

Philadelphia Bar Association – Family Law Section
August Case Summaries

A.S.C., NOW A.S.L., v. N.B.C., No. 1427 WDA 2017 (Non-Precedential)

Mother appealed from the trial court's order granting Father's Petition for Special Relief/Modification of Marital Settlement Agreement regarding a modification to the amount of child support Father pays to Mother for the parties' two children. The parties, both officers of the military, were married and subsequently divorced in June 2012. Pursuant to the parties' MSA, Father agreed to pay child support to Mother in the amount of \$2,000 each month. The parties subsequently remarried and moved several times, which set the foundation for a lengthy custody action. The parties ultimately reached an agreement that Mother would have sole legal and physical custody of the children and that Father would have specific periods of visitation and that he could not object any time Mother chose to relocate. As part of the negotiations, the parties exchanged several messages and emails regarding a reduced child support obligation for Father, but the ultimate agreement filed with the court did not reference a change in Father's support obligation. Mother moved to Virginia and Father moved to California and started making the modified support payments. Mother informed the Virginia Department of Social Services that Father was delinquent in his support payments, resulting in a wage attachment for Father. As a result, Father filed the Petition in Pennsylvania to modify the parties' MSA, seeking a reduction in his child support obligation. The trial court reviewed the correspondence between the parties and determined that the parties had reached an agreement to modify the support payments and entered an order granting the modification. On appeal, Mother alleged, *inter alia*, that Pennsylvania did not have jurisdiction over the support matter because the children and the parties were not Pennsylvania residents and that the trial court erred because the Pennsylvania court had never heard evidence regarding the parties' incomes or the children's needs. The Superior Court rejected Mother's argument and cited 23 Pa.C.S.A. §7201, which allows a tribunal of Pennsylvania to exercise personal jurisdiction over a non-resident if they submit to the jurisdiction of Pennsylvania by consent on the record or by filing a responsive pleading in the jurisdiction. The Court also cited 23 Pa.C.S.A. §7205, which states that Pennsylvania shall have continuing exclusive jurisdiction over a support matter if the tribunal has issued a child support order, even if Pennsylvania is no longer the residence of the parties or children. The Court rejected Mother's argument that the trial court erred in failing to consider incomes and expenses because the parties had agreed to submit briefs on the issue in lieu of a hearing.

C.R. v. D.H., No. 258 WDA 2018 (Non-Precedential)

Father appealed from an order dismissing his Complaint for Custody of his minor daughter. When the child was three years old, Father was convicted of a wide variety of serious sexual offenses involving a child, including rape and sexual assault, resulting in his incarceration. While incarcerated, Father filed a complaint seeking partial physical custody and shared legal custody of his daughter. Mother appeared at the custody conference, but the court was unable

to make contact with Father in prison due to issues with the teleconferencing system. After an *ex parte* discussion with Mother, the court concluded that it would not award custody to Father and entered an order dismissing his complaint. The trial court cited Father's sexual crimes involving a child as well as the fact that an award of custody would not be in the child's best interests in its decision to dismiss Father's complaint. On appeal, Father alleged that the trial court erred in denying his Fourteenth Amendment right to due process by denying him a hearing with respect to his complaint for custody. The Superior Court ultimately vacated the trial court's order and remanded for further proceedings for several reasons. First, the Court found that the dismissal of Father's complaint was a violation of his due process rights, reasoning that "Father has a fundamental liberty interest in the care, custody, and control of Child . . . [and] that Father has a right to procedural due process in any proceedings where his custody of Child is at issue, including notice and the opportunity to be heard." Second, the Court expressed concern over the fact that the trial court based its decision in part on *ex parte* discussions with Mother. Finally, the Court agreed with Father that his criminal offenses did not automatically preclude him from exercising any form of custody with his daughter.