

**RECENT PA. APPELLATE COURT FAMILY LAW SLIP OPINIONS**

**June 2013**

**Summarized by David I. Grunfeld, Esquire**

1. **In Re: S.R.D.**, Alleg., 1754 and 1755 WDA 2012  
(Pa. Super. 5/7/13)

One minor through G.A.L. appealed order terminating parents' parental rights, and other minor through G.A.L. appealed denial of petition to terminate mother's parental rights. Remanded for review by trial court, noting that children continue to live with parents under CYF oversight. Memorandum opinion by Strassburger joined by Bender. Dissenting memorandum by Mundy, who believes remand exceeds scope of review.

2. **D.D. v. A.D.**, Blair, 16 WDA 2012  
(Pa. Super. 5/7/13)

Father appealed denial of his custody modification petition seeking 50/50. Affirmed - trial court evaluated all factors. Memorandum opinion by Stevens joined by Bowes and Musmanno.

3. **N.L.C. v. W.J.B.**, Erie, 443 WDA 2012  
(Pa. Super. 5/6/13)

Father appealed denial of his petition to modify child support. Affirmed - cannot re-litigate issues of his earning capacity after accident. Memorandum opinion by Colville joined by Bowes and Lazarus.

4. E.B. v. S.T., Phl., 2262 EDA 2012  
(Pa. Super. 5/6/13)

MGM appealed denial of her child support complaint against Father. Affirmed - child back in custody of parents. Memorandum opinion by Colville joined by Olson. Concurring memorandum by Wecht, who finds harmless error in hearing officer not conducting record hearing.

5. W.L.F. v. C.A.F., Cumb., 1247 MDA 2012  
(Pa. Super. 5/7/13)

Father appealed denial of his petition to modify child support. Affirmed - Mother's inherited annuities corpus not includable in her income but earning from it are. Memorandum opinion by Olson joined by Bowes and Gantman.

6. G.S.G. v. C.M.D., Craw., 1879 WDA 2012  
(Pa. Super. 5/7/13)

Father appealed custody order to Mother. Affirmed - all factors evaluated, no abuse of discretion in weight given, such as to childrens' preferences. Memorandum opinion by Donohue joined by Bowes and Mundy.

7. S.R.M. v. A.P.M., York, 1611 MDA 2012  
(Pa. Super. 5/7/13)

Father appealed custody order to Mother. Affirmed - all factors evaluated and credibility determinations will not be disturbed. Memorandum opinion by Colville joined by Panella and Shogan.

8. **In Re: K.W.**, Phl., 2359 EDA 2012  
(Pa. Super. 5/8/13)

Mother appealed termination order. Affirmed based on incarceration, drug abuse, etc. despite bond. Memorandum opinion by Bowes joined by Bender and Lazarus.

9. **In the Interest of: C.M.**, Jun., 1565 MDA 2012  
(Pa. Super. 5/10/13)

Mother appealed dependency adjudication. Affirmed due to drug abuse, incarceration, instability. Memorandum opinion by Shogan joined by Bender and Fitzgerald.

10. **In the Interest of: T.T.**, Phl., 2886 EDA 2012  
(Pa. Super. 5/10/13)

Mother appealed termination order. Affirmed based on drugs, lack of supervision, bond with foster parent. Memorandum opinion by Fitzgerald joined by Lazarus and Olson.

11. **In the Interest of: Z.C.B.**, Phl., 2312 EDA 2012  
(Pa. Super. 5/10/13)

Father appealed termination order. Affirmed based on no contact or bond. Memorandum opinion by Platt joined by Gantman and Olson.

12. **Reece v. Reece**, Potter, 987 WDA 2012  
(Pa. Super. 5/10/13)

Wife appealed denial of her motion to vacate divorce decree. Affirmed - no error where affidavits of consent signed and filed on 90<sup>th</sup> day after Complaint served. Opinion by Shogan joined by Donohue and Wecht.

13. **Slavick v. Slavick**, Wash., 1994 WDA 2012  
(Pa. Super. 5/13/13)

Husband appealed extension of PFA order. Affirmed - no abuse of discretion in finding threats here. Memorandum opinion by Bender joined by Gantman and Olson.

14. **T.T. v. M.J.T.**, Alleg., 1381 WDA 2011  
(Pa. Super. 5/14/13)

Father appealed denial of his custody modification petition. Affirmed - no abuse of discretion not to change primary physical custody so new school can be tried. Memorandum opinion by Donohue joined by Bowes and Mundy.

15. **Adams v. Morini**, Mercer, 707 WDA 2012  
(Pa. Super. 5/14/13)

Ex-husband appealed order enforcing alimony arrears from post-nuptial agreement incorporated in divorce decree. Affirmed - non-modifiable with provision of non-termination because of remarriage, so not affected by statute or public policy or change in finances. Memorandum opinion by Bowes joined by Ford Elliott and Donohue.

