

RECENT PA. APPELLATE COURT FAMILY LAW SLIP OPINIONS

April 2016

Summarized by Sara L. Slocum, Esquire

1. **Stump v. Stump**, York, 664 MDA 2015
(Pa. Super. 2/1/16)

Cross appeals by Husband and Wife due to denial of exceptions to Master's recommendation regarding equitable distribution. Affirmed. Husband, who took on early retirement from the Navy, was given a \$60,000 earning capacity, noting a voluntary reduction in income. Court also ordered that Husband distribute 64% of the date of separation value of his pension to Wife. Master found vocational expert to be credible as well as Wife. Wife not entitled to counsel fees where both parties contributed to the delay. Memorandum opinion by Panella joined by Lazarus and Platt.

2. **M.A. v. M.G.**, Allegheny, 965 WDA 2015
(Pa. Super. 2/1/16)

Mother appeals shared custody order. Affirmed. Mother's "severe undiagnosed and untreated mental illness" was the deciding factor in awarding shared physical custody. All other factors appropriately considered. Court found that expert testimony was not required to determine mental illness as it was evident in Mother's testimony and cross examination. Court was also free to determine that the child's testimony was coached. Memorandum opinion by Bender joined by Shogan and Musmanno.

3. **In the Interest of S.N.M.**, Philadelphia, 1158 EDA 2015
(Pa. Super. 2/2/16)

Mother appeals termination orders. Affirmed. Children were left alone and Mother had a history of drug abuse. The record showed that Mother still had daily struggles with addiction at the time of the hearing and failed to complete treatment programs. Mother also failed to provide adequate housing and complete a parenting capacity evaluation. Memorandum opinion by Bender joined by Shogan and Jenkins.

4. **In the Interest of S.T.B.-R.**, Philadelphia, 1387 EDA 2015
(Pa. Super. 2/2/16)

Father appeals termination order. Affirmed. Father's incarceration rendered him incapable of parenting. Father failed to complete anger management and parenting programs, send letters or gifts to the child, or maintain contact. Minimum sentence of 2020. It was in the child's best interest not to remain in foster care. Memorandum opinion by Gantman joined by Mundy and Musmanno.

5. **In Re: Adoption of J.A.J.**, Franklin, 1166 MDA 2015
(Pa. Super. 2/2/16)

Step-parents appeal denial of petition to terminate Father's rights. Affirmed. Court noted that Mother has not encouraged and/or placed obstacles in front of Father's relationship with the child. Father continued to pursue legal rights, maintained some contact and sent gifts and cards. Court found Father's attempts to be reasonable in light of Mother's attempts to alienate. Memorandum opinion by Panella joined by Ott and Jenkins.

6. **N.W. v. J.S.**, Allegheny, 1014 WDA 2015
(Pa. Super. 2/2/16)

Mother appeals denial of petition to proceed in forma pauperis in custody. Vacated and remanded. Insufficient evidentiary hearing was provided to Mother. Other monthly expenditures must be considered and not just the income of the party. Memorandum opinion by Bender joined by Shogan and Musmanno.

7. **Wiegand v. Wiegand**, Allegheny, 467 WDA 2015
(Pa. Super. 2/2/16)

Husband appeals E.D. order. Affirmed. Court was free to determine the credibility of the witnesses in determining whether gifts were made to Husband alone or both parties. Memorandum opinion by Bender joined by Shogan and Musmanno.

8. **In the Interest of Z.R.**, Philadelphia, 1978 EDA 2015
(Pa. Super. 2/5/16)

Father appeals involuntary termination of parental rights. Affirmed. Father has a criminal history and is presently incarcerated. He failed to complete any objectives and failed to attend visits. Memorandum opinion by Gantman joined by Bender and Platt.

9. **C.B. v. L.B., B.B.**, York, 854 MDA 2015
(Pa. Super. 2/5/16)

Mother and Step-Father appeal order awarding Mother's former partner partial physical custody. Affirmed. C.B. was active in the child's life for 4½ years and even after Mother and C.B. separated, C.B. stood in loco parentis and it was in the child's best interest to maintain contact. Memorandum opinion by Panella joined by Lazarus and Platt.

10. **In Re: F.H., Z.H.**, Washington, 1116 WDA 2015
(Pa. Super. 2/5/16)

Father appeals termination of parental rights. Affirmed. Both children are special needs. Father had continued drug use and failed to provide medical care and safe housing. Memorandum opinion by Bowes joined by Olson and Strassburger.

