

JULY 2020 – Case Law Summaries

O.G. v. A.B.

Superior Court of Pennsylvania

No. 1952 MDA 2019

2020 PA Super 148

Filed June 23, 2020

Before: Panella, McLaughlin, Stevens

Opinion by: Stevens

In this matter, Mother appealed an Order for shared legal custody and shared physical custody of the parties' daughters. There were several notable issues in this matter. The first was related to the children's Passports. The children were dual-citizens, and held Russian passports which had expired. Father was unwilling to provide Mother with the Passports and did not want the children to travel to Russia to visit Mother's relatives, as Mother had previously withheld the children and had previously threatened Father to withhold the children from him. Another issue in this matter was Father's part-time work as a driver for a rideshare company. Father would bring the children on his rides. Lastly, Father had tenants renting a room in his home, who Mother alleged were not fully investigated by Father. Father had confirmed that the tenant at the time of the Order was not on the Megan's Law registry, but did not do any further investigating. The tenant had a criminal record in another state, which included only a crime for which the charges had been withdrawn. There had been a home study performed on Father's home, but the tenant was not part of same. After a hearing, the Trial Court granted the parties shared legal custody and shared physical custody. The Court also ordered that Father could not work part-time during his custodial time, that both parties must provide the other with full names and dates of birth for any party living in their household, and that written consent was required for either party to travel outside of the United States. The Trial Court declined to grant Mother's request to renew the children's Passports. Mother appealed.

The Superior Court ruled that the custody factors were properly reviewed by the court in making their determination for shared physical and legal custody. Specifically, the Court turned to Mother's challenge to the finding regarding the written consent requirement for travel. The Court noted this issue fell under custody factor sixteen, which considers "any other relevant factor." The Court stated that this involved a *ne exeat* clause, which is defined as an "equitable writ restraining a person from leaving, or removing a child or property from, the jurisdiction." They pointed to case precedent in ruling that because this case involves international and not domestic travel, this issue can be regulated by the court, and the lower court's ruling was proper. This was especially so as Father was concerned that Mother would abscond to Russia with children as she had previously threatened and/or actually withheld the children from Father in the past. The Superior Court, however, did rule that the Trial Court erred with regard to the renewal of the passports. The children were dual citizens, and it was not made clear in the original Hearing whether the expiration of the passports would impact the children's Russian citizenship. The Trial Court made no factual findings on this issue, and simply declined to grant Mother's request. The Superior Court remanded this issue to the Trial Court to determine whether restrictions on passports in this matter would impact the children's' dual citizenship. They added that if it is found that a restriction would impact the children's ability to renew their Russian

passports, they should require additional safeguards to prohibit those passports from being used without court approval.

Mother also argued in her second claim that the Court applied a presumption favoring shared physical custody. The Superior Court disagreed, noting that the trial court used their discretion to determine that a shared physical custody arrangement would benefit the children. Next, Mother argued that the Court erred when it did not determine whether Father's tenant posed a harm to the children. Father's tenant had a criminal record in Maryland, but had not been convicted of any crime, and had also previously had a PFA ordered against him. The Superior Court noted that the record contained little evidence about this tenant, and Father's investigation of him. While the Court did not make any judgments on the tenant's criminal history, as there were no convictions, they did note that the Trial Court should have done a fuller review of said tenant. The Superior Court ruled that the Trial Court abused its discretion by not making a full review of the tenant under the statute, and remanded the matter to the Trial Court for a more detailed inquiry and to determine whether the tenant posed any risk to the children. The Trial Court was also ordered to include provisions to protect the children from any future tenants.

Lastly, Mother argued that the Court erred in granting shared physical custody between two parents in such a high conflict matter, and that a shared scheduled will increase conflict. The Superior Court disagreed, noting that the Trial Court was aware of the high conflict between the parties and made their shared custody determination anyway based on the record. The Superior Court vacated the lower Court's order and remanded for further proceedings based on the above.

