

**PHILADELPHIA BAR ASSOCIATION  
FAMILY LAW SECTION MEETING  
FEBRUARY 4, 2013**

**NEXT MEETING: MARCH 4, 2013; 12:00 P.M.**

**PHILADELPHIA BAR ASSOCIATION, 11<sup>TH</sup> FLOOR CONFERENCE CENTER  
1101 MARKET STREET, PHILADELPHIA, PA**

**NEXT EXECUTIVE COMMITTEE MEETING: FEBRUARY 21, 2013; 12:00 PM**

**PHILADELPHIA BAR ASSOCIATION, 11<sup>TH</sup> COMMITTEE ROOM SOUTH  
FLOOR, 1101 MARKET STREET, PHILADELPHIA, PA**

The Section meeting was called to order at approximately 12:11 PM by Section Chair Michael Bertin, Esquire.

**I. WELCOME AND INTRODUCTION**

Michael welcomed every one in attendance to the meeting, including Judge Thompson, Judge Pechkurow and Master Sulman.

**II. APPROVAL OF MINUTES**

January Minutes were approved.

**III. TREASURER'S REPORT**

As of November 30, 2012, the account had a balance of \$25,954.

**IV. ANNOUNCEMENTS**

Michael announced that Julia Swain will be co-chairing the Bench Bar program committee. The Bench Bar is scheduled for October 4<sup>th</sup>- 5<sup>th</sup> at Revel in Atlantic City. Michael then announced he is working with the other area bar associations family law sections to have a joint meeting of all associations in the Fall. The thought is to have it either at our Bar Association or at the Montgomery Bar Association, given their proximity to the train. Michael then announced that the RFP concerning conflict counsel is being addressed by the Bar Association. He will continue to update us as to the status. Michael announced that the Unmarried Cohabitants Committee may seek to formally change its name. Michael announced that the Support Center for Child Advocates is holding its Annual Benefit Reception and Auction on April 10, 2013 from 5pm- 8pm at the Crystal Tea Room (see flyer attached). Lastly, Michael announced that the Support Center for Child Advocates along with PBI is presenting a CLE on How to Handle a Child Abuse Case (see flyer attached.)

**V. PRESENTATION**

The Custody Committee put on an excellent program highlighting cases from 2011 and 2012 addressing custody issues. Their detailed case summaries are attached.

**VI. COMMITTEE REPORTS**

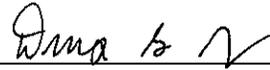
Committee meeting dates and announcements continue to be disseminated over the List Serve.

**VII. GOOD AND WELFARE**

None.

Meeting adjourned at approximately 1:12 PM.

Respectfully Submitted,



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Dina S. Ronsayro, Esquire  
Section Secretary

**ATTACHMENTS:**

Slip Opinions

Custody Committee Child Custody Update

Support Center for Child Advocates Annual Benefit Reception and Auction Flyer

Support Center for Child Advocates & PBI How to Handle a Child Abuse Case CLE Flyer

**RECENT PA. APPELLATE COURT FAMILY LAW SLIP OPINIONS**

**February 2013**

**Summarized by David I. Grunfeld, Esquire**

1. **In Re: Adoption of B.M.F.**, Blair, 1187 WDA 2012  
(Pa. Super. 1/24/12)

Mother appealed order terminating her parental rights. Affirmed - father had consented, mother did not appeal despite service of notice, adoption decree was entered, and best interest and bond evaluated. Opinion by Stevens joined by Mundy and Fitzgerald.

2. **In Re: S.Z.M.**, Jun., 1152 and 1153 MDA 2012  
(Pa. Super. 1/24/12)

Mother appealed termination of parental rights. Affirmed - no abuse in finding unremedied conditions of incapacity, and needs and welfare analysis here. Opinion by Ott joined by Panella and Strassburger.

3. **N.A.M. v. M.P.W.**, Bucks, 2349 EDA 2012  
(Pa. Super. 1/25/13)

Mother appealed denial of her petition to modify custody. Vacated and remanded - entitled to a hearing on request to continue psychological treatment; recusal denied because of failure to file motion. Opinion by Gantman joined by Stevens and Lazarus.

