consider the custody factors when making a ruling on a request to change the form of physical custody, *even in cases where the trial court merely reaffirms its prior custody order*. Furthermore, the order modified Father’s supervised period of physical custody and removed the requirement that Mother was to supervise Father’s custodial period. As the trial court offered no explanation as to how these modifications were in the best interests of the child, the Superior Court vacated and remanded the October 2018 order with instructions to issue a new order based on an analysis of the Section 5328(a) best interest factors.

Hawk v. Hawk, FD 10-008168-016 (filed June 25, 2019)

Non-Precedential

Wife appealed an order terminating her alimony upon the trial court’s finding that she was cohabiting. Husband also appealed the trial court’s decision to limit Wife’s obligation to pay back some of the alimony payments she received. The parties married in 1983, separated in 2009 and commenced divorce proceedings shortly thereafter. The parties entered into a consent order settling their marital estate, but explicitly left Wife’s alimony claim unresolved. Wife’s claim for alimony eventually went to a three-day hearing in 2014, where Husband raised the defense of cohabitation. The master found that Wife was not cohabiting and awarded Wife \$3,470 per month in alimony until 2024, at which time alimony would be reduced to \$600 per month until it terminated in 2027. The parties filed exceptions, but the trial court essentially adopted the master’s recommendation, except that it reduced the amount of alimony to account for Wife’s earning capacity. A consent order was entered, which provided that alimony would

be modifiable pursuant to 23 Pa.C.S.A. §3701, *et seq.* In March 2017, Husband filed a motion to terminate alimony, which also sought repayment of alimony dating back to Wife's cohabitation. After a two day hearing, the trial court held that Wife was cohabiting and terminated Husband's alimony obligation, but denied Husband's request for repayment of alimony subsequent to cohabitation. Each party appealed. Wife's first argument was that Husband was estopped under the principles of *res judicata* and/or collateral estoppel from raising cohabitation as a basis for terminating alimony when the same issue had been litigated in 2014. The Superior Court rejected Wife's argument, finding that Husband was permitted to present new evidence to the trial court in support of his contention that Wife was cohabiting (adding that a finding that Husband could not raise the claim again would allow Wife "to begin cohabiting with impunity"). Wife's next argument was that the trial court was precluded from terminating alimony as a result of her cohabitation, as the controlling order was a consent order (thus governed by contract law) and that the consent order cited the relevant statute for purposes of "modification", but not "termination". The Superior Court rejected Wife's argument, holding that it was the intention of both parties to permit the termination of alimony upon Wife's cohabitation. In his appeal, Husband asserted, *inter alia*, that that the trial court erred in failing to order the termination of his alimony obligation retroactive to the date he filed his motion in March of 2017 and that Wife should reimburse him for the 7.5 months of alimony she received. The Superior Court ultimately rejected Husband's claim, finding that 23 Pa.C.S.A. §3701(e) provided the trial court with the discretion, but not the obligation, to award the retroactive reimbursement.

Riovo v. Riovo, No. 3578 EDA 2018 (Superior Court - filed July 22, 2019)

Non-Precedential

Wife appealed an order denying her petition for special relief to modify the overall distribution of marital debts in the divorce decree. In April 2015, a divorce master entered a report and recommendation dividing the marital assets on a 55/45 basis in Wife's favor and allocating 55% of the marital liabilities to Husband and 45% to Wife. The recommendation was ultimately approved and a divorce decree was entered. As part of the property distribution, Wife retained the equity in the marital residence, but was also responsible for 45% of the school loans the parties had taken out for their daughter, which amounted to \$80,848. Wife continued to pay the expenses related to the marital residence and listed the property for sale. The home failed to sell, so Wife reduced the asking price consistent with the realtor's suggestion. Wife ultimately stopped paying the expenses related to the property (including the mortgage and taxes) and filed a petition for special relief, seeking a restructure of the marital debt due to the fact that she had not received the equity from the marital residence as she had anticipated. The trial court denied the petition, holding that it was untimely pursuant to 23 Pa.C.S.A. §3332. Wife appealed, asserting, *inter alia*, that the trial court erred in denying her petition on the grounds of timeliness and, in doing so, failed to effectuate economic justice between the parties. Wife argued that Pa.R.C.P. 1920.43, not §3332, governed the timeliness of her petition "because she sought to redistribute the marital debt to achieve economic justice between the parties, not to disrupt the divorce master's entire scheme of equitable distribution." Wife further maintained that Rule 1920.43 placed no time restriction on her filing. Additionally, Wife asserted that Husband's behavior in leaving the marital home in a state of disrepair and failing to sign sales documents in a timely manner prevented her from selling the marital residence, which resulted in the denial of

the benefit of the equitable distribution scheme. The Superior Court ultimately rejected Wife's arguments, reasoning that parties lose their rights to litigate equitable distribution claims after the divorce decree is final. The Court cited the general rule that a divorce decree must be either vacated or opened in order for the trial court to consider economic claims arising from equitable distribution, which is governed by §3332 of the Divorce Code. In its analysis, the Court added that, under Pa.R.C.P. 1920.43, a party may file a petition for special relief when seeking to enforce the court's order for equitable distribution, but not for the purpose of modifying the court's equitable distribution of marital property after the divorce decree is final. The Court ultimately found that Wife was essentially seeking a modification of the divorce decree via a redistribution of the marital debt, even if her pleading was styled as a "petition for special relief" pursuant to Pa.R.C.P. 1920.43.

Joseph v. Joseph, 1803 WDA 2018 (Superior Court - filed July 25, 2019)

Non-Precedential

Husband appealed from an order sustaining Wife's preliminary objections and dismissing Husband's "Petition Raising Claims". The parties married in 1982 and separated in 2008. Wife filed a Complaint in Divorce in 2010 and a 3301(d) Affidavit in May 2013. Husband filed a Counter-Affidavit in June of 2013, indicating that he intended to assert economic claims prior to the entry of the divorce decree. Husband never filed a separate complaint asserting economic claims. In April 2018, Wife served Husband with a notice of intent to seek a divorce decree. Husband again filed a Counter-Affidavit indicating that economic claims were pending and that he intended to make claims for economic relief, but Husband again failed to assert any economic claims. In May of 2018, the court entered a consent order where the parties agreed to bifurcate the claim for divorce from any economic claims and the trial court subsequently entered the divorce decree in June of 2018. In July of 2018, Husband filed a "Petition Raising Claims", seeking alimony and equitable distribution. Wife filed preliminary objections, which were sustained by the trial court. Husband appealed, asserting that the trial court erred in dismissing his petition when his Counter-Affidavits and the order bifurcating the economic claims should have preserved his ability to seek economic relief. The Superior Court affirmed the trial court's decision to sustain Wife's preliminary objections and dismiss Husband's petition, citing Section 3503 of the Divorce Code and Pa.R.C.P. No. 1920.31, which require that economic claims related to the marriage be raised prior to the entry of the divorce decree. The Court noted that the decree did not specifically preserve any economic claims, as none were pending, which ultimately precluded Husband from asserting any economic claims subsequent to the entry of the divorce decree.