

RECENT PA. APPELLATE COURT FAMILY LAW SLIP OPINIONS

February 2016

Summarized by Sara L. Slocum, Esquire

1. **K.C. & V.C. v. L.A.**, Lehigh, 65 MAP 2015
(Pa. Supreme 12/21/15)

Whether an order denying a petition to intervene in a custody action is appealable as a collateral order as of right pursuant to Pa. R.A.P. 313? Yes, Superior Court order quashing the appeal is reversed and remanded. Child lived with maternal aunt after placed by CYS. Soon after a custody order was entered with Father and maternal aunt sharing custody. Father passed away. Father had always lived with paternal grandparents who continued to care for the child after Father died. They sought a custody order claiming in loco parentis standing. Maternal Aunt filed to intervene and was denied by the Trial Court finding that they did not have standing as foster parents. Maternal Aunt appealed and the Superior Court wrongly denied the appeal. The issue of standing is a necessary threshold issue conceptually distinct from the central issue of who is entitled to custody in light of the child's best interests. The party's interests would go unprotected if not permitted on appeal and the issue implicates more than just the party. Pennsylvania has a strong public policy of earning that custody is awarded to the individual most equipped to meet child's best interest. The Barnes case applies to custody actions and requires a party who is denied intervention to appeal. All prongs of collateral order doctrine met.

2. **In the Interest of S.C., C.C. & J.C.**, Mifflin, 918 MDA 2015
(Pa. Super. 12/23/15)

Mother appeals termination of parental rights. Affirmed. Children were sexually assaulted by an uncle. Mother failed to understand the trauma and how her behavior affects the children. Memorandum opinion by Panella joined by Lazarus and Platt.

3. **Lischner v. Lischner**, Allegheny, 1975 WDA 2014
(Pa. Super. 12/23/15)

Husband appeals equitable distribution award. Affirmed. Issues either waived or denied as supported by evidence of record. Memorandum opinion by Ford Elliott joined by Bowes and Musmanno.

4. **In Re: Adoption of A.P.G.**, Blair, 85 WDA 2015
(Pa. Super. 12/23/15)

Mother appeals denial of termination of Father's parental rights. Reversed. Child born in 2011. Mother remarried shortly thereafter. Father has no contact until 2014 when he filed for custody. Mother simultaneously filed to terminate his rights and for adoption by stepfather. The hurdles Mother placed in front of Father were not insurmountable. Father did not make efforts necessary to perform parental duties. Memorandum opinion by Ford Elliott joined by Bowes and Musmanno.

5. **Baker v. Baker**, Venango, 852 WDA 2014
(Pa. Super. 12/23/15)

Mother appeals support order. Affirmed. No error in issuing Father an earning capacity consistent with the job he had while he and Mother were together. Amount represented realistic earnings. Memorandum opinion by Gantman joined by Lazarus and Musmanno.

6. **M.L. v. J.G.M.**, Berks, 716 MDA 2015
(Pa. Super. 1/4/16)

Mother appeals order granting J.G.M.'s Motion for Blood Test. Vacated and remanded. Trial Court ordered a blood test prior to holding a hearing on Mother's paternity by estoppel claim which must be analyzed first. Memorandum opinion by Panella joined by Lazarus and Platt.

7. **T.A.H. v. W.A.H., III**, Franklin, 663 MDA 2015
(Pa. Super. 1/4/16)

Husband appeals from a final PFA order. Affirmed. Husband was physical with Wife throughout the marriage and frequently destroyed personal property. He stalked Wife after they separated. Husband was physically enraged at the hearing. Memorandum opinion by Panella joined by Ott and Jenkins.

8. **JJE v. K.T.P.**, York, 1084 MDA 2015
(Pa. Super. 1/5/16)

Father appeals order granting him partial physical custody. Affirmed. Psychological testing showed significant concerns with regard to Father. Mother had a more flexible work schedule. Not an abuse to deviate from the schedule recommended by the evaluator. Memorandum opinion by Bowes joined by Panella and Platt.

9. **In the Interest of C.T.**, Lawrence, 1076 WDA 2015
(Pa. Super. 1/6/16)

Father appeals order adjudicating the child dependent and placing the child in foster care. Affirmed. Child continuously disobeyed Father and refused to remain in Mother's custody. Trauma evaluation was appropriate given the circumstances and potential parental alienation. Memorandum opinion by Bender joined by Shogan and Musmanno.

10. **T.B. & S.E. v. S.H. & K.W.**, Allegheny, 840 WDA 2015
(Pa. Super. 1/6/16)

Father and Paternal Grandmother appeal shared custody order with third party custodian. Affirmed. Trial Court erred in characterizing the nature of the custody awarded to Custodian as partial. The error was harmless and did not impact Court's analysis. Child had lived with Custodian much of her life. Memorandum opinion by Olson joined by Stabile and Strassburger.

