

RECENT PA. APPELLATE COURT FAMILY LAW SLIP OPINIONS

July 2016

Summarized by Sara L. Slocum, Esquire

1. **D.C.S.-R. v. P.R.**, Wayne, 2849 EDA 2015
(Pa. Super. 4/4/16)

Father appeals denial of petition for primary custody. Affirmed. All factors considered. Court determined that several factors weighed in favor of Mother who agreed to expand Father's time in the summer and Mother improved the child's diet. Mother was found to be credible because the pediatrician's testimony supported her testimony. Father failed to establish a change in custody was in the child's best interest. Memorandum opinion by Bender joined by Lazarus and Stevens.

2. **In the Interest of L.H.Y.**, Philadelphia, 1824 EDA 2015
(Pa. Super. 4/4/16)

Mother appeals involuntary termination of parental rights. Mother tested positive for drugs and was not aware of her pregnancy until she gave birth. Child had serious health issues as a result. Mother failed to complete FSP. Did not complete drug and alcohol treatment, parenting capacity and procure stable housing and attend visits. Memorandum opinion by Bender joined by Stabile and Musmanno.

3. **In Re: B.M.G.**, Lackawanna, 1477 MDA 2015
(Pa. Super. 4/4/16)

Father appeals termination of parental rights. Affirmed. Child was in maternal aunt and uncle's care. Mother's rights previously terminated. Father's visits were sporadic over the years and had no contact since 2014. Child has no bond with Father. Memorandum opinion by Panella joined by Mundy and Stevens.

4. **W.R.K. v. R.A.K.**, Lancaster, 1063 MDA 2015
(Pa. Super. 4/5/16)

Father appeals order awarding Mother primary physical custody and granting her request for relocation. Affirmed. Mother was 15 years old when she got pregnant. Mother failed to give proper notice of relocation 22 miles away. The Court may consider Mother's failure to follow procedure but it does not bar her relocation. All other issues were waived or required the re-weighing of evidence. Memorandum opinion by Bender joined by Shogan and Platt.

5. **P.W. v. S.M.S.**, York, 1126 MDA 2015
(Pa. Super. 4/7/16)

Mother appealed child support order. Vacated and remanded. The trial court failed to determine the guideline amount due to Mother and child have applied a proportional reduction for multiple families. Court also failed to rule on Mother's nurturing parent claim. Memorandum opinion by Ford Elliott joined by Panella and Stevens.

6. **M.B. v. K.B.**, Chester, 832 EDA 2015
(Pa. Super. 4/8/16)

Father appeals child support order. Vacated and remanded. Court adopted lower court's findings with regard to Mother's earning capacity. Court improperly calculated Father's earning capacity based upon information that was not in evidence. Memorandum opinion by Lazarus joined by Ott and Stevens.

7. **In the Interest of L.B.**, Lancaster, 1181 MDA 2015
(Pa. Super. 4/8/16)

Mother appeals finding of aggravated circumstances and the order adjudicating the children dependent. Affirmed. Children reported sexual abuse on multiple occasions in 2 different states. Child's testimony was consistent and credible especially when considering the unusual sexual and violent behaviors also exhibited. Memorandum opinion by Panella joined by Lazarus and Jenkins.

8. **M.K. v. S.K.**, Mercer, 1475 WDA 2015
(Pa. Super. 4/8/16)

Father appeals child support order. Vacated in part, remanded. Court failed to apply the self Support Reserve and remanded for recalculation. All other issues waived. Memorandum opinion by Panella joined by Olson and Platt.

9. **E.J.C. v. I.M.C.**, Clearfield, 1361 WDA 2015
(Pa. Super. 4/8/16)

Mother appeals modification of custody awarding primary to Father. Affirmed. Court found many factors to weigh in favor of both parties but that the child had more stability with Father. Court was permitted to discount testimony of the child and Guardian Ad Litem. Memorandum opinion by Ford Elliott joined by Bender and Shogan.

10. **In the Interest of S.M.A.**, Philadelphia, 2387 EDA 2015
(Pa. Super. 4/11/16)

Mother and Father appeal termination of parental rights. Affirmed. Children have been out of their care for 46 months and the conditions that led to placement continued to exist. Memorandum opinion by Bender joined by Olson and Platt.

11. **In the Interest of S.R.M.**, McKean, 991 WDA 2015
(Pa. Super. 4/12/16)

Father appeals termination of parental rights. Affirmed. Father is in prison and child was in foster care. Child was bonded with foster parent. Memorandum opinion by Ford Elliott joined by Bender and Shogan.

