

## LOCAL DECISIONS AFFECTING FAMILY LAW CASES

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The following cases were recently decided by the Court of Common Pleas of York County, Pennsylvania and serve to demonstrate how our local judges are viewing various issues that arise in family law matters:

**1. *Seitz and Seitz v. Runkle and Seitz*, 2006-FC-00309-Y03 (C.P. York, July 12, 2007 (Renn)).**

This case involves the Plaintiffs' (*Seitz and Seitz*) Petition for Enforcement and Contempt of a child custody order against the Defendants (*Runkle and Seitz*). The Plaintiffs' are the Paternal Grandparents of the child in question while Defendant Runkle is the child's biological Mother and Defendant Seitz is the child's biological Father. Father was incarcerated in York County Prison throughout these proceedings.

The Paternal Grandparents filed a Petition for Enforcement and Contempt of a June 6, 2006 custody order providing them with rights of partial physical custody including, but not limited to, one uninterrupted week during the summer months upon thirty (30) days advance notice. The Paternal Grandparents alleged that they provided the appropriate notice to Mother, made various payments for their summer vacation with the child but that Mother indicated she would refuse to make the child available for the vacation from July 14, 2007 through July 20, 2007. Assuming these allegations to be true, the trial court, nonetheless, denied the Paternal Grandparents' Petition for Enforcement and Contempt.

The trial court denied the Paternal Grandparents' petition due to the fact that Mother had not violated the June 6, 2006 Custody Order at the time the petition was filed. The Paternal Grandparents' allegations were all prospective in nature. For the same reason (no violation had occurred), the trial court could not conclude that Mother was in contempt of the June 6, 2006 Custody Order. Ultimately, the trial court considered the Paternal Grandparents' petition to be a waste of judicial resources and emphasized that the trial court should be put into the position of reiterating, explaining or otherwise advising parties on their respective rights and obligations arising from court orders.

**2. *Crouse v. Crouse*, No. 2001-SE-05282-Y15 (C.P. York, August 17, 2007 (Thompson)).**

In *Crouse v. Crouse*, the Court considered the parties' various exceptions to the Report and Recommendation of the Divorce Master as to the distribution of their assets and debts.

This case had a complicated procedural history. Husband filed for divorce on October 23, 2001 and a Divorce Master was appointed on the issues of divorce and equitable distribution on December 23, 2003. On March 23, 2004, Wife filed a petition for additional claims raising alimony, alimony pendente lite, counsel fees, costs and expenses as issues before the Divorce Master. Two settlement conferences were held but found to be unproductive because of discovery issues. The Master then declined to schedule additional proceedings until all discovery issues could be resolved. Counsel for

the parties entered into a stipulation in open court whereby each agreed to end discovery. (*Note: Discovery is the process by which the parties gather information and/or documentation from the other party*).

Based on the representation that no discovery issues remained outstanding, the Master ultimately held a hearing on the parties' respective claims on May 24, 2005 and May 25, 2005, August 18, 2005, August 19, 2005 and September 8, 2005. During the hearing, Husband raised numerous objections to Wife's exhibits and the Master met with counsel on December 12, 2005 to discuss those objections. The Master finally issued his Report and Recommendation on November 30, 2006 and each party filed timely exceptions.

Wife raised four exceptions, of which, the two most notable exceptions are discussed below. Wife claimed that the Master erred in failing to award her attorney's fees. Wife argued that Husband's income exceeded \$60,000.00 per year and his non-marital resources (life insurance policies and cash) afforded Husband the ability to pay a portion of Wife's attorney's fees. Wife expended over \$30,000.00 in attorney's fees. The Master, however, concluded that it would be punitive to impose an award of attorney's fees against Husband in light of the financial obligations Husband would bear as a result of the Master's overall distribution scheme.

In reviewing this issue, the trial court considered the following factors: (1) payor's ability to pay; (2) payee's financial resources; (3) the value of the services rendered; and (4) the property received in equitable distribution. *Crouse, supra*. (citing *Anzalone v. Anzalone*, 835 A.2d 773, 785-6 (Pa. Super. 2003)). Concluding that the Master properly considered these factors, the trial court found that the Master properly denied to award attorney's fees to Wife. The trial court specifically found that the Master's Report and Recommendation imposed various financial burdens on Husband and that he would be "strapped for cash" if he were also directed to pay Wife's attorney's fees. Further, even without the award of attorney's fees, Wife would be in a position to "get out of the hole she is in and either finish her home or salt some money away for a rainy day."

