Bardine v. Bardine
Superior Court of Pennsylvania
No.: 1787 WDA 2016
2018 Pa.Super.220
August 2, 2018
Before: Bowes, Olson, and Kunselman
Opinion by: Olson
Husband filed an appeal from the trial Court's decision granting Wife's petition to vacate the divorce decree and modify their property settlement agreement. The Court reversed the trial court's decision and denied the petition to vacate. At the equitable distribution hearing the parties agreed to "equally divide" Husband's pension and did not mention or discuss any specific monetary sum or value for that pension. Wife claimed that Husband misrepresented exactly what his pension benefit would be by exaggerating how much he/they would get and she relied on that misrepresentation. A petition to open must be filed within 30 days (see 23 Pa.C.S.A. 3332) and must allege that there was intrinsic fraud and/or new evidence discovered. A petition to vacate must be filed within five years and allege extrinsic fraud, lack of jurisdiction, and/or a fatal defect on the face of the record. Wife filed her petition more than 30 days after the entry of the divorce decree, therefore any claim of intrinsic fraud is moot. Wife did not demonstrate that there was any extrinsic fraud and she was not prevented from having a fair hearing. Husband and Wife's agreement followed extensive and counseled negotiations. Wife never stated on the record at the hearing that "equal division" was contingent on a specific sum. Wife made no claims that Husband prepared the benefits summary or that she harbored doubts about the accuracy of its prediction of future benefits. Wife did not contact the administrator of Husband's pension plan. Ultimately, the Court could not impute fraud onto Husband's actions. The Court also held that the argument of "mutual mistake" is not equivalent to finding new evidence to justify vacating the decision.

G.A.P. v. J.M.W. v. S.J. and R.J.
Superior Court of Pennsylvania
2018 Pa.Super.229
No.: 1694 WDA 2917
August 15, 2018
Before: Bowes, Dubow, and Murray
Opinion by: Dubow
Appellants, Paternal Grandparents, appealed the dismissal of their petition to intervene into a custody matter. The trial court concluded that they did not have standing to pursue custodial rights over the child. Superior Court reversed. The Child's father has a history of drug abuse and a criminal history while the mother has a history of drug abuse. Due to the parent's lifestyle choices, the child lived with maternal great-grandparents who received sole physical custody at one point in this matter. Father subsequently secured some physical custody but relapsed in his drug use. Eventually, paternal great-grandparents filed a petition to intervene on the basis that the child is substantially at risk due to abuse, neglect, drug, or alcohol abuse. See 23 Pa.C.S.A. Section 5324(3)(iii)(B). The great-grandparents have a relationship that began with the consent of the parents. The issue was whether there was substantial risk as, arguably, the grandparents mitigated the risk to the child due to the parents' lifestyle. The Court pointed out that the statute

highlights risks due to parental actions specifically, not anyone else, and as the parents still engaged in risky behaviors which could still affect the children as their parental rights have not been terminated, the statute applied. Finally, the Court indicated that statute is not to create a "race to the courthouse" which benefits whoever files first. Instead, the Court reasoned, a trial court should have the opportunity to consider all custodial options for the child.

In Re: T.S., E.S., Minors
Supreme Court of Pennsylvania
No.: 50 & 51 WAP 2017
August 22, 2018
Opinion by Chief Justice Saylor
This matter involved a proceeding regarding involuntary parental termination. The Court specifically addressed whether a separate attorney is required to represent children's legal interests when they already have a guardian *ad litem* representing their best interests. Per 23 Pa.C.S. Section 2313(a), in the context of a parental termination, the Court must appoint an attorney for the child-at-issue's legal interests. If there is a conflict between a child's best interests and legal interests, the Court is to appoint the child a separate guardian *ad litem* to advocate for the child's best interests. An attorney/guardian cannot represent both the best and legal interests of a child as they be in conflict. In such a situation, the Court must appoint separate attorneys for each type of interests. Failure to do so constitutes a structural error and does not constitute harmless-error. In the instant matter the trial court did not appoint separate counsel as described above which the mother, whose parental rights were subject to termination, claimed was a structural error on appeal. In searching for applicable law in this matter, the Court resorted to relying on the Juvenile Act (42 Pa.C.S. Section 6311(a)) which states that a "guardian *ad litem* must '[a]dvise the court of the child's wishes *to the extent that they can be ascertained* and present to the Court whatever evidence exists to support the child's wishes.'" As a corollary, "if the wishes of the child cannot be ascertained, the GAL has no duty to 'advise the court' of such wishes." In the instant matter, the child was "very young and pre-verbal" and, therefore, his wishes were impossible to discern. As the wishes are impossible to discern, there can be, by definition, no conflict between his legal and best interests, which means, as a result, there is no need to appoint separate counsel for each sort of interests.