12. **Z.L. v. E.G.**, Delaware, 2311 EDA 2015
(Pa. Super. 4/13/16)

Mother appeals order awarding Father primary custody and denying her petition for relocation. Affirmed. Mother moved to Virginia and withheld the children without petitioning the Court for relocation. Factors favored Father especially considering the children were settled and stable in Delaware County. Memorandum opinion by Olson joined by Ott and Stevens.

13. **Sankey v. Sankey**, Monroe, 2267 EDA 2015
(Pa. Super. 4/13/16)

Wife appeals denial of exceptions to Divorce Master's Report which did not require Husband to pay alimony. Affirmed. Wife preserved no direct evidence of her emotional condition and indirect evidence was properly considered in not awarding alimony. Memorandum opinion by Ott joined by DuBow and Jenkins.

14. **In the Interest of C.B.**, Philadelphia, 1794 EDA 2015
(Pa. Super. 4/13/16)

Mother appeals termination of parental rights. Affirmed. Mother failed to meet Service Plan objectives including stable housing, drug and alcohol treatments, mental health treatment and visitation. Mother was also incarcerated. Memorandum opinion by Bender joined by Stabile and Musmanno.

15. **Gigli v. Gigli**, Schuylkill, 1227 MDA 2015
(Pa. Super. 4/13/16)

Wife appeals denial of petition to declare PSA void. Affirmed. Wife presented no credible evidence at trial level that she lacked an understanding of what was going on at the time she signed. The notary and husband were both found to be credible. No evidence of duress. Memorandum opinion by Bowes joined by Lazarus and Strassburger.

16. **L.J.O. v. E.O.**, Berks, 1303 MDA 2015
(Pa. Super. 4/14/16)

Husband appeals spousal and child support order. Quashed as to spousal support and affirmed as to child support. No error in awarding Wife an earning capacity equal to full time minimum wage employment. Court will not re-weigh evidence rejected as not credible including vocational expert. Memorandum opinion by Shogan joined by DuBow and Stevens.

17. **In the Interest of L.F.**, Philadelphia, 2461 EDA 2015
(Pa. Super. 4/15/16)

Mother appeals order terminating court supervised visits and ordering her to stay away from Father and the children. Affirmed. Mother had a long history of DHS intervention. Mother had issues with drug and alcohol and continued to smoke PCP causing violent incidents. Mother's court supervised visits were suspended due to an incident in the bathroom. Mother continued to contact Father and the children despite court orders to stay away. Mother failed to meet goals. Memorandum opinion by Bender joined by Olson and Platt.

18. **E.S.K. v. J.L.K.**, Cambria, 1473 WDA 2015
(Pa. Super. 4/15/16)

Father appeals award of primary custody to Mother. Affirmed. All factors considered. Father was dissatisfied with the outcome. Court will not re-weigh evidence. Memorandum opinion by Gantman joined by Shogan and Fitzgerald.

19. **A.M.H. v. J.K., M.K., J.R., J.E. and P.E.**,
Susquehanna, 1842 MDA 2015 (Pa. Super. 4/18/16)

Adoptive Mother appeals denial of her petition to modify custody to eliminate or reduce the partial custody rights of Maternal Grandparents with respect to Adoptive Mother's niece and adopted daughter. Vacated and remanded. Court failed to consider section 5328(a) factors. Memorandum opinion by Mundy joined by DuBow and Strassburger.

20. **B.J.F. n/k/a B.J.S. v. J.P.F.**, York, 1938 MDA 2015
(Pa. Super. 4/18/16)

Mother appeals award of primary custody to Father. Affirmed. Court considered all factors and determined that "courts should be reluctant to disturb custody arrangements which have satisfactorily served the best interests of the child." per case law. Memorandum opinion by Lazarus joined by Stabile and DuBow.

21. **In Re: Adoption of J.D.M., J.R. a/k/a J.M.**, Allegheny, 1960 WDA 2015 (Pa. Super. 4/18/16)

Mother appeals termination of parental rights. Affirmed. Child was bonded with foster parent. No abuse of discretion. Memorandum opinion by Bender joined by Panella and Fitzgerald.

22. **S.E. v. K.P.**, Luzerne, 1377 MDA 2015 (Pa. Super. 4/19/16)

Mother appeals reduction of partial physical custody. Affirmed. Court assessed all factors but gave significant weight to the preference of the children. Court found them to be mature and credible. Memorandum opinion by Panella joined by Stabile and Fitzgerald.

23. **In Re: KBB**, Blair, 1414 WDA 2015 (Pa. Super. 4/19/16)

Mother appeals termination. Mother was never able to obtain suitable housing or remedy conditions that led to placement. Memorandum opinion by Lazarus joined by Stabile and Fitzgerald.

24. **In the Interest of J.B.**, Lawrence, 1230 WDA 2015 (Pa. Super. 4/19/16)

Father appeals termination of parental rights. Affirmed. Father had no contact with the child from age 2-8 (current). No bond and child was bonded with Maternal Stepfather. Memorandum opinion by Ford Elliott joined by Bender and Shogan.

