



PCADV DVAN Meeting- April 10, 2019
Case Law Update (as of April 2, 2019)

Pennsylvania Superior Court

Grandparent Custody – Biological Parent is Deceased

J. & S.O. v. C.H., 2019 Pa. Super 91, (Filed March 27, 2019)

This case concerns Father's appeal of an order that awarded Maternal Grandparents partial physical custody of the minor child every other Saturday and additional time on holidays and during summer months. Father and Mother were married and the minor child was born in 2009. The minor child saw maternal grandparents on a weekly basis and often spent the night at their home. Mother passed away in March 2013. Father appealed the order awarding Maternal Grandparents custody on the theory that 23 Pa.C.S. § 5325(1) which states, "where the parent of the child is deceased, a parent or grandparent of the deceased parent may file an action [for partial physical custody or supervised physical custody,] violates both his due process and equal protection rights. The Court applied the strict scrutiny test as is required to determine whether a law violates an individual's rights of due process or equal protection under the law. The Court held that §5325(1) advances the longstanding compelling state interest of protecting the health and emotional welfare of children by creating an opportunity for the child to have a relationship with the family of the child's deceased parent. Also, it is narrowly tailored to limit those who can seek visitation or partial custody specifically to grandparents whose child has died. Therefore, §5325(1) passed the strict scrutiny test and was found not to violate Father's due process and equal protection rights under the United States and Pennsylvania Constitutions.

Libre's Law – Animal Fighting

Commonwealth v. Baumgartner, 2019 Pa. Super 65, (Filed March 04, 2019)

This case concerns the defendant's appeal of a jury conviction of animal fighting for amusement or gain. The defendant was arrested and charged with assaulting an individual and animal fighting due to an incident that occurred on March 9, 2017. The defendant was not convicted on the assault charges but was convicted after a jury trial on the animal fighting charges. The defendant appealed his conviction stating that the Commonwealth presented

insufficient evidence of "amusement or gain" as required by the statute. The Court noted that Libre's Law does not define "amusement" or "gain," and upon further look, Pennsylvania statutory or case law does not illuminate on the definition of these terms either. The Court looked to the dictionary



definitions to define those terms and it settled on "amusement or gain" as "pleasurable diversion" or "advantage acquired or increased." After defining these terms, the Court looked at the evidence presented in this case and determined that the defendant's motive was personal, and he caused his dog to fight the victim's dog as a means of retribution. The Court specifically rejected the argument that "amusement" or "gain" needed to be pecuniary in nature to warrant a conviction. The Court determined the evidence presented by the Commonwealth was sufficient to uphold the defendant's conviction.

Collateral Estoppel – Human Trafficking

Commonwealth v. Brockington-Winchester, 2019 Pa.Super 73, (Filed March 8, 2019)

This case concerns an appeal of the trial court's order granting defendant's motion to dismiss that was filed after a jury acquitted him of robbery, theft, by unlawful taking or disposition, and terroristic threats. The jury had been unable to come to a decision regarding the charges of trafficking in individuals or attempted involuntary servitude. The defendant had contacted the victim for sexual services and then proceeded to threaten her with a weapon, zip-tie her, and take \$2,700 from her. He also told the victim that she could have her money back if she "worked for him."

In his motion to dismiss, the defendant argued that the Commonwealth of Pennsylvania was precluded from prosecuting him for "trafficking in individuals" under the doctrine of collateral estoppel. According to the defendant, the acquittal for robbery and theft by unlawful taking or disposition, both of which contain the element of knowing financial gain meant that it would be impossible for the Commonwealth of Pennsylvania to prove beyond a reasonable doubt that he had "knowingly benefited financially from any activity described in paragraph § 3011(a)(1)."¹ In addition, the defendant pointed out that it had been established at trial that he did not have the \$2,700 that the victim claimed was taken from her on his person or in his vehicle when he was arrested.

The Superior Court disagreed with this argument and overturned the ruling of the trial court granting the motion to dismiss. The Court highlighted that the trial court overlooked the presence of the word "**or**" between Section 3011(a)(1) and (2), and thereby erroneously concluded that any offense charged under Section 3011 requires proof that the defendant knowingly benefitted financially from any act that facilitates any activity described in Section 3011(a)(1). The Superior Court also noted that the trial court ignored the fact that the Commonwealth charged the defendant with **attempted** involuntary servitude. Accordingly, the Superior Court remanded the case back to the trial court with instructions that, upon retrial, the Commonwealth need only prove that the defendant recruited, enticed, solicited, among other things, the victim with knowledge or reckless disregard for the fact that she would be subjected to involuntary servitude and that the defendant took a substantial step toward committing the offense of involuntary servitude.

