NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ELIZABETH CHUD AND O/B/O MINOR CHILDREN, Appellee v. TANYA SHOOK, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1551 WDA 2011

Appeal from the Order Entered August 31, 2011
In the Court of Common Pleas of Washington County
Civil Division at No(s): 2011-5891

BEFORE: STEVENS, P.J., MUSMANNO, J., and ALLEN, J.

MEMORANDUM BY STEVENS, P.J. Filed: January 14, 2013

This is an appeal from a final Protection From Abuse ("PFA") order entered by the Court of Common Pleas of Washington County against Appellant Tanya Shook, enjoining her from seeing her 14 year old and 3 year old daughters for 18 months on evidence that she physically abused them. The PFA order itself was filed on behalf of Appellant's mother, Plaintiff/Appellee Elizabeth Chud, who presented testimony against Appellant and obtained primary physical and legal custody of Appellant's minor daughters for the effective period of the order. Herein, Appellant accuses the court of violating her right to receive adequate notice of the hearing to allow her time to obtain counsel, and contends that insufficient evidence

supported granting Appellant's mother primary physical and legal custody of Appellant's minor children. We affirm.

This matter stems from a temporary PFA order filed on behalf of Appellant's mother, Elizabeth Chud, and Appellant's two minor children on August 19, 2011. The order evicted and excluded Appellant from Chud's residence and prohibited Appellant from possessing or handling firearms during this period. The order also set a hearing date of August 30, 2011 at 9:30 a.m. at the courthouse. According to the docket sheet, service of the temporary order was accomplished on August 26, 2011 by the Westmoreland County Sheriff.

At the hearing, Chud testified that Appellant's 14 year old daughter, (hereinafter "R.R."), often complained that Appellant would hit her. N.T. 8/30/11 at 5. Chud's advice to her was always to call her father. Chud then described an incident that took place at her home on August 18, 2011, when Appellant became physical with R.R. after the child said she did not want to move back to Pittsburgh with Appellant. N.T. 6-8. Appellant and R.R. had been texting about the proposed move when R.R. turned to Chud and said "I don't want to go back there, grandma." Chud quoted the child as saying, "I'm getting abused. I don't want to go back." N.T. at 7. After several more texts to Chud in which Appellant went from stating "keep her" to "I'm coming to get her," Appellant eventually texted that she was "bringing the police," to which Chud replied "go for it." N.T. at 7.

Appellant arrived at Chud's home moments later and engaged R.R. in a screaming argument that culminated with Appellant grabbing the child's arm and saying "the cop said I can drag you out of here." N.T. at 9. When R.R. tried to pull away, Appellant kicked her in the right knee. Chud intervened and said she was calling the police. N.T. at 10. Appellant struck Chud in the back as she reached for the phone. N.T. at 10. Appellant punched Chud in the back a second time and then ran out the door, slamming it so hard that she broke it. N.T. at 10. Chud provided the court with photographs of injuries to her back and to R.R.'s knee. N.T. at 10-11.

Representing herself at the hearing, Appellant cross-examined Chud briefly, asking why, if she believed abuse had been ongoing, Chud failed to call authorities earlier. Appellant also sought to impeach Chud's credibility by asking her if she had been imprisoned for welfare fraud. Chud admitted she had been so charged in 1998 but explained the charge was eventually reduced to a misdemeanor. N.T. at 21. Finally, Appellant asked Chud if she had lodged complaints about Appellant to child services several times in the past. Chud admitted that she had, and Appellant offered that all five previous cases had been dismissed upon finding no evidence of abuse. N.T. at 22.

In her own testimony, Appellant attributed the conflict between R.R. and her to R.R.'s unwillingness to move to Pittsburgh. N.T. at 24. She admitted grabbing R.R.'s arm in an attempt to bring her to the car, and to

slamming the door on the way out. She denied all other accusations of physical abuse. N.T. at 29. She accused Chud of being highly manipulative, filing false reports with law enforcement as a means of retaliation when Appellant disagrees with her. N.T. at 27. She explained her wish was to leave Belle Vernon and move to Pittsburgh to distance herself from Chud and live closer to extended family there. N.T. at 27-28

Under cross-examination, Appellant admitted that her two daughters had been spending a majority of time with Chud over the Summer. N.T. at 33-34. The court also asked why Appellant had waited until just before the start of the new school year to make a move that would require R.R. to change school districts. Appellant answered that, until she made such a move, R.R. was still enrolled at Belle Vernon and was therefore settled educationally. N.T. at 35. Appellant did recommend to the court, however, that perhaps R.R. should live for some time with her father while Appellant and she worked on their relationship. N.T. at 34.

