

RECENT PA. APPELLATE COURT FAMILY LAW SLIP OPINIONS

May 2016

Summarized by Sara L. Slocum, Esquire

1. **Brilla v. Brilla**, Clearfield, 2063 WDA 2014
(Pa. Super. 3/1/16)

Husband appeals pro se from contempt order. Affirmed. No indication of partiality or bias of trial court. Highly litigious case. Memorandum opinion by Ford Elliott joined by Shogan and Ott.

2. **Brilla v. Brilla**, Clearfield, 417 WDA 2015
(Pa. Super. 3/1/16)

Husband appeals dismissal of his contempt petition. Affirmed. Husband failed to meet his burden to show that Mother taking the child on a tour of a school violated the custody order. Memorandum opinion by Ford Elliott joined by Shogan and Ott.

3. **E.G.O.-R. v. D.J.R.**, Centre, 182 MDA 2015
(Pa. Super. 3/1/16)

Consolidated cross appeals by Mother and Father regarding a support order. Affirmed. Father failed to meet his burden of showing a change in financial circumstances in order to modify the child support amount in the parties' Property Settlement Agreement. The Court questioned both party's accounting practices. Court reduced support payment upon emancipation of child that occurred after the filing of a petition to modify. Memorandum opinion by Panella joined by Ott and Jenkins.

4. **In the Interest of D.A.H. a/k/a D.H.**, Philadelphia,
3011 EDA 2015 (Pa. Super. 3/2/16)

Father appeals termination order and goal change to adoption. Affirmed. Father is serving life in prison for second degree murder. Father did not have a strong presence in the child's life before he was incarcerated and did not maintain contact after. Memorandum opinion by Bender joined by Lazarus and Stevens.

5. **In the Interest of L.J.W.**, Philadelphia, 182 EDA 2015
(Pa. Super. 3/2/16)

Mother appeals termination order. Affirmed. Mother's mental health issues and instability continued. She failed to complete all 3 of the programs she was referred to. Child was in a pre-adoptive home and doing well. Memorandum opinion by Mundy joined by Olson and Strassburger.

6. **In Re: B.M.W.**, Bucks, 2560 EDA 2015
(Pa. Super. 3/2/16)

Father appeals termination order. Affirmed. Father was incarcerated 3 weeks after child's birth and sentenced to 2-4 years. Father provided additional time to meet Agency Objectives and failed. No evidence of parent child bond. Memorandum opinion by Mundy joined by Olson and Strassburger.

7. **Deleon v. Spillane**, Northampton, 734 EDA 2015
(Pa. Super. 3/2/16)

Father appeals involuntary criminal contempt order for violation of a PFA. Affirmed. Custody order stated that it superseded the PFA. Father argued that the holiday provision in the custody order made it unclear when he had custody. Therefore, there was no wrongful intent in violating the PFA. PFA and custody order were clear that Father was excluded from Mother's residence and he appeared there. Memorandum opinion by Lazarus joined by Ott and Stevens.

8. **In Re: DIT and S.P.T.**, York, 1341 MDA 2015
(Pa. Super. 3/2/16)

Father appeals termination order. Affirmed. Father was incarcerated for sexually assaulting Mother and violating a PFA. Father filed for custody and it was determined after evaluation that Father should not have custody until 6 months sober and 2 years psychotherapy. Father failed to remain sober and assume parental duties. No significant bond with Father. Memorandum opinion by Panella joined by Mundy and Stevens.

9. **Robins v. Freeman**, Delaware, 2111 EDA 2015
(Pa. Super. 3/3/16)

Appeal of denial of Petition for Recovery of Overpayment. Affirmed. Appellant incarcerated and failed to follow procedure. Issues waived. Memorandum opinion by Bender joined by Olson and Platt.

10. **In the Interest of A.C.M.**, Philadelphia, 2019 EDA 2015
(Pa. Super. 3/3/16)

Father appeals involuntary termination order. Affirmed. Father had lengthy criminal history and was incarcerated at the time of the hearing. Child strongly bonded with foster parent. Memorandum opinion by Bender joined by Olson and Platt.