4. **R.L. v. G.L.**, Mon., 1282 EDA 2012  
(Pa. Super. 1/29/13)

Mother appealed grant of prime physical custody to father. Affirmed - jurisdiction retained based upon residence of children at commencement of case, although all parties later moved out of county; no abuse of discretion in findings on merits or best interest here where all factors addressed. Opinion by Platt joined by Mundy and Ott.

5. **M.B. v. L.G.**, Montg., 1064 EDA 2012  
(Pa. Super. 1/29/13)

Mother appealed custody contempt orders. Affirmed - no abuse of discretion in findings of schedule and transportation violations here. Opinion by Bender joined by Lazarus and Colville.

6. **In Re: Adoption of L.I.M.**, Luz., 1377 EDA 2013  
(Pa. Super. 1/31/13)

Father appealed termination of parental rights. Affirmed - no abuse of discretion in finding of lack of parental duties here. Opinion by Panella joined by Ford Elliott and Allen.

7. **In Re: M.Y.T-N.**, Berks, 1253 and 1254 MDA 2012  
(Pa. Super. 1/31/13)

Mother appealed termination of parental rights. Affirmed - no abuse of discretion based upon physical abuse of child here. Opinion by Allen joined by Ford Elliott and Panella.

8. **J.S.S. v. R.A.S.**, Col., 1213 EDA 2012  
(Pa. Super. 1/31/13)

Father appealed order granting mother primary physical custody (he wanted equal). Affirmed - no abuse of discretion where father got significant partial physical custody. Opinion per curiam by Ford Elliott, Panella and Allen.

9. **T.D.P. v. R.L.P.**, Dau., 1134 MDA 2012  
(Pa. Super. 1/31/13)

Father appealed custody order allowing mother to relocate with children to Arkansas. Reversed - intent to pursue Ph.D. for three years insufficient proof of being in best interest of child. Opinion by Panella jointed by Ott and Strassburger.

10. **M.J.H. v. C.S.H.**, Jun., 946 MDL 2012  
(Pa. Super. 1/31/13)

Mother appealed denial of her petition to modify custody rights of paternal grandparents (father had died and paternal grandparents had primary physical custody for a time previously). Affirmed - no abuse of discretion in finding best interest and minimal interference with mother's primary custody. Opinion by Strassburger joined by Mundy and Ott.

Copies of Pa. Supreme and Superior slip opinions may be downloaded from the Internet on the pages of the Administrative Office of the Pa. Courts, <http://www.pacourts.us/courts> (note some opinions are Memorandum).

*THE CUSTODY COMMITTEE OF THE PHILADELPHIA FAMILY LAW SECTION*  
*PRESENTS:*

**CHILD CUSTODY UPDATE:**  
**NOTEWORTHY PENNSYLVANIA CASES FROM 2011 & 2012**

**RELOCATION, SOLE LEGAL CUSTODY, AND COURT'S RESEARCH OUTSIDE OF RECORD**

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

**A. Relocation**

1. E.D. v. M.P., 33 A.3d 73 (Pa. Super. 2011). This was the first reported case to analyze relocation under the new custody statute. In this case, the trial court permitted Father to relocate to Barton, New York on an interim basis. Father did not serve a relocation notice on Mother and Mother did not file a counter-affidavit. However, because neither party objected to the procedural failures, the Superior Court treated the issues as waived. The Superior Court emphasized the importance of analyzing all of the factors in the relocation statute. It is reversible error if the court does not analyze all of the relocation factors, and the court shall reference the factors and provide explanations for its conclusion on the record or in its decision pursuant to Section 5823(d). The Superior Court stated, "To the extent that the trial court did consider these factors, it did so in a cursory manner without references to the record or explanations for its conclusion." Under §5823(d) in the Act, it is stated that "the court shall delineate the reasons for its decision on the record in open court or in a written opinion or order." It is clear from the Superior Court's opinion that the trial court did not satisfy this requirement in making its decision. Mother also filed a counterclaim for primary custody. Mother claimed the court did not fully consider all 16 factors when awarding custody under §5328. The Superior Court directed that, on remand, the trial court should conduct a thorough analysis based upon the factors set forth under §5328(a) regarding Mother's counterclaim. The Superior Court's decision also provides guidance in a number of other areas. For example, it reminds the trial court that it shall consider and analyze all members of the household. This analysis includes any criminal history as well as a history of drug and alcohol abuse and the mental and physical condition of the members. It also directs that the trial court shall evaluate the nature of the relationship between siblings and half-siblings regarding any risk, as well as their sibling relationship. Lastly, the opinion contained a reminder that Father is not entitled to any presumption in his favor as a result of the trial court's decision to permit the relocation prior to the evidentiary hearing.

