Philadelphia Bar Association
Family Law Section Meeting Minutes

Meeting of March 2, 2015

The meeting was called to order at approximately 12 noon by Section Chair, Lee Schwartz. Approximately 33 people attended, including the 6 presentation panelists. The meeting concluded at approximately 1 p.m.

I. Welcome and Introduction

The Chair made a very brief welcome, acknowledging Master Dan Sulman.

II. Approval of Minutes

Not applicable. AMF unable to attend February 2015 meeting. No minutes.

III. Announcements

A. Susan Pearlstein announced that the Family Court’s Self-Help Center is moving forward. Judge Murphy has dedicated space to the Center on the 11th Floor of the Family Court Building, right next to the Clerk. Actual opening date is TBD. Attorney volunteers will be sought for Mondays and Wednesdays. Meredith Brennan will be sending out an email soon soliciting volunteers.

B. The April 6, 2015 Section Meeting will be held at 1501 Arch Street, 13th Floor. Members of both the Adult and Juvenile Family Court Sections are invited. Judges and masters in both sections are invited as well. Program will address, among other things, the new definition of child abuse under PA’s Child Protective Services Act. 23 Pa. C.S.A. §6303. Lunch will be provided by the Section.

C. The Bench-Bar Conference is headed up this year by the Section’s own, Julia Swain. It is scheduled for the weekend of October 16, 2015 at the Borgata. Topics for the two family law programs at the Conference have yet to be finalized.

D. The Bar’s new Chancellor wants all sections involved in his “Boots on the Ground” pro bono initiative. The Family Section’s Executive Committee is considering how the Section will participate in the initiative. To see how other Sections are participating or to volunteer, please visit the Bar’s website: http://www.philadelphiaabar.org/page/BootsonTheGround

E. President Judge Sheila Wood-Skipper wants to establish and Elder Court in Philadelphia County. A seven member committee has been selected to work on this idea. Further announcement will be made as developments occur.
IV. Presentation

The Section’s Custody Committee presented a program entitled: “Custody Law Update: Noteworthy Cases from 2014”. 6 members of the committee presented. The materials which accompanied the program are attached.

V. Committee Reports

To be distributed via list serve, if any.

VI. Good and Welfare

None.

Next Section Meeting: Monday, April 6, 2015, Noon, 1501 Arch St., 13th Fl.

Next Executive Committee Meeting: Thurs., March 19, 2015, Noon, 1101 Market St, 11th Fl.

Respectfully submitted,

Ann M. Funge, Esquire
Secretary

Attachments:
Case Law Summaries courtesy Sara Slocum, Esq. and David Grunfeld, Esq.
January 2015 Treasurer’s Report
Custody Law Update: Noteworthy Cases from 2014
# Family Law Section
## Statement of Activities
### For the Month Ending January 31, 2015

<table>
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<th>Sources of Funds</th>
<th>January</th>
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<tr>
<td>Dues</td>
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<tr>
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<tr>
<td>Cocktail Party &amp; Special Events</td>
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<tr>
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<td><strong>Total Application of funds</strong></td>
<td><strong>678</strong></td>
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Excess/(deficit) of all activities    | 1,725   | 1,725     |

Balance at beginning of period        | 13,615  |

Net Assets                            | $1,725  | $15,340   |

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<td><strong>Total Committee</strong></td>
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   Court affirms order awarding primary custody to step-father and partial custody to Father. Mother had previously passed away. The trial court found that Stepfather played a large role in the child’s life, the child was well adjusted and there was no reason to award further primary physical custody based on the facts. Memorandum opinion by Jenkins joined by Bowes and Mundy.


   Court affirms order terminating Father’s parental rights since Father failed to comply with the permanency plan, failed to address his mental health issues, lacks housing and parental skills. Memorandum opinion by Olson joined by Mundy and Wecht.


   Court affirms order involuntarily terminating Mother’s parental rights. Children were removed from her care over seven times and demonstrated a long history of her inability to care for her children. Memorandum opinion by Jenkins joined by Gantman and Musmanno.

    Court affirms order involuntarily terminating Mother's parental rights due to Mother's incapacity to provide consistent care or subsistence. Memorandum opinion by Mundy joined by Donohue and Fitzgerald.


    Court affirms involuntary termination of Mother's parental rights. Child tested positive for cocaine at birth and Mother admitted to long history of substance abuse. Termination on basis of failure to comply with DHS plan including failure to complete rehabilitation on two occasions. Mother was properly notified of hearing. No abuse of discretion. Memorandum opinion by Jenkins joined by Stabile and Strassburger.


    Trial court dismissed the Petition for Accounting of Custodial Accounts and for Turnover of Funds Removed from Custodial Accounts and Motion for Post-Trial Relief filed by children against their parents. The parents were separated in 1994 and divorced in 2001. The Petition was originally filed in April 2002 but a hearing was not held until 2013 since a Certificate of Trial Readiness was not filed until September 2012. Superior Court affirms the trial court on the basis that the action was barred by the equitable remedy of non pros - failure to prosecute in a timely fashion. No abuse of discretion where court found a lack of due diligence by filing party alone and prejudice to Father where delay caused witnesses and documents to become unavailable. Memorandum opinion by Allen joined by Ford Elliott and Donohue.

    No abuse of discretion in terminating Mother’s parental rights due to Mother’s drug relapse over a 4 year period even during period of oversight by DHS and criminal court. Memorandum opinion by Platt joined by Panella and Olson.


    Father’s appeal from an order holding him in contempt for failure to pay child support arrears dismissed for failure to comply with the Rules of Civil procedure. Father’s request for appointment of counsel on appeal denied as there is no statute or case law requiring appointment of counsel for indigent in an appeal from a civil contempt order. Memorandum opinion by Ott joined by Jenkins and Stabile.


    Father appealed court order finding child abuse, directing that the child remain in foster care and not a permanency plan of reunification. Court affirmed order stating there was ample evidence to support a finding of child abuse where Father had sole custody of child for three months and Father’s testimony regarding the cause of injuries was refuted by testimony of a doctor. Memorandum opinion by Jenkins joined by Allen and Musmanno.

10. **In Re: Adoption of S.L.B., Jr.**, Erie, 1517 WDA 2014 (Pa. Super. 2/6/15)

    Court affirms order involuntarily terminating Father’s parental rights. Court found record supported decision to terminate history of abusing heroin, cocaine and alcohol and mental health issues, including bipolar and antisocial personality disorder. Memorandum opinion by Donohue joined by Shogan and Stabile.
11. **In Re: M.C.G.,** Phila., 775 EDA 2013  
(Pa. Super. 2/9/15)

No abuse of discretion where trial court terminated Mother’s parental rights for failure to address anger and mental health issues. Although Mother completed an anger management class, her anger manifested during court appearances and interactions with DHS. Memorandum opinion by Stabile joined by Jenkins and Strassburger.