11. **DiGrazio v. DiGrazio**, Montgomery, 1010 EDA 2015
(Pa. Super. 3/3/16)

Husband appeals E.D. order. Affirmed. Husband failed to pay for notes of testimony but the Court addressed and dismissed his claim. Court's reliance on Wife's appraisal expert is based on facts of record. Will not re-weigh credibility determination. Memorandum opinion by Ford Elliott joined by Ott and Jenkins.

12. **In the Interest of M.E.R.**, Philadelphia, 1342 EDA 2015
(Pa. Super. 3/4/16)

Mother appeals termination order and goal change to adoption. Affirmed. Failed to comply with Family Service Plan including visiting the children (only 11 out of 66 times). Memorandum opinion by Bender joined by Olson and Platt.

13. **Franklin v. Franklin**, Susquehanna, 736 MDA 2015
(Pa. Super. 3/4/16)

Husband appealed ED order and decree. Affirmed. Oil and gas rights accumulated during the marriage were correctly determined personal property by the Master severed from the real property itself. Memorandum opinion by Bowes joined by Ott and Fitzgerald.

**14. In Re: Involuntary Termination of Parental Rights to D.V.M.R.,
Centre, 1266 MDA 2015 (Pa. Super. 3/4/16)**

Father appeals termination of parental rights. Affirmed. Father had a repeated pattern of criminal activity. Child's best interests were served by remaining with his foster parents. Memorandum opinion by Panella joined by Mundy and Stevens.

**15. In Re: D.V.M.R., Centre, 1258 MDA 2015
(Pa. Super. 3/4/16)**

Mother appeals termination order. Affirmed. Mother had a criminal history, drug addiction issues and a lack of stable housing and employment. Mother continued to use drugs at time of hearing and was recently sent to a psychiatric hospital. Memorandum opinion by Panella joined by Mundy and Stevens.

**16. In Re: Involuntary Termination of Parental Rights of J.E.D.,
Centre, 1671 MDA 2015 (Pa. Super. 3/4/16)**

Mother and Father appeal termination order. Affirmed. Father has history of engaging in inappropriate sexual conduct with minors. Mother has history of CYS involvement. Child taken into custody when he fell and struck his head on the hospital floor the day after he was born. Both parents were present at the time. Mother's reunification efforts with older children failed and her visits went poorly with J.E.D. Father failed to complete therapy. Memorandum opinion by Bowes joined by Lazarus and Strassburger.

**17. In the Interest of J.K.V. II, Lawrence, 414 WDA 2015
(Pa. Super. 3/4/16)**

Father appeals termination order. Affirmed. Child taken into custody after Father and child were found wandering downtown with Child's belongings and a formula canister with flour in it. Father was not compliant with the Family Service Plan, including attending visits with the child. Memorandum opinion by Bowes joined by Olson and Strassburger.

18. **M.C. v. T.K.**, Lycoming, 1409 MDA 2015
(Pa. Super. 3/8/16)

Mother appeals custody order awarding Father primary physical custody. Affirmed. All factors considered. Most were neutral but court ultimately decided the children should remain with Father during the school year. Memorandum opinion by Panella joined by Mundy and Stevens.

19. **In Re: Adoption of T.D.**, Washington, 1305 WDA 2015
(Pa. Super. 3/8/16)

Mother appeals termination order. Affirmed. No documentation to show at trial that Mother completed any of the objectives of the Plan for the period during which she was not incarcerated. Mother also testified she was a drug addict and “on the lam” for at least 6 months avoiding arrest. No bond between Mother and child. Memorandum opinion by Stabile joined by DuBow and Musmanno.