2. C.R.F. v. S.E.F., 45 A.3d 441 (Pa. Super. 2012). In this relocation case, Mother sought to relocate to Somerset County. She filed her petition to relocate prior to the enactment of the new Custody Act. The hearing on Mother's petition occurred on April 7, 2011, after the enactment of the Act. The trial court applied the law that existed prior to the enactment of the new Act. The Superior Court reversed and remanded the case for a hearing where the 10 factors under the new Custody Act could be applied. The Superior Court held: "if the evidentiary proceeding commences on or after the effective date of the Act, the provisions of the Act apply even if the request or petition for relief was filed prior to the effective date. Under this scenario, it is the date of the commencement of the hearing that determines whether the Act applies, not the date the petition or complaint was filed." This is contrary to the holding in prior cases. However, this is now the interpretation of the applicability of the new custody Act.

3. C.M.K. v. K.E.M., 45 A.3d 417 (Pa. Super. 2012). Mother failed to meet her burden of proving that relocation was in the child's best interest, as the trial court determined that the proposed move would have significantly impaired Father's custodial rights where Father regularly exercised periods of partial physical custody and was actively involved in the child's life, school activities and extracurricular activities. This case is also important for the Superior Court's holding that the fact that a party serves a relocation notice on the other parent and files a petition for relocation requesting a hearing does not amount to that party tacitly conceding that the proposed move is "relocation" under the custody statute warranting an analysis under Section 5337.

4. B.K.M. v. J.A.M., 50 A.3d 168 (Pa. Super. 2012). This case focuses on when the parent relocates prior to the full evidentiary hearing on relocation. The Superior Court held that a trial court cannot ignore the facts and circumstances that exist after a party relocates with a child prior to the full evidentiary hearing when making a decision. Section 5337(l) provides: "Effect of relocation prior to hearing...If a party relocates with the child prior to a full expedited hearing, the court shall not confer any presumption in favor of the relocation." In interpreting Section 5337(l), the trial court disregarded any evidence arising out of the period after Mother and the children moved to Sweden in April 2010 (prior to the hearing). The Superior Court ruled that such an interpretation would result in a presumption against relocation and would be contrary to considering all factors under Sections 5328(a) and 5337(h). The trial court is to impose the same allocation of burdens set forth in the custody statute regardless of whether a relocation occurred prior to the hearing when considering the best interest of the child.

**B. Sole Legal Custody and Court's Research Outside of Record**

1. M.P. v. M.P., \_\_ A.3d \_\_, 2012 PA Super. 215 (October 5, 2012). In this case, Mother had sole legal custody. Mother desired to travel to Ecuador with the parties' child to visit family for three weeks. Father objected and his signature was needed for the child to travel to Ecuador. Mother then sought permission to travel to Ecuador from the court. The trial court denied Mother's request. If a parent has sole legal custody, the court cannot prohibit a legal custody decision of that parent because the parent without legal custody objects. The Superior Court reversed the trial court's decision and granted Mother permission to travel to Ecuador. Also, it is important to note that the Superior Court found that the trial court erred in relying on its own private research outside of the record. In this case, the trial court conducted post-hearing research regarding Ecuador which suggested non-compliance in Hague Convention cases. However, no testimony was presented at trial about the Hague Convention. Mother asserted that her due process rights were violated by the court when it relied on evidence outside of the record and that it neglected the most recent information on Ecuador's compliance with the Hague Convention that Mother found on her own. Mother also argued that the court violated the Custody Act by not referencing the reasons for its decision in open court or in its opinion. The Superior Court agreed. It was not until the court filed its 1925 statement that Mother became aware of the trial court's reliance on the post-hearing research.

