

# December 2019

## Legal Report

### SWAN Legal Services Initiative

*A monthly publication from the SWAN Legal Training Team*

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## SUPREME COURT OF PENNSYLVANIA

**In re: Adoption of K.M.G.**

Date of Order: December 9, 2019

Cite: 362 WAL 2019

The Petition for Allowance of Appeal was granted and is limited to the following issue:

**Issue:**

Did the Superior Court commit an error of law by concluding that it has no authority to review, *sua sponte*, whether a child's legal interest was represented by counsel during an involuntary termination of parental rights hearing, as required by Section 2313(a) of the Adoption Act and this Court's decision in *In re Adoption of L.B.M.*?

## SUPERIOR COURT OF PENNSYLVANIA

**S.R.G. v. D.D.G.**

Date of Decision: December 10, 2019

Cite: 313 MDA 2019

*Dauphin County***Holding:**

The trial court did not err in denying Grandmother's petition for child support, as there is no statutory authority requiring a third party to pay child support, where the third party has not adopted the child, and the natural parents have not had their parental rights terminated.

**Facts and Procedural Posture:**

This is a family law case which involves a child who was not adjudicated dependent. The parties in this case are Grandmother and Grandfather who were granted primary physical and legal custody of their Grandchild through an agreed-upon custody order. Sometime after attaining custody of the child, the parties divorced and exercised a custody arrangement whereby Grandmother has primary physical custody and the parties share legal custody. Grandmother later filed a petition seeking child support payments from Grandfather, which the trial court denied. Grandmother then appealed.

**Issue:**

May a third party be held liable for child support to another third party?

**Rationale:**

The Superior Court noted that Pennsylvania law is clear in establishing that parents have a duty to support their children, but that there is no statutory requirement that grandparents have a duty to support their grandchild. While Grandmother argued that the parties stand *in loco parentis* to the child and therefore have a legal duty to support the child, the Court referred to previously established precedent that held that "*in loco parentis* status alone is insufficient to create a support obligation." Grandmother also argued that as Grandfather had taken "affirmative steps to act as a legal parent" he must be treated as a legal parent. The Court also

disagreed with this assessment, finding that Grandfather had not sought custody rights against a fit biological parent, or became a full parent to the child, but rather is a grandparent who desires to maintain a relationship with his grandchild. Therefore, the Court affirmed the ruling from the trial court denying Grandmother's petition for child support.

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**H.R. & C.A.R. v. C.P. & J.M.**

Date of Decision: December 18, 2019

Cite: 807 MDA 2019

*Schuylkill County*

**Holding:**

The trial court did not err by considering Father's medical marijuana use in its best interest determination, as the Medical Marijuana Act does not preclude the trial court from making findings concerning the effect recreational or medicinal marijuana use will have on a parent's ability to care for their child.

**Facts and Procedural Posture:**

This is a child custody case, arising out of Schuylkill County, which involves a child who was not adjudicated dependent. The child was born to parents who have struggled with substance abuse issues, and Father's recreational use of marijuana has been a recurrent issue throughout the history of the custody litigation. There were even allegations that Father had fed the child marijuana laced peanut butter when the child was three years old. As a result of these issues, the maternal grandparents have had primary physical custody and shared legal custody of the child since July of 2012. Sometime in 2014, Father filed for modification of the custody order seeking increased visitation, and in July of 2015 the trial court issued an order keeping the 2012 custody order in effect and allowing Father to seek unsupervised contact with the child upon demonstrating sobriety and abstinence through hair follicle testing. Father later acquired a medical marijuana license to manage nerve pain and in June of 2018, sought modification of the custody order. Following a two-day hearing, the custody officer filed a report recommending that the drug testing conditions be removed from the custody order, and awarding Father increased and unsupervised contact. The maternal grandparents filed exceptions to the custody officer's report, and the trial court subsequently reinstated the drug testing condition for unsupervised physical custody. In their review, the trial court found that it is not in the best interest of the child to expand Father's physical custody, as Father failed to present medical evidence to establish that his wrist injury necessitated the use of medical marijuana, nor did he demonstrate the effect that the use of medical marijuana would have on his parenting ability. Father appealed.

