Philadelphia Bar Association
Family Law Section Meeting Minutes

Meeting of May 4, 2015
Secretary, Ann Funge, unable to make the meeting, so Minutes graciously taken by M.K. Feeney, Esquire.

I. Welcome & Intro: by Lee Schwartz, Section Chair.

II. Approval of Minutes: Did not occur.

III. Announcements

   a. Meredith Brennan spoke about the Chancellor’s “Boots on the Ground” initiative, and thanked everyone who brought donated personal items. These were collected today for our community service project for Women Against Abuse, in conjunction with the Workers’ Compensation section. There will be another collection in the fall.

   b. Julia Swain spoke about the Bench Bar Conference, being held 10/16-10/17. She is the chairperson, and programming and planning are now underway. Registration is now open and available online. The FLS is sponsoring two programs on "Mastering Local Practice"; one is Friday at 2pm, and will feature custody masters, and the other will be held on Saturday at 11am, and will be focused on support masters. The conference’s featured speaker will be Ben Crump, the attorney for Trayvon Martin’s family.

   c. Julia Swain also discussed the fact that the Board of Governors wants to promote the judicial candidate ratings by the Bar Association. To that end, the Chancellor would like volunteers on May 18th & 19th to hand out the Bar Association’s recommendations in highly trafficked areas. May 19th is Election Day. Anyone who volunteers will get a free hat and tee shirt. She passed around a sign-up sheet, and also distributed copies of the candidates’ ratings and ballot positions.

   d. Lee Schwartz announced that there is now free wi-fi available at the new Family Court building.

   e. Molly Callahan discussed the new Help Center in Family Court; it is now up and running, and volunteers are needed. They are getting about 3-4 people a day coming in for help. Law students have been helping with the staffing, but now there are very few b/c of their school schedules, so more attorneys are needed to volunteer. Joe Kaminski will be on hand to help with any questions that may arise. Meredith Brennan asked members to sign up with her at the end of the meeting, and noted that during the first week it was open, the Help Center had 5 clients, and by the second week, there were 39 clients who came in for help.
f. Nanci Weber of the ADR Committee spoke about the ADR proposal that she and co-chair Cheryl Cutrona just completed after over 2 years of hard work. It calls for trained volunteer mediators to take cases, and litigants will receive a mailing that will allow them to opt-in for this provision by contacting someone listed on the notice. This proposal was voted upon and passed at the meeting.

g. Lee Schwartz indicated that the September section meeting will likely be the Tuesday after Labor Day, as Labor Day is late this year.

IV. Program: Lisa Shapson of Berner Klaw, Sara Slocum of Astor Weiss, Randi Rubin of Klehr Harrison, and Renzo Cerabino, an attorney who now works as a wealth management specialist at BNY Mellon, comprised the panel, and gave a presentation about pre-nuptial agreements. There will be a hyperlink e-mailed to members of the section which will contain case law citations and forms, as the material was too extensive to be copied and handed out.

V. Committee Reports: None, other than an announcement that a hyperlink would be forthcoming.

VI. Good & Welfare: None.

Next Section Meeting:  Monday, June 1, 2015, Noon, Philadelphia Bar Association, 1101 Market St., 11th Fl.

Next Executive Committee Meeting: Thurs., May 21, 2015, Noon, 1101 Market St, 11th Fl.

Respectfully submitted,

Ann M. Funge, Esq. (courtesy of MK Feeney, Esq.)
Secretary

Attachments:
May 2015 Case Law Summaries courtesy of Sara Slocum, Esq.
RECENT PA. APPELLATE COURT FAMILY LAW SLIP OPINIONS

May 2015

Summarized by Sara L. Slocum, Esquire

   (Pa. Super. 4/1/15)

   Mother appeals from order granting Father’s motion for attorney’s fees. Appeal dismissed for defects in Mother’s briefs. Memorandum opinion by Mundy joined by Gantman and Jenkins.