Wife also argued that Husband dissipated the value of the parties' former marital residence post-separation due to neglect. The Master rejected Wife's argument finding that much of the neglect occurred while Wife was still residing with Husband in the marital residence. Even Wife's expert indicated it was possible that some of the neglect occurred over many years prior to Wife moving out. Therefore, the trial court also upheld Wife's finding that the residence was in poor condition prior to separation.

Finally, Husband raised over 190 exceptions to the Master's Report and Recommendation. The trial court dismissed all of Husband's exceptions finding that the number or errors raised was preposterous and impeded the trial court's ability to conduct a meaningful review.

### **3. *Staub v. Staub*, No. 2006-SU-02123-Y03 (C.P. York, August 27, 2007 (Renn)).**

In *Staub v. Staub*, Father filed a Petition for Special Relief in an effort to prevent the children from being home-schooled. The trial court denied Father's Petition for

## Special Relief.

The parties separated in June 2007 and each lives in the Southwestern York School District. The parties have two minor children, ages 13 and 10 respectively, who have been home-schooled since September 2001. The oldest child attended a private school for pre-school, kindergarten and first grade while the youngest child never attended a private or public school. At the time Father filed his petition, the children were beginning the eighth (8<sup>th</sup>) and sixth (6<sup>th</sup>) grades respectively.

Since September 2001, Mother was the parent primarily responsible for home-schooling the minor children even though both parents actively made the decision to home school the children. Father, by his own testimony, was the primary breadwinner for the family and uninvolved in the children's home-school program. Father did, however, discuss private and charter schools with Mother as an alternative to public school. Further, Mother did not preclude Father from participating in the children's home-school program.

The children are doing well academically in the home-school program, which is supervised by the Southwestern York School District. Both children are involved in extra-curricular activities and additional activities are available to the children through the school district.

The trial court noted that there is a strong presumption in favor of public schooling, which has been in place since, at least, 1840. However, the trial court acknowledged that recent legislative including, but not limited to, home education laws, created an alternative form of education for minor children. Again, the trial court emphasizes that parents who know their children the best should make education decisions, but that the trial court will make this decision when the parents cannot.

The trial court ultimately concluded that children would be best served by decisions favoring public education absent extraordinary circumstances. In the *Staub* case, the trial court concluded that extraordinary circumstances existed due to the long history of the children's involvement in the home-school program, the children's strong academic performance, Mother's use of outside resources to assist her efforts to home-school the children as well as Father's uninvolved involvement in the children's education to date. Therefore, Mother was permitted to continue home-schooling the minor children.

It is important to note the reasons supporting the trial court's conclusion that home schooling was appropriate in this case. Had the children been much younger and only home-schooled for a year or so, it is likely that the trial court's decision would have been in favor of public education.

#### **4. *Sipe v. Sipe*, No. 2003-CU-001312-Y03 (C.P. York, August 28, 2007 (Renn)).**

In *Sipe v. Sipe*, Mother filed a Petition for Modification of Custody and Contempt on May 1, 2007. The parties were unable to resolve their issues at the May 11, 2007 conciliation conference. However, at the June 26, 2007 pre-trial conference, Mother and Father resolved the custody issues by agreement but could not resolve the contempt issues. Consequently, the trial court held a contempt hearing on July 31, 2007.

The existing Custody Order required Father to provide transportation for the parties' daughter to and from school from Mother's residence. On or about April 15, 2007, Father and daughter had an argument that resulted in the daughter telling Father that she did not need him. As punishment, Father took the child literally and provided her with money for bus fare for transportation. The child either threw the money around Father's residence or squandered it on something other than transportation. The daughter, however, told Mother that Father did not want her in his residence. Father attempted to contact Mother on or about April 15, 2007 to inform her of the situation, but was unsuccessful until the following evening. Mother attempted to provide transportation on April 17, 2007 by taking the child to Father's residence. However, the child was locked out of Father's residence and later walked home from school. Thereafter, neither party made significant efforts to contact the other party to discuss the argument, the punishment or otherwise.

Mother argued that Father was in contempt of the Custody Order by failing to provide the child with transportation. Father argued that he was not in contempt of the Custody Order because he attempted to provide the child with money for bus fare, which she wasted. To be held in civil contempt, a party must demonstrate that (1) the alleged contemnor had notice of the specific order or decree; (2) the act constituting a violation of the agreement was volitional; (3) the contemnor acted with wrongful intent; and (4) the terms of the order were definite, clear and specific. *Sipe, supra.* (citing *Marian Shop, Inc. v. Baird*, 670 A.2d 671 (Pa. Super. 1996)).

