

RECENT PA. APPELLATE COURT FAMILY LAW SLIP OPINIONS

January 2016

Summarized by Sara L. Slocum, Esquire

1. **Bochkareva v. Bockhareva**, Montgomery, 2924 EDA 2014
(Pa. Super. 12/1/15)

Mother appeals order denying her modification of child support. Affirmed. The Court found Father's testimony credible regarding his earning capacity in Russia. Mother provided no evidence to contradict the testimony that this was the most income he could make. No abuse in finding Father's testimony credible that it was not a voluntary reduction of income. Memorandum opinion by Gantman joined by Shogan and Panella.

2. **In Re: Adoption of N.K.J.R.**, York, 991 MDA 2015
(Pa. Super. 12/2/15)

Father appeals termination orders. Affirmed. Father incarcerated and little contact with child. Child bonded with foster family and extended foster family. Child will be in foster care for at least another 4 years. No evidence of bond with Father. Memorandum opinion by Panella joined by Lazarus and Platt.

3. **In Re: Petition for Change of Name of D.A.C.**,
Allegheny, 1456 WDA 2014 (Pa. Super. 12/3/15)

Mother appeals order granting Father's petition for a name change. Affirmed. Child's surname is that of stepfather's. Evidence of record supported the name change because it will encourage a bond with Father's family, the child understood the change and there was a negative stigma associated with the child's current surname due to stepfather's violence toward Mother. Memorandum opinion by Gantman joined by Lazarus and Musmanno.

**4. In the Interest of R.P.W. III, Philadelphia, 1823 EDA 2015
(Pa. Super. 12/7/15)**

Mother appeals involuntary termination. Affirmed. Mother failed to provide documentation on how she was treating her seizures and mental health issues. Mother failed to act properly during visits. There were also concerns about prostitution. Affirmed. Memorandum opinion by Bender joined by Donohue and Mundy.

**5. J.L.J. v. S.L.J. n/k/a S.L.M., York, 1093 MDA 2015
(Pa. Super. 12/7/15)**

Mother appeals order disposing of Father's petition to modify and maternal grandparents' petition for partial custody. Affirmed. Mother testified regarding relocation but never provided notice. Court found the move constituted a relocation noting Father's attendance at school and medical appointments in the past. It would also add 50 miles each way. A lack of reduction in custodial time does not by itself preclude a finding of substantial impairment. No abuse in engaging in a dual analysis of the factors. The Court considered the relocation regardless of the procedural defects and denied the request with reason. No abuse in awarding partial custody to grandparents where child explained to psychologist that they were important to him. Memorandum opinion by Ford Elliott joined by Wecht and Fitzgerald.

**6. J.T.H., Jr. V. H.H. n/k/a H.W., Lancaster, 1960 MDA 2014
(Pa. Super. 12/7/15)**

Mother appeals order awarding Father shared legal and physical custody. Affirmed. Two factors were considered but found to not weigh in favor of either parent. Ample evidence to support shared custody and all factors considered. Memorandum opinion by Gantman joined by Mundy and Jenkins.

7. **In Re: Adoption of M.R.D. and T.M.D.**, Lycoming, 1728 MDA 2013
(Pa. Super. 12/8/15)

Father appeals order granting the termination of his rights in favor of Mother and Maternal Grandfather. Affirmed. Father visited 2-3 times in 8 years and refused to allow them to come home and meet extended family. Cohabitation is not necessary to create a family unit and Grandfather filled a void left by Father. Memorandum opinion by Gantman, Bender, Panella, Donohue, Shogan, Allen, Lazarus and Mundy. Dissenting opinion by Stabile, who would allow Maternal Grandfather to adopt children with his daughter (Mother).

8. **In Re: Adoption of E.P. III**, Delaware, 1293 EDA 2015
(Pa. Super. 12/8/15)

Mother and Father appeal termination order. Affirmed. Child deemed dependent due to Mother's drug use during pregnancy and beyond. Father remained incarcerated and never contacted the child. Mother failed to cooperate with CYS. Memorandum opinion by Gantman joined by Mundy and Fitzgerald.

9. **In the Interest of C.B. and K.B.**, Philadelphia, 1123 EDA 2015
(Pa. Super. 12/8/15)

Mother appeals order finding aggravating circumstances and terminating reunification efforts. Affirmed. Physical child abuse resulted in hospitalization. Mother claimed it was an unknown perpetrator. Mother left children alone in a bedroom of a shelter for 38 minutes. She was the primary caretaker and could not explain her whereabouts during the time. She used an out of range monitor. Children suffered severe injuries. Evidence was sufficient to show aggravated circumstances by Mother's omission. Memorandum opinion by Gantman joined by Ford Elliott and Olson.

