

Rosiecki v. Rosiecki
Superior Court of Pennsylvania
No.: 932 MDA 2019
2020 Pa.Super.92
April 9, 2020
Before: Dubow, Nichols, Colins
Opinion by: Nichols

In May 2007 Wife filed for support from Husband in the context of their divorce action. In 2009 the parties mutually entered into a marital settlement agreement to resolve their divorce, which also included a provision for alimony to be paid by Husband to Wife. The agreement laid out very specific requirements for the termination of the alimony. The agreement was then incorporated, but not merged, with the final divorce decree entered in 2010. In 2019 Husband filed to terminate the alimony based on economic hardship and health problems he was experiencing. In response, Wife filed a motion to dismiss Husband's petition to terminate. The trial court granted Wife's motion to dismiss and Husband appealed to Superior Court, and that Court affirmed the trial court's decision. On appeal Husband argued that he could not pay the alimony due to his economic hardship and health problems. He further argued that he did not understand the agreement at the time he entered into it and the agreement was done in error and without regard to all of Wife's sources of income. Finally, he requested an evidentiary hearing for these issues. Superior Court rejected all of these arguments. First, Superior Court noted that as the alimony was entered by agreement – and not court order – it can only examine the agreement itself and that, absent fraud, misrepresentation, or duress (none of which were claimed by Husband), it is bound to the terms of the agreement. The agreement in this matter does not allow for modification, and laid out very specific terms for termination. Husband acknowledged that the requirements for termination as laid out in the agreement were not yet met. As the alimony in this matter was by agreement and not court order, Superior Court ruled that it was without authority to modify or terminate it if the requirements in the agreement are not met. Finally, Superior Court did not believe the trial court's failure to grant an evidentiary hearing was error as, even if Husband's arguments and assertions were all accepted as true, the Court is still powerless to terminate or modify the alimony agreement contrary to its own terms.

J.S. v. R.S.S.
Superior Court of Pennsylvania
No.: 1069 MDA 2019
2020 Pa.Super.94
April 14, 2020
Before: Shogan, Stabile, Pellegrini
Opinion by: Stabile

This case is extremely fact specific and dependent, and included many twists and turns. The summary below contains the essential points. Mother and Father were married in 2008 and had their only Child in 2012. They then divorced in 2015, but remained sexually intimate until 2017 despite Father's subsequent marriage to the couple's Hungarian nanny. In 2015 Father filed for custody and relocation to Hungary with the Child. Father misrepresented to Mother that he was

in the witness protection program and therefore had to relocate with the Child for their safety (in or about 2019 Father later revealed that Mother was mentally ill and he told Mother he was in the witness protection program in order to protect himself and the Child from Mother. He further claimed that he continued sexual relations with Mother, and exchanged sexually explicit texts messages with her, for the benefit of Mother in order to keep her from harming herself.). Despite being awarded sole physical custody and being granted relocation to Hungary in 2015, Father did not actually move to Hungary, and Mother informally exercised primary physical custody. The Child eventually started spending less time with Mother and, by around July 2016, Father finally moved to Hungary with the Child, but did not reveal to Mother he had done so (Mother believed he was at an undisclosed Pennsylvania location). Upon learning that Father was seen in Central Pennsylvania and that he was married to their former nanny with whom he had a new baby, Mother filed to modify custody. A custody trial was eventually scheduled. Father filed to continue the trial date due to him allegedly suffering an injury in Hungary rendering him unable to appear at the trial. The trial court granted the continuance requested as Father furnished the court medical records (property translated from Hungarian to English) detailing his condition. Two weeks prior to the new trial date, Father once again requested a continuance on the basis of his injury, but this time only provided the court with Hungarian medical records translated by what appeared to be a cellphone app (or something similar). The trial court denied his second continuance request unless Father could produce something from a reputable physician prepared within sixty (60) days of the trial that indicated that his injury prevented commercial airline flights. Father produced nothing further, and did not request an electronic/telephonic appearance. At trial, Father did not appear, but his attorney appeared and indicated that he had no evidence to present and was unable to contact Father to prepare for trial. He could only interact with Father's new wife. As result, Mother moved to prohibit Father's attorney from cross-examining witnesses due to his failure to file a pre-trial statement; the trial court granted the motion. The trial court eventually awarded Mother sole legal and primary physical custody of the Child, with Father receiving only partial custody by agreement; Father appealed. Father argued that as the relocation was granted in 2015, and he was actually living in Hungary with the Child, Pennsylvania no longer had subject-matter jurisdiction over the case. He also argued that the denial of his continuance request and prohibiting cross-examination were improper. On appeal, Superior Court affirmed the trial court's decision. Regarding the jurisdiction issue, Superior Court applied the Uniform Child Custody Jurisdiction and Enforcement Act and decided that the Child has sufficient contacts in Pennsylvania to justify retaining jurisdiction despite the relocation order and the Child's eventual move to Hungary. Furthermore, Superior Court noted that when a relocation results from a party's deception and other nefarious behavior (as Father eventually revealed in 2019 and described above), it would be unjust to relinquish jurisdiction as a consequence of the same. Regarding the denial of the continuance request, this matter was waived due to Father's failure to support his argument on appeal. Regardless, Superior Court ruled that it was within the trial court's discretion to deny the request, especially since it granted his first continuance request and Father failed to produce the necessary support requested by the trial court for the second. Finally, Superior Court ruled that sanctioning Father – by prohibiting cross-examination - for failure to file a pre-trial statement without any excuse or justification, was within the trial court's discretion. Indeed, Superior Court noted that his attorney stated on the record he had no evidence to produce and did not communicate with Father before the trial and, therefore, had virtually nothing new to produce or elicit other than what was already in the record.

