

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

M.J.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
v.	:	
S.J.,	:	
Appellant	:	No. 747 WDA 2013

Appeal from the Order entered April 2, 2013,
Court of Common Pleas, Allegheny County,
Civil Division at No. FD-07-009307-004

M.J.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
v.	:	
S.J.,	:	
Appellee	:	No. 925 WDA 2013

Appeal from the Order entered April 2, 2013,
Court of Common Pleas, Allegheny County,
Civil Division at No. FD-07-009307-004

BEFORE: DONOHUE, OTT and MUSMANNO, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED JULY 16, 2014

S.J. (“Father”) appeals *pro se* from the April 2, 2013 order entered by the Court of Common Pleas of Allegheny County following its partial grant of exceptions filed by M.J. (“Mother”) and its denial of Father’s cross-exceptions to the hearing officer’s report and recommendation of November 16, 2012. Mother filed a cross-appeal from the same order. Upon review, we affirm.

This appeal is one of many in this highly contentious action. Mother and Father married on February 5, 1994, separated in 2007, and divorced on April 13, 2010. They have two children, a son who turned 18 in August of 2012 and a daughter who remains a minor. There have been numerous filings in the lower court and according to the trial court, this appeal is the fourteenth of its kind. The matter before us stems from the November 14, 2012, complex support hearing before Hearing Officer Peggy Ferber regarding Father's petition to modify his child support obligation and Mother's petition for counsel fees and costs associated with Father's previous petition to modify his child support obligation. Mother represented herself on her petition for counsel fees and costs and was represented by the County Solicitor on Father's petition for modification; Father proceeded *pro se* in both matters. Both Mother and Father testified and neither called any other witnesses. On November 16, 2012, Hearing Officer Ferber filed a recommendation and report, which included the following:

- Father is to pay Mother \$1,673.76 in child support for their daughter;
- Father is to provide health insurance and pay 81 percent of unreimbursed medical, dental and vision expenses, with Mother to pay the first \$250 of such expenses per year;
- Father is to pay expenses associated with their daughter's participation with the Indian Cultural Association of Pittsburgh ("ICAP");
- Mother is to pay the first \$3,600 of their daughter's other extracurricular activities, after which Mother pays 19 percent and Father pays 81 percent of such expenses;

- Father's overpayment of child support of \$3,143.63 as of November 15, 2012 was set at \$0, with that money to go towards the award of counsel fees of \$12,000, leaving \$8,856.37 owed by Father to Mother at a rate of \$400 per month;
- Father's request that the court find his son was self-emancipated prior to his eighteenth birthday was denied.

Both parties filed exceptions before the trial court. On April 2, 2013, the trial court granted Father's exception relating to Hearing Officer Ferber's failure to decide Father's request to claim their daughter as a dependent beginning in 2012. The trial court ordered that Father could claim her as a dependent for tax year 2012 only. The trial court granted Mother's exception regarding the propriety of installment payments for the attorney's fees and costs awarded to Mother, and ordered Father to pay the \$12,000 (reduced to \$8,856 by Father's overpayment of support) in one lump sum within 30 days of its order. The trial court also granted Mother's exception pertaining to Hearing Officer Ferber's failure to include a \$400,000 distribution of retained earnings from Father's Subchapter S Corporation in 2011. The trial court's order required the following:

- Father must pay child support for their daughter in the amount of \$1,931.60 per month;
- Father is responsible for 88% of their daughter's unreimbursed medical, dental and visions expenses after the first \$250 paid by Mother each year;
- Father is responsible for all ICAP-related expenses; and
- Father is responsible for 88% of other extracurricular activities after the first \$3,600 paid by Mother each year.

The court otherwise denied all exceptions filed by Mother and Father.

Both Father and Mother filed timely notices of appeal from the trial court's order. On June 28, 2013, this Court consolidated the appeals *sua sponte* pursuant to Pa.R.A.P. 2136.

We begin by addressing the one issue raised on appeal by Mother:

Did not the lower court err in denying an exception interposed by [Mother] contending that the hearing officer erred in failing to deviate from support guidelines based upon a substantial differential in the parties' separate property interests, Mother's fixed obligations concerning the parties' child's college education, at Carnegie Mellon University and the established standard of living of the parties and their children?

Mother's Brief at 6.¹

We review a support order according to the following standard:

When evaluating a support order, this Court may only reverse the trial court's determination where the order cannot be sustained on any valid ground. We will not interfere with the broad discretion afforded the trial court absent an abuse of the discretion or insufficient evidence to sustain the support order. An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be either manifestly unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused. In addition, we note that the duty to support one's child is absolute, and the purpose of child support is to promote the child's best interests.

Kimock v. Jones, 47 A.3d 850, 854 (Pa. Super. 2012) (citations omitted).

¹ This is the only brief filed by Mother before this Court. She did not file a responsive brief in Father's appeal.