   (Pa. Super. 4/1/15)

   Appeal of modified child support order. Affirmed. Appellant claimed she was entitled to an upward deviation pursuant to 1910.16-4 because Father did not exercise his custody rights to the extent assumed by the guidelines. Father argued that he didn’t exercise his time because Mother thwarted his efforts. The trial court found Father’s testimony to be credible. Mother did not argue a misapplication of law. Affirmed. Court will not re-weigh the evidence. Memorandum opinion by Olson joined by Bender and Ott.

   (Pa. Super. 4/1/15)

   Wife appeals order directing Husband to name her as beneficiary of no less than 13% of his pension. Quashed as interlocutory. Wife cannot meet the elements to establish that this is a collateral order. Wife’s claim to the entire pension will not be irreparably lost where marriage was only a short duration and Wife would not be entitled to the entire pension in the divorce. Memorandum opinion by Bender joined by Lazarus and Mundy.
   (Pa. Super. 4/1/15)

   Father appeals termination order. Affirmed. Father never provided care for child, has been incarcerated and did not attend visits when he was not incarcerated, and failed to meet goals since leaving jail. Father has expressed a desire that the child reside with his parents for at least 6 months before resuming custody. Father cannot or will not remedy conditions that led to termination goal Memorandum opinion by Gantman joined by Shogan and Fitzgerald.

   (Pa. Super. 4/2/15)

   Father appeals order changing goal to adoption. Affirmed. Father failed to perform any parental duties for 6 months. Child was in care for 37 months. Father failed to meet goals to respond to any outreach efforts. No bond or contact with Father since 2012. Memorandum opinion by Allen joined by Bender and Mundy.

   (Pa. Super. 4/2/15)

   Mother appeals order modifying child support and suspending Father's payments. Vacated and remanded. Father testified that a medical illness prevented him from working. Mother provided contradictory evidence including photos. Court held that notwithstanding his testimony, Father failed to meet his burden of proof to show a substantial and material change of circumstance. The suspension of the child support order was in error. Remanded for further hearing and presentation of substantiating evidence. Memorandum opinion by Gantman joined by Jenkins and Musmanno.
7. **In the Interest of C.R.**, Monroe, 1586 EDA 2014  
   (Pa. Super. 4/6/15)

   C.R., a minor, appeals adjudication of delinquency for involuntary deviate sexual intercourse with a person who suffers from a mental disability and related offenses. Affirmed. Appellant challenged the ability of both the perpetrator, who suffered mental illness, and the victim's ability to consent, arguing that neither had capacity. The Commonwealth presented evidence of lack of consent. Affirmed. Memorandum opinion by Mundy joined by Lazarus and Strassburger.

8. **In the Interest of J.E.D.**, Centre, 1625 MDA 2014  
   (Pa. Super. 4/6/15)

   Parents appeal dependency order and finding aggravated circumstances. Affirmed. No relief warranted where Mother and Father concede the existence of sufficient evidence to support aggravated circumstances. Father was convicted of indecent assault and Mother perpetrated physical abuse against H.R.D., and older child. Memorandum opinion by Olson joined by Panella. Ott concurs.

9. **In Re: Adoption of S.N.L.**, Fayette, 1646 WDA 2014  
   (Pa. Super. 4/6/15)

   Father appeals termination order. Affirmed. Father abandoned child in 2011 prior to being incarcerated and made no effort to maintain a relationship thereafter. Mother and new fiancee have provided a stable environment for the child for 4+ years. Memorandum opinion by Stabile joined by Donohue. Shogan concurs.

    (Pa. Super. 4/7/15)

    Father appeals order dismissing his support exceptions. Affirmed. Father failed to file an appropriate brief, outlining questions. Memorandum opinion by Jenkins joined by Stabile and Musmanno.
(Pa. Super. 4/8/15)

Mother appeals custody order awarding Father primary physical custody of an 11 year old. Affirmed. No error to deny continuance request of Mother where she had more than 6 weeks to find an attorney. Following her previous attorney’s withdrawal, no right to counsel in civil cases. Memorandum opinion by Bowes joined by Allen and Strassburger.

(Pa. Super. 4/8/15)

Mother appeals order denying her petition to terminate Father’s parental rights. Reversed and remanded. Court found that Mother proved statutory elements for termination under §2511(a)(1) where Father did not adequately resist the obstacles to maintain contact, prove his sobriety and prove he had adequate housing. Remanded for a determination of whether the child’s needs and welfare will be met by a termination. Memorandum opinion by Lazarus joined by Bender and Mundy.

