

RECENT PA. APPELLATE COURT FAMILY LAW SLIP OPINIONS

February 2014

Summarized by David I. Grunfeld, Esquire

1. **Wagner v. Wagner**, Miff., 235 MDA 2013
(Pa. Super. 1/6/14)

Husband appealed denial of his petition to vacate divorce decree. Affirmed - no language in agreement prohibiting Wife from remarrying, which is against public policy anyway. Memorandum opinion by Wecht joined by Bender and Fitzgerald.

2. **Swisher v. Swisher**, Col., 1851 and 2052 MDA 2012
(Pa. Super. 1/6/14)

Wife appealed divorce decree and E.D. and alimony order. Vacated and remanded - insufficient evidence of marital misconduct, error to grant alimony retroactively where A.P.L. order was higher. Memorandum opinion by Mundy joined by Panella and Platt.

3. **Sashko v. Sashko**, Lack., 729 MDA 2013
(Pa. Super. 1/6/14)

Wife appealed E.D. order. Affirmed - no error to give Husband house and set off against other assets because of Wife's inability to refinance and buy him out; no error to make her pay her student loans. Memorandum opinion by Allen joined by Lazarus and Fitzgerald.

4. **In the Interest of: M.S.J.**, Phl., 1606,
1611-14 EDA 2013 (Pa. Super. 1/7/14)

Mother appealed termination orders. Affirmed due to abandonment, substance abuse, incapacity, bond with foster parents. Memorandum opinion by Fitzgerald joined by Bowes and Panella.

5. **Crouse v. Crouse**, Adams, 639 MDA 2013
(Pa. Super. 1/7/14)

Mother appealed child support order. Affirmed - no error to determine Father's earning capacity here after self-employed business ceased. Memorandum opinion by Mundy joined by Panella and Platt.

6. **In Re: Adoption of: E.L.**, York, 891, 892, 904, 905,
917, 918, 925, 926 MDA 2013 (Pa. Super. 1/7/14)

Parents appealed termination orders. Affirmed - no abuse of discretion here. Memorandum opinion by Allen joined by Shogan and Musmanno.

7. **In the Interest of: B.C.O.**, McKean, 1042 WDA 2013
(Pa. Super. 1/7/14)

Father appealed denial of blood tests in response to Mother's petition for his involuntary termination. Affirmed - estopped due to lack of relationship. Memorandum opinion by Wecht joined by Ford Elliott and Ott.

8. **In the Interest of: V.H.**, Phl., 1490 EDA 2013
(Pa. Super. 1/8/14)

Mother appealed dependency adjudication and custody to aunt. Affirmed due to safety, incapacity. Memorandum opinion by Olson joined by Gantman and Wecht.

9. **In Re: S.H.H.**, Northam., 2048 EDA 2013
(Pa. Super. 1/9/14)

Mother appealed termination order. Affirmed due to mental health issues, incapacity, bond with foster mother. Memorandum opinion by Strassburger joined by Bender and Ott.

10. **G.A.M. v. T.E.K.**, Clear., 1140 EDA 2013
(Pa. Super. 1/9/14)

Maternal grandparents appealed custody order to paternal grandparents. Affirmed - no abuse of discretion where all factors considered. Memorandum opinion by Strassburger joined by Panella and Allen.

11. **Jeffco v. Jeffco**, Blair, 402 WDA 2013
(Pa. Super. 1/14/14)

Wife appealed annulment of marriage and dismissal of economic claims. Affirmed - no error to find her married to another. Memorandum opinion by Allen joined by Panella. Dissenting and concurring memorandum by Strassburger, who would find divorce code allows economic relief under annulment.

12. **In the Interest of: R.K.**, Luz., 1251 MDA 2013
(Pa. Super. 1/14/14)

Father appealed termination orders. Affirmed due to incapacity. Memorandum opinion by Bender joined by Panella and Musmanno.

13. **Gibbs v. Moore**, Phl., 1131 EDA 2013
(Pa. Super. 1/14/14)

Mother pro se appealed denial of her petition to terminate support arrears. Dismissed - insufficient brief, non-appearance at argument. Memorandum opinion by Bender joined by Lazarus and Fitzgerald.

14. **A.M.B. v. J.M.C.**, Montg., 1045 EDA 2013
(Pa. Super. 1/14/14)

Father appealed custody order to Mother and her relocation to Florida. Affirmed as to custody - no error to find primary caretaker doctrine and all factors in favor of Mother here. Reversed and remanded as to relocation due to errors in findings as to Mother's cooperation and compliance with interim orders. Memorandum opinion by Bowes joined by Donohue and Ott.

15. **In The Interest of: A.C.R.**, Phl., 2250 EDA 2013
(Pa. Super. 1/14/14)

Father appealed termination orders. Affirmed due to sexual abuse, safety issues, bond with foster parents. Memorandum opinion by Wecht joined by Gantman and Olson.