20. **M.P. v. T.M.**, Lawrence, 1037 WDA 2015
(Pa. Super. 3/8/16)

Father appeals support order. Remanded for recalculation of Mother’s net and to render fines regarding deviation and reasoning on allocation of private school costs. Mother’s net income figure was not supported by the evidence presented that she worked 26.5 hours per week not 20 which was what the calculation equated to. Memorandum opinion by Stabile joined by DuBow and Musmanno.

21. **In Re: A.R.B.**, Allegheny, 1025 WDA 2015
(Pa. Super. 3/8/16)

Father appeals termination order. Affirmed. Father failed to address drug and alcohol problems. He continued to drink until one month before the hearing and lied about his participation in AA. Court was permitted to discount expert testimony especially where doctor was apprehensive. Memorandum opinion by Bowes joined by Olson and Strassburger.

22. **McKernan v. McKernan**, Clinton, 1057 MDA 2015
(Pa. Super. 3/9/16)

Husband appeals denial of request to modify or terminate alimony. Affirmed. Husband elected an early retirement. Court held Husband already penalized Wife by reducing her social security benefits by retiring early. Husband should not be permitted to dictate Wife's economic future. Memorandum opinion by Panella joined by Lazarus and Jenkins.

23. **In Re: Adoption of R.B.S.**, York, 1912 MDA 2015
(Pa. Super. 3/9/16)

Father appeals termination of parental rights. Affirmed. Father incarcerated and no bond with the children. Children refer to foster parents as mother and father. Memorandum opinion by Mundy joined by DuBow and Strassburger.

24. **Long v. Long**, Bedford, 341 WDA 2015
(Pa. Super. 3/9/16)

Wife appeals denial of contempt and enforcement. Affirmed. Memorandum of understanding found not to be binding where language of the marital settlement agreement stated to the contrary. Words of the contract were clear. No evidence of fraud. Memorandum opinion by Ford Elliott joined by Shogan and Ott.

25. **E.M. v. D.Z.**, Bucks, 2086 EDA 2015
(Pa. Super. 3/10/16)

Father appeals order granting Mother primary physical custody. Affirmed in part and vacated and remanded for clarification regarding legal custody and holidays that are not mentioned. Memorandum opinion by Gantman joined by Mundy and DuBow.

26. **Grothey v. Grothey**, York, 619 MDA 2015
(Pa. Super. 3/11/16)

Wife appeals QDRO which was drafted by ex-husband. Reversed and remanded. Husband's figure failed to apply Berrington & Brown as it failed to include his guaranteed benefit based upon years of service. Also did not include total years of service as opposed to years of service until separation. Memorandum opinion by Panella joined by Ott and Jenkins.

27. **C.A.D. v. A.M.B.**, Clearfield, 1430 WDA 2015
(Pa. Super. 3/11 /16)

Mother appeals denial of relocation request. Vacated and remanded due to court's failure to state the reasons for its decision. Memorandum opinion by Bowes joined by Mundy and Jenkins.

28. **In Re: C.R.D.**, Lebanon, 1526 MDA 2015
(Pa. Super. 3/14/16)

Father appeals termination of parental rights. Affirmed. Father was never an active parent and had an extensive criminal history. Mother was engaged and child was bonded with her fiancée. Memorandum opinion by Bender joined by Shogan and Platt.

29. **In the Interest of S.T.B-R.**, Philadelphia, 2368 EDA 2015
(Pa. Super. 3/15/16)

Mother appeals termination of parental rights. Affirmed. Children in custody for 28 and 25 months. Mother had schizophrenia and failed to address her mental health issues and obtain safe housing or address her drug and alcohol issues. Children bonded with foster parents. Memorandum opinion by Bender joined by Olson and Platt.

30. **Kravitz v. Kravitz**, Montgomery, 1828 EDA 2015
(Pa. Super. 3/15/16)

Husband appealed order holding him in contempt of alimony obligation. Affirmed. Husband violated the order and it was not abuse to order \$4,000 in attorney's fees to Wife. Memorandum opinion by Mundy joined by Olson and Strassburger.