11. **V.F.M. v. C.P.**, Lawrence, 910 WDA 2015
(Pa. Super. 2/5/16)

Mother appeals denial of relocation petition to Texas. Affirmed. Custody evaluator recommended 50/50 custody and concluded that the child was doing well and developing appropriately. CYS was previously involved due to the poor condition of Mother's home. Memorandum opinion by Bender joined by Shogan and Musmanno.

12. **In Re: Adoption of B.M.G.**, Westmoreland, 1227 WDA 2015
(Pa. Super. 2/9/16)

Mother appeals involuntary termination order. Affirmed. Total of 19 referrals to CYS over years. Mother had multiple incarcerations, hospitalization and lacked appropriate housing. Minimal bond with Mother. Memorandum opinion by Bowes joined by Olson and Strassburger.

13. **K.M.W. v. C.S.**, Cumberland, 85 MDA 2015
(Pa. Super. 2/9/16)

Mother and Father appeal calculations of child support. Affirmed. Cash flow analysis was appropriate to determine Father's income. It was also appropriate to add back personal expenses paid by the business. Appropriate not to award Father with a shared custody deviation where Father does not actually exercise his time. Memorandum opinion by Bowes joined by Panella and Platt.

14. **In the Interest of I.R.H.**, Luzerne, 1741 MDA 2015
(Pa. Super. 2/10/16)

Father appeals involuntary termination orders. Affirmed. Father is incarcerated. No parent child bond exists and Father did not make reasonable efforts to maintain contact. Memorandum opinion by Bowes joined by Lazarus and Strassburger.

15. **In the Interest of V.M.W., Jr., L.R.W. and N.T.W.**,
Philadelphia, 1229 EDA 2015 (Pa. Super. 2/10/16)

Father appeals involuntary termination orders. Affirmed. Parents initially took child to E.R. for a fever and cough and evidence of child abuse was discovered. Father repeatedly abused Mother and children. No positive parental bond with children. Memorandum opinion by Lazarus joined by Ott and Stevens.

16. **Thomas-Johnson v. Johnson**, Dauphin, 1441 MDA 2015
(Pa. Super. 2/11/16)

Mother-in-law appeals PFA Order. Vacated and remanded. Insufficient time for hearing. Plaintiff did not establish evidence by a preponderance. Memorandum opinion by Bowes joined by Ott and Fitzgerald.

17. **In Re: P.R.C., H.B.C., III and J.J.C.**, Lancaster, 1378 MDA 2015
(Pa. Super. 2/12/16)

Father appeals involuntary termination orders. Affirmed. Inadequate and dangerous housing. Father failed to address his mental health issues or obtain appropriate housing and employment. Also, drug and alcohol concerns were not addressed. Memorandum opinion by Bowes joined by Lazarus and Strassburger.

18. **In Re: Adoption of A.M.**, Cumberland, 1187 MDA 2015
(Pa. Super. 2/12/16)

Mother appeals termination decrees. Affirmed. Mother failed to complete parenting classes, mental health counseling and drug and alcohol treatment. Memorandum opinion by Bender joined by Shogan and Platt.

19. **In Re: Adoption of A.P., H.H., L.H.**, Washington, 1119 WDA 2015
(Pa. Super. 2/12/16)

Mother appeals termination orders. Affirmed. Father addicted to heroin and overdosed but lived during the course of the proceedings. Child needed permanency and was doing well with Grandmother. Memorandum opinion by Bowes joined by Olson and Strassburger.

20. **In the Interest of L.N.B-G.**, Lancaster, 1473 MDA 2015
(Pa. Super. 2/16/16)

Father appeals termination order. Affirmed. Father is incarcerated and has a history of domestic violence. Father failed to address any of the goals. Memorandum opinion by Bowes joined by Ott and Fitzgerald.

21. **S.A.M. v. S.C.C.**, Columbia, 1422 MDA 2015
(Pa. Super. 2/16/16)

Mother appeals order allowing Father to relocate to Texas. Affirmed. Mother suffered from emotional problems including depression resulted in MGM and Father having custody. Father sought to move back to his family. Better opportunities for Father in Texas and a strong family network. Memorandum opinion by Ford Elliott joined by Panella and Stevens.