**THIRD PARTIES, POLYAMORY AND SHARED PHYSICAL CUSTODY**

*by Kristine L. Calalang, Esquire, of The Law Office of Kristine L. Calalang*

1. E.T.S. v. S.L.H., 54 A.3d 880 (Pa. Super. 2012). In this case, the Boyfriend of an Adoptive Mother claimed he had *in loco parentis* standing and sought shared legal and shared physical custody of the two children who had resided in the home with Adoptive Mother and him before he moved out. Adoptive Mother was the biological maternal great-aunt to the children. Adoptive Mother shared physical and legal custody of the children with their great-grandmother before having the biological parents' rights terminated and adopting the children herself. Adoptive Mother filed preliminary objections to Boyfriend's custody complaint and asserted Boyfriend did not have any standing to seek legal or physical custody because he did not have a relationship with the children and never assumed parental obligations or duties. The trial court sustained Adoptive Mother's preliminary objections, and the Superior Court affirmed this ruling.

Because it was undisputed Boyfriend had no contact with the children post-adoption, the trial court found that any alleged *in loco parentis* rights he may have established before the adoption ended when Adoptive Mother adopted the children. The Superior Court agreed with the trial court and cited Sections 5324 and 5326 of the Custody Act in support of its finding. Under Section 5324, a parent of the child, a person with *in loco parentis*, or a grandparent who

is not *in loco parentis* has standing to file for legal or physical custody of the child. Under Section 5326, an adoption ends all rights to custody which were granted under Section 5324 or Section 5325 (standing for supervised physical and partial physical custody) if the child is adopted by someone other than a stepparent, grandparent or great-grandparent. In this case, the children's biological maternal great-aunt adopted them, so this terminated Boyfriend's alleged *in loco parentis* custody rights.

2. V.B. v. J.E.B., \_\_ A.3d \_\_, 2012 PA Super 200 (September 21, 2012). This case involves a Father who filed an appeal to the trial court's order granting Maternal Grandparents sole legal and primary physical custody of the two children who were born of the polyamorous relationship among Mother, Father and Mother's Husband. The triad and the children formerly lived with the Maternal Grandparents in New Jersey but were evicted by Maternal Grandparents and moved to Bethlehem, Pennsylvania. The triad added another to their relationship when Father married Stepmother. Eventually, Father ended the polyamorous relationship and moved with Stepmother and the child he had with Stepmother to a separate apartment in the same building and later further away in Pennsylvania. Thereafter, Mother's Husband filed for divorce after moving to Texas, and Mother had a son with her new boyfriend. Mother and Father agreed to enter a custody order where they shared legal custody and had alternating periods of primary custody with Maternal Grandparents having partial custody of the children. Maternal Grandparents later filed to modify the custody order requesting primary physical custody for either them or Mother. Father then filed to modify, requesting shared legal custody with Mother and primary physical custody for himself. Mother also filed to modify, requesting primary physical custody.

In its opinion, the Superior Court noted that Section 5327(b) of the Custody Act provides that in a custody dispute between a parent and non-parent, there is a rebuttable presumption in favor of the parent. The non-parent must show clear and convincing evidence to overcome this presumption. In the present case, the Superior Court found the trial court erred, as there was not enough evidence to overcome this presumption, and the court was overly focused on the fact Father had been in the polyamorous relationship. The Superior Court cited the Michael T.L. v. Marilyn J.L. case which provides that "without evidence of a harmful effect on the child, a parent's past [sexual] conduct should have little weight in making a custody decision." 525 A.2d 414, 418 (Pa. Super. 1987). The Superior Court also found the trial court's decision to reduce Father's time to partial physical custody two times per month manifestly unreasonable. Because the record was "sufficiently developed," the Superior Court acted as it did in M.A.T. v. G.S.T. and decided the case on the merits. 989 A.2d 11 (Pa. Super. 2010). The Superior Court granted Father legal custody and primary physical custody, directed the parties to attend counseling and remanded the case for the creation of a custody schedule.