The court interviewed R.R. outside the presence of Chud and Appellant. R.R. mostly corroborated Chud's account of the August 19, 2011 incident. When asked why she now wished to live with her father when she had never really done so before, R.R. stated "He doesn't move around. That's what I want. I don't want to move around. If I'm going to move, I want to move to someone [who is] stable, [who] doesn't move." N.T. at 50. She stated that father and she had discussed her moving in with him and he

was willing to take her in. N.T. at 52. She also testified that while she preferred to live with her father, she would not mind living with her grandmother, Chud. N.T. at 53.

When asked what would happen if she and her sister moved back with their mother, R.R. testified that she would kill herself. N.T. at 50. The court explored this statement at length, advised R.R. that she must remove such ideas from her mind and focus on taking care of herself, and encouraged her to believe that this time in her life will turn out alright. N.T. at 51. During this exchange, the court also learned R.R. fears the physical punishments Appellant would occasionally hand out, N.T. at 51. R.R. also spoke with frustration over the agitated state Appellant would adopt whenever her three year-old sister would cry or need assistance at night time. N.T. at 53. She believed her sister bore a cigarette burn on her chest on the day of the hearing, a belief shared by Chud. N.T. at 57. When the court asked if it was not simply a red mark from a magic marker as Appellant had said it was, R.R. said it could be, but it does not look like a red mark from a marker, it looked like a burn. N.T. at 57.

R.R. also described Appellant's family in Pittsburgh as nice, but involved in selling marijuana. N.T. at 55. R.R. testified that she witnessed Appellant buy marijuana from one of the family members. N.T. at 55.

Upon concluding its interview with R.R., the court summoned all parties back to the courtroom and advised them of its ruling:

> **THE COURT:** I just did my interview of [R.R.]. I went over those events with her. She's a bright young lady. She is very scared, and I don't think this was just her reaction of having to move to Crafton Heights. So I'm going to enter a PFA on behalf of – based on the testimony I heard, I feel the facts warrant the entry of the PFA with respect to plaintiff Elizabeth Chud and with respect to both daughters. I am making findings of abuse and entering a PFA.

N.T. at 60. Later in the proceedings, Appellant argued that Chud influenced R.R.'s testimony during the two weeks prior to the hearing in which they lived together. Chud had misrepresented disciplinary efforts as abuse and R.R. was now adopting the same mindset, Appellant contended. The court rejected Appellant's argument, finding R.R. had given a clear and untainted account of her life with Appellant. N.T.

After making its finding of abuse, the court learned that both fathers were present in the courtroom. To determine proposed living arrangements for each of the two daughters, the court called each father to the stand. First to testify was the father of R.R., who confirmed that he, his wife, and their two little sons agreed they should bring R.R. into their home. N.T. at 61-62. Father already had the paperwork necessary to enroll R.R. into the school district the following day and had scheduled a medical appointment to ascertain whether R.R. was up to date with immunizations. N.T. at 62.

Appellant countered that Father had never been involved in R.R.'s life before, but the court responded that it was incorporating custody provisions placing R.R. with her father into the PFA order. N.T. at 63. When she asked if that meant she could not have contact with her daughters for the duration

of the PFA order, the court explained that if she wished to establish contact she could file a custody complaint that would supercede the PFA order if successful. N.T. at 63.

The court later confirmed that Father was continuously employed for the last eight years and that R.R. would have her own bedroom in the home. N.T. at 66-67. The court also determined that a child molestation accusation Appellant had made against Father when R.R. was a toddler was proven false. N.T. at 65. On that point, Appellee Chud informed the court that Appellant had taken R.R. to the hospital more than once for a sexual abuse examination and had involved the police. N.T. at 65. Chud attended the last such visit and was present in the room when, she said, hospital staff warned Appellant that it would press charges of abuse against her if she were to bring the child in under false pretenses ever again. N.T. at 65.