William D. Lewis v. Cameron H. Lewis
Superior Court of Pennsylvania
No. 2227 EDA 2019
2020 PA Super 140
Filed June 12, 2020
Before: Lazarus, Kunselman, McCaffery
Opinion by: Kunselman

In this matter, Husband appealed from a ruling invalidating the parties' Post-nuptial Settlement Agreement. By the time this matter was heard by the Trial Court, there was a history of Husband being abusive and extremely manipulative toward Wife. Husband had obtained a PFA against Wife, and used the court system to terrorize, manipulate and control her, such as inviting her back into the home after the PFA was entered, and then filing for contempt when she returned. Husband had also kicked Wife out of the house and forced her to sleep on the porch. He would drain joint bank accounts, and threaten to call in an Amber Alert for their child if she took the parties' child to the park. At the time of the signing of the Post-nuptial Settlement Agreement, Husband's abusive manipulation had led to psychiatric problems for Wife and even resulted in her hospitalization. Husband inserted himself into her treatment for same, including by attending all her psychiatric appointments and monitoring her prescriptions. Wife had even attempted suicide as a result of Husband's acts. It was after one of Wife's psychiatric appointments that Husband presented her with the Post-nuptial Settlement Agreement. Husband told Wife that the Post-nuptial Agreement was just a paper trail that he needed to show his employer and gave her

ten minutes to review the document while driving to a notary. When Wife said she wanted to have a lawyer review it, husband threatened to Divorce her and withhold their child. He then drove her to one of his acquaintances, who notarized the document. He would not provide Wife with a copy of the document. Wife filed her own PFA in 2018, at which point Husband's manipulation became clear to the Court, and she was granted exclusive possession of the marital residence. Husband then filed a Petition to enforce the Post-nuptial Agreement, which gave him right to exclusive possession of the home, and sought to hold Wife in Contempt of the Agreement. Wife filed a Counter-petition challenging the validity of the Agreement on the grounds of duress and fraud. An Order was entered on June 24, 2019, invalidating the Agreement on grounds of duress and fraud, and dismissing Husband's Petition for Contempt. Husband appealed, arguing that the Court erred by invalidating the Agreement on duress and fraud grounds, and by relying on past proceedings, which he argued exhibited bias.

The Superior Court affirmed the lower court's Order. They noted that no person with "ordinary firmness" as per the statute could overcome the amount of restraint and danger experienced by Wife in this matter. This was clear from Husband's control of Wife using threats of withholding their child and withholding her financial means, as well as Wife's close proximity to the execution of the Agreement, and because of the effects of Wife's medication at that time, which was kept locked up and distributed to Wife by Husband. The Court noted that where ordinary fitness is rebutted under the statute, the inquiry shifts to a subjective test. They used a subjective test here, and further noted that Husband was "dominant" over Wife, using actions such as keeping her medicated with unnecessary medications, which contributed to her mental state. Lastly, the Court looked to Wife's opportunity to seek counsel. They differentiated this case from the well-settled law on this issue, specifying that that Wife did not have an opportunity to consult with counsel, because of the above manipulation and as Husband had told her she would never see their daughter again if she consulted counsel. Because of all the above, the Superior Court ruled that the Settlement Agreement lacked mutual assent, making it voidable as a result of duress. The Court does not address Husband's second claim regarding fraud because of their above analysis, and found that Husband's claims of bias were waived or did not merit relief. The Superior Court affirmed the lower court's Order.

S.G. v. R.G.
Superior Court of Pennsylvania
No. 1906 EDA 2019
2020 PA Super 134
Filed June 08, 2020
Before: Stabile, McLaughlin, Stevens
Opinion by: Stevens

In this case, R.G. appealed from a final PFA Order. R.G. alleged that the court violated the "collateral jurisdiction rule" because it ignored a prior order of the same court. The Superior Court affirmed the lower court's ruling. In this case, S.G. had requested that the original Judge appointed to the first PFA Hearing in this matter recuse herself, as R.G. had previously worked on the Judge's political campaign. The Judge did recuse herself, but upon learning that a temporary agreement had been reached between the parties, agreed to enter the temporary order

along with the order for a continuance. The Judge noted that she would not hear evidence or make any rulings. The Temporary Order said that the PFA shall remain in full force and effect and included a provision that if there are no violations of said PFA, S.G. shall withdraw her petition at the next court date. At the rescheduled hearing, R.G. argued that because he had not violated the prior PFA in the two months since the temporary order was entered, S.G. should be withdraw her petition. S.G. declined because she still not did feel safe. The second Judge ruled that S.G.'s withdrawal was not required. R.G. also argued that the record should be limited to the prior 60 days pursuant to the parties' agreement. The Judge disagreed, and ruled that he would consider the full record. The Trial Court Judge entered a final order.

