

Pennsylvania Superior Court

Custody

S.S. v. T.J., 2019 PA Super 182 (Filed June 10, 2019)

Appellate Standard of Review; Pro Se Litigant. Mother was granted the ability to relocate to South Carolina with the minor children in 2017. Shortly thereafter, Father filed a complaint with South Carolina's Department of Social Services alleging that Mother was abusing and neglecting the children. Father's complaint was investigated and returned unfounded. Father then filed a petition for modification of the Pennsylvania custody order in which renewed his abuse allegations and stated that Mother was not following the Custody Order's provision in regard to contact with the non-custodial parent. The trial court dismissed Father's Petition for Modification, and Father appealed.

The Superior Court denied Father's petition on two grounds. First, it held that his Rule 1925(b) statement was not specific enough for the court to identify and address the issues Father had wished to raise on appeal, which meant that he had waived his claims. "Although this Court is willing to liberally construe materials filed by a pro se litigant, pro se status confers no special benefit upon the appellant." Nevertheless, the Superior Court still briefly addressed the merits of Father's petition and appeal and determined that they would have affirmed the trial court's order even if Father's appeal had not been fatally flawed, because the evidence presented was sufficient to support the trial court's decision. As such, there had not been an error of law or abuse of discretion.

R.L. v. M.A., 2019 PA Super 145 (Filed May 3, 2019)

Standing, Presumption for Primary Custody, Same-Sex Relationship. The child was conceived via artificial insemination. Shortly after the birth of the child, the parties broke up. However, the parties continued to co-parent and had an informal agreement that they would share 50/50 custody of the child. This remained the status quo until R.L. complained to M.A., who then stopped the weekly custody rotation. R.L. filed a custody complaint, was granted in loco parentis status, and was subsequently awarded shared legal and shared physical custody of the child. M.A. appealed, arguing that R.L. didn't meet her burden of proof to have same physical custody time as a parent seeking primary physical custody.

The Superior Court rejected M.A.'s argument stating, 'once it is established that someone who is not the biological parent is in loco parentis, that person does not need to establish that the biological parent is unfit, but instead must establish by clear and convincing evidence that it is in the best interests of the children to maintain that relationship or be with that person.' The Superior Court also rejected M.A.'s assertion that R.L., as non-biological parent, should have been held to a higher standard or burden because R.L. was not asking for primary custody, but simply asking the trial court to reestablish the informal custody arrangement of shared legal and shared physical custody exercised prior to the litigation. That being the case, the Superior

Court found that, based on the evidence presented at trial, the trial court did abuse its discretion.

T.M. v. H.M., 2019 PA Super 126 (filed April 24, 2019)

Custody Evaluation. Father filed a petition for modification of a custody order that awarded Mother primary custody with Father having periods of partial physical custody. After a multi-day trial, during which the trial court denied Father's request for a custody evaluation, the court entered a custody order that only slightly increased Father's custodial time. Father appealed arguing that the trial court erred in not ordering the custody evaluation and in its evaluation of the §5328 factors.

The Superior Court rejected both of Father's arguments. First, it pointed out that Pennsylvania Rules of Civil Procedure do not mandate a full custody evaluation, the decision to order one being within the sole discretion of the trial court. Along the same lines, the Superior Court refused to reevaluate the trial 5328 custody factors, reiterating the long-standing rule that the Superior Court will question the trial court's credibility determinations or weighing of custody factors.

Protection from Abuse

K.B. v. Terrence Tinsley, 2019 PA Super 116 (Filed April 15, 2016)

Abuse; Course of Conduct. Petitioner and Defendant were current/former intimate partners who broke up as a result of Defendant's verbal abuse, which escalated dramatically after the break-up. After a hearing, the trial court granted Petitioner a two-year Protection from Abuse (PFA) Order. Defendant appealed, arguing that there was insufficient evidence to support the entry of the PFA Order.

The Superior Court rejected Father's argument, finding that the behavior described at trial, which included incessant texts and phone calls, public verbal abuse, stabbing an air mattress in front of plaintiff, and physically accosting her in a parking lot, supported the entry of the PFA Order. The Superior Court also rejected claims that the Defendant was not able to explore the Petitioner's motive to show that she was vindictive in filing the PFA as hearing transcripts showed he had ample opportunity to present this argument.

H.M.H. On Behalf of Minor, L.M.H. v. D.J.G., 2019 PA Super 156 (Filed May 31, 2019)

OBO PFA. Mother filed for a PFA on behalf of her thirteen-year-old daughter against the child's first cousin based on allegations of sexual abuse. A temporary PFA was granted, and the parties proceeded to a final PFA hearing. At the final PFA hearing, the Court requested an offer of proof from Mother's counsel regarding a prima facie case of abuse and standing. The trial court dismissed the PFA without prejudice on the grounds that Mother failed to present a prima facie

case and that the relationship of first cousins did not meet the definition of “family” in the PFA Act.

The Superior Court reversed the trial court’s decision holding that lack of terms and familial limits in the PFA Act meant it was intended to include broader language to encompass a plethora of relationships.. In addition, the Superior Court also stated that because the language around relation by consanguinity in the PFA Act is clear and unambiguous it encompasses first cousins who are related by blood and no further analysis is warranted. The order dismissing the PFA was vacated and sent back to the trial court for further proceedings.

APL/Spousal Support

Elizabeth Bielak v. Jame Bielak, Jr., 2019 PA Super 165

Definition of Income. Parties were divorced in April 2017. When the filed for divorce, Wife sought APL and spousal support and was awarded \$555.73 per month in APL. Wife inherited an IRA from her father as non-marital property and revealed in her pretrial statement that she had liquidated nearly all of the IRA. After the divorce Husband requested to reopen the APL case for retroactive modification of the APL award. The trial court declined, stating that IRA disbursements did not create income for the purposes of support and Husband appealed.

The Superior Court affirmed the trial court’s decision that the IRA and its disbursements was an inheritance and thus not income for support purposes. The Court looked at how the parties treated the IRA and found that, for its entire existence and throughout the divorce litigation, it was treated as an inherited non-marital asset belonging to wife. The Superior Court also stated that it didn’t matter how a party used a non-marital asset, its use did not change whether or not it is income for support purposes.