(Pa. Super. 4/9/15)

Mother appeals contempt of custody order sanctioning her in the amount of $14,250. Affirmed in part and vacated in part. Court found Mother in contempt of custody order where she was aware of the order and failed to communicate with Father regarding the child’s education where the parties shared legal custody. No abuse to require Mother to pay the tuition bill herself. Order vacated as to the removal of Mother’s legal custody rights where Father never filed a petition to modify. Memorandum opinion by Musmanno joined by Panella and Ott.

14. **In Re: M.C.T., Appeal of R.T. and C.N.**, Centre,  
1792 MDA 2014 (Pa. Super. 4/97/15)

Mother and Father appeal termination orders. Affirmed. Ample evidence of dangerous home conditions, failure to cooperate with CYS and goals, child thriving in foster care, termination in child’s best interest. Memorandum opinion by Gantman joined by Mundy and Jenkins.
   (Pa. Super. 4/9/15)

   Mother appeals termination order. Affirmed. Mother failed to meet mental health goals which was the major concern since 2012. Mother failed to care for child’s heart and asthma issues, not able to sustain a residence and only attended one out of first 20 visits. Bond with foster parents. Memorandum opinion by Stabile joined by Bender and Mundy.

   (Pa. Super. 4/10/15)

   Father appeals custody order awarding Mother primary during the school year and shared custody in the summer. Vacated and remanded. No evidence of record that the child would be driven back and forth too frequently or time in transit would not be in their best interest. Remanded for entry of shared custody order. Memorandum opinion by Strassburger joined by Stabile and Jenkins.

17. **In Re: P.Z., Appeal of M.L.,** Allegheny, 1507 WDA 2014  
   (Pa. Super. 4/10/15)

   Father appeals termination order. Affirmed. CYF made efforts at reunification, lack of parenting abilities, child’s welfare and needs met through termination. Memorandum opinion by Bowes joined by Olson and Strassburger.


   Mother appeals order finding children not dependent and confirming custody with Father. Affirmed. Father able to take the children and understood his obligations as parent. Memorandum opinion by Fitzgerald joined by Bowes and Shogan.
   (Pa. Super. 4/10/15)

   Mother appeals transferring primary physical custody to Father and granting two contempt petitions and awarding $2,500 in legal fees to Father. Affirmed. Father’s home was more stable and he was more likely to promote contact and consistent source of care. Mother’s animosity exacerbated the children’s psychological issues. Memorandum opinion by Lazarus joined by Panella and Wecht.

   (Pa. Super. 4/10/15)

   Husband appeals divorce decree and denial of his exceptions to Master's recommendations. Affirmed. Master included retained income from Husband's trucking company as income to Husband. Proper since no evidence presented that the retained income was necessary to maintain the business. Alimony award appropriate where Husband's income was double that of Wife, she contributed to the success of his business and had reasonable needs. Award of counsel fees appropriate where retained earnings were not considered part of Husband's income and Wife did not receive APL as a result. Memorandum opinion by Wecht joined by Shogan and Strassburger.

21. **In Re: Adoption of Baby Girl E.**, Centre, 1554 MDA 2014  
   (Pa. Super. 4/10/15)

   Father appeals termination order. Counsel filed an Anders Brief for leave to withdraw as counsel. Affirmed. Father should have known of the child’s birth, denied paternity for 4 month period following birth of child, paid no support and made no attempt to see the child. Memorandum opinion by Ott joined by Panella and Olson.

   (Pa. Super. 4/10/15)

   Mother appeals order denying her petition to relocate to Hawaii. Affirmed. Evidence supports Mother’s desire to keep Father from exercising his custodial rights. Memorandum opinion by Olson joined by Bowes. Strassburger concurs and dissents. Strassburger would quash appeal due to Mother's failure to abide by the trial court’s order.
23. **In the Interest of: H.B.**, Erie, 1361 WDA 2014
   (Pa. Super. 4/10/15)

   Parents appeal goal change to adoption. Affirmed. Father has violent
tendencies. Mother is in a state of denial, lack of suitable housing, continued non-
compliance with treatment plans, did not appear for hearings, best interest of children
served by goal change. Memorandum opinion by Ford Elliott joined by Bowes and
Allen.