12. **F. Leslie Gunter v. Karen Koons a/k/a Karen Gunter,**  
York, 798 MDA 2014 (Pa. Super. 2/9/15)

No error of law or abuse of discretion by trial court’s denial of Appellant’s exceptions to Master’s report where the court properly assessed the credibility of Husband with regard to his fault in being terminated. The modification of alimony was therefore appropriate. Memorandum opinion by Stabile joined by Bowes and Ott.

13. **Schader v. Schader,** Del., 2492 EDA 2013  
(Pa. Super. 2/10/15)

Court affirms trial court’s denial of Wife’s request for sanctions for failure to comply with a discovery order. Wife’s issues were deemed waived for failure to file a Motion for Sanctions. Memorandum opinion by Fitzgerald joined by Allen and Mundy.

North., 2502 EDA 2014 (Pa. Super. 2/10/15)

Mother’s parental rights properly terminated where Mother failed to see the children since 2012. She was discharged unsuccessfully from mental health treatment and didn’t return. Memorandum opinion by Wecht joined by Mundy and Olson.

No abuse of discretion in terminating Father’s parental rights where DHS was involved since 2012. Father had issues with maintaining housing, had not seen the child in 5 months but saw his other 3 year old child frequently. Memorandum opinion by Mundy joined by Olson and Wecht.


Court reversed and remanded finding that the parties had not modified their Agreement where Agreement itself required any modifications to be in writing and no such writing existed. Trial court did not have the authority to modify the Agreement absent a finding of fraud, misrepresentation or duress or a provision in the Agreement allowing for the same. Memorandum opinion by Ford Elliott joined by Panella and Olson.


Evidence supported trial court’s decision to terminate Mother’s parental rights where significant mental health issues continued to exist and foster parents’ adoption was in child’s best interest. Memorandum opinion by Lazarus joined by Bender and Fitzgerald.


Court affirms custody order but writes to explain Rule 1915.10(b) stating that a custody order must be entered as a separate written order or as a separate section of a written opinion. A custody order may not be entered as a transcript from any trial or hearing. Memorandum opinion by Panella joined by Fitzgerald. Judge Olson concurs and dissents.
19. **In Re: Adoption of MJA**, Montg., 2938 EDA 2014  
(Pa. Super. 2/11/15)

No abuse of discretion in terminating Mother’s parental rights where Mother had long history of drug abuse, incarcerations as recent as 2014 and gave all parenting responsibilities to Appellees for four year period. Memorandum opinion by Gantman joined by Stabile and Platt.

(Pa. Super. 2/11/15)

Court affirmed order vacating an order terminating child support where Mother credibly testified that she did not receive notices of termination and upon proof that the child was still enrolled in high school. Memorandum opinion by Platt joined by Bowes and Panella.

(Pa. Super. 2/11/15)

No abuse of discretion where trial court found that Father’s testimony was not credible regarding his efforts to mitigate loss of employment. Trial court’s order denying Father’s Petition to Modify child support affirmed. Memorandum opinion by Panella joined by Ford Elliott and Olson.

22. **In Re: Adoption of J.D.M., Jr.**, Montg.,  
3090 EDA 2014 (Pa. Super. 2/12/15)

No abuse of discretion in terminating Mother’s parental rights where Mother missed 50% of visits, failed to address mental health and drug addiction issues and established a pattern of her inability to care for the children. Memorandum opinion by Gantman joined by Stabile and Platt.

Mother’s parental rights properly terminated where Mother had a history of drug abuse and incarceration, she failed to comply with the Family Service Plan including failure to obtain housing on two occasions when released from prison. Memorandum opinion by Gantman joined by Stabile and Platt.


Mother appeals order denying custody complaint and holding that Wisconsin shall have jurisdiction until an agreed upon date. Court reversed on basis that UCCJEA applied and all parties lived in Pennsylvania making Wisconsin an inconvenient forum. Memorandum opinion by Ford Elliott joined by Shogan and Stabile.


Court reverses trial court order denying petition to intervene and grant standing based upon in loco parentis. Trial court acknowledged that intervenor stood in loco parentis but found that allowing intervention would not be in the child’s best interest because having two moms would be confusing. Court held that the best interest standard was appropriate after all parties with standing have an opportunity to present their case. Memorandum opinion by Donohue joined by Ford Elliott and Allen.

   Court held that Mother was equitably estopped from challenging grandparents' status where she knew that their son was not the Father of her child and misled grandparents for 2 year period. Reversed and remanded. Memorandum opinion by Bowes. Wecht joins. Stabile dissents.


   Maternal aunt appealed order denying her petition to adopt. Best interest of children to remain with pre-adoptive parents. Memorandum opinion by Strassburger joined by Lazarus and Wecht.


   Father appeals finding of aggravated circumstances. Father waived his right to challenge by failing to object to the admission of Father’s guilty plea. Memorandum opinion by Platt joined by Gantman and Stabile.


   CYS appealed vacatur decrees of Orphans’ Court. Appeals quashed. Vacatur decrees are interlocutory and not appealable. Merits of CYS arguments cannot be reached. Motion of amicus curiae denied as moot. Memorandum opinion by Jenkins joined by Panella and Ott.

Mother appeals from termination orders. Affirmed due to bond with foster parents and long history (since 1998) of county involvement and Mother’s failure to comply with CYF plan. Memorandum opinion by Bowes joined by Ford Elliott and Allen.


Father appeals termination order. Reversed. Mother and maternal grandmother filed to terminate Father’s rights. No evidence to support that maternal grandfather’s adoption would create a new family unit. To the contrary, it would create confusion as they are already blood relatives. Memorandum opinion by Stabile joined by Donohue. Gantman dissents.


Order of trial court vacated and remanded. Trial court cannot sua sponte impose sanctions unless it first directs the party to show cause why sanctions should not be imposed and if no motion for sanctions was filed, the Court imposes a penalty to be paid to the Court (not opposing party) on non-monetary directives. Memorandum opinion by Fitzgerald joined by Bender and Olson.


Father appealed termination orders. Affirmed due to no contact and no bond. Memorandum opinion by Panella joined by Ford Elliott and Ott.
34. **In the Interest of B.H.,** Butler, 1393 WDA 2014 (Pa. Super. 2/17/15)

Father appeals termination order. Affirmed due to consent to placement, no contact and bond with grandmother. Memorandum opinion by Bowes joined by Ford Elliott and Allen.