16. **Nemeth v. Petrini**, Mon., 240 EDA 2013
(Pa. Super. 1/14/14)

Ex-husband appealed PFA order. Affirmed - trial court reasonably found fear created here. Memorandum opinion per curiam by Gantman, Shogan and Platt.

17. **Frame v. Froncek**, Arm., 698 WDA 2013
(Pa. Super. 1/15/14)

Mother on behalf of minor appealed denial of PFA. Reversed - testimony by expert doctor based on hospital medical records should have been admissible. Memorandum opinion by Bowes joined by Allen and Lazarus.

18. **Kloss v. Young**, Erie, 36 WDA 2013
(Pa. Super. 1/15/14)

Father appealed child support arrears. Affirmed - properly reinstated after incarceration ended. Memorandum opinion by Olson joined by Panella and Musmanno.

19. **Murphy v. Murphy**, Ches., 580 EDA 2013
(Pa. Super. 1/15/14)

Husband appealed alimony order. Vacated and remanded for review of parties' current income. Memorandum opinion by Shogan joined by Gantman and Platt.

20. **Burda v. Korenman**, Montg., 3401 EDA 2012 and
315 EDA 2013 (Pa. Super. 1/15/14)

Husband appealed denial of his petitions to vacate or modify common law E.D. arbitration awards. Affirmed - no errors below. Memorandum opinion by Ott joined by Bowes and Donohue.

21. **W.P. v. J.P.**, Schuy., 1220 and 1317 MDA 2013
(Pa. Super. 1/16/14)

Father appealed denial of custody vacation enforcement and relocation of Mother to Florida. Affirmed - no abuse of discretion, all factors discussed. Memorandum opinion by Donohue joined by Ott and Platt.

22. **M.E.H. v. C.J.P.**, Montg., 2076 EDA 2013
(Pa. Super. 1/17/14)

Father appealed support and freeze order. Quashed - untimely filing. Memorandum opinion by Bender joined by Shogan and Fitzgerald.

23. **P.S. v. V.E.O.H.**, Lanc., 984 MDA 2013
(Pa. Super. 1/17/14)

Mother appealed custody order to Father. Affirmed - no error where Mother relocated to Maryland without notice and made unfounded allegations of abuse. Memorandum opinion by Fitzgerald joined by Bender and Wecht.

24. **Morabito v. Morabito**, West., 878 WDA 2013
(Pa. Super. 1/17/14)

Husband appealed interpretation of pre-nup dividing after-acquired property equally. Affirmed - no error to include separately titled assets. Memorandum opinion by Mundy joined by Bender and Lazarus.

25. **In Re: S.P.**, Alleg., 1221 WDA 2013
(Pa. Super. 1/17/14)

Mother appealed termination order. Affirmed due to length of removal, incapacity, mental health, incompleteness of plan, bond with foster parents. Memorandum opinion by Allen joined by Bowes and Lazarus.

26. **C.M.L. v. T.I.L.**, Dau., 1163 MDA 2013
(Pa. Super. 1/21/14)

Mother appealed partial custody order to paternal grandparents. Vacated and remanded for best interest analysis. Memorandum opinion by Donohue joined by Ott and Platt.

27. **K.E.S. v. M.A.K.**, York, 1309 MDA 2013
(Pa. Super. 1/22/14)

Mother appealed custody order to Father and his relocation to Florida. Vacated and remanded for analysis of relocation factors. Memorandum opinion by Mundy joined by Panella and Platt.

28. **Bernhardt v. Dieffenbach**, Brad., 245 MDA 2013
(Pa. Super. 1/23/14)

Ex-wife appealed declaratory judgment enforcing divorce settlement agreement. Affirmed as to no oral modification, reversed as to relief under Act not available. Memorandum opinion by Shogan joined by Allen and Musmanno.

29. **In Re: J.L.F.**, Berks, 1552 MDA 2013
(Pa. Super. 1/23/14)

Mother appealed termination order. Affirmed due to safety issues, non-compliance with plan, bond with foster parents. Memorandum opinion by Donohue joined by Shogan and Musmanno.

30. **In the Interest of: D.L.**, Wyo., 1269-72 MDA 2013
(Pa. Super. 1/23/14)

Father appealed dependency adjudications. Affirmed due to abuse. Memorandum opinion by Panella joined by Mundy and Platt.

31. **In Re: Adoption of S.T.G.S.**, Montg., 1930 and 1931 EDA 2013 (Pa. Super. 1/24/14)

Father appealed termination orders. Affirmed due to parental incapacity, no bond. Memorandum opinion by Shogan joined by Gantman and Musmanno.

32. **In the Interest of: A.O.**, Mon., 1661 EDA 2013
(Pa. Super. 1/24/14)

Mother appealed dependency adjudication. Affirmed due to parental incapacity. Memorandum opinion by Gantman joined by Shogan and Musmanno.