24. **Whiteside-Wascavage v. Wascavage**, Delaware,
   339 EDA 2014 (Pa. Super. 4/13/15)

   Husband appeals order. Quashed in part and affirmed as modified. Husband
contended the trial court erred in auditing his expenses to determine his
income. No error where Husband refused to turn over documentation of her income or
financial status audit is appropriate. Award of APL could not be appealed since it is not
a final order. No child support deviation where trial court found Husband’s testimony
that he had the child 50% of the time to be not credible. Court did find the trial court
used wrong set of support guidelines and Husband was entitled to a credit of $48.60.
No abuse of discretion in the allocation of the forensic accountant’s fee where Husband
made 8 times Wife’s income. Memorandum opinion by Olson joined by Mundy and
Wecht.

   (Pa. Super. 4/13/15)

   Mother and Maternal Grandmother appeal order denying Mother
supervised visitation. Vacated and remanded. Court failed to address 5328(a) custody
factors. Memorandum opinion by Stabile joined by Mundy and Fitzgerald.
(Pa. Super. 4/13/15)

Mother appeals order awarding Father primary physical custody during the school year and shared custody in the summer. Vacated and remanded. Court failed to consider Section 5328(a) factors, especially those that relate to past acts of abuse by members of the household. Memorandum opinion by Stabile joined by Mundy and Fitzgerald.

(Pa. Super. 4/13/15)

Paternal Grandparents appeal order declining to hear their petition for custody finding that the matter had been decided by a court of coordinate jurisdiction and they failed to join Berks County CYS as an indispensable party. Affirmed. Child found dependent and placed with Mother and Legal Father. Biological Father was contacted and stated he did not want the child placed with Paternal Grandparents. Court held Paternal Grandparents pleading was inadequate. Memorandum opinion by Panella joined by Olson and Ott.

(Pa. Super. 4/13/15)

Mother appeals termination orders. Mother’s attempt to revoke her consent and her attempt to challenge the validity was not timely filed. Affirmed. Memorandum opinion by Stabile joined by Bender and Mundy.

(Pa. Super. 4/14/15)

Father appeals order adjudicating son dependent. Affirmed. Father’s employment and living situation was unstable, he failed to take the child to the doctor or dentist over 2 year period and continued to use marijuana despite being arrested for possession in 2011. Memorandum opinion by Bowes joined by Shogan and Fitzgerald.
30.  **Adoption of: C.J.P.**, Delaware, 2650 EDA 2014  
(Pa. Super. 4/15/15)

Mother appeals termination order. Affirmed. Mother was unwilling to address her mental health issues, lack of stable housing, refused to communicate with CYS and her hostility towards others prevented her from caring for her child. Memorandum opinion by Stabile joined by Gantman and Platt.

31.  **In the Interest of: M.S. and B.J.S.**, Lancaster,  
1288 MDA 2014 (Pa. Super. 4/15/15)

Mother and Father appeal order excluding reunification from permanency plan. Affirmed. Mother and Father previously abused child J., made no progress in parenting plans and putting them up for adoption would serve their best interest. Memorandum opinion by Musmanno joined by Bowes and Wecht.

1651 MDA 2013 (Pa. Super. 4/15/15)

Mother appeals order finding Father not in contempt and suspending Mother’s visitation. Affirmed insofar as contempt, vacate and remanded regarding the suspension. No evidence of willful conduct. No petition to modify was pending, therefore, it was improper for the Court to sua sponte suspend Mother’s visitation rights. Memorandum opinion by Jenkins joined by Lazarus and Wecht.

33.  **In the Interest of: R.M.B.**, Luzerne, 1798 MDA 2014  
(Pa. Super. 4/15/15)

Mother appeals termination order. Affirmed. Mother had an IQ of 60, struggled to maintain a clean apartment, she failed to respond to child’s cries in hospital, completed 3 of 14 parenting lessons, and could not safely care for the child. Memorandum opinion by Ott joined by Panella and Olson.