11. **Weitzel v. Weitzel**, Berks, 2096 MDA 2012
(Pa. Super. 1/7/16)

Husband appeals dismissal of Contempt Petition of PNA. Affirmed. Petition dismissed due to Husband's own dilatory behavior. Husband appeared by telephone and failed to answer necessary questions. Memorandum opinion by Panella joined by Ott and Jenkins.

12. **P.K. v. M.K.**, Washington, 510 WDA 2015
(Pa. Super. 1/7/16)

Mother appeals order awarding Father custody. Affirmed. Court fully considered all factors including the move back to Fredericktown with Father. Father never consented to the relocation of the children. Memorandum opinion by Bowes joined by Olson and Stabile.

13. **K.L.O. v. S.K.**, Blair, 1055 WDA 2015
(Pa. Super. 1/8/16)

Mother appeals order awarding Father primary custody. Affirmed. All factors considered. Evidence will not be re-weighed on appeal. Memorandum opinion by Ford Elliott joined by Shogan and Ott.

14. **DiCenzo v. Heary**, Allegheny, 442 WDA 2015
(Pa. Super. 1/11/16)

Father appeals order dismissing her exceptions to Master's support recommendation. Affirmed. Father has staggering debt and sought an increase in alimony. His expenses were marginally related to the children and did not justify a deviation. There are no unusual needs which Father is required to pay. Memorandum opinion by Bender joined by Shogan and Musmanno.

15. **In Re: J.R.**, Lackawanna, 1158 MDA 2015
(Pa. Super. 1/12/16)

Father appeals involuntary termination. Affirmed. Father was incarcerated since before the child was born and failed to perform any parental duties by not completing his permanency plan. Memorandum opinion by Ford Elliott joined by Wecht and Fitzgerald.

16. **In Re: D.H.-W.**, Lycoming, 1294 MDA 2015
(Pa. Super. 1/15/16)

Father appeals termination order. Affirmed. Despite his efforts, Father struggled with parenting abilities. The visitation coordinator often intervened in parenting the child during supervised issues. Evaluation determined Father would not be able to care for the child on his own. Memorandum opinion by Panella joined by Ott and Jenkins.

**17. KRW v. J.R.R., Venango, 883 WDA 2015
(Pa. Super. 1/19/16)**

Father appeals order dismissing his Petition to Modify Custody. Vacated and remanded. A hearing was held in December 2014 and a final order entered. The second hearing on Father's Petition to Modify was held in April 2015 and did not discuss all factors. The issues were not ancillary as the facts alleged were that Mother had since committed a theft and she was using marijuana. Memorandum opinion by Ford Elliott joined by Bowes and Musmanno.

**18. In the Interest of T.E.J.-H., Jr., Berks, 763 MDA 2015
(Pa. Super. 1/19/16)**

Appeal of denied Petition to Intervene in dependency child removed from foster parents' care. JCR was evaluated and found unfit to care for any child given mental and physical concerns. Appellants not entitled to party status in dependency simply because they are members of the child's family. Memorandum opinion by Bowes joined by Panella and Platt.

**19. Jenkins v. Cunningham, Fayette, 669 WDA 2015
(Pa. Super. 1/20/16)**

Mother appeals order continuing a \$711/month support payment to Father. Affirmed. The depreciation real estate taxes and other deductions were business related expenses not taken to reduce or avoid child support. Memorandum opinion by Olson joined by Stabile and Strassburger.

**20. In Re: Adoption of J.W.K., III, Cambria, 1197 WDA 2015
(Pa. Super. 1/20/16)**

Father appeals termination order. Affirmed. Mother and Father both arrested when cops responded to domestic violence incident and found 3 marijuana plants and both parents highly intoxicated and child was later returned but Father failed to remain drug free and was arrested for DUI. Substantial evidence of criminal history and drug abuse. Father failed to remedy his circumstances. Memorandum opinion by Ford Elliott joined by Shogan and Ott.

- 21. Haser v. Haser, Allegheny, 78 WDA 2015
(Pa. Super. 1/20/16)**

Appeal from order interpreting a consent decree. Affirmed. Trial Court permitted to examine existing lease document to interpret the contract. While some terms of the contract are more logical if Husband was considered the lessor, the particular paragraph at issue is not one of them. Court did not find a mutual mistake. Memorandum opinion by Bender joined by Shogan and Musmanno.

- 22. McKinney v. Willis, Montgomery, 1045 EDA 2015
(Pa. Super. 1/21/16)**

Appeal of order finding Appellant in contempt of child support arrearages. Dismissed for failure to ensure transcript was included in the certified record. Memorandum opinion by Gantman joined by Mundy and Dubow.

