

H.R. and C.A.R. v. C.P. and J.M.
Superior Court of Pennsylvania
No.: 807 MDA 2019
2019 Pa.Super. 357
December 18, 2019
Before: Bowes, Lazarus, Dubow
Opinion by: Bowes

A Father appealed from an order granting exceptions filed by the maternal Grandparents in a custody matter regarding his ten-year-old son. Father struggled with marijuana use which was a recurring issue throughout the litigation of this matter over the course of years and multiple court orders. In orders in both 2012 and 2014, the Grandparents ultimately received primary physical custody while Father was awarded supervised visits due to his persistent marijuana use (Mother's custody was resolved differently, but she, too, struggled with substance abuse). The 2014 order allowed Father to have unsupervised visits if he abstained from marijuana use. Father filed to modify custody in 2018 wherein he asserted that he had acquired a license to use marijuana for medicinal purposes and, therefore, his marijuana use ought not be used against him for the purposes of custody. An order was subsequently entered by a custody officer that was favorable to Father, but exceptions to the same were filed by Grandparents which were granted in their entirety, leaving Father with supervised visitation under an order essentially the same as the 2014 order. Father appealed to Superior Court. Father's essential underlying argument is that the production of his certification to use marijuana for medicinal purposes would, pursuant to the Medical Marijuana Act, bar the court from considering his marijuana use when determining custody. Superior Court was not persuaded by Father's arguments. First, Superior Court pointed out that the trial court did not weigh the certification against the Father. Instead, the trial court simply considered Father's history of regular marijuana use, as well as his continued use for purported medicinal purposes, when determining custody. Superior Court then noted that the Medical Marijuana Act does not preclude a court "from making relevant findings concerning the effect of marijuana use" on someone's ability to have custody of a child. Ironically, an unintended consequence of Father's raising the Medical Marijuana Act is that it obliged the trial court to look into Father's physical condition that necessitated the use of marijuana to treat it, which is also a valid consideration when determining custody. Based on the above, Superior Court affirmed the trial court's granting of the Grandparent's exceptions,