Wife appealed equitable distribution order of 50/50 distribution. Affirmed on basis that record supported finding that Husband sold stock and paid marital expenses. Court further held it was Wife’s burden to prove pre-marital contribution and no evidence of record to support her claim. Memorandum opinion by Jenkins joined by Donohue and Wecht.


Husband appealed order denying petition to reopen divorce decree. Court held that failure to disclose assets is not extrinsic fraud which carries a 5 year statute of limitations. Court only has ability to open or vacate a decree within thirty days absent a finding of fraud, lack of subject matter, jurisdiction over fatal defect on the face of the record. Memorandum opinion by Wecht joined by Mundy and Olson.


Mother appealed child custody order awarding Father shared physical and legal custody, granting Mother’s petition to relocate to Altoona, Pennsylvania and denying Father’s petition for primary custody in Texas. Affirmed. Evidenced supported modification of schedule and division of cost of transportation. Memorandum opinion by Allen joined by Ford Elliott and Donohue.
   (Pa. Super. 2/18/15)

   Father appeals order dismissing his complaint for custody visitation. Vacated and remanded. No record of evidentiary hearing on best interest factors and criminal convictions. Memorandum opinion by Bowes joined by Allen and Strassburger.

39. **In the Interest of C.R.**, Dau., 188 MDA 2014  
   (Pa. Super. 2/19/15)

   Appeal of Foster Mother dismissing motions of permanency review hearing quashed for lack of standing. Children were removed from Foster Mother’s care by CYS for safety reasons. At the time of her petition, she was no longer a foster parent and did not have standing in dependency matter. Memorandum opinion by Musmanno joined by Lazarus and Wecht.

40. **In the Interest of M.S. and B.J.S.**, Lanc.,  
   1288 MDA 2014 (Pa. Super. 2/19/15)

   Mother appealed order for plan denying reunification. Remanded for further proceedings. Appeal before Court after remand to trial court for failure to cite to factors under 6351(f) and (f.1) of Juvenile Act which must be considered in any permanency review hearing. Memorandum opinion by Musmanno joined by Wecht and Bowes.

41. **In the Interest of D.M.**, Lanc., 1499 MDA 2014  
   (Pa. Super. 2/19/15)

   Mother appealed order adjudicating child dependent. Affirmed. Evidence of drug use during pregnancy, prior involvement with CYS, lying about actual residence and where Mother’s parental rights of siblings were terminated. Memorandum opinion by Strassburger joined by Bowes and Allen.
42. **J.L.G. v. M.S.P.**, Colum., 1309 MDA 2014  
(Pa. Super. 2/19/15)

Mother appeals order granting Father’s petition to modify and contempt of custody. Affirmed. Evidence supported finding that child was underachieving in school with Mother and all factors considered. No abuse of discretion in contempt finding. Memorandum opinion by Musmanno joined by Gantman and Jenkins.

43. **In the Interest of J.D.D.**, Phila., 2326 EDA 2014  
(Pa. Super. 2/20/15)

Mother appeals termination order. Affirmed no bond with Mother, bond with maternal grandmother, failure to comply with plan. Memorandum opinion by Shogan joined by Bowes and Fitzgerald.

(Pa. Super. 2/20/15)

Wife appealed order upholding Marital Settlement Agreement entered in contemplation of a divorce. Appeal quashed as interlocutory and remanded. Wife may challenge after a decree is entered. Memorandum opinion by Bender joined by Bowes and Allen.

45. **Swartz v. Swartz**, Frank., 865 MDA 2014  
(Pa. Super. 2/23/15)

Wife appealed divorce decree. Affirmed division of marital estate acknowledging that the trial court considered that Wife’s benefit in Husband’s pension would terminate if he predeceased her by awarding a disproportionate split of assets. No abuse of discretion in claiming capacity determination where age, training, education and work history considered. No abuse of discretion in denial of alimony where all factors considered. Memorandum opinion by Shogan joined by Ford Elliott and Stabile.
46. **In Re: C.F. and L.F., Alleg., 1594 WDA 2014**
   (Pa. Super. 2/23/15)

Mother and Father appeal orders of termination. Affirmed parents not able to meet educational, psychological or developmental goals, or healthy bond. Termination in best interest of children. Memorandum opinion by Allen joined by Ford Elliott and Bowes.

47. **Keep v. Keep**, Erie, 1013 WDA 2014
   (Pa. Super. 2/23/15)

Appeal of order denying PFA petition. Affirmed; trial court properly determined Wife as non-credible. Memorandum opinion by Panella joined by Ford Elliott and Olson.

   (Pa. Super. 2/24/15)

Mother appealed goal change to adoption and order terminating her rights. Affirmed on basis minimal compliance with goals. Memorandum opinion by Stabile joined by Ford Elliott and Shogan.

   (Pa. Super. 2/24/15)

Husband appealed order of equitable distribution, counsel fees and alimony. Affirmed evidence to support value of marital estate, statutory factors considered in determining alimony, counsel fee award appropriate in light of parties’ incomes and Wife’s position as full time care giver of mentally challenged son. Memorandum opinion by Bender joined by Bowes and Allen.
50. In the Interest of A.Y.T., Dau., 1488 MDA 2014
(Pa. Super. 2/25/15)

Father appeals termination order. Affirmed. No contact with Father, bond with adoptive parent. Memorandum opinion by Strassburger joined by Allen. Concurring opinion by Bowes.

(Pa. Super. 2/25/15)

Consolidated appeal of nine orders that Husband relinquish marital property. Quashed orders are interlocutory and not appealable. Memorandum opinion by Fitzgerald joined by Bender. Concurring opinion by Olson.

52. Shawarby v. Shawarby and the Estate of Shawarby,

Decree entered. Court retained jurisdiction over equitable distribution, alimony, APL and counsel fees and costs. Wife appealed court order directing life insurance proceeds to be paid to beneficiary, not Wife. Wife argued the change in beneficiary designation was a conveyance of marital property contrary to an order enjoining a party from disposing marital assets. There was no court order or request the continued maintenance of beneficiary designation in this case. The Court cited Lindsay which held that only the cash surrender value of a life insurance policy is a marital asset. Nothing was conveyed during the Husband’s life since the benefit was payable only upon his death. The Olds case held that proceeds from a life insurance policy are not marital property since the divorce action abated upon the death of the insured. Therefore, the asset was not acquired during the marriage. The Court distinguished Scherbert which did find insurance proceeds paid to Husband on the death of their daughter to be marital property where the policy was purchased during the marriage in exchange for marital assets. In this case, the proceeds were paid to a third party. Therefore only the cash surrender value was subject to equitable distribution. Order releasing funds affirmed. Memorandum opinion by Ford Elliott joined by Shogan and Musmanno.

