

## **RECENT PA. APPELLATE COURT FAMILY LAW SLIP OPINIONS**

**July 2015**

**Summarized by Sara L. Slocum, Esquire**

1. **Deaver v. Lemon**, Lancaster, 1244 MDA 2014  
(Pa. Super. 6/1/15)

Husband appeals final divorce decree. Reversed and remanded. Husband claimed Wife failed to establish an “oral trust” over which she had no control and she had access to those funds. Wife was settlor and funded the trust and made herself beneficiary evidencing her control over the funds. Court argued that the income produced from the trust was a marital asset. The basis for alimony, counsel fees must also be revisited. Remanded. Memorandum opinion by Shogan joined by Wecht and Strassburger.

2. **M.P. and T.P. v. G.R.H., T.L.M. and R.S.**,  
Pike, 91 EDA 2015 (Pa. Super. 6/2/15)

Appeal of order dismissing emergency custody for lack of jurisdiction under UCCJEA. Affirmed. Children taken into Child Services’ custody in Tennessee and adjudicated dependent. Paternal grandmother intervened and was given custody. Appellants entered into an agreement with paternal grandmother for custody but it was never filed in Pennsylvania and the children were handed off. Paternal grandmother later unilaterally took the children back. Pennsylvania declined jurisdiction even though it found that the children resided in Pennsylvania for the requisite time and acted as parents because Tennessee was a more appropriate forum. No abuse of discretion. Memorandum opinion by Gantman joined by Ford Elliott and Jenkins.

3. **In the Interest of J.D.**, Union, 1347 MDA 2014  
(Pa. Super. 6/2/15)

Mother appeals finding of aggravating circumstances. Affirmed. Court credited grandmother’s testimony and found she did not perpetrate the injuries. Mother and Father were responsible for the child’s care giving and were with him on the date of injury. Mother did not outright deny the abuse but focused on the fact that there were several care givers. Court will not allow responsible persons to circle the wagons to avoid the allocation of responsibility for abuse. This Court agreed that Mother’s conduct amounted to an omission of care that threatened the child’s life. Memorandum opinion by Mundy joined by Stabile and Fitzgerald.

4. **In the Interest of S.A.S., Jr.**, Lawrence, 38 WDA 2015  
(Pa. Super. 6/2/15)

Father appeals termination order. Affirmed. Child had no contact with Father since 2012 and no evidence of bond. Memorandum opinion by Bender joined by Stabile and Platt.

5. **L.J.D. v. K.J.D.**, Allegheny, 1667 WDA 2014  
(Pa. Super. 6/2/15)

Mother appeals custody modification. Affirmed. All factors considered. Court made 145 findings of fact in support of awarding shared physical and shared legal custody to Father. Memorandum opinion by Bender joined by Mundy and Stabile.

6. **In Re: L.A.M.**, Lehigh, 3403 EDA 2014  
(Pa. Super. 6/3/15)

Mother appeals termination order. Affirmed. Mother had minimal contact with child and CYS. Memorandum opinion by Donohue joined by Shogan and Strassburger.

7. **Kepner, Jr. v. Kepner**, Columbia, 603 MDA 2014  
(Pa. Super. 6/3/15)

Husband appeals divorce decree. Affirmed in part, reversed in part. No abuse in alimony award. No evidence in record regarding the return of non-marital property. Reversed to that extent. Memorandum opinion by Mundy joined by Stabile and Fitzgerald.

8. **In Re: L.C.**, Allegheny, 1977 WDA 2014  
(Pa. Super. 6/3/15)

Mother appeals termination order. Affirmed. Mother had an ongoing problem with drugs and child was bonded with foster parent. Memorandum opinion by Panella joined by Lazarus and Strassburger.

9. **C.M.J. v. N.L.J.**, Venango, 1742 WDA 2014  
(Pa. Super. 6/3/15)

Mother appeals custody order awarding Father primary custody. Affirmed. Father is more likely to encourage contact with the other parent. Mother threatened many times to run away with the child. Father is the more stable parent. Evidence supported trial court's conclusion. Memorandum opinion by Panella joined by Lazarus and Strassburger.

10. **In Re: K.A.**, Allegheny, 251 WDA 2015  
(Pa. Super. 6/3/15)

Mother appeals termination order. Affirmed. Evidence in record regarding lack of bond with the child supports trial court's conclusion. Memorandum opinion by Shogan joined by Olson and Musmanno.