16. **In Re: F.K.**, Phl., 2116 EDA 2012  
(Pa. Super. 5/14/13)

Mother appealed termination order. Affirmed due to incapacity, mental health, bond with foster parent, etc. Memorandum opinion by Olson joined by Gantman and Platt.

17. **In the Interest of: S.A.M.**, Phl., 3081 EDA 2012  
(Pa. Super. 5/14/13)

Father appealed termination order. Affirmed due to lack of contact or bond. Memorandum opinion by Donohue joined by Mundy and Olson.

18. **N.R. v. S.G.**, Montg., 2718 EDA 2012  
(Pa. Super. 5/14/13)

Mother appealed custody order to Father. Affirmed - no abuse of discretion on merits here. Memorandum opinion by Olson joined by Stevens and Strassburger.

19. **Clark v. Clark**, Alleg., 941 WDA 2012  
(Pa. Super. 5/15/13)

Mother appealed denial of modification of support order. Affirmed - no error for trial court to deny discovery as to Father's bonuses or retroactivity to before parties' divorce settlement agreement setting child support. Memorandum opinion by Donohue joined by Bowes and Mundy.

20. **Hauck v. Hauck**, Wash., 1984 and 1985 WDA 2011  
(Pa. Super. 5/16/13)

Wife appealed denial of her petition to vacate divorce decree. Affirmed - Husband timely and properly filed all notices and Wife failed to respond except for filing of counter-affidavit without reasons or other petitions. Memorandum opinion by Bender joined by Mundy. Dissenting memorandum by Strassburger, who believes Husband should have filed a new 3301(d) affidavit after reinstating the complaint.

21. **Travaline v. Travaline**, Mont., 2801 EDA 2012  
(Pa. Super. 5/20/13)

Husband appealed E.D. order. Dismissed due to defective brief. Memorandum opinion per curiam by Gantman, Allen and Platt.

22. **In the Interest of: E.M.S.**, York, 2045 and  
2079 MDA 2012 (Pa. Super. 5/21/13)

Father appealed termination order. Affirmed due to incarceration, substance abuse, lack of parental duties or bond. Memorandum opinion by Olson joined by Stevens and Ford Elliott.

23. **Estacio v. Belopolsky**, Mont., 2591 EDA 2012  
(Pa. Super. 5/22/13)

Father appealed enforcement of child support agreement. Affirmed - no error to enforce contract not entered as support order; no breach by Mother in using funds for 529 account. Memorandum opinion by Fitzgerald joined by Lazarus and Olson.

- 24. In Re: K.R.**, Alleg., 1827 WDA 2012  
(Pa. Super. 5/22/13)

Mother appealed dependency order appointing educational and medical guardians. Affirmed as to medical due to parent-child drug problems; vacated as to educational due to lack of notice. Memorandum opinion by Ott joined by Shogan and Strassburger.

- 25. In Re: J.J.**, Alleg., 1713-1716 WDA 2012  
(Pa. Super. 5/22/13)

Father appealed dependency adjudications. Affirmed - no error in finding of lack of parental care and control here. Memorandum opinion by Mundy joined by Bender and Strassburger.

- 26. A.J.H. v. F.D.N.**, Tioga, 729 MDA 2012  
(Pa. Super. 5/23/13)

Father appealed denial of his petition to modify child support. Affirmed - not error to reject his voluntary decision to stop second job. Memorandum opinion by Bowes joined by Olson and Wecht.

- 27. Boyer v. Boyer**, Leb., 1758 MDA 2012  
(Pa. Super. 5/23/13)

Husband appealed alimony order. Affirmed - no abuse of discretion in finding of relative incomes and expenses, earning capacity or eligibility for government assistance. Memorandum opinion by Fitzgerald joined by Bender and Shogan.

- 28. Eckle v. Eckle**, Wash., 943 WDA 2012  
(Pa. Super. 5/23/13)

Father appealed child support order. Affirmed - trial court properly included distributions from businesses Father owned. Memorandum opinion by Bowes joined by Lazarus and Colville.

- 29. K.A.W. v. S.J.W.**, Mer., 1101 WDA 2012  
(Pa. Super. 5/24/13)

Father appealed child support order. Vacated and remanded - error not to use slightly reduced income in new job voluntarily taken with same employer to lower commute time for custody reasons. Memorandum opinion by Bender joined by Gantman. Olson concurs in result.

- 30. In Re: C.J.G.**, Lyc., 2235 MDA 2012  
(Pa. Super. 5/24/13)

Father appealed termination order. Affirmed based on lack of contact, bond with adopting step-parent. Memorandum opinion by Platt joined by Donohue and Allen.

