NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IN THE INTEREST OF: B.T., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: L.T.	:	No. 2009 MDA 2013

Appeal from the Order entered October 9, 2013,
Court of Common Pleas, Northumberland County,
Juvenile Division at No. CP-49-DP-0000003-2012

BEFORE: DONOHUE, WECHT and STRASSBURGER*, JJ.

MEMORANDUM BY DONOHUE, J.: **FILED JUNE 30, 2014**

L.T. ("Father") appeals from the order entered on October 9, 2013 by the Court of Common Pleas, Northumberland County, suspending Father's in-person visitation with B.T. ("Child"). For the reasons that follow, we quash the appeal.

The relevant facts and procedural history of this case are as follows. At all times relevant to this matter, Father has been incarcerated in a state correctional facility. On January 10, 2012, the trial court entered an order placing Child into the custody of Northumberland County Children and Youth Services ("CYS"). On June 27, 2012, the trial court appointed Attorney Matthew Slivinski ("Attorney Slivinski") to represent Father in this matter.

On September 17, 2013, CYS filed a motion to suspend visitation between Father and Child because of Father's move from SCI Rockview to SCI Forest. CYS claimed that it would take approximately 12 hours round trip to get Child and her brother to and from SCI Forest for visits with

*Retired Senior Judge assigned to the Superior Court.

Father. On October 9, 2013, the trial court held a hearing on the motion in which the court unsuccessfully attempted to include Father via telephone. N.T., 10/9/13, at 3. After failing to contact Father, CYS asked Attorney Slivinski if he objected to proceeding and he indicated that he did not object. ***Id.*** at 4. During the hearing, CYS stated that it had offered video conference visitation to Father so that he could visit with Child in that manner. ***Id.*** Attorney Slivinski then informed the trial court that he received a letter written by Father stating that if face-to-face visits with Child at the prison could not occur, that he wanted the trial court to order video conferencing. ***Id.*** at 6. Both Attorney Slivinski and CYS were uncertain as to whether SCI Forest had the facilities available for Father to video conference with Child. ***Id.*** at 5-9. As a result, CYS assured Attorney Slivinski that if video conferencing did not work out, CYS would "be glad to reschedule this matter before the [c]ourt." ***Id.*** at 9.

Following this hearing, the trial court entered an order stating the following: "face[-]to[-]face visitation with [Child] and [Father] are SUSPENDED until further [o]rder of the [c]ourt. If arrangements can be made with SCI [Forest] for video conferencing, visitation can occur at [CYS] for [Child] and [Father] through video conferencing." Trial Court Order, 10/9/13, at 1. On November 7, 2013, Father filed a timely *pro se* notice of appeal and a motion for leave to proceed *in forma pauperis*. The trial court granted Father's request to proceed *in forma pauperis*. On November 22,

2013, because Father failed to file a 1925(b) statement contemporaneously with his notice of appeal, the trial court filed an order, sent, *inter alia*, to Father and Attorney Slivinski, which ordered Father to file a 1925(b) statement. On December 10, 2013, Father filed a *pro se* 1925(b) statement.

Prior to discussing the issues raised on appeal, we must first determine whether we have jurisdiction to review the order appealed. Pennsylvania law provides that the jurisdiction of this Court extends to review of final orders, interlocutory appeals as of right, interlocutory appeals by permission, and collateral orders. ***In re W.H.***, 25 A.3d 330, 334 (Pa. Super. 2011), *appeal denied*, 24 A.3d 364 (Pa. 2011) (citation omitted). "A final order is any order that: (1) disposes of all claims and of all parties; or (2) is expressly defined as a final order by statute; or (3) is entered as a final order pursuant to subdivision (c) of this rule." Pa.R.A.P. 341(b). The October 9, 2013 order suspending Father's visitation with Child does not fall within Rule 341(b)'s definition of a final order because it does not dispose of all claims and parties, it is not defined as final by statute, and the trial court did not certify the order as final pursuant to Rule 341(c). ***See*** Trial Court Order, 10/9/13, at 1; Pa.R.A.P. 341(b). Additionally, this is not an interlocutory appeal as of right pursuant to Pa.R.A.P. 311 because an appeal from an order suspending parental visitation is not among the orders described by Rule 311. ***See*** Pa.R.A.P. 311. Nor is this an interlocutory

appeal by permission, as Father has not filed a petition seeking permission to appeal pursuant to Pa.R.A.P. 312 and 1311. ***See*** Pa.R.A.P. 312; Pa.R.A.P. 1311.

Attorney Slivinski claims that the October 9, 2013 order is an appealable order pursuant to the collateral order doctrine. Brief for Appellant at 10.[1] Under the Pennsylvania Rules of Appellate Procedure,

> A collateral order is [1] an order separable from and collateral to the main cause of action [2] where 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 claim will be irreparably lost.