11. **J.E.L. v. S.L.**, Luzerne, 1171 MDA 2014  
(Pa. Super. 6/4/15)

Father appeals order awarding Mother primary physical custody. Affirmed. Mother maintained stability in lives of children. Child's preference was well reasoned. Memorandum opinion by Bowes joined by Donohue and Allen.

12. **M.P.S. v. T.J.S.**, Lycoming, 1340 MDA 2014  
(Pa. Super. 6/5/15)

Husband appeals order dismissing his child support exceptions. Affirmed. Husband failed to provide record. All issues waived. Memorandum opinion by Shogan joined by Wecht. Strassburger dissents on basis that the issues could have been decided without a transcript and the \$600.00 that Wife was obligated to pay should have been factored into the support obligation.

13. **C.A.R. v. R.E.M. III**, Blair, 1976 WDA 2014  
(Pa. Super. 6/5/15)

Father appeals order denying request for DNA test. Affirmed. Father did not prove fraud by clear and convincing evidence the application of paternity by estoppel and rescind the acknowledgment of paternity. Father was aware of the possibility that he was not the father and acted as the Father for 4 years. Memorandum opinion by Panella joined by Lazarus and Strassburger.

14. **In the Interest of F.S.L.R.**, Philadelphia, 239 EDA 2015  
(Pa. Super. 6/9/15)

Mother appeals termination order. Affirmed. Mother failed to meet FSP goals with regard to mental health and no bond with child. Memorandum opinion by Gantman joined by Shogan and Lazarus.

15. **In Re: M.M.B., K.B.R., S.M.R.**, Crawford, 1760 WDA 2014  
(Pa. Super. 6/9/15)

Father appeals termination orders. Affirmed. Father incarcerated and sentenced but has 3 additional criminal cases pending. No contact with children since 2012. Memorandum opinion by Panella joined by Shogan and Ott.

16. **In Re: T.J.**, Butler, 1724 WDA 2014  
(Pa. Super. 6/9/15)

Mother and Father appeal termination order. Affirmed. Father incarcerated at time the child was taken into custody upon her incarceration. Mother spent 2 years in jail and occasionally wrote the child letters. No abuse of discretion. Memorandum opinion by Panella joined by Lazarus. Strassburger concurs.

17. **Wyatt v. Wyatt**, Perry, 1228 MDA 2013  
(Pa. Super. 6/11/15)

Wife appeals decree and equitable distribution order. Affirmed in part, vacated in part and remanded. The trial court abused its discretion by reducing Wife's alimony award as it provided no rationale for the modification. Memorandum opinion by Shogan joined by Wecht and Strassburger.

- 18. N.T. on behalf of KRT & JAT v. F.F.,  
Centre, 1121 MDA 2014 (Pa. Super. 6/15/15)**

F.F. appeals order overruling preliminary objections on PFA. Reversed as to objection based on lack of personal jurisdiction. PFA petition vacated and dismissed. F.F. had only one tenuous contact with P.A. Memorandum opinion by Shogan joined by Wecht and Strassburger.

- 19. J.N. v. L.M., Montgomery, 2669 EDA 2014  
(Pa. Super. 6/15/15)**

Father appeals custody order awarding Mother primary orders requiring him to pay for a portion of private school. Pro se appeal evidence supported by the record. Memorandum opinion by Stabile joined by Jenkins and Musmanno.

- 20. In the Interest of D.S.B., Lancaster, 65 MDA 2015  
(Pa. Super. 6/15/15)**

Father appeals termination order. Affirmed. Father has history of medical, legal, drug, alcohol and mental health issues. Memorandum opinion by Bowes joined by Allen and Lazarus.

- 21. In Re: Adoption of L.M.H., York, 228 MDA 2015  
(Pa. Super. 6/15/15)**

Father appeals termination order. Affirmed. Father lacks legal source of income, has substantial abuse issues, did not complete FSP, rarely visited the child and strong bond with grandmother. Memorandum opinion by Bowes joined by Allen and Lazarus.

- 22. In Re: Adoption of A.D.M., Franklin, 94 MDA 2015  
(Pa. Super. 6/15/15)**

Father appeals termination order. Affirmed. Father incarcerated and made minimal efforts to maintain contact. Memorandum opinion by Bowes joined by Allen and Lazarus.

