

I.A. v. K.F
Superior Court of Pennsylvania
No.: 1723 EDA 2020
March 4, 2021
Before: Stabile, King, Pellegrini
Opinion by: Pellegrini

This Superior Court decision is useful because it addresses custody safety concerns during the COVID-19 pandemic. Father filed a Petition to Modify Custody requesting sole physical custody of his two children during the beginning months of the pandemic. The trial court awarded Mother sole legal custody and primary physical custody. Father appealed arguing that the award of sole legal custody was a punishment of Father for requesting sole physical custody.

Father sought sole physical custody of the two children because Mother was a nurse anesthetist working in a hospital during the pandemic. Father worked from home and asserted that he would be able to provide the children with assistance with their online schooling. Mother's seventy-year-old mother lived with the children and her, but did not help the children with their online schooling. Mother argued that she did not work with COVID-19 patients, neither she nor her co-workers tested positive for COVID-19, and she was given new PPE equipment every shift. Mother also argued if the children were to live with Father, she would be unable to communicate with the children because Father had Mother's phone number blocked.

The trial court reviewed all 16 of the custody factors and concluded that 8 factors favored Mother, only one factor favored Father and the rest were neutral. Based on the results of the factors, the trial court awarded Mother sole legal and primary physical custody. Father appealed the trial court's decision and argued that the decision was punitive and that Mother put the children in danger by enrolling them into before and after school care as well as enrolling the children in a summer camp program where a shooting took place.

The Superior Court disagreed with Father and affirmed the trial court's decision. The Court concluded the trial court addressed all 16 of the custody factors and provided a thorough review in the Order and its opinion. The Court did not find any indiscretions in the trial court's reasoning for awarding sole legal and primary physical custody to Mother. The Court agreed with the trial court that the parties' were unable to co-parent and timely make important decisions for the children. The trial court concluded that it was in the children's best interests for Mother to have sole legal custody because of her willingness and past attempts to communicate with Father and inform him about the children. The Superior Court agreed and did not find any evidence to suggest that this decision was a punishment directed at Father. The Court also noted that Father failed to provide any credible evidence that Mother failed to follow COVID-19 safety protocols.

J.L. v. B.L., Jr.
Superior Court of Pennsylvania
No.: 1006 MDA 2020
February 5, 2021
Before: Murray, McLaughlin, McCaffery
Opinion by: McCaffery

This Superior Court decision is instructive in that it reverses the trial court's holding and remands to permit testimony about Mother's boyfriend's loss of custody of his child. Father filed a Petition to Modify requesting sole legal and physical custody of his youngest child. An Interim Order was entered and Father was granted sole custody of his youngest child. After a hearing, the trial court denied Father's Petition to Modify and directed that the prior order remain in effect. The trial court did not state whether the court considered the custody factors regarding the safety of a child and past testimony. Father appealed the trial court's decision.

Mother and Father have four children together. Mother lived with her boyfriend who has a history of drug and alcohol abuse and who lost custody of his own daughter seven years earlier. Mother and her boyfriend drank alcohol and smoked marijuana in front of her children and have supplied the three older children with alcohol and marijuana. Father was awarded sole legal and physical custody of the three older children and Mother was awarded sole legal and primary physical custody of the youngest child. Father filed a Petition seeking sole legal and physical custody of the youngest child. At the trial on Father's Petition, the trial court denied Father's request and directed that the previous order remain in effect. The trial court based its decision on mother's history as the child's primary caregiver and their strong bond. The trial court found the child would have difficulty adjusting to a life away from Mother and therefore it was in the child's best interest to remain with Mother.

Father appealed the trial court's order and asserted that sufficient weight was not given to Mother's and her paramour's drug use and their history of supplying alcohol and drugs to the children. The trial court previously credited testimony that the paramour was using marijuana in front of the older children and Mother allowed the older children to use marijuana in her custody. However, at the most recent trial the court did not give this testimony weighted consideration.

The Superior Court agreed with Father, reversed and remanded. The Court noted the trial court must give weighted consideration to the custody factors affecting the safety of a child citing 23 Pa.C.S. §5328(a). The Court agreed with Father that Mother did not progress or recognize concern and that Mother refused to admit any wrongdoing or take any responsibility. The Court stated the trial court was obligated to consider past abuse committed by a member of Mother's household regardless of how long ago citing §5328(a)(2) and §5329. The Court remanded for further proceedings, to allow evidence and/or testimony about why Mother's boyfriend lost custody of his daughter, the criminal histories of all members of the parties' households, the custody factors concerning the children's safety and to enter a new custody order, if warranted.