Husband appeals divorce decree and equitable distribution order challenging jurisdiction and service errors. Affirmed, record indicates proper service and proper venue in Bucks as the marital home is located there. Memorandum opinion by Ott joined by Allen and Olson.


Husband appealed order denying his petition to enforce Marital Settlement Agreement. Affirmed. Agreement required Husband to provide health insurance for Wife. Agreement required Wife to obtain insurance as a benefit or at a lesser cost. Husband contended Wife was eligible under the Affordable Care Act for less expensive insurance. Wife was on Medicare Parts A and B denied that any other comparable coverage was available at a lesser cost. Court affirmed. Memorandum opinion by Allen joined by Bowes and Allen.


Wife appealed divorce decree. Affirmed for failure to fill 1925(b) statement. Memorandum opinion by Donohue joined by Wecht and Jenkins.


Father appealed termination orders. Affirmed. Father was a sex offender who failed to meet goals, minimum contact, bond with foster family. Memorandum opinion by Bowes joined by Allen and Strassburger.
57. *In Re: Adoption of G.X.E.*, Frank., 1537 MDA 2014
(Pa. Super. 2/27/15)

Father appeals termination orders. Affirmed. Remanded for limited purpose of correcting order. Memorandum opinion by Bender joined by Olson and Ott.

THE CUSTODY COMMITTEE OF
THE PHILADELPHIA FAMILY LAW SECTION PRESENTS:

CUSTODY LAW UPDATE:
NOTEWORTHY CASES FROM 2014
BIOGRAPHIES OF PANELISTS

(alphabetically)

Lawrence W. Abel, Esquire

Lawrence W. Abel practices law with Avallone Law Associates, focusing on the field of family law. Mr. Abel regularly conducted continuing legal education (CLE) courses on Domestic Relations for the Cape School in Philadelphia and around the metropolitan area. He served as President of Suburban Jewish Community Center-Bnai Aaron from 2002 – 2004, and is now a member of the Board of Directors of Temple Adath Israel of the Main Line in Merion Station. He has appeared in the State and Federal Courts and has argued before the Pennsylvania Superior Court. Mr. Abel is a member of the Philadelphia Bar Association. He received his Bachelor of Arts (A.B.) Degree, his Master’s Degree in Applied Economics, and his Juris Doctor (J.D.) from the University of Michigan. After law school, Mr. Abel served as law clerk to the Hon. John Feikens, Chief United States District Judge for the Eastern District of Michigan.

Michael E. Bertin, Esquire

Michael E. Bertin is a partner at the law firm of Obermayer Rebmann Maxwell & Hippel LLP. Mr. Bertin is co-author of the book Pennsylvania Child Custody Law, Practice, and Procedure. Mr. Bertin is a former Chair of the Family Law Section of the Philadelphia Bar Association, current Co-Chair of its Custody Committee, and Treasurer of the Family Law Section of the Pennsylvania Bar Association and a member of its Executive Committee. Mr. Bertin is listed in The Best Lawyers In America. He is also listed as one of the Greater Philadelphia Region’s Ten Leaders in Divorce Law, Age 45 & Under, by the Ten Leaders Cooperative. Mr. Bertin is also listed as a “Pennsylvania Super Lawyer” by Philadelphia Magazine and Law and Politics Magazine. Mr. Bertin was also selected as a “2007 Lawyer on the Fast Track” by The Legal Intelligencer and Pennsylvania Law Weekly. Mr. Bertin received a 2011 PBA Special Achievement Award for his contributions and work with the PBA Family Law Section to enact new custody legislation. He received his Bachelor of Arts (B.A.) from the University of Pittsburgh and his J.D. from Temple University School of Law.

Kristine L. Calalang, Esquire

Kristine L. Calalang is the principal of The Law Office of Kristine L. Calalang. Ms. Calalang serves as the Chair of the Family Law Section (FLS) Diversity Committee of the Philadelphia Bar Association and Co-Chairs the FLS Custody Committee. She also serves on the FLS Executive Committee, the Villanova Minority Alumni Society Leadership Board (serving also as a Co-Chair of the Mentoring Committee) and was on the Young Lawyer Editorial Board for The Legal Intelligencer for seven years. She is a member of the Asian Pacific American Bar Association of Pennsylvania (APABA-PA), the Pennsylvania Bar Association and the American Bar Association. Ms. Calalang also serves as an Arbitrator for the Court of Common Pleas of Philadelphia County. She was named as Rising Star in Super Lawyer: Rising Stars Editions 2010, 2011, 2013 and 2014. She was also named as a Lawyer on the Fast Track for 2008 by The Legal Intelligencer and Pennsylvania Law Weekly and has been placed on the First Judicial District of Pennsylvania’s Pro Bono Rolls of Honor for exemplary pro bono work each
year from 2006 – 2010. Ms. Calalang received her B.A. from The College of New Jersey and her J.D. from Villanova University School of Law.

**Jesse Krohn, Esquire**

Jesse Krohn is a staff attorney in the Family Law Unit at Philadelphia Legal Assistance, which provides legal services on matters pertaining to child custody, child and spousal support, and protection from abuse to low-income individuals and families. Ms. Krohn is responsible for the Family Law Unit’s services to teen parents, and was previously awarded a Skadden Fellowship for her work with this population. She is also the supervising attorney for the Custody and Support Assistance Clinic of the University of Pennsylvania Law School. Ms. Krohn is a graduate of Penn Law, holds a Master’s Degree from Penn’s Graduate School of Education, and is a graduate of Harvard College. Prior to her legal career, Ms. Krohn served as a public school teacher in Philadelphia.

**Shabrei M. Parker, Esquire**

Shabrei M. Parker is Of Counsel at Mincey & Fitzpatrick, LLC where she practices civil, family and estate litigation. Prior to joining Mincey & Fitzpatrick, LLC, Ms. Parker operated a solo practice, providing legal assistance to both individual and organizational clients. She also worked as a judicial law clerk and as an associate in law firms, which provided her with insight into the judicial system and the ability to use her civil litigation skills before the state courts in Pennsylvania and New Jersey and the United States District Courts. Ms. Parker also serves as an Arbitrator for the Philadelphia Court of Common Pleas. She is the President-Elect of the Barristers’ Association and serves on the Executive Committee of the Philadelphia Bar Association’s Young Lawyers Division. Ms. Parker works as a volunteer attorney with Philadelphia VIP, was placed on the First Judicial District of Pennsylvania’s Pro Bono Honor Roll for exemplary pro bono work in 2012, and is a member of Delta Sigma Theta Sorority, Incorporated. Ms. Parker received her J.D. from Drexel University School of Law and a Master of Laws, LL.M. in Trial Advocacy from Temple University, Beasley School of Law.

