

*In the Interest of: A.D.-G, A Minor*  
2021 Pa.Super. 177  
September 3, 2021  
Before: Panella, McCaffery, Pellegrini  
Opinion: Panella

The Court in *A.D.-G* entered an order keeping a Father's child dependant, finding aggravating circumstances, and directing no further effort to reunify the child with Father. He appealed and Superior Court affirmed. Father had a history of sexually abusing his sister for many years and, accordingly, is a registered sex offender. Based on his history, CYS filed a motion requesting a finding of aggravating circumstances (which was granted), and the hearing officer recommended no further effort to reunify the child with the Father. This recommendation was adopted by the Court. Upon Father's request for a hearing, a *de novo* hearing was held. The Court, after the *de novo* hearing, entered an order consistent with the above. On appeal, Father argued that he was deprived of his due process rights as he was not notified of the initial dependency proceedings and, therefore, denied opportunity to defend against CYS' allegations (Father was not initially identified as the child's father). The Court noted that it was impossible to involve Father at the beginning of the case as he was not known to be the child's father at that time; regardless, however, granting a *de novo* hearing, as well as other hearings in which he could participate, obviated any issue that he may have had regarding his absence at the start of the matter. Father simply did not establish his interests were impaired or he was denied an opportunity to be heard. The remainder of Father's arguments dealt with the quality and weighing of evidence about which the Court found no abuse of discretion.

*C.H.Z v. A.J.Y*  
2021 Pa.Super. 186  
September 16, 2021  
Before: Bowes, Dubow, Musmanno  
Opinion by: Musmanno

This matter regards the Mother's appeal from a child support order she must pay to the Father for the support of their twin children. The Mother has another child ("A.Y.") with another man who passed away. Due to his death, the Mother is entitled to receive Social Security Survivor's Benefits for A.Y. The support order at issue included the aforesaid Survivor's Benefit as part of the Mother's income. Mother appealed this order arguing that A.Y. is not part of the support order and has a different father, and that because the Survivor's Benefit was awarded to her as A.Y.'s mother for the support of A.Y., the Benefits cannot be transferred to anyone else via a support order for other children. In reaching its decision, the Court pointed out that the Domestic Relations Code defines "income" as "any form of payment...regardless of source," which is broad enough to include the Survivor's Benefits at issue herein. Furthermore, the Court also noted that, unlike other forms of benefits, the Mother need not provide any accounting evidencing how the Benefits are used for A.Y.'s benefit. Mother also reported the Benefits on her tax return as income as it constitutes taxable income to her. She is also able to use the Benefits, in part, to apply for loans. Based on all of the above, the Court affirmed the lower court's support order, and ruled that the Benefits can be attributable to the Mother as income for the purposes of child support.

*Graves v Graves*

2021 Pa.Super. 188

September 17, 2021

Before: Olson, King, Pellegrini

Opinion by: Pellegrini

In this matter, the Mother appealed from an order granting the Father primary physical and sole legal custody of their Child; Superior Court vacated this order, and remanded it for additional proceedings. The Child, born in 2008, has only lived with his Mother. The Father has never cared for the Child in any way and, indeed, even lives in another state and had only seen the Child twice in his life. Maternal Grandmother also filed for custody, eventually modifying it to visitation, but the Mother asserted that she interfered with her relationship with her Child. The primary legal issue discussed by the Court was whether a court can grant custody to a party - like the Father - who has never filed for custody of the Child at any time. As a matter of first impression, the Court did a comprehensive review of the applicable case law. After review, the Court opined that the “case law suggests that, because notice plays an essential role in custody litigation, custodial rights may not be adjusted in the absence of a petition and the burden of proving that custody is in the child’s best interest falls on the party seeking custody.” As a result, awarding Father custody - who has never filed for custody - “deprived Mother of notice and the procedural safeguards to which she was entitled...[therefore] a trial court cannot grant custody *sua sponte* to a non-custodial parent who has not sought custody by formal petition.” Almost as an afterthought, Superior Court also noted that the trial court did not adequately comply with the statutory mandate to consider and explain its reasons for granting custody, including complying with the procedural requirements for relocation.

*In the Interest of C.B., A Minor*

*In the Interest of K.B., A Minor*

*In the Interest of A.B., A Minor*

*In the Interest of C.B., A Minor (2)*

*In the Interest of K.B., A Minor (2)*

*In the Interest of A.B., A Minor (2)*

*In the Interest of Y.C., A Minor*

2021 Pa.Super. 189

September 23, 2021

Before: Panella, Bender, Lazarus, Stabile, Nichols, Murray, McLaughlin, King, McCaffery

Opinion: Lazarus

The Father and Mother both appeal from decisions regarding their three children, and Mother also appealed from a decision that her other child by another man, which adjudicated them all as dependent; Superior Court affirmed. The case revolved around a finding of physical abuse against the child K.B. K.B., who was five months old at the time, suffered a broken bone in his upper right arm, and a right shoulder fracture. After much investigation, it was discerned that K.B. was with the Father and the Mother when the injury occurred. Neither parent claimed s/he knew how K.B. suffered his injuries, and never made report about it to anyone until they took him to the hospital. After hearing the testimony and reviewing the evidence, the trial court

found, by clear and convincing evidence, that K.B. “suffered injuries of such a nature that were reckless and would not ordinarily be sustained or exist by reason of the acts or omissions of the parent[s],” which, pursuant to 23 Pa.C.S. Section 6381(d), is sufficient to be *prima facie* evidence of abuse. This *prima facie* presumption may be rebutted with various forms of counter-evidence which can provide another explanation for, or perpetrator of, the abuse (the Court noted that the use of the term “reckless” was superfluous). In the instant matter, neither parent offered any evidence or testimony that could rebut the presumption or that they relinquished control of K.B. to someone else at the time of his injury.