

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

M.M.R.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	No. 2146 MDA 2013
	:	
F.M.B.	:	

Appeal from the Order Entered November 1, 2013,
in the Court of Common Pleas of Dauphin County
Civil Division at No. 2012-CV-2121

BEFORE: FORD ELLIOTT, P.J.E., OLSON AND STRASSBURGER,* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED JULY 14, 2014**

M.M.R. ("Father") appeals, *pro se*, the trial court's November 1, 2013 order that modified an earlier custody order dated May 15, 2013. We affirm.

We adopt the facts and procedural history as set out in an earlier memorandum decision by this court.

Mother [F.M.B.] and Father married and had two children: S.R., a son born in January 2006; and S.M.R., a daughter, born in December 2009 (collectively "Children"). On February 6, 2012, Mother petitioned for a PFA order against Father. Following this initial filing, the case has been extensively litigated. We recite only the factual and procedural history relevant to the instant custody appeal. On March 9, 2012, the trial court issued a six-month PFA order that, among other provisions, excluded Father from the marital home for thirty days, and granted him partial physical custody of Children every weekend from Friday after school through Sunday at 6:00 p.m. After several additional hearings, the trial court issued an

* Retired Senior Judge assigned to the Superior Court.

amended PFA order on April 25, 2012, that confirmed Father's partial custody time. See Trial Court Opinion ("T.C.O."), 7/12/2013, at 1-2.

On August 15, 2012, the trial court held a hearing to address Mother's petitions for civil contempt and for extension of the term of the PFA order. At that hearing, the trial court found Father in contempt of the PFA order for violating the custody provisions. The trial court extended the provisions of the PFA order for an additional year.

On October 5, 2012, the trial court held a conference to resolve concerns raised by the parties over the custody arrangement. When no agreement was reached, the trial court scheduled a hearing that resulted in a modified custody provision. The resulting October 11, 2012 order suspended Father's custody, provided Mother with primary physical custody, and ordered Father to undergo a psychological evaluation.

On December 14, 2012, Father filed a petition to modify the order, as well as a petition for contempt. On February 8, 2013, the parties appeared with counsel for a conference. After the parties proved unable to reach an agreement, the trial court held a hearing on May 14, 2013.

M.M.R. v. F.M.B., No. 1069 MDA 2013, unpublished memorandum at 2-3 (Pa.Super. filed December 20, 2013).

On May 15, 2013, the trial court entered the following order, in relevant part:

... IT IS HEREBY ORDERED that the October 11, 2012 custody order is MODIFIED as follows:

Effective immediately, Father [] is entitled to supervised visitation at the Harrisburg YWCA, after Father and Mother [], participate in the intake process of the YWCA Visitation Center and a

visitation schedule is set as the YWCA deems appropriate. Father shall speak only English during the supervised visit with the children to ensure that the supervisor is able to understand the conversations he has with the children.

Father, Mother and minor children [] shall submit to Dr. Kasey Shienvold, Psy.D, M.B.A. for a full custody evaluation and any therapeutic counseling that may be deemed recommended. Father, Mother and minor children must follow the recommendation of Dr. Shienvold with respect to continued treatment or counseling. Upon completion of the evaluation both Father and Mother are urged to follow the recommendations of Dr. Shienvold as to Father's future contact with the children.

Father shall bear the initial financial burden of paying for the services of Dr. Shienvold. Once the evaluation and any services that follow are completed, and assuming that Mother has been paid the full amount of child support that she would be entitled to by that time, Father may file an appropriate motion with this Court seeking a contribution from Mother for the cost of the evaluation and/or treatment. . . .

The minor child, S.M.R., shall continue participating in the Family Based Services he is currently receiving

Order, 5/15/13.

Father appealed the trial court's May 15, 2013 order. On December 20, 2013, this court affirmed the trial court's order in a memorandum decision. ***M.M.R. v. F.M.B., supra***. On July 9, 2013, Father filed another petition for modification of an existing custody order. In his ***pro se*** petition, Father sought modification of "the May 15, 2013 order or the prior order of October 11, 2012 to allow him to see and interact with his

[] children.” A custody conference occurred on August 16, 2013, at which time the parties were unable to come to an agreement with respect to the custody arrangement. The parties appeared for a hearing on October 1, 2013, and October 31, 2013. On November 1, 2013, the trial court entered the following order:

This court’s Order of May 15, 2013 shall be modified to allow immediate supervised visitation between Father and the minor children at any appropriate facility or agency with each party responsible for fifty percent (50%) of costs for such services. All other provisions of the May 15, 2013 order regarding supervised visitation shall remain in effect.[Footnote 5]

[Footnote 5] To the extent that the Superior Court determines that issues raised in this appeal relate to this Court’s May 15, 2013 Order, we hereby incorporate by reference our trial court opinion submitted in compliance with Pa.R.A.P. 1925(a) filed to Docket No. 1069 MDA 2013.