¹ **Offense defined.** – A person commits a felony of the second degree if the person:

1. Recruits, entices, solicits, harbors, transports, provides, obtains, or maintains an individual if the person knows or recklessly disregards that the individual will be subject to involuntary servitude; **or**
2. Knowingly benefits financially or receives anything of value from any act that facilitates any activity described in paragraph (1).



Paternity – Presumption of Paternity

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J.L. v. A.L. and K.L., 2019 Pa. Super 60 (Filed February 26, 2019)

This case is a paternity dispute between A.L. and K.L. (Mother and Husband), and J.L. (Father). Mother and Husband have been married since 2009 and have one child together. Mother met Father in March 2017 and had an affair with him that lasted until February 2018. One child was born of this relationship. After Mother and Father separated, she ceased his visitation with the child, and Father filed a complaint to establish paternity and for genetic testing. Mother and Husband responded that they had never separated and thus Husband was presumptively the legal father. The trial court granted Father's petition, finding that the presumption of paternity did not apply since that the marriage between Mother and Husband was not intact when the child was born.

The Superior Court upheld the trial court's decision stating that the record supported the finding that there was no intact marriage or family at the time in question. For instance, while Mother and Husband did not file for divorce, Mother represented to Father and his friends and family that she and Husband were separated. In fact, Mother and Husband considered separation and even leased a separate apartment in September 2017, at the suggestion of their marriage counselor. Moreover, Mother stated to Father on numerous occasions that she was considering divorce.² The Court also found that the marriage in question did not require protection because a paternity test had already conducted that established Father as the child's father, and Mother had told Husband about the affair and the resultant child.

Protection from Abuse – Bad Faith Filing

Courtney v. Courtney, 2019 Pa. Super 50 (Filed February 22, 2019)³

This case concerns the trial court finding that the plaintiff filed her Protection from Abuse (PFA) petition in bad faith, ordering her to pay \$310 in counsel fees to the defendant's counsel. The plaintiff filed a PFA against her then-husband, the defendant in June 2017 due to an incident on a custody exchange. In addition to referencing the prior history of "sexual abuse and control," the plaintiff alleged that the defendant came to her house believing her boyfriend was present while the children were there (this was not allowed per an active custody order), and he demanded entry. She did not provide him entry but was fearful that he would attempt to gain entry. She was granted temporary protection from abuse order based on these facts. The defendant subsequently filed an Emergency Petition for Counsel Fees alleging the plaintiff filed the PFA in bad faith. At the hearing on the PFA, the plaintiff agreed to withdraw the PFA in exchange for custody exchanges to take place at the local police department, and

² Mother also obtained a second apartment separate from the marital residence in December 2017, with Mother representing to Father that she was securing her own residence. Further, Mother expressed a desire for a future with Father and made representations to Father that this apartment could potentially be used to begin a life together. In addition, [Child] was held out as Father's child to Father's friends, colleagues, and family, to various doctors and/or medical staff, and on social media.

³ This appeal was taken by our own, Women's Center and Shelter of Greater Pittsburgh's CLR Team! PCADV's Legal Department submitted an *Amicus Curiae* on behalf of the Appellant's position.



for the parties routinely communicate only by e-mail. There was no evidentiary hearing conducted on the merits of the PFA. The hearing on counsel fees was conducted later that day with the trial court concluding that the plaintiff had filed her PFA in bad faith because there was no testimony about the defendant's forcible attempt to enter her home.

The Superior Court overruled the trial court's order assessing counsel fees against the plaintiff. First, the Court held that the trial court improperly found bad faith due to the plaintiff's failure to prove her allegations of abuse by a preponderance of the evidence, which is explicitly against the language of 23 Pa.C.S. §6117(b). Second, the Court held that the trial court's bad faith finding was unsupported by the certified record stating that, in making its finding on the record, the trial court simply restated the plaintiff's original allegation as described by her during her testimony at the hearing on counsel fees wherein she mentioned

forcible entry. The Superior Court reversed the decision awarding counsel fees. This is the first published opinion in Pennsylvania interpreting the concept of bad faith in the context of a PFAA.