

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

M.M.

Appellant

v.

S.S.

v.

S.A.S.

Appellees

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1212 WDA 2012

Appeal from the Order Entered July 26, 2012  
In the Court of Common Pleas of Westmoreland County  
Civil Division at No(s): No. 2053 of 2009 D

BEFORE: DONOHUE, J., MUNDY, J., and PLATT, J.\*

MEMORANDUM BY MUNDY, J.:

Filed: March 8, 2013

Appellant, M.M. (Father), appeals from the July 26, 2012 order granting the petition of maternal grandmother, S.A.S. (Grandmother), for emergency special relief and suspending Father's summer visitation with his two minor sons, M.S., born in August 1996, and E.M., born in August 1999. After careful review, we quash this appeal.<sup>1</sup>

The relevant facts and procedural history of this case may be summarized as follows. S.S. (Mother) and Father are the biological parents

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> The Court notes that Grandmother did not file a brief in this appeal.

of M.S and E.M. Mother resides in Pennsylvania and Father resides in Idaho. On July 15, 2011, Father filed a motion to modify an existing custody order, which permitted M.S and E.M to visit with Father in Idaho during the summer. In said motion, Father sought to relocate M.S and E.M. to Idaho and to obtain sole physical and legal custody of both children. Subsequently, on September 7, 2011, Grandmother filed a petition to intervene in the custody proceedings. A hearing on Grandmother's petition to intervene and Father's motion to modify custody was held on November 14 and 17, 2011. On November 23, 2011, the trial court granted Grandmother's petition to intervene and entered an interim custody order awarding Grandmother temporary physical and legal custody of M.S and E.M pending trial in February 2012.<sup>2</sup>

The trial was subsequently continued to August 2012, and, in June 2012, Grandmother permitted M.S and E.M. to visit Father in Idaho. On June 18, 2012, Grandmother filed an emergency petition for special relief to temporarily suspend Father's visitation in Idaho and reported that Father was drinking heavily and smoking marijuana in the presence of M.S and E.M.

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<sup>2</sup> The trial court noted that credible concerns about Mother's ability to care for the children were raised at the November hearing. Trial Court Opinion, 11/23/11, at 2, n.2. The trial court further explained that it placed interim custody with Grandmother rather than Father because M.S. asserted a preference for living in Pennsylvania with Grandmother, and the trial court lacked sufficient information to determine whether it would be in the best interests of M.S and E.M. to relocate to Idaho. *Id.*

Thereafter, on July 26, 2012, the trial court entered an interim custody order granting Grandmother's emergency relief petition and suspending the remainder of Father's summer visitation pending trial. On August 3, 2012, Father filed a notice of appeal with this Court challenging the trial court's July 26, 2012 interim custody order.<sup>3</sup>

Before we may consider the merits of Father's appeal, we must first determine whether his appeal is properly before us. "Few legal principles are as well settled as that an appeal properly lies only from a final order unless otherwise permitted by rule or statute." *G.B. v. M.M.B.*, 670 A.2d 714, 717 (Pa. Super. 1996) (citations omitted). With respect to custody orders, we note the following.

Generally, a custody order will be considered final and appealable only after the trial court has completed its hearings on the merits and the resultant order resolves the pending custody claims between the parties. In the context of finality of orders, we recognize the uniqueness of custody orders compared to orders in other civil actions.

Child custody orders are temporary in nature and always subject to change if new circumstances affect the welfare of a child. The Commonwealth has a duty of paramount importance, to protect the child's best interests and welfare. To that end, it may always entertain an application for modification and adjustment of custodial rights.

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<sup>3</sup> The trial court filed an opinion pursuant to Pa.R.A.P. 1925(a) on August 15, 2012. The trial court did not order that Father file a concise statement pursuant to Pa.R.A.P. 1925(b).

***Kassam v. Kassam***, 811 A.2d 1023, 1025 (Pa. Super. 2002) (citations and quotation marks omitted), *appeal denied*, 827 A.2d 430 (Pa. 2003).

In ***G.B.***, this Court held that “a custody order will be considered final and appealable only if it is both: 1) entered after the court has completed its hearings on the merits; and 2) intended by the court to constitute a complete resolution of the custody claims pending between the parties.”

***G.B.***, *supra* at 720 (footnotes omitted).

[T]his holding will protect the child from the protraction of custody litigation through repetitive appeals while still allowing prompt and comprehensive review of custody determinations. It will also support judicial economy and efficiency and uphold the integrity of the trial court’s process in deciding custody matters ... by not interfering with the trial court’s efforts to craft a final decision and by not permitting premature challenges to those efforts. In striking a balance between postponing and granting an appeal, we have attempted to serve primarily the best interests of the child.

***Id.*** at 720-21.

In the instant case, trial on the matter was imminent when the trial court issued the interim custody order that is the subject of this appeal, and the trial court did not intend that the order constitute a complete resolution of the custody claims pending between the parties. Specifically, the trial court granted Grandmother’s emergency petition and suspended Father’s visitation in Idaho “until after the trial, when the issue can be addressed with all parties involved.” Trial Court Opinion, 7/26/12, at 4.

On August 31, 2012, this Court issued a rule upon Father to show cause why his appeal should not be quashed as interlocutory. Father responded that on August 24, 2012, trial on this matter was cancelled rendering the interim custody order final and appealable. Father's Response to the Rule to Show Cause at 2.<sup>4</sup> However, although the trial court cancelled the trial, the record reflects a review hearing was scheduled for October 15, 2012, making it clear that the ultimate issues between the parties remained under consideration. **See** Trial Court Opinion, 8/24/12, at 8. Accordingly, since the order appealed from was not a final order, the instant appeal is interlocutory. **See *Kassam, supra*** at 1028 (stating that a custody order would not be considered final where the trial court scheduled review for a date certain and the ultimate issues between the parties remained under consideration).

Based on the foregoing, we conclude that the instant appeal is interlocutory. Accordingly, this Court is without jurisdiction to decide this appeal. Therefore, we quash Father's appeal.

Appeal quashed.

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<sup>4</sup> We note that Father's two-page response letter is not paginated. For the ease of our discussion, we have assigned pagination.