

SPEEDY TRIALS IN CUSTODY CASES

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In a recent decision, the Pennsylvania Superior Court held that a parent's Complaint for Custody may be dismissed if the matter is not listed for trial within 180 days of the date the Complaint for Custody had been filed. See *Dietrich v. Dietrich*, 923 A.2d 461 (Pa. Super. 2007). Specifically, the Superior Court strictly enforced Pennsylvania Rule of Civil Procedure 1915.4, which provides, in relevant part:

Rule 1915.4. Prompt Disposition of Custody Cases.

- (b) **Listing Trials Before the Court.** Depending upon the procedure in the judicial district, within 180 days of the filing of the complaint either the court shall automatically enter an order scheduling a trial before a judge or a party shall file a praecipe, motion or request for trial, except as otherwise provided in this subdivision. If it is not the practice of the court to automatically schedule trials and neither party files a praecipe, motion or request for trial within 180 days of filing of the pleading, the court shall dismiss the matter unless the moving party has been granted an extension for good cause shown, which extension shall not exceed 60 days beyond the 180 day limit.
- (c) **Trial.** Trials before a judge shall commence within 90 days of the date the scheduling order is entered. Trials and hearings shall be scheduled to be heard on consecutive days whenever possible but, if not on consecutive days, then the trial or hearing shall be concluded not later than 45 days from commencement.

Prompt Decisions. The judge's decision shall be entered and filed within 15 days of the date upon which the trial is concluded unless, within that time, the court extends the date for such decision by order entered of record showing good cause for the extension. In no event shall an extension delay the entry of the court's decision more than 45 days after the conclusion of trial.

The above-quoted rule was enacted because it was thought that the best interests of the children subject to these custody actions would be best served by requiring custody decisions to be made within a certain time frame. See Pa. R.C.P. 1915.4 Explanatory Comment 2000.

In *Dietrich v. Dietrich*, 923 A.2d 461 (Pa. Super. 2007), Father filed a Petition for Emergency Injunctive Relief on July 19, 2005 after Mother removed the parties' three minor children from the marital residence and moved to Canada on July 15, 2005 to reside with a man she had met over the Internet. Also on July 19, 2005, the trial court awarded Father sole legal and physical custody on a temporary basis. Father then filed a Complaint for Divorce & Custody on August 3, 2005. Following a hearing on August 12, 2005, the trial court awarded both parents joint legal custody and unsupervised visitation to Mother. On September 21, 2005, following another hearing, the August 12, 2005 Order was vacated and Mother was awarded temporary physical custody of the three minor children as well as exclusive possession of the former marital residence. Father was awarded rights of partial physical custody on weekends. A Special Master was appointed in this case who conducted conciliation conferences on October 5, 2005 and February 10, 2006. Thereafter, the parties filed various petitions for contempt and Mother filed two motions for immediate dismissal of Father's complaint for custody. The trial court finally held a custody trial on August 6, 2006 and permitted the record to stay open to allow additional time for the Court-appointed evaluator to submit her report¹. Finally, the trial court issued a Custody Order on September 27, 2006 awarding primary physical custody of the three minor children to Father. See *Dietrich v. Dietrich*, 923 A.2d 461, 462 (Pa. Super. 2007).

Mother then filed a timely appeal to the Pennsylvania Superior Court alleging that Father's complaint for custody should have been dismissed due to "numerous and gross violations of [the] Pennsylvania Rules of Civil Procedure."² Mother argued that the concept of judicial economy did not support the trial court's failure to dismiss Father's complaint for custody nor was the trial court's decision in the best interests of the children. The Superior Court agreed with Mother finding that there were no ambiguities in the language of Rule 1915.4(b). Therefore, the Superior Court was constrained to give

effect to all of the words/provisions of Rule 1915.4(b). In Dietrich, Father filed a Complaint for Divorce & Custody on August 3, 2005, which meant the trial court was required to schedule a custody trial on or before January 26, 2006. However, Father did not request an extension. Assuming an extension had been granted, the latest the trial court could have scheduled a custody trial in Dietrich was on or before March 31, 2006. Nonetheless, the trial court did not ultimately schedule trial until May 30, 2006, almost ten-months after Father filed his complaint for custody. Thus, the Superior Court nullified the trial court's September 27, 2006 Custody Order and reinstated the prior Order of Court dated September 21, 2005. The Superior Court noted that either party was free to file a Petition for Modification of Custody. See Dietrich, *supra*.

For those of you who may have custody cases currently pending before the Court of Common Pleas of York County, Pennsylvania or if you may be contemplating the filing of a custody action, you can expect the trial court to strictly comply with Rule 1915.4(b), (c) and (d). This means that all custody litigants can expect a trial to be scheduled on his or her petition/complaint for custody within 180 days (6 months) of the date on which a parent commenced a custody action. This does not mean that trial will, in fact, occur within that 180-day (6 month) time frame but, rather, your case will be scheduled for trial. At the present time, custody cases in York County are automatically listed for trial at the Call of the Custody Trial List that occurs two weeks prior to the commencement of each custody trial term. Therefore, there should be no need for custody litigants to petition the trial court for a scheduling Order. Where the application of Rule 1915.4(b) is going to be complicated is with regard to custody evaluations in that these evaluations often take several months to be completed. Consequently, if custody evaluators are taking several months to complete an evaluation and prepare a report, the trial court is going to be hard-pressed to schedule trial within the 180 day (6 month) time-frame even when a 60 day extension has been granted, which could result in the dismissal of more custody actions than in the past. Considering the Superior Court's strict interpretation and/or enforcement of the language set forth in Rule 1915.4(b), one can only assume that the Superior Court (and, likewise, the trial court) will strictly interpret and enforce the time-frames set forth in sub-paragraphs (c) and (d) of Rule 1915.4.

¹ The Superior Court opinion notes that Mother refused to present any testimony or evidence at the August 9, 2006 custody trial or otherwise participate in any fashion claiming that she (Mother) was present "under protest." Therefore, the trial court only had the benefit of Father's testimony, in camera interviews of the three minor children and the court-appointed evaluator's report. The Superior Court cautioned Mother that this behavior was inappropriate and that she should have fully participated rather than relying on presumed procedural errors. See Dietrich v. Dietrich, 923 A.2d 461, 462 (Pa. Super. 2007).

² The Superior Court noted that Mother failed to preserve at least two issues for proper appellate review but did appropriately raise the issue as to whether the trial court was obligated to dismiss Father's complaint for custody as trial had not been scheduled until more than 180 days had passed from the filing of Father's complaint.