February 2019 Legal Report

SWAN Legal Services Initiative

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pennsylvania
STATEWIDE ADOPTION AND PERMANENCY NETWORK

PENNSYLVANIA SUPERIOR COURT

In Interest of: M.V., Appeal of: R.M., Father Date of Decision: February 6, 2019
Cite: 1035 WDA 2018

Holdings:

1. Termination of parental rights was proper where Father evidenced a settled purpose of relinquishing a parental claim to the child, failed to perform his parental duties, and termination was in the best interest of the Child.
2. Notice during the dependency proceedings has no bearing on the proceedings to terminate Father's parental rights, as the Adoption Act does not require that a child be adjudicated dependent prior to the filing of a termination petition.

Facts and Procedural Posture:

The dependency action was initiated on January 15, 2016, at which time the Child had been residing with a kinship caregiver. Crawford County Children and Youth Services (CYS) sent notice that the adjudication hearing was scheduled for January 28, 2016; however, Father did not sign the return receipt for the notice until February 10th, 2016. The adjudication hearing was continued until February 18th, 2016 and Father signed the return receipt for this notice on February 23, 2016. In both instances, CYS had sent the notices via certified mail, as well as first class mail, and in neither instance was the first class mail returned. In March of 2016, Father was incarcerated and CYS was not able to locate him, as his name was incorrectly entered in the Department of Corrections custodial records. Father was paroled on October 4, 2017 and a hearing to terminate Father's parental rights under 23 Pa.C.S.A. §2511(a)(1),(2),(5),(8), and (b) commenced on May 31, 2018. On June 7th, 2018, the trial court issued its order terminating Father's parental rights and Father subsequently appealed.

Issues:

1. Did the trial court err when they terminated Father' parental rights under 23 Pa.C.S.A § 2511 (a)(1), and (b)?
2. Did the trial court err in terminating Father's parental rights, where Father was not afforded proper notice of the dependency action that preceded the termination petition?

Rationale:

The Court first addressed Father's argument that he did not evidence a settled purpose of relinquishing his parental claim to the Child and that he had not refused to perform parental duties. The Court reviewed the evidence presented at the termination hearing and saw that the record reflected that Father had suspected Mother was using drugs, but had never sought custody of the Child; that he had not seen the child until she was more than a year old; that he had only seen the Child two to three times since the initial meeting; and that Father had never

sent the Child any cards or letters. The Court also noted that Father was aware of the dependency proceedings and still did nothing to stay in the Child's life, and that while Father did pay a small amount of child support, that this only came after court-ordered genetic testing and a contempt order was issued. With all of these things considered, the Court determined that the record supports a finding for the termination of Father's rights under 23 Pa.C.S.A § 2511(a)(1).

The Court then began its analysis to see if termination under 23 Pa.C.S.A § 2511(b) was warranted. At the onset of its analysis, the Court looked to the holding from In Re K.Z.S., 946 A.2d 753 (Pa. Super. 2008), in which it was held that, "In cases where there is no evidence of any bond between the parent and child, it is reasonable to infer that no bond exists." The Court then looked to the record of the case and noted that the Child did not even recognize Father, and that Father has had almost no contact with the Child. As such, the Court determined that no bond exists between Father and the Child, and that the record supports the termination of Father's rights under 23 Pa.C.S.A § 2511(b), as termination is in the best interest of the Child.

Finally, the Court addressed Father's claim that he did not receive notice of the initial dependency proceedings. The Court agreed with the trial court's analysis that Father had received service and that even, if there was a deficiency in the notice, it had no bearing on the petition to terminate his parental rights. The Court further noted that there is no prerequisite that a child be adjudicated dependent, or that the agency make efforts to reunite Father with the Child before a petition to terminate parental rights can be filed. The court did note that 23 Pa.C.S.A § 2511(a)(5) and (8) require that a child be removed from the parent by court order, but that Father's rights in this case were terminated under (a)(1) and (2), neither of which require such removal. As such, the Court affirmed the trial court's order terminating Father's parental rights.

In re: Adoption of C.J.A.,
Appeal of B.A., Mother and P.F.

Date of Decision: February 14, 2019
Cite: 1731 EDA 2018

Holding:
The Trial Court did not err in denying the petition to terminate Father's parental rights under 23 Pa.C.S.A § 2511(a)(1), as Father made substantial efforts to perform his parental duties in the six months preceding the filing of the termination petition.