**23. In Re: C.D., Allegheny, 2074 WDA 2014  
(Pa. Super. 6/15/15)**

Mother appeals termination decree. Affirmed. Child experiences anxiety and depression as direction relation to experiences with Mother. Mother failed to remedy her substance abuse issues. Memorandum opinion by Bender joined by Stabile and Platt.

**24. Lucas v. Lucas, Fayette, 598 WDA 2014  
(Pa. Super. 6/15/15)**

Wife appeals E.D. order. Reversed and remanded. Master erred in only valuing the parties' contributions to their defined benefit pensions and using an immediate offset method where the pensions were vested. QDROs should be used for deferred distributions. No abuse as to the alimony award but should be re-evaluated in light of the other changes. Determination regarding the distribution of certain assets must also be re-evaluated to the extent that the division was impacted by the change in allocation of the retirement assets. No explanation for denial of counsel fees. Remanded. Memorandum opinion by Bowes joined by Olson and Strassburger.

**25. In the Interest of AHS, Philadelphia, 3586 EDA 2014  
(Pa. Super. 6/16/15)**

Father challenges dependency ruling. Affirmed. Father failed to attend the hearing even though court rescheduled it to later in the day and Father had notice. Mother and her counsel agreed the child was dependent. Father's counsel did not object. Memorandum opinion by Gantman joined by Shogan and Lazarus.

**26. J.E.E. v. M.P.E., York, 2051 MDA 2013  
(Pa. Super. 6/16/15)**

Husband challenges child support order. Affirmed. Proper to hold Husband to an earning capacity that included expenses to expand his business. All other issues waived. Memorandum opinion by Bowes joined by Mundy and Jenkins.

27. **KT and MRT v. L.S. f/k/a L.R.**, York, 2072 MDA 2014  
(Pa. Super. 6/17/15)

Paternal Grandparents appeal order denying partial physical custody. Reversed and remanded. Case previously remanded for trial court's failure to address the factors. On this appeal, abuse of discretion found and on remand ordered to award grandparents with partial custody. Memorandum opinion by Gantman joined by Mundy and Jenkins.

28. **Seaman v. Petery**, Berks, 1059 MDA 2014  
(Pa. Super. 6/17/15)

Wife appeals order requiring her to sign an agreement of sale. Affirmed. Issues waived or lacked legal support. Memorandum opinion by Bowes joined by Donohue and Allen.

29. **In the Interest of M.B.**, Susquehanna, 2123 MDA 2014  
(Pa. Super. 6/17/15)

Father appeals motion to dismiss dependency action. Appeal quashed. Order is interlocutory. Memorandum opinion by Bender joined by Jenkins and Strassburger.

30. **Piotti v. Piotti**, Blair, 899 WDA 2014  
(Pa. Super. 6/17/15)

Wife appeals second amended divorce and order of E.D. Affirmed in part, reversed in part and remanded. Remanded to determine if any part of Wife's student loan money was used for joint purposes and to apportion the whole of the debt as a marital debt. Alimony should be revisited to determine the current economic circumstances. Memorandum opinion by Bowes joined by Olson. Strassburger concurs.

31. **B.H. and D.H. v. U.K.H. and B.W.H.**, Washington,  
1907 WDA 2014 (Pa. Super. 6/18/15)

Paternal Grandparents appeal denial of partial physical custody. Affirmed. Grandparents permitted Father to see the children during their visits with them contrary to a court order. The children are afraid of their Father and afraid to visit with grandparents because of Father's potential presence. Not in best interest of children for grandparents to have custody. Memorandum opinion by Panella joined by Shogan and Ott.

32. **In Re: N.C.**, Allegheny, 1506 WDA 2014  
(Pa. Super. 6/17/15)

Child appeals finding that she is not dependent. Reversed and remanded. Court mixed dependency standard with the best interest standard which is an error of law. Child feared returning home and claimed ongoing physical abuse by Father and stepmother. Child should have been deemed dependent. Memorandum opinion by Panella joined by Shogan and Ott.

33. **In the Interest of J.S.**, Philadelphia, 2582 EDA 2014  
(Pa. Super. 6/22/15)

Father appeals dependency order. Affirmed. Due to mental health issues of Father and child, Father was ordered to have a mental health evaluation. No abuse to temporarily suspend visits to ensure safety of child and allow child to determine if the visit should occur. Memorandum opinion by Gantman joined by Platt. Concurring and dissenting opinion by Stabile. Stabile agrees that the child is dependent and dissents on the basis that it should not have been in the discretion of the child to visit and no compelling state interest in ordering Father to undergo an evaluation under penalty of fine or imprisonment.