- 23. LeShack v. LeShack, Allegheny, 558 WDA 2015
(Pa. Super. 1/22/16)**

Husband appeals order affirming Master's E.D. Report. Affirmed. Neither party filed exceptions to the Report. Husband was not granted leave to file them later. Memorandum opinion by Ford Elliott joined by Shogan and Ott.

- 24. J.R. v. L.T., Allegheny, 494 WDA 2015
(Pa. Super. 1/22/16)**

Father appeals order denying his custody exceptions. Affirmed. The Court found Mother in a technical violation of the custody order but did not believe sanctions were warranted. Father misused multiple fines of communication to harass Mother. Memorandum opinion by Ford Elliott joined by Bowes and Musmanno.

- 25. M.E.W. v. J.D.F., Delaware, 1185 EDA 2015
(Pa. Super. 1/25/16)**

Father appeals denial of custody contempt Petition. Affirmed. Court found child sought mental health treatment and requested Mother's confidentiality in doing so. Mother did not act with wrongful intent. Memorandum opinion by Gantman joined by Panella and Shogan.

**26. In the Interest of D.C., Wayne, 2067 EDA 2015
(Pa. Super. 1/26/16)**

Father appeals termination of parental rights. Affirmed. Child born with fetal alcohol syndrome. Father had history of substance abuse issues, had minimal income and inadequate housing. Father failed to remedy his addiction and failed to bond with the child by failing to show up for visits or leave early. Memorandum opinion by Gantman joined by Ford Elliott and Olson.

**27. A.R.W. v. A.E.Y., Philadelphia, 1093 EDA 2015
(Pa. Super. 1/27/16)**

Father appeals order granting Mother primary physical and legal custody. Affirmed. Father is incarcerated and has visitation at jail as arranged by Mother and Paternal Grandmother. Court found he was entitled to information but not decision making authority from jail. Memorandum opinion by Gantman joined by Mundy and Musmanno.

**28. In Re: Adoption of C.L.H., Warren, 1161 WDA 2015
(Pa. Super. 1/27/16)**

Mother appeals termination order. Affirmed. Parents were homeless but ultimately came into CYS custody due to a head injury. Mother had several mental and memory issues. Expert testified these issues made it difficult for her to care for even herself. Memorandum opinion by Bowes joined by Olson and Strassburger.

**29. Borovick v. Wilson, Clarion, 463 WDA 2015
(Pa. Super. 1/27/16)**

Wife appeals order directing Husband to pay \$650/month alimony for 3 years. Affirmed. All 3701(b) factors addressed. No abuse of discretion. Memorandum opinion by Bender joined Shogan and Musmanno.

**30. In the Interest of M.S.P., Philadelphia, 1805 EDA 2015
(Pa. Super. 1/28/16)**

Father appeals termination order. Affirmed. Father was in prison for sexual related offenses and failing to register as a sex offender for most of the children's lives. Children bonded with foster mother. Memorandum opinion by Gantman joined by Mundy and Musmanno.

**31. In the Interest of K.N.H., Philadelphia, 1724 EDA 2015
(Pa. Super. 1/28/16)**

Mother appeals termination order. Mother addicted to heroin and would not visit with the child while in prison. Did not meet FSP goals. Child was not bonded with Mother. Memorandum opinion by Gantman joined by Mundy and Musmanno.

**32. In Re: W.M.S., Centre, 1295 MDA 2015
(Pa. Super. 1/28/16)**

Mother and Father appeal termination order. Remanded for failure to perform a Section 2511(b) analysis. Memorandum opinion by Panella joined by Mundy and Stevens.

**33. T.B. v. R.J., Bradford, 1045 MDA 2015
(Pa. Super. 1/28/16)**

Appeal of order denying DNA testing. Affirmed. Acknowledgment of paternity form signed previously. Doctrine of paternity by estoppel applied. Child was 15 at the time of the challenge. Memorandum opinion by Panella joined by Ott and Jenkins.

**34. Chromack v. Williams, Allegheny, 733 WDA 2015
(Pa. Super. 1/29/16)**

Appeal of order denying permission to proceed in forma pauperis in custody. Reversed and Remanded. Trial Court only considered income and household dependents measured against guidelines. Other expenditures and obligations must be considered. Memorandum opinion by Ford Elliott joined by Shogan and Ott.

**35. J.B. v. B.B., Dauphin, 477 MDA 2015
(Pa. Super. 1/31/16)**

Husband appeals child support order denying a downward deviation to account for his student loan. Affirmed. Father chose to pay a higher monthly amount than required. No evidence that he could not meet his obligation on his physician salary. Memorandum opinion by Panella joined by Lazarus and Platt.

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