

**Philadelphia Bar Association – Family Law Section
March 2021 - Case Law Summaries**

A.M. v. A.J., Appeal of: L.F., Memorandum Decision
No. 885 WDA 2020 (Pa. Super. February 19, 2021)

Grandmother appealed an order denying her petition to intervene in the pending custody litigation between Mother and Father.

During the early years of the children’s lives, Grandmother was a “fixture in the children’s lives.” Mother filed a complaint for custody and the parties entered into a consent agreement to share legal and physical custody of the children. Father subsequently filed a petition to modify the custody agreement due to Mother’s substance abuse issues. Father’s petition was granted and he was awarded sole legal and physical custody of the children. Grandmother continued to assist Father with caring for the children.

Mother then filed a petition to modify the custody order and Grandmother filed a petition to intervene in the custody proceedings (seeking to be appointed as a guardian of the children). The court appointed a guardian *ad litem* (“GAL”) for the children. At the hearing, Grandmother and Father presented competing narratives regarding the level of Grandmother’s involvement with the children. The (“GAL”) for the children opined that guardianship was not appropriate in the case, but acknowledged that Grandmother played a substantial role in caring for the children and that her continued contact with the children would serve their best interest. Critically, the GAL intentionally avoided opining as to whether Grandmother stood *in loco parentis* to the children, highlighting that the extent of her involvement, whether as a mere helper or a *de facto* parent, was still under dispute. The trial court then denied Grandmother’s petition to intervene.

Grandmother appealed, arguing that the trial court erred in denying her petition when:

1. The testimony of the GAL established that she parented the children with Father, thus establishing standing pursuant to 23 Pa.C.S.A. § 5324(2) (*in loco parentis* standing).
2. She had a prior relationship with the children with the consent of the parents, the parents initiated the custody action, and the parents disagreed as to whether Grandmother should have partial custody or visitation.
3. The court disregarded the testimony of the GAL that it would be in the children’s best interests for Grandmother to have some form of partial custody.

The Superior Court disagreed with Grandmother and affirmed the decision of the trial court, reasoning that:

1. In light of Father’s credible testimony to the contrary, Grandmother’s interactions with the children did not constitute the assumption of parental status with Father’s consent;

2. Mother's willingness to permit the children's telephone contact with Grandmother was not tantamount to evidence of her agreement to Grandmother exercising physical custody; and

3. Notwithstanding the GAL's observations about the children's best interests, the GAL specifically declined to speculate as to the threshold determination concerning whether Grandmother stood *in loco parentis* with the children.

The Court found Grandmother's actions to be commendable, but asserted that her providing the children with occasional shelter, financial support and transportation were more "akin to assistance in a time of need" as opposed to "assuming parental status".

Belke v. Belke, Memorandum Decision
No. 1932 MDA 2019 (Pa. Super. February 19, 2021)

Wife appealed an order granting in part and denying in part her exceptions to the divorce master's recommendation.

In 2007, Wife learned that Husband had been involved in extramarital affairs. When confronted by Wife, Husband admitted to the affairs and out of remorse suggested the parties enter into a post-nuptial agreement. The agreement was drafted by Wife's counsel and the parties signed it in December of 2008. The agreement provided, *inter alia*, that in the event that Husband continued extramarital sexual activity, Wife would receive 100% of the marital assets and 60% of Husband's income.

In February of 2012, Husband communicated to Wife that he "did not see a way forward for the parties' relationship and expressed a desire for a divorce." Wife filed for divorce in March of 2013. Following extensive hearings, the master issued a report recommending that the trial court find the agreement to be valid (which the parties stipulated to) and that the marital estate be divided in accordance with the terms of the agreement. The parties filed numerous exceptions and the trial court, *sua sponte*, held that the agreement was invalid and dismissed the parties' exceptions. The trial court decreed, *inter alia*, that:

1. Wife shall receive 70% of the marital assets, valued at \$820,482.15;
2. Husband shall pay to Wife monthly alimony in the amount of \$11,000 per month for eight years; and
3. The parties shall be responsible for their own debts and obligations.

Wife appealed, arguing only that the trial court erred in *sua sponte* questioning the validity of the agreement, and declaring the same void and unenforceable based on a variety of reasons, including impossibility of performance, vagueness, material ambiguities, unconscionability, constitutional infirmities and public policy

The Superior Court ultimately agreed with Wife, vacated the trial court order and remanded for further proceedings, finding that the trial court erred when it, *sua sponte*, declared the agreement void and unenforceable despite the parties stipulating to its validity before the master. The Court noted that neither party challenged the validity of the agreement when they filed exceptions to the master's report and cited Pa.R.C.P. No. 1920.55-2, which provides that "each exception shall set forth the separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived unless, prior to entry of the final decree, leave is granted to file exceptions raising those matters." The Court reasoned that:

...it was clear that the trial court did not have before it a question regarding the agreement's validity. Additionally, it is settled law that postnuptial agreements are to be evaluated under the same standards as other contracts and that absent fraud, misrepresentation, or duress, spouses are bound by the terms of their agreement. . . courts must not act in a manner that would "constitute a paternalistic and unwarranted interference with the parties' freedom to enter contracts," citing Simeone v. Simeone, 581 A.2d 162, 166 (Pa. 1990).

Accordingly, the Court held that the trial court erred and remanded the matter with direction to decide the parties' exceptions and, upon determining which provision, if any, of the agreement applied to this case, to remand the matter to the master for further proceedings for purposes of distributing marital assets.