Facts and Procedural Posture:
This is a family law case arising out of Monroe County, which involves a child who was not adjudicated dependent. Father initially exercised partial physical custody of his daughter through an informal arrangement with Mother that continued until Mother decided to move in

with her fiancé in Monroe County. When she was moving, Mother told Father that he would not see the Child anymore; Mother refused to provide Father with her new address and blocked Father on Facebook. Father made numerous attempts to locate Mother and Child: he, conducted an internet search to locate Mother, drove past Maternal Grandparent's home to look for Mother, reached out to Mother's friends, and even reached out to Mother's sister. Father eventually hired an attorney who filed for custody of the Child in Luzerne County. Father also paid for the services of a private investigation website that was unable to locate an address for Mother. After failed attempts to serve Mother in the custody action, Father received permission from the Luzerne County trial court to serve notice by publication. Shortly after this, Father received notice that Mother and Fiancé (Appellants) had filed for the termination of Father's parental rights under 23 Pa.C.S.A § 2511(a)(1) and had also filed a custody complaint in Monroe County. The Luzerne County trial court directed that future proceedings occur in Monroe County. In May of 2018, the Monroe County trial court denied the petition for termination of Father's parental rights. The Appellants appealed.

Issues:

There were 3 issues raised in this appeal, but the court only addressed the following issue:

1. Did the trial court err when they failed to terminate Father' parental rights under 23 Pa.C.S.A § 2511(a)(1)?

Rationale:

Appellants argued that the trial court erred in not granting their termination petition, as Father made minimal recent efforts to establish contact with the child, and the trial court should have considered the whole history of the case and not just the six months preceding the filing of the termination petition. The Superior Court determined that while courts must consider the whole history of a given case, §2511(a)(1) of the Adoption Act requires courts to focus its attention on the six months immediately preceding the filing of the termination petition. They then reviewed the record of the case and found that Father did nearly everything in his power to reestablish contact with his child, including contacting Mother's sister, consulting a lawyer, hiring a private investigation website, and filing for custody of the child. The Superior Court then affirmed the trial court's decision, as the evidence on the record supported the trial court's decision.

In the Matter of M.P., Appeal of: S.L., Mother

Date of Decision: November 27, 2018
Cite: 1371, 1372 MDA 2018

Holdings:

1. That failure to file separate notices of appeal in accordance with Pennsylvania Rule of Appellate Procedure Rule 341 and Commonwealth v. Walker, 185 A.3d 969 (Pa. 2018) shall result in the *quashal* of appeal.

2. That the termination of Mother's parental rights was proper where Mother's continued incapacity left the children without parental care, the incapacity would not be remedied, and termination is in the best interest of the children.
3. That the trial court did not err in changing the permanency goal where Mother was not compliant with her family service plan, made little progress towards alleviating the circumstances that led to placement, and did not demonstrate that the circumstances would be remedied in a reasonable amount of time.

Facts and Procedural Posture:
Dauphin County Social Services for Children and Youth (CYS) became involved with Mother and Children in November of 2016, after Mother delivered a stillborn child believed to be caused by her drug use prior to delivery. The Children were subsequently adjudicated dependent and, over the course of the next year, Mother was non-compliant with her family service plan. In April of 2018, CYS filed a petition to terminate Mother's parental rights and to change the Children's goal from reunification to adoption. A hearing was held in July of 2018, after which the trial court terminated Mother's parental rights and changed the Children's permanency goal. Mother appealed.

Issues:
The first issue was raised by the court *sua sponte:*
1. Did Mother's appeal meet the requirements of Pa. R.A.P. Rule 341 and the holding of Commonwealth v. Walker?
2. Did the trial court err in terminating Mother's parental rights pursuant to 23 Pa.C.S.A § 2511(a)(2), and (b)?
3. Did the trial court err in changing the goal of the children from reunification to adoption?

Did you know?

Quash means to nullify, void or declare invalid. The procedure is used in both criminal and civil cases when there is an irregularity or defect in procedures. A motion to quash is often made in regard to the issuance of a subpoena.

Quashal is the act of quashing something.

Sua sponte, (*which is* Latin for *"of his, her, it's or their own accord"*) describes an act of authority taken without formal prompting from another party. The term is usually applied to actions taken by a judge without a prior motion or request from the parties.