Husband appealed equitable distribution order. Affirmed. Pro se appeal. All arguments previously litigated and/or without merit. No abuse of discretion or error. Memorandum opinion by Ford Elliott joined by Panella and Olson.


Mother appeals termination decrees. Remanded for failure to complete analysis on parent/child bond and to address the goal change to adoption. Memorandum opinion by Fitzgerald joined by Bender and Lazarus.


Husband appeals order denying petition to enforce Marital Settlement Agreement. Husband's parents paid off the line of credit on the home prior to the execution of the document. Wife claims she was not aware Agreement stated that the home was to be sold and the line of credit with the bank was to be paid, as well as the mortgage. The parties would split the remaining proceeds. Court held the parties to the plan language of the Agreement. Husband's parents are not to be repaid with the proceeds. Memorandum opinion by Wecht joined by Lazarus and Jenkins.


Father appeals termination decree. Affirmed. Father was in jail for 17 months of the child's life, Father made no effort to communicate with the child, he is a repeat criminal offender, child bonded with aunt and uncle. Memorandum opinion by Ott joined by Panella and Olson.

Father petitioned to change name of his child. Trial court granted the petition and Mother appealed. Mother unilaterally and deceptively gave the child her estranged husband’s surname. Court found it was in the child’s best interest to bear the Father’s name as Father and child were bonded. No abuse of discretion. Memorandum opinion by Panella en banc.


Father appeals child and spousal support order. Affirmed. No abuse to award Father earning capacity where he voluntarily chose to further his education or instead of work to include Father’s disability benefits, housing allowance, and Veteran’s Administration educational grant as income. Memorandum opinion by Fitzgerald joined by Stabile and Mundy.


Mother appeals order awarding Father sole legal custody of 3 sons while Mother retains primary physical custody. Affirmed. No abuse of discretion where Father had tie breaking authority in legal custody issues for a year and did not abuse his authority. Father demonstrated an ability to make decisions in the child’s best interest even if he did not agree personally. Memorandum opinion by Ott joined by Panella. Olson concurs.
42. **B.C.S. v. T.S.S.**, Berks, 1491 MDA 2014
   (Pa. Super. 4/21/15)

No abuse of discretion where Court gave weight to the custody evaluator's testimony in support of Father's position and failing to decide the case on the wishes of the child as request was not well reasoned. Memorandum opinion by Mundy joined by Stabile and Fitzgerald.

   (Pa. Super. 4/21/15)

Father appeals order awarding him partial physical custody. All factors considered. Waived for lack of complete record. Only 3 days of transcripts of an 11 day trial produced. Memorandum opinion by Mundy joined by Jenkins. Stabile concurs.

44. **Brkovich v. Brkovich**, Westmoreland, 676 WDA 2014
   (Pa. Super. 4/21/15)

Husband appeals order dismissing his exceptions to Master's report and recommendation. No abuse of discretion where Husband was distributed car and corresponding debt thereon, Husband to retain a larger portion of debt where there were little marital assets and Wife was disabled, alimony and counsel fees appropriate given Wife's condition. Memorandum opinion by Bowes joined by Olson and Strassburger.

45. **Cummins v. Cummins**, Centre, 1071 MDA 2014
   (Pa. Super. 4/22/15)

Husband appeals equitable distribution order. Affirmed. No error in finding Husband's tax liability related to his net employment not a marital debt where Husband failed to properly treat gains on his separately filed return. Memorandum opinion by Ott joined by Bender and Olson.
46. **Frame v. Frame**, Chester, 1906 EDA 2014  
(Pa. Super. 4/23/15)

Father appeals order modifying child support and spousal support retroactively. Mother filed cross-appeal. Affirmed. No abuse of discretion where Father not awarded child support during 5 month period of sole custody where Father had substantial financial resources as compared to Mother. Also no abuse to issued Father an earning capacity and retroactively entering an order where Father misrepresented his income. Memorandum opinion by Ott joined by Panella and Jenkins.