On appeal, R.G. argued that the Trial Court violated the "law of the case doctrine," or "coordinate jurisdiction rule" when the Judge conducted a full hearing on S.G.'s PFA petition without first finding that R.G. violated the temporary order. The pertinent portion of the law of the case doctrine here is that Judges sitting on the same court in the same case should not overrule each other's decisions. "Only in exceptional circumstances, such as an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed, may the doctrine be disregarded." A court must look to the rulings at issue in the context of the procedural posture of the case at hand when determining if the law of the case doctrine applies. Here, the Superior Court ruled that because the first Judge issued no holding that implicated this rule, she resolved no legal question put before her by either of the parties, and simply granted the parties' mutual request to enter a temporary agreement in her continuance order. The Superior Court also noted that there was no prior legal resolution that was overruled by the second Judge, and thus the coordinate jurisdiction rule is not applicable. R.G. also argued that it was improper to proceed with a full hearing on the merits on the original PFA because there was no basis to find that R.G. violated the temporary PFA. The Court affirmed the Trial Court's ruling on this issue as well, noting that per the Pennsylvania Rules of Civil Procedure, a Petitioner may request to withdraw a temporary PFA order, but the order shall remain in effect until a court modifies or terminates it after providing the parties with notice and a Hearing. Thus, the second Judge was correct in permitting a full evidentiary hearing on the matter to go forward, and Husband's argument was without merit, as again there was no hearing prior to the entry of said temporary order.

TAGHREED M. ILEIWAT v. MOHANNAD A. LABADI
Superior Court of Pennsylvania
NO. 59 EDA 2019
2020 PA Super 132
Filed June 03, 2020
Before: Bowes, Olson, FORD ELLIOTT
Opinion by: BOWES

Consolidated with:
TAGHREED M. ILEIWAT v. MOHANNAD A. LABADI
Superior Court of Pennsylvania

NO. 266 EDA 2019
2020 PA Super 132
Filed June 03, 2020
Before: Bowes, Olson, FORD ELLIOTT
Opinion by: BOWES

The Superior Court consolidated these two matters after both parties appealed from a final order entered in the parties' Divorce matter in December 2018. Of importance here is that the parties are both dual citizens of Jordan and the United States, and while they were married in New Jersey, have traveled back and forth from both countries throughout their marriage, and owned property both in the United States, including Philadelphia, and in Jordan. In January 2015, Wife was in Jordan after the parties had renewed their Visas there. Husband had returned to Philadelphia with the children. Wife was served with a Divorce Complaint under Muslim law while still in Jordan. The Divorce became final after ninety days and did not include any economic claims. Upon Wife's return to the United States, she filed for Divorce in Philadelphia, including economic claims, and served Husband in Philadelphia. Husband filed Preliminary Objections, and the Court entered a decree recognizing the Jordanian Divorce, but retaining jurisdiction over Wife's economic claims. Husband filed to challenge the court's jurisdiction in the Divorce matter. In the meantime, Wife filed for APL and an interim APL Order was entered. After several hearings in the APL matter, Husband was ordered to pay Wife \$5,500 per month, an amount which deviated from the guideline calculation based on the amount alleged to be sufficient to meet Wife's expenses. Wife filed exceptions. The Trial Court consolidated Wife's Exceptions with Husband's jurisdictional challenge, and heard all matters at once. They entered an Order confirming their jurisdiction over Wife's economic claims, denying Wife's support exceptions, dividing the marital property, and awarding alimony. Both parties appealed.

Husband's arguments related to the residency and domicile requirements in Pennsylvania, and whether the Court had subject matter jurisdiction when the parties were already divorced in Jordan and Wife was living out of state at date of filing of the Complaint. Husband argued that neither party had been domiciled in Pennsylvania for six months preceding the filing of Wife's divorce complaint and that domicile was necessary to file. The Superior Court looked to 23 Pa.C.S. § 3104, which requires at least one of the spouses to be domiciled in Pennsylvania to grant a Pennsylvania court subject matter jurisdiction to terminate a marriage. More specifically, the Court looked to § 3104(d), which discusses *quasi in rem* jurisdiction. The Court noted that there were different jurisdictional tests involved in this matter, stating, "because different tests must be met to establish jurisdiction to terminate the marriage, a *quasi in rem* proceeding, and the economic claims that may be brought ancillary to a divorce proceeding, all of which require *in personam* jurisdiction, the concept of "divisible divorce" arose." The Court then noted that as both parties had agreed that the Jordanian Divorce Decree was valid, the issue of terminating a marriage was no longer in issue, and thus the language of § 3104(d) with regard to the Court's ability to terminate a marriage no longer applied. Therefore, the Court ruled that the lower court had jurisdiction to determine ancillary claims which were not already decided by the Jordanian Court, so long as Husband's federal constitutional rights were not infringed upon in doing so. As Husband had obtained a Pennsylvania driver's license, acquired property during the marriage in Pennsylvania, and was living in Pennsylvania when he was served with the Complaint, the

Superior Court ruled the lower court had jurisdiction over Husband, and thus could review the ancillary economic claims. They affirmed the Trial Court's order on the jurisdiction issue.