Rationale:
The Superior Court first addressed the fact that Mother filed a single notice of appeal for each child, even though there are two separate issues (termination of parental rights and goal change) that arose from two different docket numbers (the Orphans Court docket and the Juvenile Court docket). In addressing this issue, the Court turned to the official note of Pa R.A.P. Rule 341, which states that where "one or more orders resolves issues arising on more than docket or relating to more than one judgement, separate notices of appeal must be filed." The Court noted that while it had become common practice to allow appeals to proceed even if they failed to comply with Rule 341, the Pennsylvania Supreme Court held in Walker that this practice violated Rule 341, and that the failure to file separate notices of appeal for separate dockets must result in quashal. Because the law may have been unclear on this issue, the Superior Court

decided to review the substantive issues of the case, although they recognized that Mother's lack of compliance with Rule 341 should be grounds for quashing her appeal. The Court also ruled that all parties seeking review with the Superior Court in the future must file notices of appeal in accordance with Rule 341 or face quashal.

The Court then turned its analysis to the issues related to the termination of Mother's parental rights under 23 Pa.C.S.A § 2511(a)(2), and (b). In regards to § 2511(a)(2), the Court found that the record supports termination, as Mother continues to struggle with addiction, was not compliant with her family service plan, accrued new criminal charges, made little progress towards alleviating the circumstances that led to the children's placement, and showed no indication that these circumstances would be remedied in a reasonable amount of time. In regards to 23 Pa.C.S.A § 2511(b), the Court affirmed the trial court's decision, as the record reflected no evidence that breaking the bond with Mother would be detrimental to the children, and that the lack of permanency for the children would be contrary to their welfare.

Finally, the Court addressed Mother's assertion that the children's permanency goal should not have been changed because CYS failed to provide appropriate or sufficient reunification services. The Court looked to the record of the case and noted that throughout the dependency, Mother was difficult to contact, had issues with visitation, was non or minimally compliant with her family service plan objectives, and had not obtained stable housing or employment. While Mother did complete some drug and alcohol and mental health counseling, this occurred late in the case, after CYS made extensive and unsuccessful efforts to get Mother treatment. As such, the Court determined that the trial court did not err in changing the Children's permanency goal to adoption.

Concurring and Dissenting Opinion: While Judge Pellegrini agreed with the majority's decision on the merits of the appeal, he disagreed with the application of Walker. In Walker, the PA Supreme Court noted that Rule 341(a) does not explicitly require a separate notice of appeal be filed, but that this requirement is contained in an Official Note to the Rule. The Supreme Court further assessed that the Official Note to Rule 341 was contrary to decades of case law, and that even the authorities cited in the Rule's Official Comment are contrary to the Official Note to the Rule. As such, the Supreme Court mandated the Appellate Procedural Rule Committee to amend Rule 341(a) or its Official Note to explicitly require the filing of separate notices of appeal. Judge Pellegrini opined that the holding from Walker should only apply once the Rule or Official Comment is amended and, until that time, the previously used standard from General Electric Credit Corporation v. Aetna Casualty and Surety Company, 263 A.2d 448 (Pa.1970) should be used.

In Interest of: S.U., Appeal of: R.U., Father Date of Decision: February 21, 2019
Cite: 888 MDA 2017

Holding:

1. Where a parent has been given proper notice of an adjudicatory hearing and of the parent's right to counsel at such a hearing, yet fails to attend or apply for counsel, the juvenile court need not conduct an in-person colloquy of a parent's right to counsel.

Facts and Procedural Posture:

The Lancaster County Children and Youth Services Agency (Agency) had a long history of involvement with the family and, in March of 2017, the parent's parental rights were terminated involuntarily as to another child. Around the same time as the termination hearing, the Agency received a referral alleging that the child had poor hygiene and that there were substance abuse issues in the home. In April of 2017, the parents initially refused to take a drug test, but were later tested. While Father tested negative, Mother tested positive for THC and cocaine. The Agency then sought an order for temporary custody of the Child, which was granted. In the order, the trial court scheduled the shelter care hearing and appointed counsel to represent the parents and the child. Attached to the order was a notice that informed the Parents that counsel would be appointed to represent them only in the first hearing, and that they would have to take further steps to secure counsel for subsequent hearings. At the shelter care hearing, the court allowed counsel for the parents to withdraw because the Parents did not show up to the hearing. The shelter care order included notification that counsel for the Parents had withdrawn due to the parents' failure to appear at the hearing, and included an attachment directing the parents to re-qualify for counsel if they desired representation at the next hearing. In May of 2017, a dependency hearing was held, and the parents did not attend, nor were they represented by counsel. After the hearing, the trial court issued an order adjudicating the child dependent, setting the permanency goal as adoption, and terminating Father's visitation. The trial court also issued an order finding aggravated circumstances due to the involuntary termination of the parent's rights to one of the child's siblings, and directed the Agency not to make reunification efforts. Father subsequently obtained court-appointed counsel and filed a notice of appeal.