**31. In the Interest of P.J.W.P., Philadelphia, 1421 EDA 2015
(Pa. Super. 3/15/16)**

Mother appeals involuntary termination of parental rights. Affirmed. Mother and child tested positive for marijuana at birth. FSP put in place. Mother failed to received drug treatment and missed parenting classes. Mother continued to engage in criminal activity and was incarcerated. Memorandum opinion by Mundy joined by Olson and Strassburger.

**32. R.M. v. P.M., Wayne, 3007 EDA 2015
(Pa. Super. 3/17/16)**

Father appeals order granting him supervised visitation at his expense. Vacated and remanded. Order failed to consider custody factors. Memorandum opinion by Ott joined by DuBow and Jenkins.

**33. S.E.U. v. GWU Jr., Lancaster, 1536 MDA 2015
(Pa. Super. 3/18/16)**

Appeal of order denying support modification. Affirmed. Husband was incarcerated and arrears continued to accrue. It was converted to a non-financial obligation for period of incarceration and court ordered him to pay \$100 per month on arrears. Father never sought a modification while arrears accrued and his incarceration did not constitute a change in circumstance at the time to warrant a modification. Memorandum opinion by Bowes joined by Lazarus and Strassburger.

**34. McGrath v. McGrath, Erie, 1913 WDA 2014
(Pa. Super. 3/18/16)**

Wife appeals equitable distribution order. Affirmed. Master awarded a 65% distribution in Wife's favor but due to the large marital debt paid by Husband, Wife had to pay Husband \$10,000. Memorandum opinion by Ford Elliott joined by Bowes and Musmanno.

**35. Berkowitz v. Berkowitz, Chester, 2777 EDA 2015
(Pa. Super. 3/21/16)**

Wife appeals denial of her petition to enforce where the trial court determined that the exemption became unavailable for her use when the child claimed herself as dependent on her 2014 return. Emily was 21 years old. Husband testified that he prepared his return. Emily was permitted to claim a personal exemption but she qualified as a dependent child. Husband prepared the return erroneously. Reversed and remanded. Memorandum opinion by Panella joined by Ott and Fitzgerald.

**36. Jones-Keaney v. Keaney, Delaware, 373 EDA 2015
(Pa. Super. 3/21/16)**

Husband appeals pro se from order incarcerating him for contempt of court. It was proper for court to enforce its order while it was on appeal. Memorandum opinion by Shogan joined by Stabile and Lazarus.

**37. Llaurado v. Llaurado, Delaware, 1637 EDA 2015
(Pa. Super. 3/21/16)**

Husband appeals court order finding him in contempt and sentencing him to 6 months incarceration with release upon payment of \$47,000 in arrears. Affirmed. Husband had the financial ability to pay as he recently liquidated \$125,000 of assets. Memorandum opinion by Ford Elliott joined by Ott and Musmanno.

**38. In Re: SMC, A.K.C. and J.M.C., Somerset, 1325 WDA 2015
(Pa. Super. 3/22/16)**

Mother appeals order granting Maternal Grandparents petition to terminate her rights. Affirmed. Children lived with Maternal Grandparents on and off until January 2014 when Mother disappeared then exclusively with Maternal Grandparents. Mother remained homeless at the time of the hearing and had criminal charges pending. Children call Grandparents Mom and Dad. Memorandum opinion by Stabile joined by DuBow and Musmanno.

- 39. In Re: M.S.G., Somerset, 1303 WDA 2015
(Pa. Super. 3/22/16)**

Mother appeals termination order. Affirmed. Mother was a heroin addict with a long criminal history. Child placed with Great Aunt and Uncle and was thriving. No meaningful bond with Mother. Memorandum opinion by Stabile joined by Musmanno and DuBow.