25. **R.H.E. v. K.M.P.**, Clearfield, 1396 WDA 2015 (Pa. Super. 4/19/16)

Mother appeals award of primary custody to Father. Affirmed. All factors considered and supported by evidence in the record. Memorandum opinion by Ford Elliott joined by Shogan and Bender.

**26. In the Interest of N.H., Susquehanna, 1881 MDA 2015
(Pa. Super. 4/20/16)**

Father appeals orders finding aggravated circumstances existed against Father in the dependency cases involving his daughters N.H. and P.H. Affirmed as to P.H., dismissed as to N.H. A Senior Judge issues an amended order re: aggravated circumstances. Not an error of law for a court to correct typographical errors. Memorandum opinion by Mundy joined by DuBow and Strassburger.

**27. In the Interest of N.H., Susquehanna, 1508 MDA 2015
(Pa. Super. 4/20 /16)**

Mother appeals goal change to adoption. Affirmed. Mother sought a continuance through counsel the morning of the hearing and failed to appear. Mother had notice and was not denied due process. Memorandum opinion by Mundy joined by DuBow and Strassburger.

**28. In the Matter of A.D.W., Erie, 1639 WDA 2015
(Pa. Super. 4/20/16)**

Mother appeals from termination decrees. Affirmed and counsel granted leave to withdraw. Mother failed to complete drug and alcohol counseling and testing. Failed to obtain housing and employment. Memorandum opinion by Panella joined by Olson and Platt.

**29. FPM v. FPM, III and H.O.M., Bucks, 2529 EDA 2015
(Pa. Super. 4/21/16)**

Paternal Grandfather appeals order denying partial physical custody. Vacated and remanded. Section 5328(a) factors were not considered. Memorandum opinion by Olson joined by Ott and Stevens.

**30. In the Interest of I.B.B., Philadelphia, 1230 EDA 2015
(Pa. Super. 4/21/16)**

Father appeals termination decrees. Affirmed. Father used extreme methods of discipline including belts and bats, which led to placement. Children's statements properly admitted as they were not hearsay; rather, were offered to identify the reason DHS did not recommend visits and/or were an exception under Pa.R.E. 803(3). Reports admitted were admissible under the business records exception. No record of bond and Father failed to perform parental duties as a result of a stay away order. Memorandum opinion by Mundy joined by Olson and Strassburger.

**31. Miller v. Nelson, Delaware, 1085 EDA 2015
(Pa. Super. 4/21/16)**

Mother and Father appeal child support order. No error to require Father to pay tuition directly to the provider. No error to require a lump sum payment of support upon receipt of a bonus. Vacated as to percentage of unreimbursed medical which was a clerical error by Court. Memorandum opinion by Gantman joined by Mundy and DuBow.

**32. Gray v. Gray, Franklin, 612 MDA 2015
(Pa. Super. 4/21/16)**

Husband appeals PFA. Affirmed. Counsel did not object to the use of a calendar when Wife was testifying or regarding Wife's close proximity to her counsel while testifying. Husband's issues are waived for lack of timely and specific objections. Memorandum opinion by Panella joined by Stabile and Fitzgerald.

**33. J.F. v. J.F., Berks, 1571 MDA 2015
(Pa. Super. 4/21/16)**

Father appeals denial of shared physical custody. Affirmed. All factors considered. Most factors favored Mother. Trial Court considered and disagreed with the expert testimony and it was not improper to do so. Memorandum opinion by Panella joined by Stabile and Fitzgerald.

- 34. Folmar v. Folmar, Clearfield, 1039 WDA 2015
(Pa. Super. 4/21/16)**

Husband appeals order granting Wife's petition for clarification of QDRO. Affirmed. Proper to value the 401k on the date the QDRO was signed and not separation because it would be inequitable for Husband to earn interest on Wife's share. Memorandum opinion by Gantman joined by Shogan and Fitzgerald.

- 35. In the Interest of JKLS, Dauphin, 1674 MDA 2015
(Pa. Super. 4/22/16)**

Mother appeals termination decrees following a consent to adoption. Mother failed to prove fraud or duress and did not revoke her consent within 30 days in writing. Memorandum opinion by Bowes joined by Lazarus and Strassburger.

- 36. In the Interest of J.H., Chester, 2998 EDA 2015
(Pa. Super. 4/25/16)**

Mother appeals award of permanent custody to kinship guardian and termination of supervision. Affirmed. Despite Mother's progress, which was very slow, the children needed permanency. Memorandum opinion by Panella joined by Ott and Fitzgerald.