**Issues:**

Does the Medical Marijuana Act bar courts from considering any aspect of marijuana use in reaching a best interest determination after a party has obtained certification to use medical marijuana?

Rationale:

In its analysis, the Superior Court noted that the trial court did not weigh the fact that Father has a certification to use marijuana against him, but rather that the court examined Father's history of recreational drug use, including allegations that he fed the child marijuana, and concluded that it is in the child's best interests to continue the 2012 custody arrangement, and to require that Father meet the drug testing conditions before unsupervised contact may take place. The Court further reasoned that the Medical Marijuana Act (Act) does not preclude courts from making findings regarding the effect that medical or recreational marijuana use has on a parent's ability to care for their child, but that the Act expressly reaffirms 23 Pa. C.S.A. §5328(a), which requires courts conducting a best interest determination to consider not only a parent's history of drug and alcohol use, but also their mental health conditions. As such, the trial court was required to consider Father's physical condition, his reliance upon medication to treat the condition, and the impact that the legal use of these substances would have on the child's best interests. While the Act prohibits courts from penalizing a parent simply for utilizing medical marijuana, in this case the trial court heard the evidence and applied the best interest factors, and found that it was not in the child's best interests for Father to exercise periods of unsupervised custody without first requiring Father to submit to drug screening. As such, the court affirmed the trial court's order.

## LEGISLATION SPOTLIGHT

*Federal Legislation:***Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act**

On December 19, 2019, the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act (Act) was enacted. This Act reauthorizes mandatory funding programs for historically Black colleges and universities and other minority-serving institutions. It streamlines the Free Application for Federal Student Aid (FASFA) by eliminating a number of the application questions, and by allowing the IRS to share tax information with the Department of Education. The FUTURE Act also increases funding for the Pell Grant, and contains provisions aimed at simplifying the process borrowers use to repay income-driven student loans. The Act may be viewed in its entirety at the link provided below.

<https://www.govtrack.us/congress/bills/116/hr5363/text>

**Building Blocks of STEM Act**

On December 24, 2019, the Building Blocks for STEM (Science, Technology, Engineering, and Mathematics) Act was enacted to direct the National Science Foundation to support STEM education research focused on early childhood. The primary purpose of this Act is to improve the focus of research and development of STEM education for elementary and prekindergarten aged youth, as well as to support female students in prekindergarten through elementary school in the pursuit of STEM and computer science education. The Building Blocks for STEM Act can be viewed in its entirety at the link provided below.

<https://www.govtrack.us/congress/bills/116/s737/text>

*State Legislation:***Amendment to PA Rules of Juvenile Court Procedure**

On December 12, 2019, the Supreme Court of Pennsylvania issued an order adopting Pennsylvania Rules of Juvenile Court Procedure (Pa. R.J.C.P.) 205 and 1205, and amending Pa. R. J.C.P. Rules 166, 167, 345, 1166, 1167, and 1345, to allow judicial districts to adopt local rules for the electronic filing and service of “legal papers.” The term “legal papers” is defined as “a pleading or other submission to the court, including motions, answers, notices, or other documents, of which filing is required or permitted, including orders, copies of exhibits, and attachments,” and excludes from its definition ex parte submissions, submissions of exhibits offered as evidence, and applications for search or arrest warrants. The comments to Pa. R.J.C.P. Rules 205 and 1205 make clear that the rules permit the electronic filing of legal papers, but do not require implementation of electronic filing by the judicial districts. A judicial district that adopts local rules for electronic filing may not require mandatory participation in electronic filing until a local rule requiring electronic filing has been in effect for two years. The Fifth Judicial District (Allegheny County) has been exempted from the two-year requirement because they have already adopted local rules making electronic filing mandatory and have asked for a waiver from this provision. These Rules are set to take effect on June 1, 2020. For more information, please use the links provided below.

<https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol49/49-52/1937.html>

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