47. **In the Interest of: C.L.**, Schuylkill, 2080 MDA 2014  
(Pa. Super. 4/23/15)

Mother appeals goal change to adoption. Affirmed. Child only in foster care for 3 months but history of the case showed this was not sustainable where child was in system total of 28 months since December 2010. In child’s best interest to remain with aunt with goal of adoption. Memorandum opinion by Wecht joined by Ott and Jenkins.

(Pa. Super. 4/23/15)

Mother appeals termination order. Affirmed. Minimal compliance with permanency plan, no bond worth preserving with Mother, foster parents meeting needs of child. Memorandum opinion by Shogan joined by Gantman and Fitzgerald.

(Pa. Super. 4/24/15)

Husband appeals contempt and order to pay counsel fees. Affirmed. Husband failed to appear at hearing without good cause. Husband had the ability to pay upon analysis of his net income in support. Appeal frivolous. Remanded for additional fees. Memorandum opinion by Panella joined by Lazarus and Wecht.
(Pa. Super. 4/24/15)

Pro Se Father appeals award of shared legal and physical custody. Affirmed. All factors considered. Memorandum opinion by Panella joined by Olson and Ott.

51. **In Re: Adoption of T.S.**, Allegheny, 1919 WDA 2014  
(Pa. Super. 4/24/15)

Father appeals termination order. Affirmed. Child removed due to child abuse by unknown perpetrator, Mother’s drug abuse, domestic violence and Father’s drug abuse and mental health issues including intermittent explosive disorder and bipolar and his incarceration. Circumstances leading to placement continued. In child's best interest to terminate. Memorandum opinion by Shogan joined by Gantman and Fitzgerald.

52. **In the Interest of: D.J.**, Philadelphia, 2425 EDA 2014  
(Pa. Super. 4/28/15)

Father appeals termination decrees. Affirmed. No abuse. DHS made reasonable efforts at reunification. Memorandum opinion by Donohue joined by Shogan and Strassburger.

(Pa. Super. 4/28/15)

Father appeals denial of visitation. Affirmed. Regular telephone contact and not visitation in prison serve child’s best interests. No abuse of discretion found. Memorandum opinion by Jenkins joined by Gantman and Musmanno.
(Pa. Super. 4/29/15)

Father appeals order granting him partial physical custody. The parties are in a position geographically and financially to equally share custody. Primary caretaker doctrine not applicable where both parents are otherwise equal. Parental alienation by Mother was an issue that should outweigh her retaining primary. Vacated and remanded. Memorandum opinion by Lazarus joined by Wecht. Strassburger dissents. Strassburger would give substantial weight to the recommendation of the custody evaluator.

55. Barnes v. Barnes, Montgomery, 2463 EDA 2014  
(Pa. Super. 4/29/15)

Father failed to demonstrate that Mother’s use of cell phone paid by her company was for personal use. No abuse not to include $100 in her income. Also no abuse to include private school where evidence demonstrated that their attendance was reasonable and consistent with their standard of living. Memorandum opinion by Musmanno joined by Stabile. Jenkins concurs.

56. In Re: The Interest of G.G., Bedford, 999 WDA 2014  
(Pa. Super. 4/29/15)

Mother appeals goal change to adoption and termination and denial of termination of Father’s rights and denial of change of permanency goal with respect to Father. Affirmed as to Father. Reversed and remanded as to Father to perform bond analysis. Mother continued to abuse alcohol and could not care for the children, no positive bond with Mother, goal is in child’s best interest. Memorandum opinion by Musmanno joined by Gantman and Jenkins.

57. Dimino v. Dimino, Lackawanna, 1259 MDA 2014  
(Pa. Super. 4/30/15)

Husband appeals PFA. Affirmed. Reference to clear and convincing standard was with regard to Wife’s testimony not her burden of proof. Forcing wife to have sex warrants a PFA. Memorandum opinion by Allen joined by Bowes and Donohue.
(Pa. Super. 4/30/15)

Father appeals order awarding Mother primary custody and granting Mother's request for relocation. Remanded for failure to address all custody factors and relocation factors. Memorandum opinion by Allen joined by Bowes and Donohue.