The Superior Court then turned to Wife's APL claim, in which she argued that there was no basis for a downward deviation based on her reasonable needs. In reviewing the record, the Court noted that neither the Trial Court, nor the master, had applied the law which states that the guideline support amount is presumed to be the correct amount. Rather, Husband must provide evidence to rebut this presumption and to prove that a deviation from the guidelines is warranted. The Superior Court finds that he did not do so. Husband also argued that Wife does not need the full amount per the guidelines. The Superior Court confirmed that this issue is well settled in prior case law, and in Wife's favor. The Court then remanded the case for recalculation of APL.

IN THE INTEREST OF: D.R., A MINOR
APPEAL OF: FAYETTE COUNTY CHILDREN AND YOUTH SERVICES
Supreme Court of Pennsylvania
Western District
No. 45 WAP 2019
2019 at No. 311 WDA 201
Decided: June 16, 2020
Before: Saylor, Baer, Todd, Donohoe, Dougherty, Wecht
Opinion by: MUNDY

IN THE INTEREST OF: A.R., A MINOR
APPEAL OF: FAYETTE COUNTY CHILDREN AND YOUTH SERVICES
Supreme Court of Pennsylvania
Western District
No. 46 WAP 2019
2019 at No. 312 WDA 2019
Decided: June 16, 2020
Before: Saylor, Baer, Todd, Donohoe, Dougherty, Wecht
Opinion by: MUNDY

IN THE INTEREST OF: G.R., A MINOR
APPEAL OF: FAYETTE COUNTY CHILDREN AND YOUTH SERVICES
Supreme Court of Pennsylvania
Western District
No. 47 WAP 2019
2019 at No. 313 WDA 2019
Decided: June 16, 2020
Before: Saylor, Baer, Todd, Donohoe, Dougherty, Wecht
Opinion by: MUNDY

IN THE INTEREST OF: R.R., A MINOR
APPEAL OF: FAYETTE COUNTY CHILDREN AND YOUTH SERVICES
Supreme Court of Pennsylvania

*Western District
No. 48 WAP 2019
2019 at No. 314 WDA 2019
Decided: June 16, 2020
Before: Saylor, Baer, Todd, Donohoe, Dougherty, Wecht
Opinion by: MUNDY*

*IN THE INTEREST OF: C.R., A MINOR
APPEAL OF: FAYETTE COUNTY CHILDREN AND YOUTH SERVICES
Supreme Court of Pennsylvania
Western District
No. 49 WAP 2019
2019 at No. 315 WDA 2019
Decided: June 16, 2020
Before: Saylor, Baer, Todd, Donohoe, Dougherty, Wecht
Opinion by: MUNDY*

In this matter, Father, who was an attorney, had been observed to be under the influence while in the presence of one of his children in public. Three separate reports were filed regarding Father's behavior, and Children and Youth Services (CYS) investigated. They were only successful in communicating with Father once during their investigation. CYC filed a Motion to Compel, and at a hearing, Mother and Father were ordered to permit CYC into their home to assess the children's living conditions, and to cooperate with CYC in the investigation. Father was also ordered to submit to an observed urine sample for a drug and alcohol assessment. Mother and Father appealed, and the Superior Court reversed the Trial Court's order. The Superior Court noted that there was no specificity in the Trial Court's findings as to Father's alleged impairment or whether it led to any neglect or abuse of the children. The Superior Court also noted that the record did not reflect any actual proof of alleged neglect or abuse otherwise, and that there was no foundation for a finding of abuse or neglect. The Superior Court then turned to the issue of the urine sample. The Court ruled against CYC on this issue, noting that there is no authority for a CYC agency to request a drug test prior to a dependency adjudication. Both parties cross-appealed the Superior Court's Order. The Supreme court granted the appeal by CYC on one limited question, specifically whether the Superior Court erred by vacating and remanding the Trial Court's order requiring parents to provide a urine sample for drug testing in an investigation relating to allegations of drug usage by one of the parents. CYC argued that it has authority to require urine samples as party of its duty to investigate reports of suspected child abuse per 55 Pa. Code § 3490.232 and Section 3490.73, which authorize CYC to petition the court to order compliance with their mandatory investigation. The Mother and Father argued that CYC does not have that authority. The Supreme Court looked to the relevant statute, the Child Protective Services Law (CPSL). In doing so, they noted that there is no express language in the CPSL that permits CYC to require an observed urine sample for analysis as part of a CYC investigation, and case law that CYC had relied on in their argument was related to custody matters, rather than the CPSL. The Supreme Court found that CYC did not have the authority to obtain an involuntary urine sample from the subject of an investigation, and affirmed the Superior Court's judgment.