Rather than finding that Father violated the transportation provisions of the existing Custody Order, the trial court found that Father violated the legal custody provisions of the order. The reason for this is that Father inflicted a form of punishment on the child that required Mother's cooperation to implement. Father failed to consult Mother regarding this form of punishment, which resulted in confusion on April 17, 2007 and subsequent days. This was in violation of the shared legal custody provision of the parties' Custody Order.

Once a party is found in contempt, the trial court may impose a number of sanctions including a fine, imprisonment, a suspension of privileges or an award of counsel fees. In this case, however, the trial court was not inclined to overly punish Father for several reasons. First and foremost, the trial court felt that Mother's decision to call the child as a witness against Father at the contempt hearing to be a very poor parenting decision and would do nothing to promote cooperation between the parties. Further, Mother was not willing to resolve the contempt issue at the pre-trial conference even after Father expressed his willingness to do so. Consequently, as "punishment" for his violation of the order, Father was directed to pay Mother a total of \$200.00 to reimburse her for certain costs incurred in filing her Petition for Modification of Custody and Contempt. Thus, as this case demonstrates, it is always important to remember that it is the children who come first in any custody action and further serves as a reminder that parents should act reasonably when pursuing custody litigation even in contempt situations.

**5. *Hung v. Hersch*, No. 2002-SU-04784-Y03 (C.P. York, August 30, 2007 (Renn)).**

In *Hung v. Hersch*, Father filed a Petition for Special Relief on August 8, 2007 because the parties could not agree where their son should be enrolled in school. Mother and Father are the parents of one minor child, a son, who would be six (6) in October 2007. Mother and Father share legal custody as well as physical custody of the child on a 50%/50% basis. The child had never attended school in the past and the parents could not agree where he should be enrolled in school.

Previously, the trial court had taken the position that the trial court would not choose between two equally applicable school districts through a Petition for Special Relief. However, in this opinion, the trial court reverses its prior position to indicate that it will not consider these matters through a duly filed Petition for Special Relief. This Opinion also includes a clear reprimand to parents who share legal and physical custody of their child(ren). The trial court emphasizes that where to enroll a child in school (i.e., picking one school district over another) is a decision best made by the parents. The parents are in the best position to consider the child's emotional and educational needs, the advantages and disadvantages of each school district as well as the child's abilities, interests, parental support and relationship to any given teacher.

**6. *Heyer v. Hollerbush*, No. 2007-SU-002132-Y08 (C.P. York, September 7, 2007 (Cook)).**

In the *Heyer v. Hollerbush* case, the Court was called upon to determine if the parties were validly married. In this case, Putative Wife filed a Motion for Declaratory Judgment asking the Court to declare the marriage invalid because Adam Charles Robert Johnston is not a rabbi, minister or priest of a regularly established church or congregation as required by the Marriage Act. A hearing was held on Putative Wife's Motion on July 19, 2007. Only Mr. Johnston, the alleged minister, testified. The parties stipulated to the remaining averments in Putative Wife's Motion.

Putative Wife and Putative Husband applied for marriage license in York County, Pennsylvania on June 30, 2006, which was issued on July 3, 2006. Mr. Johnston allegedly married the parties in a religious ceremony on August 24, 2006 and filed the Return of Marriage Certificate on August 28, 2006. No one attended the parties' ceremony other than Mr. Johnston.

Mr. Johnston was ordained by the Universal Life Church via the Internet within five to ten minutes of submitting his application to the Universal Life Church's website. Mr. Johnston testified that he is a member of the Universal Life Church but has never attended meetings or services at the church. Mr. Johnston further testified that he receives a newsletter and emails from the Universal Life Church. However, Mr. Johnston acknowledged that he does not have a location for his church nor does he serve any congregation with regularity. Neither Putative Wife nor Putative Husband are members of the Universal Life Church.

Concluding that Mr. Johnston was not a person qualified to solemnize marriage in Pennsylvania, the Court relied on a New York Court of Appeals decision, *Ravenal v. Ravenal*, 338 N.Y.S. 2d 324 (1972), which held that the Universal Life Church was not an ecclesiastical body of denomination or order but was entirely non-religious. Thus, the

parties' marriage was declared void *ab initio*, meaning their marriage was never legally valid.