Issues:

The first issue was raised by the court *sua sponte* and is the only issue we will address below. For a greater understanding turn to the opinion of the court.

1. Was Father was properly notified of his right to counsel?
2. Did the trial court err by concluding that the evidence clearly and convincingly established that the child is dependent?
3. Did the trial court err by concluding that it was in the child's best interests to be removed from the home of Mother and Father?
4. Did the trial court err in terminating visitation for Father?
5. Should Father be granted another hearing to determine if he should be allowed visitation and whether he should be given the goal of reunification?

6. Did the trial court err in granting the aggravated circumstances order and ordering that reunification efforts not be made?

Rationale:

Majority: Judge Nichols joined by President Judge Gantman, President Judge Emeritus Bender, Judge Panella, Judge Lazarus, Judge Dubow, and Judge McLaughlin.

The Superior Court granted *en banc* consideration to address the issue of whether Father was granted proper notification of his right to counsel. The Majority noted that Pennsylvania Rule of Juvenile Court Procedure (Pa. R.J.C.P.) Rule 1151(E) require that a parent be appointed counsel prior to the first court proceeding, and that the rule does not require that notification of the right to counsel be given in person. The Majority then looked to the record of the case and found that the trial court had met the requirements of Pa. R.J.C.P. Rule 1151(E), as they appointed counsel prior to the first hearing, and they provided notice to Father of his right to counsel on three separate occasions. The Majority also determined that the time-frames established for dependency cases emphasize the urgency of deciding these case promptly, and that the Rules of Juvenile Court Procedure cannot be construed to require a court to wait indefinitely until parents decide to appear in court. As such, the Majority held that where a parent has been given proper notice of an adjudicatory hearing and of the parent's right to counsel at such a hearing, yet fails to attend or apply for counsel, the juvenile court need not conduct an in-person colloquy of a parent's right to counsel.

Concurring Opinion: Judge Dubow joined by President Judge Emeritus Bender, Judge Panella, Judge Lazarus, and Judge McLaughlin

Judge Dubow agreed with the Majority's decision, but wrote a concurring opinion in order to address the Superior Court raising the issue of right to counsel during dependency hearings *sua sponte*. In her decision, Judge Dubow opined that, while the Supreme Court of Pennsylvania has not authorized the Superior Court to raise this issue *sua sponte*, the §6337 of the Juvenile Act authorizes the appointment of counsel in dependency cases where a parent cannot afford counsel and appears at the hearing. Judge Dubow asserts that because the legislature has authorized the appointment of counsel, it has determined that representation at dependency hearings when parents appear is of importance. Therefore, the Superior Court should ensure that trial courts follow the legislative mandates and address this issue, even if it is not raised by the parties. Judge Dubow further asserted that the Superior Court's right to ensure that the trial court appoints counsel should address the issue of the appointment of counsel alone, and not the adequacy of the representation that the appointed counsel provides.

Dissenting Opinion: Judge Stabile joined by Judge Shogan

The primary basis of Judge Stabile's dissent rests upon his contention that Father had a statutory right to counsel that was not waived. From the facts of the case, Judge Stabile noted that, while Father was appointed counsel prior to the shelter care hearing, Father did not attend the shelter hearing and was not subsequently notified that his counsel had withdrawn until he received the

May 1, 2017 Shelter Care Order. This is problematic because the adjudication hearing (one of the hearings from which the contested orders arise) was held on May 2, 2017, which did not give Father any time to seek the appointment of new counsel. Judge Stabile further asserted that because Father's counsel was allowed to withdraw at the shelter hearing, Father's interests were not represented at the adjudication hearing. Judge Stabile noted that §6337 of the Juvenile Act gives parties the right to counsel at all proceedings, and that §6337 does not expressly or implicitly require a parent to appear at a hearing before the right to counsel takes effect. He further noted that Pa R.J.C.P. Rule 1151(E) is also silent on the effect of a parent's failure to appear or request counsel, and that Father never waived his right to counsel in accordance with Pa R.J.C.P. Rule 1152. As such, Judge Stabile averred that the trial court's orders should be vacated, as Father has a statutory right to counsel, that the law did not permit the trial court to allow counsel for Father to withdraw, and that Father did not waive his right to counsel.