34. **In the Interest of K.R. a/k/a K.N.R.**, Philadelphia,  
2733 EDA 2014 (Pa. Super. 6/22/15)

Mother appeals termination orders. Affirmed. Failed to follow FSP and tested positive for drugs. Memorandum opinion by Bender joined by Allen and Mundy.

35. **Philpott v. McGinley**, Lackawanna, 2196 MDA 2014  
(Pa. Super. 6/22/15)

Husband appeals denial of spousal support. Spousal support orders are not appealable until the divorce is final. Quashed as interlocutory. Memorandum opinion by Bowes joined by Ott and Stabile.

36. **In the Matter of: A.G.A.**, Dauphin, 505 MDA 2015  
(Pa. Super. 6/22/15)

Father appeals termination decrees. Affirmed. Father has not performed any parental duties since 2008. Best interest factors not addressed but not raised on appeal. Memorandum opinion by Wecht joined by Stabile and Musmanno.

37. **Markle v. Markle**, Westmoreland, 968 WDA 2014  
(Pa. Super. 6/22/15)

Wife appeals equitable distribution order. Divorce decree affirmed. No abuse of discretion. Court can award the marital home to either party. All other distributions supported by evidence on the record. Memorandum opinion by Bowes joined by Olson and Strassburger.

38. **K.A.Y. v. W.L.E.**, Venango, 1779 WDA 2014  
(Pa. Super. 6/23/15)

Father appeals custody order awarding Mother primary custody. Father waived all issues on appeal. Dismissed as moot. Memorandum opinion by Panella joined by Shogan and Ott.

39. **R.W. v. C.C.**, Delaware, 206 EDA 2015  
(Pa. Super. 6/23/15)

Mother appeals order of shared physical custody and denying her petition to relocate to Florida. Affirmed. Mother failed to develop a legal argument supported by legal authority for her position. Mother challenges the weight of the evidence which is in the purview of the trial court. Memorandum opinion by Mundy joined by Olson and Platt.

**40. In Re: Adoption of A.J.K., Philadelphia, 2679 EDA 2014  
(Pa. Super. 6/23/15)**

Father appeals termination orders. Affirmed. No meaningful contact with child or bond with Father. Memorandum opinion by Ford Elliott joined by Stabile and Fitzgerald.

**41. In the Interest of K.D., Berks, 1912 MDA 2014  
(Pa. Super. 6/23/15)**

Mother appeals dependency order. Affirmed. Mother's husband was arrested for sending pornographic images and soliciting sex from his stepdaughter. Mother was aware of his criminal past which included sexual offenses. Mother was unable to perceive the risk husband imposed on her children. Memorandum opinion by Gantman joined by Mundy and Jenkins.

**42. Flannery v. Flannery, Lackawanna, 1622 MDA 2014  
(Pa. Super. 6/23/15)**

Husband appeals PFA. Reversed. No testimony that Wife was in fear of serious bodily injury and court only found that she was "physically threatened" which is not the standard. Husband viewing Wife's public Linked In profile repeatedly and sending a request to connect did not constitute cyber stalking. Order reversed. Memorandum opinion by Bowes joined by Donohue and Allen.

**43. In Re: M.G., Allegheny, 2076 WDA 2014  
(Pa. Super. 6/23/15)**

Mother appeals involuntary termination orders. Affirmed. Mother has a long history of drug use, mental health issues and housing issues, all of which she failed to remedy. Memorandum opinion by Panella joined Mundy and Strassburger.

**44. In the Interest of V.L.D.H., Philadelphia, 2897 EDA 2014  
(Pa. Super. 6/24/15)**

Mother appeals termination orders. Affirmed. Mother minimally compliant with FSP goals. Cannot obtain housing and two different shelters discharged her for failure to comply with their requirements. Mother did not attend all visits and never reached unsupervised visits. No parent/child bond. Memorandum opinion by Mundy joined by Olson and Platt.

**45. In Re: D.M.H., Lancaster, 145 MDA 2015  
(Pa. Super. 6/24/15)**

Father appeals termination order. Affirmed. Although Mother left and Father did not know her whereabouts, court found that the did not use reasonable efforts to find the child. Father had the financial ability to do so. Father also did not act immediately upon learning that the child was in care. No bond with Father who was absent for 6 years. Memorandum opinion by Bender joined by Allen and Wecht.