3. Durning v. Balent/Kurdilla, 19 A.3d 1125 (Pa. Super. 2011). In this case, the Mother filed an appeal from the trial court's order granting Mother and Father shared legal custody and equal physical custody of their son. The child lived with Mother from birth (2005 in Pennsylvania) to January 2010 when Mother suffered from renal failure and could not care for the child. Mother and the child were living in Alaska at the time with Mother's husband (a member of the U.S. Army), and there was an existing custody order granting Mother primary physical custody and the right to relocate to Alaska. Mother asked Father to come to Alaska to pick up the child while she tried to recover, but he did not have the financial resources to travel. Maternal Grandmother thereafter picked up the child from Alaska and brought him to live in Pennsylvania with her from January to March 2010 (when Father kept the child with him and filed a petition to modify at the end of a weekend where his parents had overnights with the child). Meanwhile, Mother recovered and went to Pennsylvania in late March or early April 2010 to resume having primary custody of the child, but Father refused to relinquish custody. Mother filed a petition to modify and requested primary physical custody and to relocate from Alaska to North Carolina (the state where her husband was reassigned). The trial court entered a final order awarding the parties with shared legal and equal physical custody.

The Superior Court vacated the trial court order and exercised its ability to decide the case itself on the merits. Specifically, the Superior Court granted Mother primary physical custody and the ability to relocate with the child to North Carolina. The Superior Court found Mother's time in Pennsylvania was only temporary, as she was attempting to regain custody before going to live in North Carolina with her husband. Thus, the trial court's week on/week off schedule requiring travel between Pennsylvania and North Carolina was too far a distance and unreasonable. The Superior Court also focused on Mother's role as the primary caregiver for much of the child's life and noted its prior commentary in the Wiseman v. Wall case - that a court should be "reluctant to disturb custody arrangements which have satisfactorily served the best interests of the child." 718 A.2d 844, 846 (Pa. Super. 1998). Finally, the Superior Court found that the trial court erred when it did not grant relocation mainly on the premise that the Gruber factors were not established, as the Superior Court found these were significant but not the only factors to consider in the best interest analysis.

### RESTRICTIONS ON CUSTODY

*by Elaine Smith, Esquire, of the Law Office of Smith & Horwitz*

1. A.H. v. C.M., \_\_ A.3d \_\_, 2012 PA Super 227 (December 18, 2012) – In this case, Mother appealed the trial court's denial of her motion to review the determination of the parent coordinator without a hearing. The Superior Court reversed the trial court's ruling and remanded the case back to the trial court ordering that it must hold a *de novo* hearing to review the parent coordinator's determination. In its opinion, the Superior Court cited the Yates v. Yates case which defines parent coordination. 963 A.2d 535 (Pa. Super. 2008).

2. P.H.D. v. R.R.D., \_\_ A.3d \_\_, 2012 PA Super 246 (August 22, 2012) – In this case, Father filed an appeal of a trial court order which dismissed Mother’s contempt petition but also “clarified” a prior custody order by adding stay-away provisions even though there was no modification petition pending or motion for clarification pending. This action by the trial court was found to violate Father’s due process rights, and, accordingly, the Superior Court vacated the “clarified” part of the order. The Superior Court advised that a trial court may not permanently modify a custody order without having a petition for modification before it, and noted that in this case, the modification was a significant departure and not a “clarification.”

3. J.R.M. v. J.E.A., 33 A.3d 647 (Pa. Super. 2011) – Father appealed a trial court’s order which awarded Mother with primary custody of the parties’ son and restricted Father’s partial custody time. The Superior Court vacated the trial court’s order and remanded it because the trial court did not make any best interest findings to support its granting of primary physical custody to Mother or to support the 4 hour visitation restriction on Father.