H.Z. v. M.B.

Date of Decision: February 8, 2019
Cite: 1809 EDA 2018

Holding:

1. The Uniform Act on Blood Tests to Determine Paternity only applies to blood tests and not to other forms of genetic testing.
2. Appellant was not entitled to dismissal as a matter of law under Pa. R.C.P. Rule 1910.15 or 23 Pa.C.S.A.§4343, as 23 Pa.C.S.A.§4343 establishes that any party may request an additional genetic test as a matter of right.
3. Appellant waived his claim that further genetic testing would be a violation of his Fourth Amendment rights, because he did not raise this issue prior to his appeal.
4. The trial court abused its discretion by issuing its order declaring the Appellant to be the Child's Father, as the trial court did not hear all of the evidence and based its decision upon evidence that was excluded.

Facts and Procedural Posture:

This is a paternity and child support case arising out of Montgomery County involving a child who was not adjudicated dependent. Appellant and Appellee are former coworkers who have been engaged in ongoing litigation to establish paternity of the child since March of 2005. The first genetic test for the child was conducted in New York (where the parties resided) on March 28, 2006 and it excluded the Appellant as the Father. After the first genetic test, the parties entered into a stipulation agreement which provided that Appellee would discontinue her paternity and support actions against the Appellant. The second test took place in December of 2008, when Appellee had retained a private investigator who retrieved Appellant's DNA from a discarded coffee cup and submitted it for genetic testing. The results of the second test indicated

a probability over ninety-nine percent that Appellant is the child's father. Appellee then filed a second action to establish paternity and child support against Appellant, but this time Appellee filed in New Jersey, where she and the child relocated. Appellant had relocated to Pennsylvania and, because the courts in New Jersey lacked jurisdiction over him, the parties entered into another stipulation in March of 2010, which dismissed Appellee's claim. In May of 2010, Appellee filed a request for child support in Montgomery County, Pennsylvania. After years of inactivity (due to Appellee's inability to pay for counsel), in August of 2015, the trial court entered an order directing the Appellant to submit to genetic testing. Appellant appealed this order to the Superior Court claiming *res judicata*, and the Superior Court, in an unpublished decision, affirmed the trial court's order for paternity testing. In July of 2016, the Appellant submitted to genetic testing via a buccal swab. However, because the Appellant's DNA sample was insufficient for testing, another genetic test was conducted in August of 2016. The results of this test excluded Appellant as the father of the Child and Appellant filed a motion for dismissal. Appellee contested the dismissal and claimed irregularities in the DNA sample collections, and requested further testing via buccal swab, blood, and hair follicle testing. In December of 2017, the trial court conducted a hearing, and entered an order continuing the remainder of the hearing. In March of 2018, prior to the conclusion of the hearing, the trial court issued an order concluding that the Appellant is the Child's Father and that he would be responsible to pay child support. The Appellant appealed this order to the Superior Court.

Issues:

1. Do Pa. R.C.P. Rule 1910.15, 23 Pa. C.S.A. §5104 and 23 Pa. C.S.A. §4343 require a trial court to dismiss a paternity/child support action as a matter of law, after two court-ordered tests excluded the Appellant as the Child's father?
2. Did the trial court err by not holding a hearing to determine whether requiring the Appellant to submit a fourth buccal test would be in violation of his Fourth Amendment rights?
3. Did the trial court err by concluding that Appellant is the Child's father, where there are two court ordered tests that exclude him as the father and the only test that reached a contrary result was excluded from evidence?

Rationale:

To begin the analysis, the Superior Court first looked to the provisions of 23 Pa.C.S.A.§5104, otherwise known as the Uniform Act on Blood Tests to Determine Paternity (UAB). The Court concluded that the UAB does not apply to this case, as the UAB only applies to blood testing, and in this case buccal swabs were used.