**Elaine Smith, Esquire**

Elaine Smith is a partner in the law firm of Smith & Horwitz with her practice focusing on Domestic Relations. Ms. Smith received her B.A. from the University of Pennsylvania, her Master’s Degree from Bryn Mawr College and her J.D. from Temple University School of Law. She has been active in the Philadelphia Bar Association, serving previously as a Chair of the Family Law Section and as a member of the Family Law Section’s Executive Committee. Ms. Smith is presently a Co-Chair of the Family Law Section’s Custody Committee. She has also served as a counsel member to the Pennsylvania Bar Association and is a Teacher in the Civics Education Program with the Philadelphia Public Schools.
CUSTODY CASE LAW SUMMARIES
(alphabetically by panelist)

APPLICATION OF CUSTODY FACTORS AND RELOCATION
by Lawrence W. Abel, Esquire, of Avallone Law Associates


This was an appeal of a Luzerne County decision allowing relocation. The Superior Court reversed because of the trial court’s failure to consider the standard custody factors of § 5328(a), in addition to the relocation standards set forth in § 5337(h). The Superior Court also criticized the trial court’s wholesale adoption of Mother’s brief—including finding facts not supported by any evidence—and its failure to comply with § 5323(d), including not delineating the reasons for its decision before the appeal deadline.

Mother filed a custody petition, seeking primary physical and shared legal custody of the parties’ three children in June 2013, while the parties were still in the same residence. In July 2013, the same day the parties agreed on a week-to-week shared physical and legal custody, Mother filed a relocation petition, seeking permission to move to New Jersey. Mother then started taking the children to Brick, NJ (about three hours away). In early September 2013, the trial court granted relocation and modified Father’s time with the children to alternate weekends, Friday to Sunday evenings. It was not until after Father appealed that the trial court filed a memorandum and order, claiming it had inadvertently failed to provide an opinion.

Father appealed alleging the failure to perform the analysis on the standard custody factors set forth in § 5328(a) and its failure to provide an opinion. Father also appealed the factual finding that the relocation would be in the children’s best interest, but the Superior Court did not decide that issue, since it reversed on the first two grounds.

The trial court’s opinion addressed only the relocation factors of § 5337(h) and not the general custody standards of § 5328(a). The Superior Court agreed with Father that all custody factors are to be considered before custody is modified. In this case, Father’s custody was reduced from shared physical custody to partial physical custody, and therefore should have considered the § 5328(a) general custody standards.


In this case, the Superior Court affirmed an Allegheny County court decision that the custody relocation notice provisions of § 5337(c) are not per se triggered when neither party—Father or Mother—seeks to relocate. However, in deciding the case, those factors set forth in § 5337(h) should be considered, insofar as they impact the final determination of the best interests of the children. The Court noted that many of the standard custody and relocation factors are very similar, and stated that a relevant § 5337(h) relocation factor not duplicative of the § 5328(a) factors should be considered under the catchall provision of § 5328(a)(16).
The family lived in Virginia, but Father moved to Pittsburgh with the children in late 2010 while Mother was an inpatient at an alcohol rehab facility. In January 2011, Mother and Father signed an agreement that Father would have “full primary and legal custody ... and granted Mother limited supervised custody.” (Page 3). In January 2012, Mother sought primary custody, but agreed to supervised alternate weekend visits and some summer time. Later, Father was arrested for DUI and became engaged to another woman. In January 2014, the trial court awarded primary physical custody to Mother.

Father's appeal was based on three factors, although the Superior Court only directly addressed two. Father objected that Mother (who did not intend to move) had not sent a relocation notice. The Court did note that Mother's evidence on some of the issues, like the schools the children would attend and the activities available to them was lacking, but ruled that a relocation notice was not necessary. The Superior Court analyzed the relocation statute in some detail in arriving at the conclusion that when an adult party is not moving, there is no relocation notice required.

Father also objected that the trial court, over Father's continual objections, permitted Mother to keep reopening her case even after the trial court observed, on the record, that Mother had not met her burden to show relocation was in the children's best interest. The Superior Court did not address this issue, perhaps because Father combined it with the issue about the relocation notice.

Finally, the Superior Court addressed Father's “weight of the evidence” issues. The Court repeated the well-known rule that it must “accept findings of the trial court that are supported by competent evidence of record” and “defer to the presiding trial judge who viewed and assessed the witnesses first-hand.” (Page 24) Factual findings are subject to reversal only if they are unreasonable as shown by the evidence of record, and factual conclusions are reversible only if they are unreasonable in light of the sustainable findings of the trial court.

**Jurisdiction and UCCJEA/Counsel Fees**

by Michael E. Bertin, Esquire, of Obermayer Rebmann Maxwell & Hippel LLP


TAM (the Father) and SLM (the Mother) are the natural parents of a Child who was born in September 2004. TAM and SML resided in Tennessee and shared custody of the Child pursuant to an order entered in Tennessee, as the parties were separated. In 2011, Mother dropped Child off at Father's residence and Mother was never seen again. The opinion further states that it is undisputed “that police are actively investigating Mother’s disappearance as a homicide and Father is considered a person of interest in the case.”

Shortly after Mother's disappearance, her Mother, Maternal Grandmother (DMS), who is a resident of Erie County, Pennsylvania, petitioned for custody in Tennessee. Maternal Grandmother was granted custody by the Tennessee court and the Child was permitted to
relocate with Maternal Grandmother to Erie County, Pennsylvania. Since the entry of that order, the Child has been residing with Maternal Grandmother in Pennsylvania. The court also granted Father supervised visitation with his parents (the paternal grandparents) being the supervisors. Father’s supervised custody was then suspended after Maternal Grandmother alleged that Father and Paternal Grandmother “urged Child to burn down Maternal Grandmother’s home and provided matches to assist Child in doing so.”

Over a year later, Father filed a custody action in Erie County, Pennsylvania, seeking custody. The action brought by Father was against Mother and Maternal Grandmother. In Father’s complaint he alleged that Pennsylvania should assume jurisdiction over the matter as he “resided in Palm City, Florida since June of 2013, Maternal Grandmother and Child have resided in Pennsylvania since 2011, and Mother’s whereabouts are unknown.” Maternal Grandmother filed a motion in Tennessee to review custody and child support, after a custody trial was scheduled in Pennsylvania. The Pennsylvania court entered an order staying the custody trial “in order to give the Tennessee Court the opportunity to address its continuing jurisdiction” at a hearing scheduled in Tennessee. After the scheduled hearing in Tennessee, the Pennsylvania court contacted the Tennessee court and confirmed that a hearing took place and that “no order was entered to relinquish jurisdiction of custody.” In citing the trial court, the Pennsylvania Superior Court’s opinion reflects that the trial court entered an order dismissing Father’s Pennsylvania Complaint for Custody stating that it lacked jurisdiction to modify the Tennessee court’s child custody determination because the Tennessee court did not relinquish jurisdiction.