The father of three year old J.B. also testified, but circumstances surrounding him were problematic, as he was an Ohio resident recently unemployed and dealing with seemingly unresolved back and heart issues. N.T. at 68-71. During the course of his testimony, moreover, a combative exchange began between the parties ensued when Appellee Chud questioned whether J.B.'s father and his 16 year old son who lived with him had a substance abuse problem. The court explored this allegation, which J.B.'s father denied, as well as the issue of father's dedication to J.B. given his nearly two weeks' inaction after first learning from Chud that J.B. may be

taken from Appellant. J.B.'s father denied the charge of apathy and insisted he had called police to inquire into the case, but to no avail. N.T. at 83.

The uncertainly surrounding the stability of Father and his living conditions compelled the court to order that J.B. reside with Appellee Chud, with unlimited visitation for J.B.'s father as to be agreed upon by Chud. N.T. at 87-91. Chud expressly stated she would welcome Father whenever he wished to visit. N.T. at 93. The court further ordered that Appellant would have the right to supervised visits to each daughter, although in the case of R.R., the court ruled that such visits were conditional upon both her father's and R.R.'s agreement to the visit. N.T. at 93-94. Such conditions are incorporated in the final PFA order of August 30, 2011, from which Appellant now appeals.

Upon receiving Appellant's notice of appeal, the court ordered Appellant to provide it with a Pa.R.A.P. 1925(b) concise statement of matters complained of on appeal. Newly retained counsel supplied the court with a belated Rule 1925(b) statement containing an enumerated account of what Appellant believed to be the factual and procedural history of the case. Within this statement were two enumerated assertions that Appellant "indicated to the Court that she was just made aware of the hearing on that day and, therefore, was unable to obtain counsel[,]" and that "[Appellant] was unrepresented at the time of her hearing and, as a result, did not take

the proper direction, in which to defend herself in this matter." Appellant's Concise Statement of Matters Complained of on Appeal Under Rule 1925(b).

The court informed counsel he had filed the statement well after the 21 day filing period had run, but counsel prevailed upon the court that it had not received notice of the court's order. The court determined this was so because counsel had failed to enter an appearance on behalf of Appellant, but it nevertheless granted counsel an extension of time in which to file an amended 1925(b) statement raising an appealable issue, as it was the court's determination that the first statement failed to do so. As the court's extension failed to provide a deadline, the court issued a subsequent order nearly three months later giving Appellant ten more days in which to file an amended statement. The court served a copy of this order on both Appellant and counsel, as counsel had still not entered his appearance at that time. Apparently, counsel for Appellant disagreed that the statement contained no appealable issue and, therefore, filed no amended statement within this final ten-day period. Consequently, the court authored its Pa.R.A.P. 1925(a) opinion recommending waiver of Appellant's appeal for want of an appealable issue in her concise statement.

Appellant raises three issues for our review:

I. DID THE TRIAL COURT ERR IN SUBMITTING THAT APPELLANT WAIVED HER APPELLATE ISSUES, THAT APPELLANT FAILED TO FILE THE REQUIRED RULE 1925(B) STATEMENT, OR THAT APPELLANT'S COUNSEL FAILED TO FILE AN APPEARANCE?

II. WERE APPELLANT DUE PROCESS RIGHTS VIOLATED AT THE PFA HEARING FOR WHICH SHE RECEIVED INADEQUATE NOTICE AND AT WHICH SHE WAS UNREPRESENTED BY LEGAL COUNSEL?

III. WAS THERE INSUFFICIENT EVIDENCE PRESENTED AT THE PFA HEARING TO SUPPORT THE TRIAL COURT'S DECISION TO GRANT PRIMARY PHYSICAL AND LEGAL CUSTODY OF THE TWO MINOR CHILDREN TO APPELLEE, ELIZABETH CHUD?

Brief of Appellant at 2.

As a threshold matter, we must determine whether Appellant has raised any discernible issues in her counseled Rule 1925(b) statement. The court informed Appellant that the statement raised no discernible issues and gave her two more opportunities to file an amended 1925(b) statement; Appellant, however, filed nothing in response. Consequently, the court authored a Rule 1925(a) opinion finding the statement contains no appealable issues.

Our review of Appellant's Rule 1925(b) statement finds it to present a combination of facts, procedural history, and two assertions that 1) Appellant had been made aware of the hearing on that day and was thus unable to obtain counsel, and 2) that her attempt at self-representation was misdirected and ineffective.

Prior to addressing Appellant's claims on the merits, we must first determine whether she has preserved her claims by raising them adequately in a court-ordered Pa.R.A.P. 1925(b) statement.