In the Interest of: J.M.G., a Minor

Supreme Court of Pennsylvania

No.: 18 MAP 2019

2020 WL 1932760

April 22, 2020

Before: Saylor, Baer, Todd, Donohue, Dougherty, Wecht, Mundy

Opinion by: Mundy

From an early age J.M.G. suffered from chronic mental health issues that resulted in multiple hospitalizations. When he was about seventeen years old, he attempted to choke his adoptive mother which led to his voluntary admission to a residential treatment facility. While at the facility, J.M.G. revealed he was sexually inappropriate with his adoptive sister and was subsequently referred to Childline. After investigation, J.M.G. was adjudicated delinquent for one count of misdemeanor indecent assault. J.M.G. has since been in secure residential treatment facilities. Pursuant to 42 Pa.C.S. Section 6358(a), minors who are adjudicated delinquent due to certain sexual offenses and committed in secure facilities are entitled to an assessment by the Sexual Offender Assessment Board (SOAB) if they are still committed upon reaching twenty years old. Accordingly, as J.M.G. was still committed by age twenty, he was assessed by SOAB. Pursuant to 42 Pa.C.S. Section 5944, records of confidential communication between the child (i.e.: J.M.G) and his psychiatrist/psychologist are to be redacted before being reviewed for the aforementioned assessment. Upon review of the records, J.M.G. filed for additional redactions, but the motion was denied by the trial court, and the records were furnished to SOAB for assessment. Based on SOAB's assessment, the trial court held a hearing to determine whether there was a *prima facie* case to initiate civil commitment proceedings against J.M.G. A civil commitment hearing was subsequently held at which it was determined that J.M.G. should be civilly committed; J.M.G. appealed. One of J.M.G.'s arguments on appeal was the records referred to above were not properly redacted before their consideration and, therefore, included information subject to psychotherapist/patient privilege. On appeal the Superior Court agreed that the records were not properly redacted, but the failure to properly redact was so-called "harmless error" as, in Superior Court's estimation, the decision to commit J.M.G. was not based on the material that should have been redacted. J.M.G. appealed to the Supreme Court. The Supreme Court reviewed, in detail, the history and importance of psychotherapist/patient privilege and mental health treatment in the context of the juvenile system. The Supreme Court ultimately ruled that the aforesaid privilege is so critical and vital to mental health treatment, that the revelation of information that ought to have been redacted cannot be, in principle, a "harmless error." As a result, the Supreme Court ordered the matter to be reconsidered by SOAB by individuals not previously involved in this matter using properly redacted material, and to allow the matter to naturally unfold thereafter.