- 31. In Re: D.R.K. et al.**, Berks, 2252 MDA 2012  
(Pa. Super. 5/24/13)

Mother appealed termination orders. Affirmed based on incarceration, lack of compliance with plan, danger to children, bond with foster parents. Memorandum opinion by Platt joined by Donohue and Allen.

32. **Albert v. Albert**, Alleg., 784 WDA 2012  
(Pa. Super. 5/28/13)

Husband appealed E.D. order. Vacated and remanded - trial court erred in including Husband's pre-marital business at present value, and in failing to divide marital tax liability; alimony order to be reconsidered after that. Memorandum opinion by Donohue joined by Bowes and Mundy.

33. **M.B. v. M.K.**, But., 1884 WDA 2012  
(Pa. Super. 5/29/13)

Mother appealed denial of her custody contempt petitions. Affirmed based on credibility that violations were explained. Memorandum opinion by Gantman joined by Bender and Olson.

34. **N.L.C. v. W.J.B.**, Erie, 1173 WDA 2012  
(Pa. Super. 5/29/13)

Father appealed order seizing bank account for child support. Affirmed - no error in attachment for arrears while he was litigating modifications. Memorandum opinion by Colville joined by Bowes and Lazarus.

35. **B.A.Z. v. M.A.B.**, But., 1748 WDA 2012  
(Pa. Super. 5/29/13)

Mother appealed child custody order to Father after child's accident. Affirmed - no error based on alienation, interference, etc. Memorandum opinion by Bowes joined by Donohue and Mundy.

36. **In Re: D.P.**, Alleg., 1337 WDA 2012  
(Pa. Super. 5/29/13)

Mother appealed dependency adjudication. Affirmed based on lack of parental care and control. Memorandum opinion by Bowes joined by Lazarus and Colville.

37. **In the Interest of: M.W.**, Lyc., 142 MDA 2012  
(Pa. Super. 5/29/13)

Father appealed termination order. Affirmed based on incarceration, inability to care for autistic child, no bond. Memorandum opinion by Allen joined by Panella and Colville.

38. **G.M.T. v. S.A.K.**, York, 1249 MDA 2012  
(Pa. Super. 5/29/13)

Mother appealed child support order. Affirmed as to finding of her earning capacity, vacated and remanded for trial court to consider upward deviation for child's senior year expenses and Father not exercising custody. Memorandum opinion by Colville joined by Panella and Shogan.

39. **In the Matter of: J.F.M.**, Dau., 1724 MDA 2012  
(Pa. Super. 5/29/13)

Mother appealed termination order. Affirmed due to mental health, inability to parent, bond with foster family. Memorandum opinion by Ford Elliott joined by Wecht and Colville.

40. **In Re: M.B.**, Carbon, 2888 EDA 2012  
(Pa. Super. 5/30/13)

Father appealed termination of parental rights. Affirmed due to neglect, lack of bond, etc. Memorandum opinion by Colville joined by Stevens and Wecht.

- 41. Cohen v. Cohen**, Bucks, 2321 EDA 2012  
(Pa. Super. 5/31/13)

Husband appealed grant of preliminary objections of Wife to his civil complaint for missing property. Affirmed - should be addressed in pending divorce action. Memorandum opinion by Lazarus joined by Bender and Bowes.

- 42. McCrossan v. McCrossan**, Del., 2322 EDA 2012  
(Pa. Super. 5/31/13)

Wife appealed denial of A.P.L. Affirmed - failed to establish need. Memorandum opinion by Musmanno joined by Bowes and Gantman.

- 43. Gariss v. Gariss**, York, 1063 MDA 2012  
(Pa. Super. 5/31/13)

Mother and her attorney appealed contempt order for failure to appear or file memorandum in custody case. Vacated as to Mother, who did not receive notice through counsel. Affirmed as to counsel due to his conduct. Memorandum opinion by Fitzgerald joined by Bender and Shogan.

- 44. M.E.V. v. F.P.W.**, Clint., 1560 MDA 2012  
(Pa. Super. 5/31/13)

Father appealed custody order to Mother. Affirmed - no abuse of discretion despite opinion of court-appointed psychologist favoring Father. Memorandum opinion by Shogan joined by Bender and Fitzgerald.

45. **Mayercheck v. Mayercheck**, Westm., 1729  
and 1728 WDA 2011 (Pa. Super. 5/31/13)

Parties appealed divorce decree. Affirmed - previous separation agreement unenforceable because parties reconciled; no abuse of discretion as to E.D. here. Memorandum opinion by Shogan joined by Donohue and Wecht.

46. **In Re: J.L.T.**, Beav., 377 WDA 2013  
(Pa. Super. 5/31/13)

Father appealed termination order. Affirmed due to failure to comply, incarceration, mental health, bond with foster family. Memorandum opinion by Strassburger joined by Bender and Lazarus.

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