NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: C.J.S.	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: A.J.A., SR.	:	No. 1976 EDA 2012

Appeal from the Order entered June 12, 2012
in the Court of Common Pleas of Pike County
Civil Division at No.: 12-2011-OA

BEFORE: DONOHUE, OLSON, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: Filed: January 9, 2013

Appellant, A.J.A., Sr., appeals *pro se* from the orders entered in the Pike County Court of Common Pleas, denying his petition for recusal of the trial court judge and denying his motion to compel the withdrawal of counsel.[1] This case returns to this Court after we remanded for the trial court to appoint counsel for Appellant in this involuntary termination of parental rights case. We hold this appeal is interlocutory and quash.

The instant underlying termination matter concerns the child C.J.S., who was born of the ongoing sexual abuse committed by Appellant against his paramour's minor daughter, K.S.[2] On July 14, 2011, K.S. and her father

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* Former Justice specially assigned to the Superior Court.

[1] No appellee's brief was filed in this appeal.

[2] For the abuse committed against K.S., Appellant was found guilty by a jury of rape of a child and related offenses, received an aggregate sentence of forty to eighty years' imprisonment, and was subjected to lifetime "Megan's Law" registration. On direct appeal, this Court affirmed the judgment of

filed a petition for the involuntary termination of Appellant's parental rights to C.J.S, pursuant to 23 Pa.C.S. § 2511(a) and (b). The trial court granted the petition on October 26, 2011. Appellant appealed, and on April 30, 2012, this Court reversed the termination order and remanded for the trial court to appoint counsel for Appellant.[3]

On May 9, 2012, the trial court appointed Mark Moulton, Esq. to represent Appellant. Attorney Moulton also represented Appellant in the related criminal action. On June 4th, Appellant filed a *pro se* motion to compel the withdrawal of Attorney Moulton, alleging ineffective assistance in his criminal case. On the same day, Appellant also filed a motion for the recusal of the trial judge in this termination matter. On June 12, 2012, the trial court entered two orders, one denying Appellant's motion to compel the withdrawal of counsel, and one denying his petition for recusal. Since the appointment of Attorney Moulton, no hearing has been held on the issue of the involuntary termination of parental rights.

On June 29, 2012, Appellant filed a *pro se* notice of appeal and a concise statement of errors, the latter of which related to the denial of

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sentence. ***Commonwealth v. [A.J.A.]***, No. 812 EDA 2011 (unpublished memorandum) (Pa. Super. Dec. 2, 2011). The Pennsylvania Supreme Court denied Appellant's petition for allowance of appeal on August 7, 2012.

The author of this memorandum notes that he was also the author of the Superior Court' memorandum in Appellant's criminal case.

[3] ***In re Adoption of C.J.S.***, No. 405 EDA 2012 (unpublished memorandum) (Pa. Super. Apr. 30, 2012).

recusal.[4] On July 2nd, Appellant filed a second *pro se* notice of appeal, which is stamped with the phrase "Children's Fast Track," as well as a concise statement alleging counsel's ineffective assistance.[5] In his *pro se* appellate brief, Appellant raises ten issues for our review, all of which concern his ineffective assistance of counsel claim. Appellant's Brief at 5-6. We understand Appellant to have abandoned his appeal from the order denying his motion for recusal, as he presents no issues related thereto.

Initially, we must consider whether the order from which Appellant appeals is immediately appealable to this Court. "[I]t is the right and obligation of an appellate court to raise the issue of jurisdiction even where parties do not[.] The question of the appealability of an order goes directly to the jurisdiction of the Court asked to review the order." ***In re N.B.***, 817 A.2d 530, 533 (Pa. Super. 2003) (citations omitted).

We find ***In re N.B.*** instructive. In that case, the trial court appointed one attorney to represent both the mother and father in a dependency matter. ***Id.*** at 532. Subsequently, the court denied a request by Community Legal Services to enter its appearance on behalf of the mother. ***Id.*** The mother appealed to this Court, "challenging the order denying her right to representation by counsel of her own choosing." ***Id.*** at 533. This

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[4] The trial court did not issue an order requiring a concise statement. ***See*** Pa.R.A.P. 1925(b).

[5] Subsequently, on July 20, 2012, Attorney Moulton filed a motion for a stay of the termination proceedings, pending Appellant's petition for allowance of appeal in his criminal case to the Pennsylvania Supreme Court.

Court *sua sponte* reviewed whether the court's order was immediately appealable. ***Id.***

We stated:

> Under Pennsylvania law, an appeal may be taken from: (1) a final order or an order certified by the trial court as a final order (Pa.R.A.P. 341); (2) an interlocutory order as of right (Pa.R.A.P. 311); (3) an interlocutory order by permission (Pa.R.A.P. 312, 1311, 42 Pa.C.S.A. § 702(b)); (4) or a collateral order (Pa.R.A.P. 313). A final order is any order that disposes of all claims and all parties, is expressly defined as a final order by statute, or is entered as a final order pursuant to the trial court's determination. Pa.R.A.P. 341(b)(1)-(3).

Id. at 533 (some citations omitted). Under Rule 313 and the collateral order doctrine, an order is immediately appealable if, "(1) it is separable from and collateral to the main cause of action; (2) the right involved is too important to be denied review; and (3) the question presented is such that if review is postponed until final judgment in the case, the claimed right will be irreparably lost." ***Id*** at 534.

This Court held that the trial court's order was not a final order under Pa.R.A.P. 341, as it did "not dispose of all claims or all parties involved, [was] not expressly defined as a final order by statute, and was not entered as a final order." ***Id.*** at 533. We also held the order was not an interlocutory order as or right or by permission under Rules 311 and 312. ***Id.*** In holding the order was also not an appealable collateral order, we noted:

> [A] parent's claim that she was essentially denied counsel because of counsel's ineffectiveness at a dependency hearing is capable of vindication in an appeal filed **after** the entry of a dependency and dispositional order. We determined that a procedural scheme permitting such post-dependency adjudication appeals satisfactorily reconciles the interests of parents with the paramount aim of acting in the best interests of children, as such a scheme would avoid piecemeal litigation on a typically collateral matter likely to disrupt efficient, and delay final, adjudication of the child's case.

Id. at 535-36 (citations omitted) (emphasis added).

Pursuant to this Court's prior remand, the petition to terminate Appellant's parental rights remains unresolved. Thus, we find that, as in ***In re N.B.***, the order denying Appellant's motion to compel Attorney Moulton's withdrawal was not a final order. The order did not dispose of all claims or all parties involved, was not defined by statute as a final order, and was not entered as a final order. In addition, the court's order was not an interlocutory order as of right or by permission under Rules 311 and 312. Finally, pursuant to ***In re N.B.***, we hold the court's order was not a reviewable appealable order. ***See id.*** Finding this appeal is interlocutory, we quash.

Appeal quashed.