

Philadelphia Bar Association – Family Law Section
September 2021 - Case Law Summaries

Thompson v. Thompson, No. 1356 WDA 2020 (Pa. Super. August 16, 2021)
Memorandum Decision - Non-precedential

Mother appealed a Support Order granting Father’s petition for modification of support.

The parties were the parents of three minor children and Father paid child support to Mother for the Children. Father filed a petition to modify custody and the trial court entered an Interim Custody Order awarding primary physical custody of the Children to Father and restricting Mother’s time with the children. The Order further provided that “Mother shall not consume alcohol while exercising custody of the Children.”

While awaiting trial on Father’s Petition, Mother was involved in a car accident. Mother had been driving while intoxicated with one of the Children in the automobile. As a result, the trial court entered an Order suspending Mother’s physical custody of the Children. Father filed a petition to terminate his support obligation to Mother and Father additionally filed a complaint for child support. The trial court entered an unallocated Support Order awarding father support of \$825.63 per month.

Mother appealed, claiming that the trial court abused its discretion in failing to deviate from the support guidelines in determining her child support obligation. Citing 23 Pa. C.S.A. §4322(a), Mother contended that, in determining the ability of a parent to provide support, the guidelines shall place primary emphasis on the net incomes and earning capacities of the parties, with allowable deviations for unusual needs, extraordinary expenses and other factors. Mother argued that, in determining whether to deviate from the guidelines, the trial court was required to consider the unusual needs and unusual fixed obligations, as well as the relative assets and liabilities of the parties. Mother took the position that she had “unusual fixed expenses,” as her expenses for insurance, telecommunications, rent, heat, water, and electric left her with \$386.50 per month upon to live and that this amount did not include groceries.

Mother claimed that the trial court’s Support Order was “manifestly unreasonable and confiscatory, as it left her ‘underwater’ every month.” Mother averred that “this is precisely the predicament that the deviation factors at Rule 1910.16-5(b) and the Supreme Court decision in Colonna v. Colonna, 855 A.2d 648 (Pa. 2004), were attempting to resolve.

The Superior Court rejected Mother’s and affirmed the trial court’s order. In its analysis, the Court noted that child support payments are motivated by the best interests of the child, not the parents and that deviations “will be permitted only where special needs and/or circumstances are present such as to render an award in the amount of the guideline figure unjust or inappropriate”. (citing McCarty v. Smith, 655 A.2d 563, 565 (Pa. Super. 1995)). The Court found nothing unjust or inappropriate in requiring Mother to pay support commensurate with the guideline amount.

The Court also rejected Mother's contention that she had unusual expenses (Mother had argued that these expenses should result in a downward deviation from the guidelines amount for child support). The Court noted that the law does provide for "deviations for unusual needs, extraordinary expenses and other factors, such as the parties' assets, as warrant special attention" pursuant to 23 Pa. C.S.A. §4322, but found that Mother did not offer evidence of any such expenses. Instead, she had listed "mundane" expenses for her mortgage, an electric bill, gas bill, water bill, Wi-Fi, car insurance and gasoline, and prescriptions. The Court found that these expenses were typical, noting that, if such expenses were cause for deviation from the guidelines, the guidelines would quickly lose their primary role in determining support.

J.S. v. B.H., No. 1166 MDA 2020 (Pa. Super. August 12, 2021)
Memorandum Decision - Non-precedential

Father appealed the trial court's order granting Mother's Petition filed under the Protection from Abuse Act.

The parties were the parents of a two-year-child and had been involved in a highly contentious custody action. Mother filed a *pro se* petition for a temporary PFA order after an altercation with Father. Mother's petition was granted and a temporary PFA order was entered on May 18, 2020 and then became a final PFA order on August 7, 2020.

Father appealed, asserting that Mother "presented insufficient evidence to warrant a PFA order because she did not prove 'abuse' as defined the PFA Act." Specifically, Father argued that Mother "failed to establish that she suffered physical injury or violence directed at her or others, that would give rise to a reasonable fear of imminent serious bodily injury" and that Mother was merely using the PFA Act as a tool to limit or deny contact between him and the party's child.

The Superior Court rejected Father's argument and affirmed the trial court's order, finding that, under §6102(a)(1), force is not required to establish abuse under the PFA Act. (citing Boykai v. Young, 83 A.3d 1043, 1047 (Pa. Super. 2014)). The Court also cited §6102(a)(2), which provides that, in the context of a PFA case, the court's objective is to determine whether the victim was in reasonable fear of imminent serious bodily injury and that "[t]he intent of the alleged abuser is of no moment." (citing Buchhalter v. Buchhalter, 959 A.2d 1260, 1262 (Pa. Super. 2008)). The Court added that physical contact is not a prerequisite for a finding of abuse under §6102(a)(2) pursuant to Fonner v. Fonner, 731 A.2d 160 (Pa. Super. 1999). The Court reasoned that, since the goal of the PFA Act is to prevent physical and sexual abuse, a victim does not have to wait for physical or sexual abuse to occur for the Act to apply.

In its analysis, the Court noted that the trial court found that, throughout the entire final PFA hearing, Father was agitated and, at times, appeared to the trial court almost unable to control himself as he was aggressive towards his attorney and aggressive toward Mother to the extent that the trial court continued to make eye contact with the court room Sheriff Deputies to ensure that they were ready to subdue Father if he lost control. The Court concluded that it was not difficult for the trial court to believe Mother's descriptions of Father's behavior as Father was "placing his characteristics of intimidation on display for the court throughout the day." The

Court ultimately held that the record demonstrated that Mother established Father's abuse, as defined under the Act.