- 40. L.A. v. C.L., Allegheny, 1300 WDA 2015
(Pa. Super. 3/22/16)**

Mother appeals order providing her with partial physical custody. Mother relocated temporarily and left children with Father. When she returned she filed for custody on several occasions but her complaints were dismissed for failure to appear. All factors properly addressed. Memorandum opinion by Panella joined by Olson and Platt.

- 41. S.C. v. A.M., Lancaster, 1176 MDA 2015
(Pa. Super. 3/23/16)**

Mother appeals denial of request to transfer jurisdiction to New Jersey. Affirmed. Father and Mother's parents live in Lancaster and child visits often. Significant connection to the Commonwealth. Memorandum opinion by Bender joined by Shogan and Platt.

- 42. In Re: Adoption of G.J.A., P.J.A., Cambria, 1493 WDA 2015
(Pa. Super. 3/23/16)**

Father appeals termination order. Affirmed. Father is a repeat felon. No meaningful bond to preserve despite the fact that he loved the children and that they loved him. Memorandum opinion by Lazarus joined by Stabile and Fitzgerald.

- 43. B.C. v. J.M.C., Monroe, 3022 EDA 2015
(Pa. Super. 3/24/16)**

Father appeals custody order awarding Mother primary physical custody during the school year and shared in the summer. All factors considered. Court will not re-weigh credibility determinations. Memorandum opinion by Bender joined by Stabile and Musmanno.

- 44. Mandler v. Mandler, Chester, 683 EDA 2015
(Pa. Super. 3/29/16)**

Jeffrey appeals PFA. Affirmed. Proper to admit evidence of events after the PFA was filed. Defendant corroborated the events, stating that they occurred; he merely had a different account or perception. No objection on the record regarding not having sufficient time to interview witnesses brought to trial. Therefore, the issue is waived. Memorandum opinion by Ford Elliott joined by Ott and Musmanno.

- 45. In the Interest of M.L., Philadelphia, 3136 EDA 2015
(Pa. Super. 3/29/16)**

Father appeals finding of aggravated child abuse. Affirmed. Child born premature with medical difficulties. Father had short periods of custody and Mother was responsible for all medical appointments. Father was found to have failed to protect the child from Mother's abusive or neglectful behavior. Memorandum opinion by Bowes joined by Lazarus and Platt.

- 46. In Re: Adoption of L.L.E.G., Erie, 1457 WDA 2015
(Pa. Super. 3/29/16)**

Father appeals termination order. Affirmed. Long history of OCY involvement with the children. Father has never been involved with parenting the child. At the time of removal, Father was incarcerated. Father made no progress and failed to comply with the FSP. Memorandum opinion by Gantman joined by Shogan and Fitzgerald.

**47. Della Guardia v. Della Guardia, Montgomery, 136 EDA 2015
(Pa. Super. 3/30/16)**

Husband appeals order denying his petition for contempt and enforcement of a PSA and granting Wife's counterclaim and award of counsel fees. Affirmed. Husband alleged Wife was cohabiting and sought to terminate alimony. Wife raised counsel fees in her answer and counterclaim. Husband failed to prove cohabitation. Memorandum opinion by Ford Elliott joined by Stabile and Strassburger.

**48. C.A.S. and J.A.S. v. E.R.S. and L.C.J., Jefferson, 1072 WDA 2015
(Pa. Super. 3/30/16)**

Father appeals order awarding Paternal Grandparents primary physical custody. Affirmed. Child lived with Grandparents until 2008 when Father was discharged from the Navy. Grandparents lived in a better school district. Also, potential abuse issues with Father's girlfriend. Memorandum opinion by Ford Elliott joined by Bender and Shogan.

**49. J.R.W. v. E.J.W., Chester, 1650 EDA 2015
(Pa. Super. 3/31/16)**

Mother appeals denial of request to relocate to Florida. Affirmed. All factors considered. Court states that the standard is "best interest of the child" not which parent has more factors in their favor. Relocation would affect child's relationship with Mother's half-siblings and Father's wife and her children. Memorandum opinion by Gantman joined by Mundy and DuBow.

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