Mother and Father shall continue to pursue and complete a full custody evaluation as outlined in the order of May 15, 2013. With respect to payment of the cost of such evaluation, the parties shall submit a copy of their 2012 or latest federal income tax return to this court in order for this court to make an initial determination on the ability to pay. If either party did not file a federal tax return for 2012, a summary of income and expenses should be submitted. (Federal tax return is meant to include any corporate, partnership or business returns as well as individual returns). Should testimony become necessary on the question of ability to pay, an appropriate hearing will be scheduled. Once the full custody evaluation is concluded and submitted to

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this court, a hearing will be scheduled to resolve any and all outstanding custody issues.

The minor child [S.M.R.] shall continue participating in the services outlined in the order of May 15, 2013.

The Petition for Contempt filed by Defendant [F.M.B.] has been withdrawn by Defendant and is therefore Dismissed.

Trial court opinion, 1/30/14 at 4.

Father filed an appeal with this court on November 29, 2013, from the November 1st order. Father did not file his concise statement of errors complained of on appeal with his notice of appeal, in violation of Pa.R.A.P. 905. It was not until December 20, 2013, that Father filed his statement of errors. Father lists 12 alleged errors that cover 8 pages. Father recites facts and references witnesses from past hearings that have nothing to do with the petition for modification filed on July 9, 2013. In fact, the statement of errors is basically a rambling recitation of Father's disagreements with the findings of the trial court. While this court is willing to construe liberally materials filed by a *pro se* litigant, *pro se* status generally confers no special benefit upon an appellant. ***Commonwealth v. Maris***, 629 A.2d 1014, 1017 n.1 (Pa.Super. 1993). As such, "a *pro se* litigant must comply with the procedural rules set forth in the Pennsylvania Rules of Court." ***Commonwealth v. Lyons***, 833 A.2d 245, 252 (Pa.Super. 2003).

In his brief, Father lists six issues for our consideration. Of those six issues, the only issue preserved and relevant to this appeal is whether the trial court erred when it did not consider the custody factors in accordance with 23 Pa.C.S.A. § 5328. Father is correct that a trial court must analyze the Section 5328(a) custody factors when making an **award of custody**. However, this court has explained that a discussion of each factor is not necessary where the trial court does not change the underlying award of custody but, rather, modifies a discrete custody-related issue. **M.O. v. J.T.R.**, 85 A.3d 1058, 1063 (Pa.Super. 2014). The court in **M.O.** provided the following explanation:

The plain language of Section 5328(a) requires that the sixteen enumerated factors be considered when the court is determining a child's best interest for the purpose of making an award of custody. 23 Pa.C.S.A. §§ 5323(a), 5328(a). By contrast, while the court must consider the child's best interest when modifying a custody order, the modification provision does not refer to the sixteen factors of Section 5328. 23 Pa.C.S.A. § 5338(a). The cases in which we have applied Section 5328(a) have involved the award of custody as defined by Section 5323(a) or have involved a modification that also entailed a change to an award of custody.

Id. at 1062 (footnote omitted).

Here, as set forth previously, the trial court's order of November 1st modified the May 15th order in three ways. First, the November 1st order permitted supervised visitation "at any appropriate facility or agency," whereas the May 15th order allowed for supervised visitation only at the

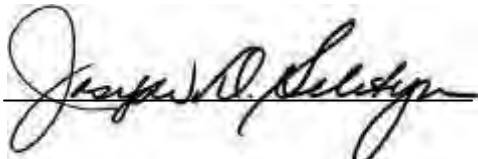
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Harrisburg YWCA. Second, the November 1st order directed that each party was now responsible for 50 percent of the costs for such services. Third, the November 1st order directed the parties to submit a copy of their latest federal tax return to determine their ability to pay for the custody evaluation whereas the May 15th order placed the financial burden of paying for the evaluation on Father. Clearly, none of these slight modifications altered the underlying award of custody. Thus, rather than analyze the myriad custody factors codified at Section 5328(a), the trial court was only required to determine that the modification that it did order was in the Children's best interests pursuant to Section 5338(a). **See M.O., supra** at 1063. Instantly, we are satisfied that the trial court considered the children's best interests, and that the court did not abuse its discretion in making minor, mostly financial, adjustments in this matter.¹

Accordingly, we conclude that Father has not raised any claim that entitles him to relief. We affirm the order of November 1, 2013.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/14/2014

¹ Indeed, the trial court specifically addressed the children's best interests. (**See** trial court opinion, 1/30/14 at 13-18.)