> Issues not raised in a Rule 1925(b) statement will be deemed waived for review. ***Commonwealth v. Castillo****,* 585 Pa. 395, 403, 888 A.2d 775, 780 (2005) (quoting ***Commonwealth v. Lord****,* 553 Pa. 415, 420, 719 A.2d 306, 309 (1998)). An appellant's concise statement must properly specify the error to be addressed on appeal. ***Commonwealth v. Dowling****,* 778 A.2d 683 (Pa.Super.2001). In other words, the Rule 1925(b) statement must be "specific enough for the trial court to identify and address the issue [an appellant] wishe[s] to raise on appeal." ***Commonwealth v. Reeves****,* 907 A.2d 1, 2 (Pa.Super.2006), *appeal denied,* 591 Pa. 712, 919 A.2d 956 (2007). "[A] [c]oncise [s]tatement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no [c]oncise [s]tatement at all." ***Id****.* The court's review and legal analysis can be fatally impaired when the court has to guess at the issues raised. ***Id****.* Thus, if a concise statement is too vague, the court may find waiver. ***Id****.*

Commonwealth v. Hansley, 24 A.3d 410, 415 (Pa. Super. 2011).

As noted *supra*, the trial court ordered Appellant to provide it with a concise statement of matters complained of on appeal pursuant to Rule 1925. No statement was forthcoming, and the court prepared to author an opinion calling for waiver when it learned that newly retained counsel had not received adequate time to prepare a concise statement. The court granted counsel an extension and received the Rule 1925(b) statement at issue, but it found no appealable issues therein. The court notified Appellant and counsel that it found no appealable issues in the statement and gave Appellant two opportunities to file an amended concise statement. Appellant disagreed that no appealable issues were raised and, therefore, filed no amended statement. Consequently, the court filed a Rule 1925(a) opinion calling for our affirmance for want of a properly preserved issue.

While we agree that counsel for Appellant inartfully drafted the concise statement, we find that giving it the benefit of every reasonable inference yields the claim that the court provided Appellant insufficient notice of the PFA hearing, which prejudicially deprived her of adequate time to obtain counsel. Moreover, though we are without the benefit of a responsive Pa.R.A.P. 1925(a) opinion, the record enables us to engage in meaningful appellate review such that we need not exercise our option under 1925 to remand for an opinion in this quasi-civil case. In short, we find the record clearly belies Appellant's claim.

Moving, then, to the merits of her appeal, Appellant argues in her second claim that the court deprived her of her right to due notice of the PFA hearing to the detrimental effect that she was forced to represent herself at the hearing. As Appellant herself notes, there is no legislative right to counsel in a PFA proceeding. ***See Weir v. Weir***, 631 A.2d 650 (Pa. Super. 1993) (distinguishing civil PFA proceedings from criminal, delinquency, dependency, termination of parental rights, involuntary commitment, and paternity cases, all of which involve either statutorily mandated right or fundamental right to counsel). Nevertheless, it was her right to receive adequate notice of the hearing, she maintains, and had the court properly notified her of the hearing she would have retained private counsel. However, not only does Appellant present no evidence to support the claim that she was denied adequate notice, both the lower court's docket sheet

and the testimony offered at the hearing establish notice had been served upon her several days beforehand.

Appellant claims she received notice of the PFA hearing only on the day of the hearing. According to the docket sheet, however, service of notice was accomplished on August 26, 2011, four days before the date of the hearing. Corroborating the docket sheet entry was the testimony of Bowers, father of Appellant's younger daughter, that Appellant refused his August 27th request to take J.B. for the day because she was "waiting to find out what's going to happen in court." N.T. 8/30/11 at 82. Given this unrebutted evidence that notice of the hearing provided Appellant with several days in which to retain counsel, we reject Appellant's claim.

The third claim Appellant raises challenges the sufficiency of evidence relied upon by the court in entering its PFA order. This claim appears nowhere in Appellant's Rule 1925(b) statement. “Any issues not raised in a Pa.R.A.P.1925(b) statement will be deemed waived.” ***Commonwealth v. Lord***, 553 Pa. 415, 719 A.2d 306, 309 (1998). ***See also Commonwealth v. Castillo***, 585 Pa. 395, 888 A.2d 775, 780 (2005) (reaffirming “bright-line rule first set forth in ***Lord***”). Accordingly, this claim is waived.

For the foregoing reasons, we affirm the order entered below.