In RE: J.W.B. and R.D.B., Minors
Supreme Court of Pennsylvania
Middle District
No. 93 MAP 2019
No. 215 MDA 2019
Decided: June 16, 2020
Before: Saylor, Baer, Todd, Donohoe, Dougherty, Wecht, Mundy
Opinion by: Donohoe

Father, after having moved to Colorado in 2017, signed consent documents to terminate his parental rights and to permit Wife's Husband to adopt the parties' children. The adoption stalled for a few months. In May 2018, upon receipt of a text message from Mother indicating that she planned to move ahead, Father contacted the attorney who had prepared the documents by phone and told him that he had changed his mind. Both parties then hired new counsel. When Mother moved to confirm Father's consent to adoption, or to alternatively involuntarily terminate his parental rights, Father opposed it. Father argued his consent was invalid because it did not meet the requirements for consent to adopt under Colorado law. He argued that the Pennsylvania Statute 23 Pa.C.S. § 2711(c) provides that any consent given outside of the Commonwealth is only valid if given in accordance with the laws of the jurisdiction where executed. Mother argued that per case precedent, the filing of a timely revocation petition is the event that triggers an inquiry into the validity of a consent. Father never withdrew his consent in writing and thus did not meet any time restriction to revoke his consent as required by the Statute. The Trial Court sided with Mother and entered a decree terminating Father's parental rights to the children. Father appealed.

The Superior Court upheld the Trial Court's ruling, basing their decision on prior caselaw that required the timely filing of a petition to revoke consent before it considered the merits of a consent. The Superior Court also noted that Pennsylvania's interest in establishing the children's relationships and status outweighed Colorado's interests, and thus Pennsylvania law should apply. Father sought discretionary review, and the Supreme Court granted his request on the issue of whether the Superior Court erred in failing to consider Colorado law with regard to Father's consenting to an adoption, simply because of the fact that Father did not revoke his consent under the 30-day requirement under Pennsylvania Law, where Colorado permits consent up to and including the date of the hearing.

In their decision, the Supreme Court relied on Sections 2504(a)-(b) and 2711(c) and (d) of the Adoption Act, which discuss the petition to confirm consent and subsequent hearing, and the consents necessary for adoption, respectively. The Supreme Court stated that the Superior Court's interpretation leaves no opportunity to challenge or confirm that the signed consent complies with the requirements of the statute, including those of another state, and that the Superior Court should not have disregarded Father's challenge to the validity of his consent because of timeliness. The Court also acknowledged Father's claims that his purported consent did not comply with Colorado law, so that it was never valid to begin with, and thus, the Court could not find that his consent was not revoked in time. However, the Supreme Court found that despite that issue, the Superior Court was correct in finding that Pennsylvania, as the children's home state and the location of the adoption, had an overriding interest. They also found that the statutory language regarding the validity of consents given outside of the Commonwealth does not specify that the law of the state in which the consenting parent is living exclusively governs in Pennsylvania adoptions. Rather, the Supreme

Court said that they cannot agree with Father's claim that Colorado law exclusively governs his consent. They stated, "Pennsylvania's validity requirements do not yield to those of the state in which the consenting parent resides; instead the laws of both states provide alternative means to effectuate a valid consent to terminate parental rights and permit an adoption in accordance with Pennsylvania's Adoption Act." The Supreme Court thus affirmed the Superior Court's decree.

Justice Todd filed a concurring opinion, noting that the relevant Colorado statute specifically states that for the provisions regarding consent in Colorado law to apply, the case must involve a "child in Colorado or for whom Colorado is the home state." Thus, the Colorado statute did not apply in this matter anyway.

Chief Justice Saylor filed a concurring and dissenting opinion, noting that he concurred with the majority opinion, except for the Court's finding that the Adoption Act's provisions regarding out-of-state consents supplement other provisions of the statute merely to accommodate the validity of procedures for consent in other states. He stated that he found this portion of the statute to be ambiguous and would reserve judgment for a case in which "such a conclusion is material to the outcome, and in which advocacy is presented referencing the tools of statutory construction."

Justice Wecht filed a concurring and dissenting opinion, in which he noted that in reading the language plainly, he agreed with Father's argument that the Pennsylvania statute provided that any consent given outside of the Commonwealth shall only be valid if given in accordance with the laws of the jurisdiction where executed. He argued that it is beyond the Court's powers to interpret this as they did.