Pa.R.A.P. 313(b).

Our Court has held that an order suspending visitation of a dependent child to a parent may qualify as a collateral order pursuant to Pa.R.A.P. 313. ***See In re J.S.C.***, 851 A.2d 189, 191-92 (Pa. Super. 2004) (citing ***In the Interest of Rhine***, 456 A.2d 608 (Pa. Super. 1983)). In ***Rhine*** the appellants appealed from the indefinite suspension of their visitation with their daughter. ***Rhine***, 456 A.2d at 609. In that case, this Court did not discuss whether such an order was appealable, although we did address the

[1] Attorney Slivinski has filed a petition to withdraw and brief pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009). While ***In re V.E.***, 611 A.2d 1267 (Pa. Super. 1992) extended the ***Anders*** principles to appeals involving the termination of parental rights, we know of no authority applying ***Anders*** to dependency matters. However, because we do not have jurisdiction to review the merits of this appeal, we do not need to address this issue.

merits of the appeal. ***See id.*** at 609-20. Although this Court did not analyze the appealability of the order at issue in ***Rhine***, we examined whether the order in ***Rhine*** was appealable in ***In re J.S.C.***, 851 A.2d 189, 191-92 (Pa. Super. 2004). In ***In re J.S.C.***, we explained,

> [I]t appears that our exercise of jurisdiction in ***Rhine*** was proper pursuant to the 'collateral order doctrine.'
>
> The 'collateral order doctrine' exists as an exception to the finality rule and permits immediate appeal as of right from an otherwise interlocutory order where an appellant demonstrates that the order appealed from meets the following elements: (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. ***See*** Pa.R.A.P. 313; ***see also Witt v. LaLonde***, 762 A.2d 1109, 1110 (Pa. Super. 2000) (citations omitted).
>
> In ***Rhine***, the parents appealed from the indefinite suspension of their parental visitation rights. Clearly, a parent has a protected interest in the visitation of their dependent child, which is too important to be denied appellate review when attacked. ***Rhine***, 456 A.2d at 612–13[.] Moreover, an order abridging a parent's right to visitation with his or her child is separable and collateral to a dependency action because it does not require an analysis of the merits of the underlying case. ***See, e.g.***, ***Vertical Res., Inc. v. Bramlett***, 837 A.2d 1193, 1199 (Pa. Super. 2003). Lastly, if appellate review of the issue were denied until a final judgment, the right of visitation could be irreparably lost because the parent's rights in the dependent child could be terminated via petition.

In re J.S.C., 851 A.2d at 191-92.[2]

In the present matter, the trial court set forth the following reasoning as to why it believed the October 9, 2013 order was appealable pursuant to the collateral order doctrine:

> It has been decided that an order reducing or affecting a parent's right to visitation in a dependency proceeding falls within a 'collateral order' exception for purposes of appeal. ***See*** [***Rhine***, 456 A.2d 608]. Clearly, a parent has a protected interest in the visitation of their dependent children, which is too important to be denied appellate review when attacked. ***See In re J.S.C.***, 851 A.2d at 191 (quoting from [] ***Rhine***, 456 A.2d at 612-13). In any case, an order which modifies or changes a parent's right to visitation with his or her child is separate and collateral to the underlying issues of the dependency case, as it does not require the appellate court to look at the merits of the dependency. ***See*** [***i***]***d.***; ***see, e.g.***, ***Vertical Res., Inc. v. Bramlett***, 837 A.2d 1193, 1199 (Pa. Super. 2003). Finally, if appellate review of the issue were denied until a final judgment, the right of visitation could be irreparably

[2] ***In re J.S.C.*** involved Monroe County Children and Youth Services's ("MCCYS") appeal from an order permitting visitation between J.S.C., a minor, and, S.C. ("Mother"), a prisoner at SCI–Muncy. ***Id.*** at 189. Ultimately, our Court held that "[MC]CYS does not possess a 'right' to prevent Mother from visiting with J.S.C. Accordingly, the order [MC]CYS purports to appeal from does not foreclose [MC]CYS from asserting an 'important right,' and, therefore, the order is not appealable via the collateral order doctrine." ***Id.*** at 192 (citation omitted). Thus, this Court quashed MCCYS's appeal. ***Id.***

We note that ***In re J.S.C.*** is clearly distinguishable from the instant matter because it deals with MCCYS's appeal from an order permitting visitation between parent and child. ***See In re J.S.C.***, 851 A.2d at 189, 192. We rely on ***In re J.S.C.*** for its analysis of ***Rhine*** under the collateral order doctrine. ***See id.*** at 191-92. ***Rhine*** does address an appeal from an order suspending parental visitation. ***See Rhine***, 456 A.2d at 609.