10. **Jiminez, Jr. v. McKnight Jiminez**, Berks, 311 MDA 2015
(Pa. Super. 12/8/15)

Wife appeals dismissal of her exceptions in divorce. Affirmed. Pro se appeal. Court dismissed exceptions for failure to file brief per court procedure despite being afforded ample time. Memorandum opinion by Bowes joined by Panella and Platt.

11. **In the Interest of K.J.C.M.**, Philadelphia, 834 EDA 2015
(Pa. Super. 12/11/15)

Father appeals termination decrees and goal change to adoption. Affirmed. Father incarcerated 23 months of child's life and made no efforts to perform parental duties during that time or upon release. Children established in a pre-adoptive foster home. Memorandum opinion by Bender joined by Lazarus and Ott.

12. **S.W. v. S.I. n/k/a S.F.**, York, 273 MDA 2015
(Pa. Super. 12/11/15)

Mother appeals order awarding Father primary physical custody. Affirmed. Mother relocated with her husband to Oklahoma with the child. Father later learned she left and took the child to Texas to live without her husband and without Father's knowledge or consent. All factors considered. Father was able to provide more stability in Pennsylvania, closer to family. Memorandum opinion by Panella joined by Lazarus and Platt.

13. **E.R. v. J.N.B.**, Lehigh, 168 EDA 2014
(Pa. Super. 12/14/15)

Father appeals order awarding Mother primary physical custody and denying Attorney Maher's representation of him. Affirmed. Attorney Maher represented Mother on two unrelated matters but was disqualified on the basis that he possessed knowledge that was confidential and could be used against her from representing her in a PFA case against her father. Court analyzed all factors and found none weighed in Father's favor. Memorandum opinion by Lazarus joined by Wecht and Strassburger.

14. **Real v. Real**, Montgomery, 299 EDA 2015
(Pa. Super. 12/14/15)

Wife appeals order pro se. Affirmed. No abuse of discretion and evidence supported. Memorandum opinion by Gantman joined by Panella and Shogan.

15. **D.W. v. S.A.**, York, 300 MDA 2015
(Pa. Super. 12/14/15)

Father appeals order awarding Maternal Aunt sole legal and physical custody of the child. Affirmed. Father is incarcerated. Mother died unexpectedly. Father's history of drug and alcohol offenses would preclude him from having custody if he were not incarcerated. Child stated she did not want to see Father. Memorandum opinion by Panella joined by Wecht and Strassburger.

16. **Oh v. Rho**, Allegheny, 1591 WDA 2014
(Pa. Super. 12/14/15)

Wife appeals equitable distribution order. Affirmed. Court performed a thorough review of all factors and concluded an award of 65% to Wife was appropriate. Memorandum opinion by Gantman joined by Lazarus and Musmanno.

17. **Kundratic v. Kundratic**, Luzerne, 501 MDA 2015
(Pa. Super. 12/15/15)

Husband appeals order denying petition to open or vacate divorce decree. Affirmed. Issues waived or dismissed as previously litigated. Memorandum opinion by Ford Elliott joined by Wecht and Platt.

18. **In Re: L.J.W.**, Butler, 851 WDA 2015
(Pa. Super. 12/15/15)

Father appeals termination orders. Father failed to complete any permanency goals, including in-patient drug rehabilitation and obtaining suitable housing. Children are doing well in foster care. Memorandum opinion by Olson joined by Stabile and Strassburger.

19. **Richardson v. Richardson**, Montgomery, 3477 EDA 2014
(Pa. Super. 12/16/15)

Catherine appeals entry of a final PFA order against her. Final PFA vacated, temporarily reinstated and remanded. Catherine was involuntarily committed to a mental hospital and the PFA hearing proceeded in her absence not having been informed of her commitment. Catherine was denied due process of law as she was rendered unavailable for trial by the involuntary commitment. Memorandum opinion by Gantman joined by Ford Elliott and Olson.

**20. CMW v. M.J.S., Forest, 861 WDA 2015
(Pa. Super. 12/16/15)**

Mother appeals the support order which entered an award modification in her favor but did not disturb the parties' prior agreement that Father claim the children as dependents. The Trial Court may award the exemption to either parent (1910.16-2(f)) but factor the award into the calculation. Awarding it to Father maximized income available for support and benefitted the child. Memorandum opinion by Ford Elliott joined by Shogan and Ott.