Father appealed and raised two issues pertaining to whether the trial court misapplied the law in dismissing his custody complaint which he filed in the home state of the Child because the former home state judge declined to relinquish jurisdiction; and whether the trial court erred in not recognizing that Pennsylvania was the more appropriate jurisdiction to adjudicate the matter regardless of the issue of home state.

Pursuant to the UCCJEA, a court of this Commonwealth has jurisdiction to modify an order made by a court of another state if two requirements are met: (1) it has jurisdiction to make an initial determination under the section of the UCCJEA relating to initial child custody jurisdiction (which favors home state) and (a) the court of the other state determines it no longer has exclusive continuing jurisdiction or that a court of this Commonwealth would be a more convenient forum, or (b) a court of this Commonwealth or a court of the other state determines that the child, the child’s parents and any person acting as a parent do not presently reside in the other state. Because the Child has been living with Maternal Grandmother in Pennsylvania for three years, the Superior Court found that “there is no question that Pennsylvania is Child’s home state.” Further, no parent or person acting as a parent still resides in Tennessee. The Superior Court highlighted that Mother has not been heard of since February 28, 2011 and may no longer be living. As such, pursuant to the UCCJEA, the Superior Court found that Pennsylvania has jurisdiction to modify the order of the Tennessee Court. The Superior Court vacated the trial court’s order, reinstated Father’s complaint, and remanded the case for proceedings consistent with the opinion.

The Chen case pertains to a number of issues, including an appeal regarding an equitable distribution award. However, this summary will focus on the portion of the appeal pertaining to the award of counsel fees pursuant to §5339 in the child custody matter.

Mr. Chen filed seven custody petitions over the course of seven years. Relying on §5339, the trial court entered an attorney's fees award against Mr. Chen. On appeal, Mr. Chen argued that the trial court erred and abused its discretion in awarding Ms. Saidi an award of counsel fees.

The Superior Court indicated that: "No case law exists regarding interpretation or construction of this statute." Further, no legislative comment exists regarding Section 5339. The Superior Court focused on 42 Pa. C.S. §2503 of the Judicial Code "which allows an award of counsel fees" with essentially identical language to §5339 but for the fact that §5339 contains the additional word "repetitive." In analyzing Section 5339, the Superior Court stated: "We must presume that the legislature did not intend any language of a statute to exist as mere surplusage."

Because this is a matter of first impression, this Superior Court looked to case law interpreting 42 Pa.C.S. §2503 for guidance. Pursuant to existing case law analyzing Section 2503, "A suit is vexatious, such as would support in award of counsel fees, if it is brought without legal or factual grounds and if the action served the sole purpose of causing annoyance." The Superior Court further highlighted that: "Section 2503(9) serves not to punish all those who initiate legal actions that are not ultimately successful, or which may to seek to develop novel theories in the law, as such a rule would have a chilling effect on the right to bring suit for real legal harm suffered. Rather, the statute focuses attention on the conduct of the party from whom counsel fees are sought and the relative merits of that party's claims."

The trial court focused on the word "repetitive" in the Section 5339 and "relied on a definition from Merriam-Webster's Dictionary: repeated many times in a way that is unpleasant." The trial court "opined that it was the intent of the legislature 'to award counsel fees under the new custody statute to deter repetitive filings that may affect the best interest of a child and require that the child constantly be placed in the middle of continued custody litigation.'"

The Superior Court analyzed the seven petitions filed by Mr. Chen. The petitions ranged from a modification petition seeking primary physical custody, a petition seeking to modify the school holiday and summer break schedule, to a petition seeking to travel internationally with the child. The Superior Court highlighted the fact that one of the petitions was resolved by agreement and another petition was granted in part. Regardless of the fact that a number of the petitions sought to modify the custody schedule, the Superior Court found that each petition filed by Mr. Chen sought "distinct relief pertaining to a variety of legitimate issues that typically arise in a custody matter." Because of this, the Superior Court held: "We cannot conclude the Husband's actions rose to the level of 'repetitive' within the meaning of Section
The Superior Court further stated that it could not “say that each of the petitions was without relative merit.” Lastly, the Superior Court stated that “The trial court failed to explain how the filing of seven petitions to modify custody in the span of the seven-year proceeding legitimately affected the well-being of the child or how the filings in any way altered the status quo.”

Therefore, the Superior Court reversed the trial court’s award of counsel fees and concluded that such an award under Section 5339 was unwarranted and an abuse of discretion. The Chen case is clearly a fact-specific case and if the situation arises where a litigant repeatedly files actions that are not seeking “distinct relief pertaining to a variety of legitimate issues that typically arise in a custody matter” an award of attorney’s fees may be warranted.

**Hague Convention/ Grandparent Standing and In Loco Parentis**
by Jesse Krohn, Esquire, of Philadelphia Legal Assistance

5. **Lozano v. Montoya Alvarez, 572 U.S. ___ (March 5, 2014).**

The Hague Convention generally requires that a child wrongfully removed (or, if permissibly removed, wrongfully retained) from his or her country of habitual residence be returned upon the non-abducting parent’s filing of a petition for return within one year of the removal. At issue in this case was whether this window is subject to tolling when the abducting parent conceals the child’s location, thwarting the other parent’s ability to timely file. The Court ultimately held that equitable tolling is not available in such cases. Mother and Father in this case are British, and the parents of one daughter, born in 2005. The parties presented very different accounts of the child’s early life: Father claimed that the parties’ relationship was happy and the child thrived, while Mother claimed that Father was physically and sexually abusive to her, and that the child had speech delays, cried excessively, wet the bed, and exhibited fear of Father. The child was eventually diagnosed with post-traumatic stress disorder, which the therapist attributed to Father. In November 2008, when the child was three years old, Mother took the child and left Father, first for a shelter, then, in July 2009, for her sister’s home in the United States.