The Court then turned its analysis Rule 1910.15 of the Pennsylvania Rules of Appellate Procedure (Pa. R.A.P.). Appellant averred that Pa. R.A.P. Rule 1910.15 requires the trial court to grant his motion to dismiss, arguing that a hearing on paternity can only take place if the results of the genetic tests did not indicate exclusion, and does not allow a hearing to commence if a genetic test resolved the issue of paternity. The Court disagreed, noting that the text of the rule allows

the parties to enter into a written stipulation by which the parties would be bound by genetic test results, and permits parties to have a hearing regarding the reliability of the genetic test, or on the issue of paternity after the test results are received. The Court further asserted that the term "resolve the issue of paternity" as used in Rule 1910.15, is in reference to situations in which the parties have entered into a written stipulation regarding paternity, not merely when the test results indicate less than a ninety-nine percent probability of paternity. As such, the Superior Court ruled that the Appellant was not entitled to dismissal under Pa. R.A.P. Rule 1910.15, as the rule allows for further hearings to take place.

Furthermore, in regards to 23 Pa.C.S.A.§4343, it provides that any party may request an additional genetic test as a matter of right. The Court noted that if they were to construe this statute to require dismissal in this circumstance, that it would produce an inequitable and unreasonable result, as the Court would be holding that a mother could never challenge a negative paternity test, even if she had evidence that demonstrated the test's inaccuracies. The Court further asserted that requiring dismissal in these circumstances would create an incentive for putative fathers to manipulate test results because the results would not be able to be challenged.

With regards to the Appellant's claim that the further genetic testing would violate his Fourth Amendment rights, the Superior Court noted that the Appellant waived this claim, as he did not present this argument at the trial court. However, the Court also asserted that the Appellant would not prevail, as the Pennsylvania Supreme Court set forth in Cable v. Anthou, 699 A.2d 722 (Pa. 1997), that a party may be entitled to additional genetic testing if the party proves by a preponderance of the evidence that the first test was unreliable. Cable further requires that after the unreliability of a test is demonstrated, the trial court must then "weigh the parties' interests" to determine whether requiring a subsequent genetic test is justified in light of Fourth Amendment privacy interests.

Finally, the Court addressed the Appellant's claim that the trial court abused its discretion in entering an order finding him as the father. The Court held that the trial court abused its discretion by issuing the order prior to the completion of the hearing to address the issue of paternity and by relying upon the results of the coffee cup test, which the trial court had previously excluded as unreliable. The Court then vacated the trial court's order and remanded the case for additional genetic testing.

J.L. v. A.L. and K.L.

Date of Decision: February 26, 2019
Cite: 945 MDA 2018

Holding:
The Superior Court affirmed a trial court order that asserted that the presumption of paternity does not apply to situations in which the marriage was not intact.

Facts and Procedural Posture:
This is a paternity and child support case arising out of Dauphin County that involves a child who was not adjudicated dependent. The Appellants (Mother and Husband) married in 2009 and their marriage became strained after Mother had two nonviable pregnancies. Mother and Husband participated in counseling to address their marital issues and Mother obtained a separate apartment in September of 2017, upon the advice of their counselor. The couple continued to celebrate holidays and go on vacations together and continued to have a sexual relationship with each other. In March of 2017, Mother met Appellee (Father) and started an affair with him that lasted almost a year. Mother told Father that she and Husband had been separated since November of 2016 and, over the course of her relationship with Father, Mother had frequently discussed her strained relationship with Husband and her desire to get a divorce. In May of 2017, Mother learned of her pregnancy and all three parties participated in a paternity test. The test determined Father to be the biological father of the Child and Father assumed the responsibilities of an expectant father. Mother and Father presented themselves as being in a relationship and, in December of 2017, Father helped Mother move her possessions out of the marital home and into a new apartment that Mother had rented for herself. When Mother went into labor, Father left a conference that he was attending and spent at least one night in the hospital with Mother and Child. After the Child was born, Father introduced the Child to his friends and colleagues and posted a message regarding the Child's birth on social media. In February of 2018, Mother notified Father that she was reconciling with Husband and decided to stop allowing Father to have visits with the Child. In March of 2018, Father filed a complaint to establish paternity and genetic testing, to which Mother and Husband contested that the presumption of paternity should stand, as the couple was in an intact marriage. The trial court conducted a three-day hearing and, in May of 2018, the trial court issued an order in favor of Father, finding that the marriage was not intact. Mother and Husband appealed.