**21. In the Interest of J.D.G., Lancaster, 1247 MDA 2015
(Pa. Super. 12/18/15)**

Father appeals termination order. Affirmed. Father was incarcerated and failed to make efforts necessary to maintain contact or foster a relationship with the child. Child is with foster parents who adopted all four of the child's other siblings. Memorandum opinion by Panella joined by Ott and Jenkins.

**22. Llaurado v. Garcia-Zapta, Delaware, 707 EDA 2015
(Pa. Super. 12/21/15)**

Father appeals child and spousal support order. Quashed in part, affirmed in part. Issues related to spousal support are interlocutory and quashed. No abuse for the trial court to refuse to deviate from the guidelines. Trial Court was free to assess Father's credibility regarding her ability to earn and gain meaningful employment. No abuse to issue an earning capacity consistent with past employment. Memorandum opinion by Mundy joined by Jenkins and Fitzgerald.

**23. M.A.D. v. J.F.D., Jr., Montgomery, 1026 EDA 2015
(Pa. Super. 12/21/15)**

Appellant appeals order denying his petition to modify child support. Appellant failed to prove a change in circumstances that arose after the order was modified. Court will not consider evidence of circumstances that existed prior to the entry of the support order. No credible evidence that financial circumstances changed after the order. Memorandum opinion by Mundy joined by Ott and Stabile.

**24. In the Interest of R.M., Pike, 433 EDA 2015
(Pa. Super. 12/21/15)**

Father appeals termination order. Affirmed. Father missed 13 of 29 visits after he was released from jail with no good reason. Father was re-incarcerated and failed to maintain a relationship with the child. Child thriving in foster care. Memorandum opinion by Gantman joined by Panella and Shogan.

**25. Coyle v. Coyle III, Washington, 1842 WDA 2014
(Pa. Super. 12/21/15)**

Husband appeals order denying special relief. Affirmed. Appellant previously litigated the issues presently on appeal and trial court deemed the issues were barred by res judicata. Memorandum opinion by Bowes joined by Olson and Stabile.

**26. In the Interest of Z.J.H., Philadelphia, 925 EDA 2015
(Pa. Super. 12/22/15)**

Mother appeals termination order. Affirmed. Mother failed to provide any documentation of meeting FSP goals in 2 years; failed to visit consistently. Child has cerebral palsy and special needs. Child would be harmed if left in Mother's care. Memorandum opinion by Bender joined by Lazarus and Ott.

**27. Schmook v. Russell, Lancaster, 694 MDA 2015
(Pa. Super. 12/22/15)**

Wife appeals denial of her petition that Husband breached their post-nuptial agreement. Affirmed. There were discrepancies in the testimony surrounding a disagreement with regard to the sale of the house. The Trial Court was free to assess the credibility of the witnesses in finding Husband was not in breach of the post-nuptial agreement. Memorandum opinion by Ford Elliott joined by Wecht and Fitzgerald.

**28. J.L.M. v. J.P.M., Allegheny, 1803 WDA 2014
(Pa. Super. 12/22/15)**

Father appealed entry of a 3 year PFA. Affirmed. Father engaged in stalking and harassing Mother while a temporary consented stay away agreement was in place. The stalking included the placement of a GPS tracking device on her car and hiring investigators. More so it was the use of the information he collected that put Mother in reasonable fear. Memorandum opinion by Bowes joined by Olson and Stabile.

**29. In Re: R.-JK, Allegheny, 942 WDA 2015
(Pa. Super. 12/22/15)**

Guardian Ad Litem appeals denial of petition to terminate Father's rights. Affirmed. Children placed with maternal aunt and Father given FSP goals. The Trial Court found that Father had completed FSP goals except that he has not received assistance with housing despite his application. In addition, the children were removed from Mother's care, not Father's. Therefore, the 12 month time period is inapplicable as to him. Memorandum opinion by Ford Elliott joined by Bowes and Musmanno.

**30. In the Interest of H.L.-R., Philadelphia, 100 EDA 2015
(Pa. Super. 12/23/15)**

Consolidated appeal. Foster parents appeal from orders that removed the children from their care and denied their petition to intervene. Orders affirmed and petition to intervene is quashed for lack of standing. Evidence showed foster mom's mother was abusing the children and their needs were not being met. There was no adoption petition; therefore, foster parent had no standing to intervene in dependency. Memorandum opinion by Gantman joined by Panella and Shogan.

Copies of Pa. Supreme and Superior slip opinions may be downloaded from the Internet on the pages of the Administrative Office of the Pa. Courts, <http://www.pacourts.us/courts> (note some opinions are Memorandum).