Approximately seven months after Mother left without a word, and around the same time she relocated to the United States, Father filed for custody of the child in London, where he believed Mother and the child were residing. He later learned that Mother and the child were indeed in the United States, and in November 2010, approximately two years after Mother first left Father, and sixteen months after Mother and the child left the United Kingdom, Father filed a petition for return in the Southern District of New York, which was dismissed as untimely. Father appealed to the Second Circuit, claiming that the period in which to file a petition for return should be equitably tolled due to Mother’s concealment of the child’s whereabouts. But, the Second Circuit affirmed the judgment of the District Court. Father appealed again, and the United States Supreme Court affirmed, holding unanimously that equitable tolling of the year period is not available because there is no general presumption that equitable tolling applies to treaties (as opposed to statutes), due to their contractual nature. And, because even if there was such a presumption, the one year window is
not a statute of limitations, subject to tolling, because at the end of the period, no rights are extinguished: the return of the child is still possible, only rather than returning the child forthwith pro forma, a court must also consider whether the child is “settled” in his or her new home country, laminating a best interests determination onto the right of return. Justice Alito, concurring, observed that this is so because the Convention recognizes that “at some point the child will become accustomed to the new environment, making [a] conclusive presumption of return inappropriate,” although “a variety of factors may outweigh the child’s interest in remaining in the new country,” including, inter alia, “the child’s need for contact with the non-abducting parent,” “the need to discourage inequitable conduct (such as concealment) by abducting parents,” and “the need to deter international abductions generally.”


In this case, the parties were Mother and Maternal Grandmother; one child, born in 2005, was at issue. In 2010, when the child was five years old, Maternal Grandmother was granted, by agreement, partial physical custody consisting of every other weekend and one night per week. In 2013, Maternal Grandmother filed a petition to modify seeking primary physical custody, which she was ultimately awarded that same year. Mother appealed, arguing that Maternal Grandmother lacked standing to seek primary physical and/or legal custody of the child.

The Superior Court held that the trial court erred in finding that Maternal Grandmother had in loco parentis standing per 23 Pa. C.S. Sec. 5324(2). Although Maternal Grandmother often provided Mother financial assistance, helped with laundry and cooking, cared for the child when Mother was unavailable, drove the child to medical appointments after Mother lost her vehicle, and permitted Mother and the child to live in a camper on her land for four months in 2007 and eight months in 2009 (she assisted Mother in securing welfare benefits so that Mother and the child could leave the property), the Court held that Maternal Grandmother’s “actions were consistent with helping her daughter through a period of need, but not with a de facto adoption of the child.” Put another way, her actions on the child’s behalf were “substantial and commendable,” but “not consistent with an intent to assume all of the rights and responsibilities of parenthood.”

The Court then considered whether Maternal Grandmother had grandparent standing per 23 Pa. C.S. Sec. 5324(3), which applies to grandparents who are willing to assume responsibility for a grandchild with whom they have a relationship and who, inter alia, is substantially at risk due to parental abuse, neglect, drug or alcohol abuse, or incapacity. The trial court referred to Mother as “immature,” “dysfunctional,” and “irresponsible”; observed that she experienced substance abuse and depression in 2010 after the child was diagnosed as having special needs; was unemployed; often failed to wake the child up in time for school; and had previously been in an abusive relationship. However, the Superior Court observed that the trial court made no specific findings that there was abuse or neglect, that drug or alcohol abuse was a present issue, that Mother was incapacitated, or that the child was “substantially at risk.” The trial court then remanded for a determination of that issue.
JURISDICTION AND INCONVENIENT FORUM/DUAL RESIDENCES AND SCHOOL TRANSPORTATION
by Shabrei M. Parker, Esquire, of Mincey & Fitzpatrick LLC


This case presented a unique situation where Father and Mother entered into a custody agreement in which Father would get primary physical custody of the child and Mother would exercise physical custody of the child one week each month and holidays. Although Father and child resided in Canada, and custodial exchanges were to take place in Ontario, the agreement included a forum selection provision which provided that any child custody litigation would take place in Mercer County, Pennsylvania where the child had lived from birth. Approximately 4 months after this agreement was entered, Mother filed a Petition for Modification in Pennsylvania and Father objected, contending that the trial court lacked subject matter jurisdiction and that Mercer County was an inconvenient forum.

On the issue of subject matter jurisdiction, the court held that the trial court appropriately retained jurisdiction because of the child’s significant continuing contacts with Pennsylvania pursuant to 23 Pa.C.S.A. § 5422. In so holding, the court explained that, although relevant to the inconvenient forum issue, a forum selection provision is not dispositive in the analysis regarding subject matter jurisdiction. The court further explained that, even where a child moves away from a locale, that court retains jurisdiction so long as the child or the child and one parent or person acting as a parent has a significant connections with Pennsylvania and substantial evidence concerning the child’s care, protection, training and personal relationships are available here at the time the proceedings were initiated. SJK v. JLC, 94 A.3d at 410-11.

As such, for the subject matter jurisdiction determination, the court must examine the facts as presented at the time of the filing of the petition for modification. The court determined that a significant connection exists “where one parent resides and exercises parenting time in the state and maintains a meaningful connection with the child.” Id. at 412 (quoting Rennie v. Rosentholt, 995 A.2d 1217, 1222 (Pa.Super.2010)). In the instant case, the custody agreement provided that Mother was to have physical custody over the child within the state at least one week each month as well as holidays, which amounted to several months in Pennsylvania each year, thereby creating a significant connection. This determination was made based on the language of the agreement, although in practice, Mother had actually only exercised physical custody one month in Pennsylvania due to Father’s contempt of the agreement shortly after it was entered. In refusing to reward the contemptuous behavior of Father, the court looked beyond the fact that Mother had not exercised physical custody in PA in the months preceding the filing of the Petition for Modification. Id. at 413.

Holding that “jurisdiction is defeated [only] where significant connection with Pennsylvania no longer exists and substantial evidence relating to the child care, protection, training, and personal relationships is no longer present within the Commonwealth,” the court concluded that the trial court properly maintained exclusive and continuing jurisdiction under
23 Pa. C.S. § 5422. Id. at 413.

On the issue of an inconvenient forum under 23 Pa. C.S.A. § 5427, the court concluded that the Commonwealth of Pennsylvania was not an inconvenient forum. Holding that the choice of law provision was one of 8 statutory factors to be considered in this analysis, the court concluded that considerations such as prior physical abuse between the parties, the distance between the parties, the relative financial circumstances of the parties, and the forum selection clause, weighed in favor of the trial court exercising jurisdiction.


In this case, Father and Mother were divorced parents who resided in the same school district where the child attended public school. The parties lived approximately 2 miles apart and shared physical and legal custody on alternating weeks. The School District, in an effort to save money, instituted a policy in which pupils would only be taken to one home or the other, rather than both as it had in previous years, and determined that Mother’s address would be the child’s transportation address. Father sought a permanent injunction, compelling the school district to have child bused to both residences, thereby prohibiting the limitation.

Relying on Wyland v. West Shore School District, 52 A.3d 572 (Pa. Cmwlth. 2012), the court held that just as a student who is subject to an equally split shared physical custody agreement can be a resident pupil of more than one school district, a student may also maintain 2 residences within a single district. Watts, 84 A.3d at 381-82. The Commonwealth Court affirmed the trial court’s holding that where “both parents live in the school district, the student is subject to an equally split joint legal and physical custody agreement, and a bus from the students school has available seats, already serves both homes and could accommodate the student without any further cost of adding a stop,” the School District is required to provide transportation to both residences. Id. at 382, 386.