## JURISDICTION

*by Lawrence W. Abel, Esquire, of Avallone Law Associates*

1. C.L. v Z.M.F.H., 18 A.3d 1175 (Pa. Super. 2011). Parties married on April 17, 1997 and had two boys. The family moved to Nebraska in 2004, and separated in Summer 2006, when Mother moved to Pine Ridge Indian Reservation with the boys. Father went to Indiana County, PA. Boys “visited” Father in November 2006 and never returned. Mother filed for divorce and custody in December 2006 in the Tribal Court. Father was served, but his only appearance was by counsel requesting a continuance (not objecting to jurisdiction). The final order dated April 19, 2007, awarded custody to Mother. On March 17, 2007 (during pendency of Tribal proceedings) Father filed for custody Indiana County, alleging no other action or court proceeding. Based on this filing, Indiana County issued a temporary order for the boys to stay in Pennsylvania. No proof of service on Mother. Father was ordered to file proof of service, but he never did. In March 2010, Mother filed a UCCJEA enforcement petition in Indiana County, which stayed proceedings, pending communication with Tribal Court. After an on-the-record conference with the Tribal Court, Indiana County vacated the temporary 2007 Order and transferred the case to Tribal Court.

*Home state.* Tribal Court is equivalent to other state court pursuant to the UCCJEA. There was no home state, as the boys had not lived in Nebraska, Pine Ridge or Pennsylvania for six consecutive months immediately prior to Mother’s initial 2006 filing. Because there was no home state, the §5426 first-in-time rule applies, for states with “signification connection”. The Court went through some facts in determining significant connection to both states.

*Importance of good service.* The Superior Court defers on credibility issues to the trial court. The first-in-time court makes the decision on jurisdiction, and the second court is to defer to the first-in-time court.

*Jurisdiction.* Father argued that Mother submitted to personal jurisdiction of the Pennsylvania court. However, it is not personal jurisdiction that matters here; instead, it is subject matter jurisdiction (the children).

2. Swarrow v. Brasuhn, \_\_ A.3d \_\_, 2012 Pa. Super 247 (November 13, 2012). The only opinion published in this case is J. Bowes' concurring opinion that joins in the majority's decision and fully concurs with its reasoning. The opinion is an admonition to trial courts and an affirmation that courts must maintain impersonal authority of law. In this case, the parties resolved a custody dispute, but their attorneys were having difficulty finalizing the agreement. Instead of helping to resolve the situation for the sake of the child, the trial court amplified the conflict, created additional costs and stresses, inconvenienced the parties and counsel, and wrongly found counsel in contempt. The Superior Court advised that contempt is a last resort, and civil contempt should be considered before criminal contempt. To determine whether contempt is civil or criminal, what it is in application is more important than how it is characterized. The trial court stated in this case that it was imposing civil contempt, but it was actually imposing criminal contempt.

3. M.E.V. v R.D.V., \_\_ A.3d \_\_, 2012 PA Super 233 (October 23, 2012). The parties were married in 2005 and had children born in 2007 and 2010. The marital home was in New Jersey. Father had an affair, and Mother moved with the children to Pennsylvania in June 2011. In November 2011, Father filed for divorce and custody in New Jersey, averring that state was the children's home state. Mother was served, and she thereafter filed for custody in Erie, Pennsylvania. Father filed preliminary objections. The Erie trial court found in favor of Mother. An immediate appeal by Father followed where he alleged the trial court erred in finding Pennsylvania to be the children's home state, when the move to Pennsylvania was "only temporary."

A court must not exercise jurisdiction when another state has priority. The trial court in this case found that there were no custody proceedings scheduled or pending in New Jersey and that no initial determination had been made. The trial court, therefore, did not contact the New Jersey court. However, the Superior Court advised that a served complaint is enough to have the courts communicate with each other, and the Erie court should have contacted the New Jersey Court. Further, the Erie court abused its discretion in determining that Pennsylvania was the children's home state. The court must decide whether the move is temporary or permanent (i.e., was it temporary arrangements for Father to see the children or temporary time in PA?). Because Mother didn't tell Father she wasn't going back to New Jersey

until November 2011, this is when the move to Pennsylvania became “permanent,” and the six-month clock started ticking. As with the previous case, first-in-time applies in jurisdictional challenges. In this case, the jurisdictional determination was for New Jersey, as it was the first court to be involved with the parties. However, in this case, the court may not have even found Pennsylvania to have jurisdiction, even without a New Jersey proceeding.

