

Case Summaries for May 7, 2018 Meeting

P.J.P. v. M.M., 2018 PA Super 100 (filed April 27, 2018)

Father appealed from an order denying his petition for modification requesting shared physical custody of the parties' child. Father argued that the trial court had abused its discretion by failing to award shared custody pursuant to the analysis established in Wiseman v. Wall, 718 A.2d 844 (Pa.Super. 1998). Wiseman required trial courts to make four findings before awarding shared custody: (1) both parents must be fit, capable of making reasonable child rearing decisions and willing and able to provide love and care for their children; (2) both parents must evidence a continuing desire for active involvement in the child's life; (3) both parents must be recognized by the child as a source of security and love; (4) a minimal degree of cooperation between the parents must be possible. The Superior Court in P.J.P. rejected father's argument that the Wiseman rule applied because "the enactment of [23 Pa.C.S.A.] § 5328(a) rendered the Wiseman analysis obsolete" and held that "Section 5328(a) no longer requires a trial court to give deciding weight to the four specific factors discussed in Wiseman when awarding shared custody." The Superior Court affirmed the trial court's holding that shared custody was not in the child's best interests.

Schultz v. Schultz, 2018 PA Super 83 (filed April 10, 2018)

Wife appealed the parties' final decree in divorce. Husband and Wife were 61 and 56 years old, respectively, and were married for 25 years. The trial court determined that their respective net monthly incomes were \$15,941 and \$10,409. Wife was awarded 55% of the marital estate (worth in excess of \$7 million), but was not awarded alimony. Wife argued that the trial court erred in awarding her 55% of the marital estate despite the fact that Husband allegedly dissipated \$4.4 million in marital assets via gifts and transfers to paramours. The Court rejected Wife's argument, reasoning that the trial court explicitly considered "monies used by husband during the course of the marriage" as part of its analysis in awarding 55% of the estate to Wife. Wife also appealed the trial court's decision to exclude Husband's severance payment (received two days after separation) from the marital estate, arguing that the payment was for "past services which occurred during the marriage." The Court affirmed the trial court's ruling to exclude the payment after finding that the payment was consideration for Husband's agreement not to compete with his previous employer for the next twelve months. Finally, Wife claimed that the trial court erred in failing to award her alimony. The Court concluded that an alimony award was not appropriate given: 1) Wife's income; 2) the significant assets she received in equitable distribution; and 3) the fact that she was "in good health and has many employable years ahead of her", so she would have sufficient income to meet her reasonable needs.