- 37. In the Matter of I.L., Philadelphia, 1393 EDA 2015
(Pa. Super. 4/25/16)**

Mother appeals finding of aggravated circumstances and ordering reunification efforts. Affirmed. Where there are multiple caretakers it is up to the trial court to make credibility determinations. Trial Court's finding was supported by the record. Memorandum opinion by Bender joined by Olson and Platt.

- 38. T.F.B., III v. A.L.B., Montgomery, 1717 EDA 2015
(Pa. Super. 4/25/16)**

Father appeals order allowing Mother to enroll the child in Titus Elementary School. Affirmed. Court considered length of bus ride and Father's lack of importance on faith based education and the services provided by the public school in reaching its decision. Memorandum opinion by Gantman joined by Mundy and DuBow.

- 39. In the Interest of A.M.A., Adams, 1763 MDA 2015
(Pa. Super. 4/25/16)**

Father appeals termination decree. Affirmed. No meaningful contact since July 2013. Memorandum opinion by Lazarus joined by Stabile and DuBow.

- 40. In the Interest of R.B., Jr., Mifflin, 1597 MDA 2015
(Pa. Super. 4/25/16)**

Mother and Father appeal temporary restraining orders. Affirmed. Parental incapacity since 2008. Two experts testified regarding lack of bond and were found to be credible. Memorandum opinion by Lazarus joined by Stabile and DuBow.

- 41. In Re: Adoption of L.T.D., Northumberland, 1553 MDA 2015
(Pa. Super. 4/25/16)**

Father appeals temporary restraining order. Affirmed. Father failed multiple drug tests and could not meet goals. Children required permanency. Court ordered the child dependent, gave Father custody and ordered evaluations. Concerns that Mother was mentally ill and coaching the child re: false abuse committed by Father. Father was the more stable parent. Memorandum opinion by Panella joined by Stabile and Jenkins.

- 42. JWL v. J.L. and A.M.B., Westmoreland, 1762 WDA 2015
(Pa. Super. 4/25/16)**

Mother appeals award of partial physical custody to her Father. Affirmed. Court was struck by the affinity between the children and maternal grandparents. All factors considered. Memorandum opinion by Bender joined by Panella and Fitzgerald.

**43. In re: Adoption of JJJ, Montgomery, 3280 EDA 2015
(Pa. Super. 4/26/16)**

Father appeals temporary restraining order. Affirmed. Father incarcerated and not able to care for the child. No bond with child as they only met once in Juvenile Court. Memorandum opinion by Olson joined by Stabile and Strassburger.

**44. C.O. v. N.G., Dauphin, 808 MDA 2015
(Pa. Super. 4/26/16)**

Father appeals dismissal of modification petition in child support. Affirmed. Trial Court determined Father was able to work from home and earn a full time wage upon evidence including his recent travel to India despite a supposed medical condition that prohibited him from working. Memorandum opinion by Lazarus joined by Stabile and DuBow.

**45. Doyle v. Doyle, Allegheny, 617 WDA 2015
(Pa. Super. 4/26/16)**

Wife appeals Divorce Decree and order denying declaratory judgment and upholding the Marital Settlement Agreement. Affirmed. The Court found no material misrepresentation upon which to find fraud. In addition the language of the Agreement stated full and faire disclosure had been made. Memorandum opinion by Ford Elliott joined by Bender and Shogan.

**46. Burtz v. Burtz, Lycoming, 1147 MDA 2015
(Pa. Super. 4/27/16)**

Husband appeals QDRO. Affirmed. Husband claimed Wife was not entitled to post-separation increases in Husband's pension. The QDRO employed a coverture fraction and was therefore prepared "pursuant to current law" as the Marital Settlement Agreement required. Memorandum opinion by Panella joined by Stabile and Fitzgerald.

- 47. SME v. R.J.E., Philadelphia, 1937 EDA 2015
(Pa. Super. 4/29/16)**

Mother appeals amended custody order. Vacated and remanded. Court failed to delineate all factors in making the custody decision and order. Memorandum opinion by Ford Elliott joined by Ott and Musmanno.

- 48. In Re: K.N., Lehigh, 3654 EDA 2015
(Pa. Super. 4/29/16)**

Mother appeals temporary restraining orders. Mother failed to comply with goals and safety plan involving the oldest son sexually assaulting the younger children. Affirmed. Memorandum opinion by Ford Elliott joined by Bender and Musmanno.

- 49. In Re: S.-S.T.R., Philadelphia, 3684 EDA 2015
(Pa. Super. 4/29/16)**

Father appeals temporary restraining orders. Father failed to meet goals and continued to use PCP. Father also had a history of domestic violence. Evidence of lack of bond. One child stated she did not want a relationship with her Father at all. Memorandum opinion by Bowes joined by Lazarus and Platt.

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