33. **Magee v. Warner**, Erie, 954 WDA 2013
(Pa. Super. 1/28/14)

Father pro se appealed child support order. Affirmed - issues waived because no concise statement filed. Memorandum opinion by Wecht joined by Ford Elliott and Ott.

**34. In the Interest of: J.D.D., Phl., 2001 EDA 2013
(Pa. Super. 1/30/14)**

Mother appealed termination order. Affirmed due to parenting incapacity. Memorandum opinion by Ott joined by Bender and Strassburger.

**35. In Re: Adoption of E.J.D., Montg., 2120 and
2238 EDA 2013 (Pa. Super. 1/31/14)**

Parents appealed termination orders. Affirmed due to incarceration, mental health, parental incapacity, substance abuse, child's special needs, lack of bond. Memorandum opinion by Shogan joined by Ott and Platt.

**36. In the Interest of: N.J-D., Lanc., 1377-80 MDA 2013
(Pa. Super. 1/31/14)**

Foster parents appealed relocation order of dependent children to pre-adoptive placement. Affirmed - no standing because legal custody in agency. Memorandum opinion by Shogan joined by Donohue and Musmanno.

**37. B.K.A. v. T.M.Z., Northam., 1865 EDA 2013
(Pa. Super. 2/3/14)**

Father appealed custody order to Mother. Vacated and remanded - all factors not considered. Memorandum opinion by Ott joined by Bender and Strassburger.

38. M.O. v. J.T.R., Ches., 1757 EDA 2013
(Pa. Super. 2/4/14)

Mother appealed custody order that Father not have to take off from work during his 5 weeks of summer partial physical custody. Affirmed - no error or abuse of discretion; no need to evaluate all factors for this narrow issue. Memorandum opinion by Wecht joined by Ford Elliott and Musmanno.

39. J.L., R.C.R. and S.A.R., Leb., 798 MDA 2013
(Pa. Super. 2/4/14)

Maternal grandparents appealed custody order to daughter, with visitation to them. Affirmed - no error. Memorandum opinion by Platt joined by Donohue and Ott.

40. D.M. v. D.M., Berks, 379 MDA 2013
(Pa. Super. 2/4/14)

Maternal grandparents appealed custody order to daughter and partial physical custody to them. Affirmed - no error. Memorandum opinion by Platt joined by Donohue and Ott.

41. L.M. v. C.J.R., York, 961 MDA 2013
(Pa. Super. 2/4/14)

Mother appealed custody order reinstating her primary physical custody after her incarceration, with Father to have children during it. Affirmed as to contempt order but vacated for new jurisdiction in Maryland. Memorandum opinion by Ott joined by Donohue and Platt.

- 42. In Re: A.L.W., Mer., 1043 WDA 2013
(Pa. Super. 2/5/14)**

CYS appealed denial of change of placement goal to adoption. Affirmed - no error in finding here despite 21 month placement. Memorandum opinion by Panella joined by Olson and Wecht.

- 43. Tosi v. Kizis, Luz., 160 MDA 2013
(Pa. Super. 2/6/14)**

Decedent's representative appealed denial of petition to strike discontinuance of divorce action. Affirmed - surviving spouse may voluntarily discontinue divorce where party dies before decree but after grounds established. Opinion by Fitzgerald joined by Bender and Wecht.

- 44. In Re: T.B., Alleg., 1112 WDA 2013
(Pa. Super. 2/6/14)**

Father appealed custody order to Mother. Affirmed - no error to so order in dependency case without adjudication. Memorandum opinion by Lazarus joined by Bender and Mundy.

- 45. In Re: Adoption of J.B.W., Elk, 1239 WDA 2013
(Pa. Super. 2/6/14)**

Mother appealed denial of termination of Father's rights. Affirmed - paternity estoppel and no error in finding not in child's best interest. Memorandum opinion by Lazarus joined by Bender and Mundy.

- 46. In Re: Adoption of T.J.S., West., 1277 and
1278 WDA 2013 (Pa. Super. 2/7/14)**

Mother appealed termination orders. Reversed and remanded - relinquishment not voluntary, and without counseling here. Memorandum opinion by Lazarus joined by Bowes and Wecht.

**47. In Re: Adoption of M.J.S., Law., 1190 WDA 2013
(Pa. Super. 2/10/14)**

Father appealed termination order. Affirmed due to failure to perform parental duties, no bond. Memorandum opinion by Ford Elliott joined by Bowes and Wecht.

**48. In the Interest of: C.T., Erie, 1261 WDA 2013
(Pa. Super. 2/10/14)**

Mother appealed goal change to foster parents permanent custody. Affirmed due to conduct of child, incapacity of and non-compliance by Mother. Memorandum opinion by Ford Elliott joined by Ott and Wecht.

Copies of Pa. Supreme and Superior slip opinions may be downloaded from the Internet on the pages of the Administrative Office of the Pa. Courts, <http://www.pacourts.us/courts> (note some opinions are Memorandum).