22. **Krupnick v. Krupnick**, Bucks, 340 EDA 2015
(Pa. Super. 2/17/16)

Husband appeals E.D. award. Affirmed. No abuse of discretion. Court will not re-weigh credibility evidence. Memorandum opinion by Lazarus joined by Ott and Stevens.

23. **J.A.S. v. L.A.S.**, Dauphin, 1347 MDA 2015
(Pa. Super. 2/17/16)

Mother appeals denial of relocation to Lehigh Valley. Affirmed. Custody evaluator found no significant improvement to the children's lives if the move was permitted. Distance would cause Father to be less involved. Memorandum opinion by Panella joined by Ott and Jenkins.

24. **C.A.J. v. D.S.M.**, Cumberland, 1264 MDA 2015
(Pa. Super. 2/18/16)

Mother appeals equally shared custody order. Vacated and remanded. Despite Father's petition being procedurally improper, Mother had notice custody was at issue. However, Court did not delineate the reasons for its decision. Memorandum opinion by Bender joined by Shogan and Platt.

25. **P.J.A. v. H.C.N.**, Lehigh, 2395 EDA 2015
(Pa. Super. 2/18/16)

Father appeals custody order. Affirmed in part, reversed in part. Court held that each parent is permitted to expose the child to their respective religion; however, the order limited Father's ability to educate the child. Memorandum opinion by Mundy joined by Olson and Strassburger.

26. **In the Interest of C.T.N., III**, Philadelphia, 1830 EDA 2015
(Pa. Super. 2/18/16)

Mother appeals involuntary termination of parental rights. Children taken into custody due to unhealthy living conditions. Mother failed to complete FSP goals including mental health treatment and housing. Strong bond with Foster Mother. Memorandum opinion by Mundy joined by Olson and Strassburger.

27. **In the Interest of K.T.J.**, Philadelphia, 1228 EDA 2015
(Pa. Super. 2/18/16)

Mother appeals involuntary termination of parental rights. Affirmed. Mother failed to meet FSP goals including attending visits with the child, failing drug tests and obtaining suitable housing. Memorandum opinion by Ford Elliott joined by Ott and Musmanno.

- 28. L.S. v. S.C., Delaware, 2573 EWDA 2015
(Pa. Super. 2/18/16)**

Father appeals denial of his petitions to enforce South Carolina orders and to change venue. Affirmed. South Carolina relinquished jurisdiction in August 2011, and recalled Mother's bench warrants before the May 2012 order was entered in Pennsylvania. Memorandum opinion by Gantman joined Mundy and Musmanno.

- 29. GMG v. MCK, Clinton, 1248 MDA 2015
(Pa. Super. 2/18/16)**

Mother appeals denial of request to relocate to South Carolina, and primary custody to Father. Affirmed - all factors considered. Memorandum opinion by Bender joined by Shogan and Platt.

- 30. Sterling v. Lyman, Philadelphia, 1231 EDA 2015
(Pa. Super. 2/19/16)**

Father appeals order holding him in contempt for failure to pay a support order. Father has a law license in two states. He was let go from TEVA Pharmaceuticals and refused to sign a severance agreement. He has since worked part-time jobs. He was also living rent free with little expenses. No modification was filed and judge found he had the ability to earn more regardless. Father willfully chose to remain underemployed; therefore, was in willful violation of the support order. Memorandum opinion by Bender joined by Olson and Platt.

- 31. SME v. D.A.B., Snyder, 1817 MDA 2015
(Pa. Super. 2/19/16)**

D.A.B. appeals order naming him the biological father and entering a final support order. Vacated and remanded. D.A.B. appeared but refused genetic testing and argued that Mother was married and living with her husband at the time of conception. D.A.B.'s request for continuance due to a scheduled surgery was denied and when he failed to appear, an order was entered. Court found he did not have a meaningful opportunity to contest paternity. Memorandum opinion by Panella joined by Lazarus and Jenkins.

**32. In Re: Adoption of A.J., Allegheny, 1546 WDA 2015
(Pa. Super. 2/19/16)**

Mother appeals involuntary termination order. Mother was incarcerated for violating PFA, missed several drug screenings and did not provide evidence of mental health treatment. Memorandum opinion by Stabile joined by DuBow and Musmanno.

**33. A.N.A. v. N.N.A., Clearfield, 1185 WDA 2015
(Pa. Super. 2/19/16)**

Father appeals custody modification. Affirmed. All factors considered. Court will not re-weigh evidence or credibility determinations. Court was free to reject expert testimony. Memorandum opinion by Bender joined by Shogan and Musmanno.