**46. G.S. and J.S. v. EJT, Somerset, 177 WDA 2015  
(Pa. Super. 6/24/15)**

Mother appeals termination order. Affirmed. When incarcerated, Mother placed child with Great Aunt and Uncle. Mother had criminal history and history of drug abuse. Bond with Great Aunt and Uncle. Memorandum opinion by Panella joined by Mundy and Strassburger.

**47. R.L.R. v. S.P.S., Erie, 1341 WDA 2014  
(Pa. Super. 6/24/15)**

Father appeals support orders. Affirmed. Court corrected a computer error which input 2013 figures for 2014 figures. Therefore facts and testimony on the record supported the 2014 incomes. No abuse of discretion. Rule 1701 permits a court to take action to correct clerical errors. Memorandum opinion by Panella joined by Shogan and Ott.

- 48. Osborne v. Osborne, Lawrence, 1774 WDA 2014  
(Pa. Super. 6/24/15)**

Husband and Wife both appeal an E.D. order. Affirmed. All factors considered for E.D. and alimony. No abuse found. Memorandum opinion by Shogan joined by Olson and Musmanno.

- 49. Wingard v. Seanor, Butler, 1881 WDA 2014  
(Pa. Super. 6/25/15)**

Wife appeals order granting in part and denying in part her Petition to Enforce Alimony. Affirmed. Wife stipulated to the arrears in court and later claimed a miscalculation. Claim was waived. Memorandum opinion by Shogan joined by Olson and Musmanno.

- 50. Morgante v. Morgante, Lycoming, 1088 MDA 2014  
(Pa. Super. 6/26/15)**

Husband appeals order denying his exceptions to Master's E.D. recommendation. Affirmed. Court awarded an indemnification of benefits awarded to her from Husband's Navy pension in the event that funds were not later available to compensate Wife for the lump sum calculated as due to her. Husband tried to argue it was an infringement on his disability benefits which were protected but that argument failed. Memorandum opinion by Shogan joined by Wecht and Strassburger.

- 51. Oley v. Oley, Northumberland, 187 MDA 2014  
(Pa. Super. 6/26/15)**

Wife appeals support order. Vacated and remanded. Court relied only upon tax returns to determine Husband's income who was a business owner. Court held that tax returns do not automatically establish income. Remanded to look at purpose and effect of tax decisions. Memorandum opinion by Shogan joined by Wecht and Strassburger.

**52. J.V. v. R.J., Blair, 342 WDA 2015  
(Pa. Super. 6/26/15)**

Mother appeals custody order. Affirmed. Trial court must consider all factors but it is within their sole discretion to weigh that evidence. Memorandum opinion by Ford Elliott joined by Donohue and Strassburger.

**53. N.L.P. v. S.M.K., Blair, 292 WDA 2015  
(Pa. Super. 6/26/15)**

Father appeals custody order awarding him joint physical and legal custody. Affirmed. Court decided case in the determination that Father influenced the child to make false abuse allegations. Evidence of record supported this conclusion. Memorandum opinion by Ford Elliott joined by Donohue and Strassburger.

**54. L.E.C. f/k/a L.C.S. v. J.A.S., Centre, 1598 MDA 2014  
(Pa. Super. 6/29/15)**

Mother appeals order denying her petition to relocate from Pennsylvania to Connecticut and modification of order giving Father primary custody during school year and Mother primary custody in the summer. Affirmed. All factors considered. Memorandum opinion by Shogan joined by Wecht. Strassburger dissents. The Court did not give proper credit to preference of child to stay with Mother.

**55. In Re: Adoption of A.E.C., Northumberland, 1964 MDA 2014  
(Pa. Super. 6/30/15)**

Mother appeals termination order. Affirmed. Child had serious medical issues. Mother attended only 2 supervised visits and none after child was hospitalized. Mother failed to complete medical training among other goals. Memorandum opinion by Ott joined by Wecht and Jenkins.

**56. Mansmann v. Mansmann, Washington, 1738 WDA 2014  
(Pa. Super. 6/30/15)**

Appeal from decree upholding Prenuptial Agreement. Affirmed. Husband claimed coercion to sign because Wife threatened not to marry him. Husband failed to meet his burden. Agreement provided that disclosure was made. Husband could not overcome the presumption. Memorandum opinion by Bender joined by Stabile and Platt.

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