Issues:
1. Did the trial court err by finding that the couple's marriage was not intact and therefore, the presumption of paternity should not apply?

Rationale:
The Superior Court looked to the record of the proceedings and found that, while Husband and Mother had not filed for divorce, Mother had represented to family and friends that she was separated from Husband, and had even secured separate living arrangements. Mother had represented to Father on numerous occasions that she was considering divorce and had

expressed to Father her desire to have a future with him. At one point, Mother had even represented to Father that the only reason she decided to reconcile with Husband is because she had consulted attorneys who told her that she would lose custody of her child with Husband if she sought a divorce and a custody action ensued. The Child was also held out as Father's child to friends, colleagues, family, and on social media. As such, the Court found that the record supports the trial court's finding that the presumption of paternity should not apply, as the record supported the trial court's finding that the marriage was not intact.

SPOTLIGHT

Amendments to Rule of Juvenile Court Procedure
On February 13, 2019, the Supreme Court of Pennsylvania issued an order amending Rules 330, 337 & 515 of the Rules of Juvenile Court Procedure to update statutory references to 42 Pa.C.S. § 6307(b)(1.1)(i) relating to the access of court records. These amendments will become effective on June 28, 2019.

Amendments to PA Rules of Appellate Court Procedure
On February 8, 2019, the Supreme Court of Pennsylvania issued an order amending Rules 1731 and 1782 of the Pennsylvania Rules of Appellate Court Procedure regarding stays pending appeal. The Official Note section of these rules has been changed to direct readers to review the holding from Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 467 A.2d 805 (Pa. 1983), for the criteria for the issuance of a stay pending appeal. The amendments to these rules are set to take effect on April 1, 2019.

Amendments to PA Bar Admission Rules
On January 29, 2019 and February 8, 2019, the Supreme Court of Pennsylvania issued orders adopting Rule 304 and amending Rule 202 of the PA Bar Admission Rules. Rule 304 was adopted to allow spouses of active duty military members limited admission to the practice of law in Pennsylvania, provided that all of the requirements of the rule are met. Rule 304 is set to take effect six months from the date of the order.

Rule 202 was amended to allow undocumented immigrants who have Deferred Action for Childhood Arrival status and valid work authorization to be eligible for admission into the Pennsylvania Bar. This amendment became effective immediately. These rules can be viewed in their entirety at the links provided below.

https://www.pabulletin.com/secure/data/vol49/49-7/204.html
https://www.pabulletin.com/secure/data/vol49/49-8/251.html

Updated List of Hospitals That Will Not Provide Emergency Contraception or Sexual Assault Emergency Services

On February 23, 2019, pursuant to 28 Pa. Code §117.57(1)(ii) & §117.58(1)(ii), the Department of Health published its updated list of hospitals that will not provide emergency contraception due to a stated religious or moral belief, and the updated list of hospitals that will not provide any sexual assault emergency services due to the limited services provided by the hospital. These updated lists can be viewed in their entirety at the link provided below.
https://www.pabulletin.com/secure/data/vol49/49-8/267.html

Proposed Changes to the PA Rules of Appellate Court Procedure

On February 23, 2019, the Appellate Court Procedural Rules Committee proposed adoption of Pa.R.A.P.s 130, 131, 132, 133, 134, 135, 136 and the amendment of Pa.R.A.P.s 121, 122, 124, 125, 1921, 1931, 2173, 2174. The purpose of these Rules is to govern the procedure for the electronic and paper filing of documents with the appellate courts. These Proposed changes to the Rules of Appellate Court Procedure can be viewed at the link provided below.
https://www.pabulletin.com/secure/data/vol49/49-8/253.html

Notice of Grant from the Department of Education

On February 2, 2019, the Department of Education issued a notice that they are seeking applications for grants to establish 21st Century Learning Centers. These Learning Centers are going to be established to provide, among other things, tutoring services to help students who attend low-performing schools, and to offer students a broad array of additional services and activities. The Department of Education will have $23 million in grants available and more information can be found at the link below.
https://www.pabulletin.com/secure/data/vol49/49-5/146.html