
Case Notes:

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SUPERIOR COURT MANDATES TRIAL COURT TO PROVIDE INDEPENDENT JUDICIAL ANALYSIS OF SECTION 5328(a) CUSTODY FACTORS IN CUSTODY MODIFICATION AND RELOCATION CASE BY RANDI L. RUBIN, ESQ.

A.V. v. S.T., Appeal of S.T. (Father), 87 A.3d 818 (Pa. Super. 2014)

SUMMARY

The Superior Court of Pennsylvania (Gantman, Ott and Musmanno, J.J.) recently vacated a decision of a Luzerne County trial court (Muroski, J.) that granted a mother's petition to relocate with her three children from Pennsylvania to New Jersey and remanded the matter instructing the trial court to provide a full and complete analysis of the custody factors in a custody modification and relocation case.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Mother and father never married, but resided with their three minor children in Ashley, Pa. In June 2013, Mother filed a petition for shared legal custody and primary physical custody of the children. At the time, the family was living in the same residence in Ashley. On July 29, 2013, mother filed a petition to relocate with the children from Pennsylvania to Brick, N.J. On the same day, an order was entered by agreement of the parties to share legal custody and share equally physical custody on an alternating weekly basis, from Sunday to Sunday. Pending a hearing on mother's petition for relocation, mother moved to Brick and brought the children with her to New Jersey during her custodial time.

After a hearing on Sept. 4, 2013, Judge Muroski entered an order granting mother's petition for relocation. The Sept. 4, 2013 order modified the parties' agreed order dated July 29, 2013, and included a provision titled "Partial Custody" that decreased

father's custody from shared physical custody to alternating weekends from Friday evening to Sunday evening. Initially, no written opinion explaining the basis of the court's decision was issued in support of the Sept. 4, 2013 order.

Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)(2)(i) and (b), father filed a notice of appeal and a concise statement of matters complained of on appeal. On Oct. 8, 2013, Judge Muroski issued a memorandum and order acknowledging that he had inadvertently failed to provide a written opinion and notified father that he would have an additional 30 days to amend his statement of errors complained of on appeal. The record shows no other such filings were made by either party.

ANALYSIS

Father raised three issues for the court's consideration on appeal that the trial court erred by: 1) failing to analyze the custody factors under 23 PA.C.S. §5328(a) in making a determination of which party should have primary custody of the children, before any analysis of relocation; 2) failing to provide an opinion, in writing or on the record, with respect to its reasons for granting mother's petition for relocation and 3) concluding that mother met her burden of proof that relocation was in the best interests of the children. The Superior Court agreed with father's first two issues and declined to address father's third issue and, therefore, vacated the trial court's order and remanded the case back to the trial court.

The Superior Court addressed father's first two issues together. Specifically, father argued that Judge Muroski did not consider the 16 custody factors set forth in 23 PA.C.S. §5328 before he considered the factors for relocation set forth in 23 PA.C.S. §5337(h), when he entered the Sept. 4, 2013 order granting relocation and modifying the parties' agreed order for shared physical custody to

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CASE NOTES

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partial physical custody. Father also argued that Judge Muroski's opinion was a wholesale copying of mother's post-trial brief which included factual findings that were absent from the record. Father requested that the Superior Court remand the case to the trial court with instructions to apply the law under the relevant statutes, 23 PA.C.S. §5328 and 23 PA.C.S. §5337, and the facts of the matter and to articulate an independent judicial analysis of the facts and the law.

The Superior Court explained that, when presented with a petition to modify custody, the trial court must conduct a thorough analysis of the factors for determining the best interests of the child or children as delineated in 23 PA.C.S. §5328(a). The Superior Court also noted that, pursuant to 23 PA.C.S. §5323(d), the trial court must state on the record in open court or in a written opinion or order the reasons for its decision. Although there are no requirements on the level of detail in the best-interests analysis, the trial court must adequately address the relevant factors to comply with §5323(d) and complete its analysis prior to the deadline for the parties to file a notice of appeal. Moreover, the Superior Court emphasized that the Supreme Court of Pennsylvania has censured trial courts for replicating a party's brief as a replacement for its own well-reasoned opinion because it deprives the appellate court from the appropriate guidance from the judicial body most familiar with the case.

The Superior Court concluded that when Judge Muroski modified the July 29, 2013 order by agreement of the parties he substantially reduced father's periods of physical custody from two weeks per month to two weekends per month. As a result of changing father's custody from "shared physical custody" to "partial physical custody," the Superior Court held that the trial court erred when it did not engage in a best-interests analysis of the 5328(a) factors and did not explain the reasons for its decision. The Superior Court further found error and reprimanded Judge Muroski for its "wholesale adoption" of mother's brief and for converting averments in mother's brief into findings of fact, which lacked support in the record. The Superior Court emphasized that Judge Muroski's failure to provide an independent judicial analysis impeded the appellate review process and resulted in unsupported conclusions that lacked judicial scrutiny.

CASE NOTE AUTHOR'S COMMENT

A.V. v. S.T. is yet another case in which the Superior Court is holding trial courts' feet to the fire to comply with 23 PA.C.S. §§ 5328(a) and 5323(d) when there is a modification of the physical and/or legal custody award. As it has done in many recent decisions, the Superior Court is demanding that trial courts analyze the relevant custody factors and provide litigants with explanations in support of their decisions, whether on the record or in written opinions. The Superior Court relied on its recent decision in *M.O. v. J.T.R.*, and concluded that in *A.V. v. S.T.* a more de-

tailed explanation was needed by the trial court because the trial court modified custody from "shared physical custody" to "partial physical custody" and dramatically reduced father's custodial time from two weeks per month to two weekends per month. See *M.O. v. J.T.R.*, 2014 PA Super. 15 (filed Feb. 4, 2014) (holding that the trial court was not required to address the 5328(a) custody factors in considering a custody modification petition because the modification did not affect the type of custody award, *shared physical custody*, *partial physical custody* or *primary physical custody*, as those terms are defined in 23 PA.C.S. §5322 but rather altered certain terms and conditions of custody). Although there is no bright-line test as to the extent of detail required by the statute, one point is clear from *A.V. v. S.T.* — copying and pasting a litigant's brief is an unacceptable judicial practice, especially when averments in a litigant's brief are not part of the record on appeal. The Superior Court acknowledged the Supreme Court's condemnation of trial courts across all practice areas, not just family law, from adopting litigants' briefs as their own opinion. Although trial courts in family law cases now have their marching orders to perform an independent judicial analysis, it remains unclear as to exactly what is required of trial courts to fully and adequately support their custody decisions.

Photos from the PBA Family Law Section Winter Meeting at the Loews Philadelphia Hotel are on our website!

View them, and many more, at www.pabar.org/public/sections/fam05/Meetings

