

PCADV DVAN Meeting- February 13, 2019  
Case Law Update (as of February 8, 2019)

## **Pennsylvania Superior Court**

### **First Amendment – Child Victim**

*S.B v. S.S.*, 2018 Pa. Super. 354 (filed December 24, 2018)

Case concerns Mother who alleged during a custody case that Father had sexually abused the minor child. After a custody trial that awarded Father with sole legal and physical custody, Mother and her attorneys conducted a press conference where her attorney refers to her by name and included a reproduction of the child's in-court testimony and forensic interview. Additionally, they made available to the public significant documentation from the case which led to an article in Pittsburgh City Paper that contained graphic testimony of the child and personally identifying information. In response to this, Father filed a Motion for Sanctions which resulted in the trial court prohibiting Mother and her attorneys from speaking publicly about the case in any way that could cause the Child to be identified. Mother appealed this order alleging that it violated her free speech right under the First Amendment of the United States Constitution. The Superior Court held that the trial court did not violate her free speech rights by proscribing her and her attorneys from discussing the facts of the case with the members of the news media. This was because the order proscribed only information that would tend to identify the child, it was content-neutral, and it was narrowly tailored to serve a significant governmental interest in safeguarding children from physical and emotional harm and promoting their well-being.

### **Child Support – Motion for Reconsideration/Appeal**

*Dumas v. Brooks*, 2018 Pa. Super. 357, (filed December 31, 2018)

Case concerns Father's appeal of an order that increased his support obligation. A support order directing Father to pay Mother was entered on September 17, 2015. Mother filed motion for reconsideration to this order, and this motion was granted and an order was signed on October 15, 2015. The prothonotary received this order the same day, as the time-stamp on the order verified. The next day, October 16, 2015 Mother filed an appeal of the September 17, 2015 order. On October 28, 2015, the prothonotary entered the October 15,



2015 order granting reconsideration on the docket. On April 8, 2016, more than 120 days after the prothonotary received the order granting reconsideration, the trial court, seeking to clarify the status of Mother's motion for reconsideration, sent a letter to the Superior Court advising it had granted Mother's motion and requested that they remand the matter to the trial court for further proceedings. The Superior Court dismissed Mother's appeal and the trial court conducted a hearing on the motion for reconsideration after which they increased Father's support obligation. The question before the Superior Court was whether the trial court had jurisdiction to enter a reconsidered decision under Pa.R.C.P 1930.2 when the trial court neither requested additional testimony nor entered a reconsidered decision, within 120 days from the date reconsideration was granted? The Superior Court held that the trial court entered its original order on September 17, 2015 and entered its reconsideration order on October 15, 2015. On October 15, 2015, the prothonotary received the trial court's reconsideration order, the same day it was signed by the trial court. The deadline for entering a reconsidered decision or ordering additional testimony became February 12, 2016, the 120th day after the date of filing. The trial court did not enter any order by this date, so the motion for reconsideration was deemed denied, and the appeal period began to run again on the following weekday, Monday, February 15, 2016. The trial court lost jurisdiction on this date, when the appeal period began running again. Consequently, the trial court's May 26, 2016 increasing Father's support obligation was a nullity.

### **Child Abuse – Rebuttable Presumption**

*In the Interest of S.L., A Minor*, 2019 Pa. Super 10, (Filed on January 08, 2019)

This case concerns a finding of aggravating circumstances against Mother on the basis she had committed child abuse. Mother noticed that the minor child was experiencing pain and discomfort and brought her to the emergency room. Mother stated the child had not fallen or experienced trauma. Subsequent tests showed several bone fractures that were the result of child abuse. Both Mother and Father denied wrongdoing. However, during the investigation Mother stated she was concerned about Father's reactions and behaviors following the discovery of their daughter's injuries. Specifically, she reported Father suggested "why don't we just blame it on the family dog." She also stated that Father opposed her talking the child to the hospital, and also requested to the hospital that it not permit Father to visit the child. Mother also indicated she was the victim of Father's verbal abuse, and was intending to

terminate her relationship with him. However, the CPS report identified both Mother and Father as perpetrators. At a permanency review hearing, the trial court denied Mother's attempt to present the testimony of several witnesses including the court appointed psychologist. Mother appealed the resulting order that found that aggravated circumstances existed. Upon review, the Superior Court clarified that the presumption of abuse under the CPSL is rebuttable through the parent or responsible person presenting evidence demonstrating that they did not inflict the abuse. It found as such, that due process dictates that Mother was entitled to present testimony "demonstrating that [she] did not inflict the abuse." The psychologists report and testimony regarding Mother's psychological profile and



behavioral health was relevant in determining Mother's culpability and in rebutting the presumption that she perpetrated child abuse.

### **Criminal Law – Terroristic Threats**

*Commonwealth v. Kline*, 2019 Pa. Super 4, (Filed January 4, 2019)

This case concerns a woman whose neighbor (Kline) had on multiple occasions, followed her up and down her long driveway before and after work, just staring at her with a flat affect. On February 25, 2017, Kline made a hand gesture towards her and her daughter as if to indicate he was firing a shot at them. Terrified, they jumped back into the car and went straight to the Pennsylvania State Police to report the incident. She reported the incident and Kline was subsequently charged with terroristic threats. He was convicted of this charge at a jury trial, and he filed an appeal of this conviction. The question before the court was, whether the jury verdict holding that defendant's hand gesture constituted a communication was sufficient to uphold he defendant's conviction of terroristic threats under 18 Pa.C.S. § 2706(a)? The Superior Court held that although the defendant argued that because his non-verbal gesture was not accompanied by any type of verbal communication, there was sufficient evidence to prove his intent to terrorize beyond a reasonable doubt because combining the menacing gesture by defendant of a shooting gun recoiling, while pointed at the victim, with the defendant's past stalking-like behavior in relation to the victim, the jury could have concluded that he conveyed a threat to commit a crime of violence toward the victim. Furthermore, the victim testified that she was psychologically distressed at defendant's hand gesture, while a state trooper testified that the victim looked like someone who was terrorized.

## **Pennsylvania Supreme Court**

### **Child Abuse – Opioid Use While Pregnant**

*In the Interest of: L.J.B., A Minor*, No. 10 MAP 2018, 2018 Pa. LEXIS 6807 (Decided: December 28, 2018)

This case concerns a Mother who was found to have committed child abuse under the CPSL for overdosing while she was pregnant. The Superior Court held in favor of Child and Youth Services (CYS), and Mother subsequently appealed to the Pennsylvania Supreme Court who granted review.<sup>1</sup> The question the court addressed was, whether a woman's use of opioids while pregnant, which results in a child born suffering from neonatal abstinence syndrome ("NAS"), a constitutes "child abuse" as defined under the CPSL. The court looked at the relevant statutory language, and concluded that a mother cannot be found to be a perpetrator of child abuse against her newly born child for drug use while

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<sup>1</sup> PCADV signed on to an amicus brief submitted in support of Mother by the National Advocates for Pregnant Women



pregnant. The court determined this because she was not "perpetrator" at the time of the act since the fetus was not a "child" under 23 Pa.C.S. §6303(a). By its plain language, a "child" is a person who is under the age of eighteen years of age. The court stated, "Had the General Assembly intended to include a fetus or unborn child under the protections of the CPSL, it would have done so, just as it has in other statutory schemes."