4. B.J.D. v D.L.C., 19 A.3d 1081 (Pa. Super. 2011). A 2009 Pennsylvania custody order allowed Father to relocate with the parties’ child to the U.S. Commonwealth of Northern Mariana Islands. The child never returned to Pennsylvania after that. In the summer of 2010, Father temporarily moved to Canada with the child. In June 2010, Mom asked jurisdiction be transferred to Oklahoma, which the court ultimately granted after a hearing in late September. Earlier in September 2010, Father moved to his mother’s home in Maryland, again with the child, and asked permission to do so. The Pennsylvania trial court ordered the custody dispute be litigated in Oklahoma, where Mother has continually resided. The Superior Court found that the trial court lacked jurisdiction because the child had not been in Pennsylvania since 2009, and the case should have been dismissed.

5. R.M. v J.S., 20 A.3d 496 (Pa. Super. 2011). In 2007, the parties and child moved from Pennsylvania to Florida. From October 2008 to March 2009, Mother “visited” family in Pennsylvania, and the child resided in Pennsylvania at Maternal Grandmother’s (MGM) home. From March to August 2009, the parties and child were in Florida together. From August 2009 to March 2010, Mother and the child were back in Pennsylvania. In March 2010, the court returned the child to Father’s custody after a dependency hearing (though child found not dependent), and Father and the child went home to Florida. In March and April 2010, Mother filed for support and custody in Pennsylvania, respectively. MGM also filed for custody. Father filed preliminary objections regarding jurisdiction and MGM’s standing and for custody in Florida. Father’s Pennsylvania preliminary objections were denied without hearing, but an order entered allowed an immediate appeal. The Pennsylvania trial court found the child’s “home state” to be Pennsylvania, where the child resided for six months within six months of filing. Superior Court held once jurisdiction is acquired, the “extended six month home state provision” allows Pennsylvania to maintain right to jurisdiction for six months after the child leaves—basically until child is gone long enough for some other state to establish jurisdiction.

However, Superior Court found that because the statute (in §5402) requires the child to have “lived with a parent” in Pennsylvania for six consecutive months and the child was placed (by dependency court) with MGM during some of that time, the child did not live with Mother in Pennsylvania for the requisite six months. The question, therefore, becomes whether Florida is the child’s home state; if not, then there is no home state. The trial court found that resolving the question of whether a move is “temporary” when the child has been in the new state for more than six months is unnecessary. Superior Court disagreed, finding that if

Mother's move from Florida was "temporary," then Florida retains jurisdiction. If there is no home state, the "maximum significant contacts" analysis applies and an evidentiary hearing is needed.

Father also alleged "unjustifiable conduct" [from § 5428(a)] by Mother and MGM for failing to inform Father of Mother's failing mental health and the child's situation. Because Father raised an issue of fact about the alleged unjustifiable conduct, a hearing should have been held. If the court finds it has jurisdiction, it may decline jurisdiction if it finds jurisdiction based on unjustifiable conduct.

The Court discussed both §5312 (now §5325 - partial custody) and §5313(a) (now §5324 - full custody) with respect to MGM's standing. The partial custody statute required a six-month separation or divorce proceedings, but the Supreme Court in *Baxter* read this language out of the statute. However, MGM's full custody complaint was insufficient since she did not allege any fact supporting one of the three requirements of §5313(b)(3) - 12 months of living with the child, adjudication of dependency, or where it is necessary to assume responsibility for a child substantially at risk due to one of a list of factors, including a parent's mental illness. Thus, Father's preliminary objections should have been granted. The trial court was to hold a hearing on MGM's standing if it has jurisdiction over the case in chief.