**34. In Re: B.N., Washington, 1352 WDA 2015
(Pa. Super. 2/19/16)**

Custodian appeals dependency adjudication. Affirmed. Mother's home not fit due to her continued drug use. Custodian not a ready, willing and able parent for the child. Custodian did not understand custody order requesting him to supervise all visits with Mother, showing a disregard for the child's safety. Memorandum opinion by Stabile joined by DuBow and Musmanno.

**35. Kodenkandeth v. Kodenkandeth, Allegheny, 2050 WDA 2014
(Pa. Super. 2/19/16)**

Husband appeals order in equitable distribution. Quashed in part and affirmed in part. Appeal period had run on several of Husband's issues. No abuse where Court refused to impose a constructive trust. Memorandum opinion by Shogan joined by Ott and Stabile.

**36. D.A.C. v. J.E.H., Lehigh, 1942 EDA 2015
(Pa. Super. 2/23/16)**

J.E.H. appeals order allowing a foreign support order to be registered in Lehigh. Affirmed. J.E.H. was served and had notice of the hearing and order in Wisconsin. He failed to timely appeal. He was afforded due process and the Court had personal jurisdiction. Memorandum opinion by Gantman joined by Bender and Platt.

**37. C.B. v. F.W. f/k/a F.M. and R.D.V., J.F.K. and J.C.K.,
Columbia, 1268 MDA 2015 (Pa. Super. 2/23/16)**

Paternal Grandmother appeals denial of petition to intervene. Vacated and remanded. Paternal Grandmother, who lives with Mother, was previously granted partial custody. Father later obtained shared legal custody and Paternal Grandmother's custody was to be through Father. Mother relocated to Virginia. Paternal Grandmother eventually lost standing. Maternal Grandmother filed for custody after the children had been living with them since January 2012. Paternal Grandmother has standing pursuant to 5325(2) even though parents were never married. Children's parents were separated for 6 months; therefore, it was an error of law to deny standing for partial physical custody. Memorandum opinion by Panella joined by Mundy and Stevens.

**38. In the Interest of T.W., Monroe, 2188 EDA 2015
(Pa. Super. 2/26/16)**

Mother and Father separately appeal termination of parental rights. Both Affirmed. Their relationship was violent and resulted in criminal charges and PFAs. Their relationship and inability to separate has endangered the child. Child was thriving in foster care. Memorandum opinion by Gantman joined by Bender and Platt.

**39. In the Interest of S.T., Lancaster, 1375 MDA 2015
(Pa. Super. 2/26/16)**

Mother appeals termination of parental rights. Affirmed. Child was involved with Agency for more than ½ of her life. Mother does not recognize the need to place child's needs over hers and does not appreciate the damage to the child. Memorandum opinion by Bender joined by Shogan and Platt.

**40. Weisher v. Weisher, Indiana, 394 WDA 2015
(Pa. Super. 2/26/16)**

Husband appeals E.D. order. Affirmed. Agreement stated that Husband was to pay \$2,000 per month from his pension and his counsel was to draft a QDRO. Court held that Husband was to commence paying immediately as opposed to after the entry of the QDRO. Could not be offset against an overpayment of APL. Memorandum opinion by Bender joined by Shogan and Musmanno.

**41. In the Interest of Z.J.J., Philadelphia, 2263 EDA 2015
(Pa. Super. 2/29/16)**

Father appeals termination of parental rights. Vacated and remanded. Court erred in relying on stipulated facts regarding safety from a previous hearing in terminating Father's rights at which time Father was voluntarily relinquishing his rights (he later revoked his consent). New evidence should have been taken. Father was denied notice and opportunity to be heard. Memorandum opinion by Bender joined by Olson and Platt.

**42. In Re: D.G., Allegheny, 1179 WDA 2015
(Pa. Super. 2/29/16)**

Mother appeals involuntary termination. Affirmed. Mother's family is volatile yet she continues to maintain contact and fails to address her mental health issues which endanger the child. Memorandum opinion by Bowes joined by Olson and Strassburger.

**43. In Re: Adoption of T.J.F., B.I.R., Cambria, 1327 WDA 2015
(Pa. Super. 2/29/16)**

Mother appeals involuntary termination of parental rights. Affirmed. Mother refused medical treatment for the child in several occasions. Mother failed to meet Family Safety goals. Memorandum opinion by Stabile joined by DuBow and Musmanno.

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