> lost because the parent's rights in the dependent child could be terminated via petition. ***See*** [***i***]***d.*** As this appeal is brought by [] Father and not by [CYS], the holding in ***In re J.S.C.*** is distinguishable.

Trial Court Opinion, 1/27/14, at 6.

We disagree with the trial court's analysis of the third prong of the collateral order doctrine as applied to this case. Here, the October 9, 2013 order from which Father appeals is, on its face, not a final order. The October 9, 2013 order states:

> [I]t is ORDERED, ADJUDGED AND DECREED that at the [m]otion to [s]uspend [v]isitation [h]earing, ***face[-]to[-]face visitation*** with [Child] and [Father] are SUSPENDED ***until further [o]rder of the [c]ourt***. If arrangements can be made with SCI [Forest] for video conferencing, visitation can occur at [CYS] for [Child] and [Father] through video conferencing.

Trial Court Order, 10/9/13, at 1 (emphasis added). The order indicates that Father's visitation with Child is suspended only until further order of court, which reflects the trial court's intention to re-examine this issue. ***See id.*** Likewise, the order only suspends Father's in-person visitation with Child. ***See id.*** According to the order, Father may still have visitation with Child through video conferencing if CYS and SCI Forest are able to make such arrangements. ***See id.***

The trial court's 1925(a) opinion likewise indicates that the suspension of Father's visitation with Child was only meant to be temporary. In fact, the trial court explained the following in its 1925(a) opinion:

> […] This [c]ourt order would naturally be entered with the understanding that physical visitation is suspended pending the occurrence of 'video[]conferencing visits.' If, however unlikely the scenario, [CYS] has been unsuccessful in securing video[]conferencing visitation between Father and [Child], it is presumed by this [c]ourt that [CYS] would have reverted to the regulatory minimum for purposes of physical visitation.
>
> To couch it another way, the [c]ourt's order did limit visitation[,] but it did not terminate visitation. […] By virtue of Father's appeal, it appears that Father is not aware of the nature of which his visitation rights are moving forward. […]

Trial Court Opinion, 1/27/14, at 11. The trial court's 1925(a) opinion shows that the suspension of Father's in-person visitation was dependent on his ability to have video conference visitation with Child. ***See id.*** Moreover, the trial court stated that it had the expectation that if CYS and SCI Forest were unsuccessful in arranging video conference visitation between Father and Child, then CYS would afford Father the regulatory minimum for in-person visitation with Child. ***See id.***

Furthermore, this case is distinguishable from ***Rhine***. That case involved the appellants' appeal from an order ***indefinitely*** suspending their visitation with their daughter, which this Court characterized as a "state action [that] threatens either a prolonged, indefinite or a permanent loss of a substantial private interest." ***Rhine***, 456 A.2d at 609, 612-13. Here, however, there is nothing that threatens a "prolonged, indefinite, or a permanent loss" of Father's parental visitation rights. ***See id.***; ***supra***, pp.

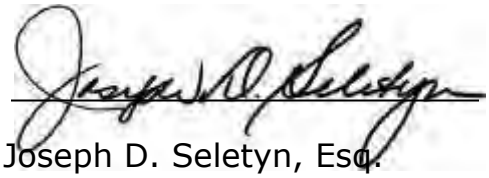
7-8. The October 9, 2013 order, on its face, indicates the trial court's intention to re-examine Father's visitation rights concerning Child. ***See*** Trial Court Order, 10/9/13, at 1. Likewise, the trial court's 1925(a) opinion shows that it only suspended Father's in-person visitation with Child temporarily. ***See*** Trial Court Opinion, 1/27/14, at 11. That suspension was dependent on Father receiving video conference visitation with Child. ***See id.*** If Father did not receive video conference visitation with Child, the trial court expected that Father would once again receive in-person visitation with Child. ***See id.*** This case does not represent the same indefinite suspension of parental visitation that occurred in ***Rhine***. ***See Rhine***, 456 A.2d at 609.

Accordingly, this appeal does not present a question where if review were postponed until final judgment in the case, the claimed right would be irreparably lost. ***See*** Pa.R.A.P. 313(b). "To invoke the collateral order doctrine, each of the three prongs identified in the rule's definition must be clearly satisfied." ***In re W.H.***, 25 A.3d at 335 (citation omitted). Therefore, this case is not appealable under the collateral order doctrine because this appeal does not satisfy the third prong of the Rule.

Based on the foregoing, we conclude that the order from which Father appeals is not a final order and is not appealable under the collateral order doctrine. Therefore, we lack jurisdiction to review Father's appeal.

Appeal quashed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/30/2014