In the instant matter, Plaintiff was able to secure a permanent injunction, rather than a preliminary injunction, compelling the School District to provide transportation. In so finding, the court highlighted that “to prevail on explain for a permanent injunction, plaintiff must establish a clear right to relief, that there is an urgent necessity to avoid an injury which cannot be compensated for by damages, and that greater injury will result from using granting the relief.” Id. at 390. Having already concluded that Sections 1361 and 1362 the School Code required to school to provide transportation to a resident pupil, the court held that Plaintiff demonstrated a “clear right to relief” and awarded an injunction. 24 P.S. §§ 13-1361-62.
APPLICATION OF CUSTODY FACTORS IN COURT RULINGS
by Elaine Smith, Esquire, of Smith & Horwitz


   This case holds that where there is a discrete or single issue before the court, there is no reason to analyze all of the custody code factors. Here there was an existing order which was provided that Father had five weeks in the summer. Mother wanted Father to take off from work and Father had only two weeks of vacation and had to work the other weeks. The court held that he doesn’t have to be off from work and held that there was no reason to analyze the code factors that didn’t directly relate to the summer vacation issue. The court distinguished between making an award of custody which requires the best interest analysis and a modification which has different requirements. There was no change in custody arrangement.


   By contrast, this case did involve a change in the arrangement and the case was remanded for an opinion and order addressing all factors under 5328(a) on the issue of physical custody. Here the parties had an arrangement in place which Father said had been modified to 50/50 time which Mother disputed. The parents did not live in the same school district and Father wanted the child to attend a Christian school and Mother wanted the child to attend the public school in her district. The court sided with Mother but did not consider all factors in the ruling. The Appellate Court said that the failure to do so constitutes an abuse of discretion and contrasted it to the **M.O. v. J.T.R.** case which involved the single issue. Here, this was a modification action, which meant that the trial court had to decide which physical custody arrangement was in the child’s best interest. That means that it is a form of custody under Section 5328 of the Custody Act.
**Case Scenarios**

1. Father Oak and Mother Oak were living together in Luzerne County with their three children when Mother filed a custody complaint seeking primary physical and shared legal custody. The parties entered into an agreed order to equally share physical and legal custody of their children. Mother shortly thereafter filed a relocation petition to move to NJ (a three-hour drive away). The trial court granted Mother’s petition to relocate, awarding her with primary physical custody and Father with partial physical custody (alternating weekends) with the parties sharing legal custody. Father filed an appeal.

   Throughout the hearing and in the court’s written opinion, only the relocation factors were addressed. Father would like to know whether you think he has a chance to prevail in his appeal.

2. Mother Pine and Father Pine lived in Virginia with their two children. In late 2010, the parties separated, and Mother was in a Virginia inpatient alcohol rehabilitation facility. Father then moved with the children to Pittsburgh. In 2011, the parties signed an agreement that Father will have “full primary and legal custody” of the children with Mother having “limited supervised custody.” In the beginning of 2012, Mother sought primary physical custody but later agreed to supervised alternate weekends.

   During the next two years, Father was arrested for DUI and became engaged to another woman. In 2014, Mother sought primary physical custody again and prevailed in the trial court. Father seeks your advice, as he believes Mother should have filed a relocation notice, and this should make the Superior Court overturn the trial court’s decision.

3. Mother Maple and Father Maple have been engaged in litigation for a number of years over the custodial arrangement for their child. Father filed seven different custody petitions over a seven year period. Mother argued that she must be awarded attorney’s fees for Father’s repetitive and vexatious litigation. The trial court, relying on Section 5339, granted Mother’s request and entered an attorney’s fees award against Father. Father believes the trial court abused its discretion and seeks your advice regarding an appeal.

   In addition, the same parties have argued over the busing arrangement for their child. They both live in the same school district, and their school district has recently instituted a policy to only bus the child to one parent’s address (Mother’s). Father wants the school district to continue its prior practice of busing to both residences and wants
your advice on obtaining a permanent injunction against the school to preventing its limitation of the busing.

4. Grandmother Spruce and Mother Spruce have been in custody litigation regarding Mother’s child. In 2010, the parties entered into an agreement that Mother would have primary physical custody, and Grandmother would have partial physical custody of the child.

    In 2014, Grandmother filed a petition to modify the order, seeking primary physical custody. The trial court thereafter granted Grandmother’s petition.

    Mother seeks advice as to whether she should appeal and possibly argue that Grandmother did not have standing to seek primary physical custody of the child.

5. Father Dogwood and Mother Dogwood resided in Tennessee with their child. When the parties separated, they had an agreed Tennessee order to share physical and legal custody. In 2011, Mother dropped off the child to Father for a visit and then mysteriously disappeared. Father was thereafter a possible suspect in her disappearance.

    Maternal Grandmother Birch went to Tennessee and filed a petition for primary custody and to relocate with the child to her home in PA. The trial court granted Grandmother’s petition and awarded Father with supervised custody time (which was thereafter suspended due to his alleged urging of the child to burn down Grandmother’s home and him providing the child with matches).

    More than a year later, Father filed a complaint in PA asserting PA should assume jurisdiction because he resided in FL, the child and Grandmother resided in PA, and Mother was still nowhere to be found. Grandmother filed a motion in Tennessee to review the custody order after there was already a hearing scheduled in PA on Father’s complaint. The PA trial court stayed the PA hearing to give the Tennessee court the chance to address whether it had continuing jurisdiction. Ultimately, the Tennessee court did not enter an order relinquishing jurisdiction, so the PA trial court dismissed Father’s complaint, stating that the PA court lacked jurisdiction because the Tennessee court did not relinquish. Father would like to know whether he should appeal this decision.
Mother Cherry and Father Cherry lived in London with their child. In 2008, when the child was three years old, Mother took the child to a London shelter and then to her sister's home in NY, alleging Father abused Mother and that the child feared Father. Seven months after Mother left, Father filed for custody in London, believing they were still living there.

In 2010, Father discovered Mother was in the U.S. At this point, it was about two years after she first left him and 16 months after she left the United Kingdom. Father filed a petition in a NY district court to have the child returned, and the court dismissed it as untimely.

Father then appealed to the Second Circuit court, arguing that the period he had to file for the return of the child should be equitably tolled due to the fact that Mother concealed the child's whereabouts. The Second Circuit court upheld the ruling of the district court. Father would like to know whether he would be likely to prevail if he appealed to the U.S. Supreme Court.