**ADMISSION OF A PRIOR CUSTODY EVALUATION AND TEMPORARY ORDERS BEING MOOT**  
*by Mark-Allen Taylor, Esquire, of the Law Offices of Mark-Allen Taylor, LLC*

M.O. v. F.W., 42 A.3d 1068 (Pa. Super. 2012). Father filed an appeal of a trial court order granting Mother sole legal and primary physical custody of the parties' child. The Superior Court affirmed the trial court ruling. The parties were never married, and after the 2007 birth of the parties' daughter, they privately obtained a custody evaluation in 2008. A custody order was entered granting shared legal custody to the parties and primary physical custody to Mother. Father filed a Protection from Abuse Action against Mother and her paramour and an emergency petition to modify custody. Mother filed a contempt petition. In short, the trial court found Father's claims to be baseless and that he manufactured evidence. Father moved to have Mother's attorney recused, moved for a mistrial and objected to the privately engaged custody evaluation report being admitted without the presence of the evaluator. An important factual issue addressed is that Father took the child to doctors for evaluation and stripped and inspected the child every time she was put into his care. The Court held that Father's behavior was a "heinous attempt to wrest custody from Mother . . . [which was] detrimental to the child's welfare that the court was left no option but to limit his contact . . . any further attempt to poison her mind."

The Superior Court noted the general rule is that “expert reports may not be used in child custody contests unless the author of the report testifies and is subject to cross-examination by the party adversely affected, or unless the parties consent.” Cyran v. Cyran, 566 A2d 878 (Pa. Super. 1989); see also Pa.R.C.P 1915.9(b). However, in this case, even though the custody evaluator did not testify at the 2011 proceedings, the parties had hired the evaluator together, and it was Father who first referenced the report and presented rebuttal witnesses to refute its conclusions. Thus, the Superior Court did not find any abuse of discretion when the trial court admitted the custody evaluation into evidence. Finally, regarding the June 9, 2011 temporary order which Father claimed was another abuse of discretion by the trial court, the Superior Court found the issue was moot, as the temporary order was no longer in effect. The court cited Commonwealth v. Benn, where it found that “the appellate courts of this Commonwealth will not decide moot questions.” 680 A.2d 896, 898 (Pa. Super. 1996).

SUPPORT  
Center  
FOR  
**child**  
advocates

COCKTAIL PARTY...

SILENT & LIVE AUCTION...

AWARD PRESENTATION!



## Annual Benefit Reception & Auction

**Wednesday, April 10, 2013 | 5:00-8:00 PM**

Crystal Tea Room • Wanamaker Building • Philadelphia, PA



**PENNSYLVANIA BAR INSTITUTE**  
Presents  
**SUPPORT CENTER FOR CHILD ADVOCATES**  
**“How to Handle a Child Abuse Case”**  
**Volunteer Training Workshop**

**THURSDAY, APRIL 11, 2013**  
**REGISTRATION & BREAKFAST: 8:30 AM**  
**PROGRAM: 9:00 AM – 4:30 PM**

**CONTINUING LEGAL EDUCATION CREDITS: 6.0**

*Lunch on Your Own*

The Support Center for Child Advocates provides legal assistance and social service advocacy to abused and neglected children in Philadelphia County. *Child Advocates* is one of the most successful volunteer models serving children in the country. Each pro bono attorney is teamed with a staff case handler and assigned one child or sibling group. The child advocate team conducts home visits, participates in service planning meetings and court hearings. All volunteers must attend this full-day training program, which includes presentations on the Juvenile Act, the Child Protective Services Law, the role of a child advocate in a criminal case, representing parents in Dependency proceedings, service planning, and the dynamics of child abuse. Our training manual *How to Handle A Child Abuse Case*, with the latest Juvenile Act amendments and Juvenile Court rules, is provided to attendees. This course also provides certification for eligibility to receive court-appointed dependency cases.

**AT:**  
**THE CLE CONFERENCE CENTER**  
**Wanamaker Building, 100 Penn Square East, Suite 1010**  
**Philadelphia, PA 19107**

**For registration and fee details, contact PBI at**  
**[www.pbi.org](http://www.pbi.org) or 1-800-932-4637**  
*(type CHILD ABUSE into site catalog search)*

**For other questions, contact *Child Advocates* at**  
**267-546-9200**

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