The trial court found that Hearing Officer Ferber did not err by failing to deviate from the support guidelines based upon Mother's provision of funds to help pay the college tuition for the parties' adult son. Trial Court Opinion, 7/15/13, at 4. Relying on Rule of Civil Procedure 1910.16-5(b), Mother contends that the trial court was incorrect. That Rule states, in relevant part: "In deciding whether to deviate from the amount of support determined by the guidelines, the trier of fact shall consider: (1) unusual needs and unusual fixed obligations; [...] (5) the relative assets and liabilities of the parties; [...] and] (7) [the] standard of living of the parties and their children[.]" Pa.R.C.P. 1910.16-5(b)(1), (5), (7). According to Mother, their son's college tuition is an unusual need and unusual fixed obligation that requires deviation from the support guidelines as a matter of law. Mother's Brief at 11.

Mother recognizes that in ***Horst v. Horst***, 593 A.2d 1299 (Pa. Super. 1991), this Court rejected the father's contention that his payment of tuition for his older child required a downward deviation for support he was paying for his minor child.² Mother's Brief at 11 (citing ***Horst***, 593 A.2d at 1300-

² Mother refers to ***Horst*** as a "plurality opinion." Mother's Brief at 11. A plurality opinion is one that "does not command a majority of the votes," and therefore is not precedential. ***In re C.B.***, 861 A.2d 287, 297 n.6 (Pa. Super. 2004). On the other hand, "an opinion has a binding effect whenever a majority of participating justices join." ***Commonwealth v. Barnett***, 25 A.3d 371, 374 (Pa. Super. 2011) (*en banc*), *rev'd on other grounds*, 84 A.3d 1060 (Pa. 2014). Our review of the ***Horst*** decision reveals that it was a three-judge-panel decision, with two judges representing the majority and

01). Mother attempts to differentiate her circumstances from those in **Horst** because she was requesting an **upward** deviation, as opposed to the downward deviation requested by the father in **Horst**. **Id.** Furthermore, the college tuition in this case was for the parties' son, whereas in **Horst**, it was for the father's child from another relationship. **Id.** We find these slight factual distinctions do not change the required outcome. The holding in **Horst** is clear: A parent's voluntary payment of college tuition for a child who is not subject to the support order is irrelevant in making an award for support of a minor child. **Id.** at 1300. "[The] desire and willingness to continue that child's education is admirable and desirable, but it cannot diminish [a parent's] primary duty to provide for the dependent children before reaching into the financial pool to educate the older child." **Id.**

Pursuant to **Horst**, Mother's voluntary payments for the parties' adult son's college tuition is not a consideration when determining the amount of support owed for the parties' minor daughter. Accordingly, we find no abuse of discretion in the trial court's decision.

We now turn to Father's appeal. He raises 17 issues for our review:

1. Did the [trial c]ourt abuse its discretion and commit [an] error of law by including asset distribution as income for [Father] in determining [the] child support payment? Did the [trial c]ourt abuse its discretion by assuming the role of a CPA/tax expert in making such determination when the H.O. overruled such claim by the

one judge concurring. Thus, her characterization of the opinion as a plurality is incorrect.

County Solicitor, the [Mother] failed to have a forensic expert testify to such matter and the County Solicitor is on record [in the] hearing transcript admitting that he lacked knowledge and experience on handling such matters and asked the H.O. to make the determination? [The trial c]ourt ignored such references to transcript provided in the brief to exceptions. [The trial c]ourt made [a] similar major financial error when it claimed Father's gross business income as his personal net income which is on record in the opinion for [a]ppeal #1101 WDA 2010, by failing to recognize that businesses have expenses such as employee payroll, office rental expense, travel expenses and telephone/internet expenses. The [trial c]ourt previously penalized Father for not bringing an expert to testify on [a] tax refund issue raised in appeal #838 WDA 2010 but failed to apply same criteria to such failure by [Mother], showing prejudice against [Father].

2. Did the [trial c]ourt abuse its discretion and commit [an] error of law by issuing the April 2, 2013 [o]rder that is arbitrary, not based on facts and constitutes [an] abuse of judicial power motivated to punish Father for exercising his constitutional rights to appeal, seeking recusal of the judge and prejudice in favor of the Mother?
3. Did the [trial c]ourt abuse its discretion and err by failing to rectify errors by [the] H.O. with [*sic*] using certain income sources for 2011 and others for 2012, and by failing to adjust Mother's income for [the] correct amount earned before she stopped working and for income from dividends and interest just as it was done for [Father] and the [Mother] had [not] filed any objections to such exception?
4. Did [the trial c]ourt abuse its discretion and err by failing to take three years['] average income of [Father] in establishing the income for support payments? The H.O. is on record for [*sic*] agreeing with [Father] due to fluctuation in his

income as previously argued by [Mother] and endorsed by [the trial c]ourt[’s] order requiring discovery of three years [of] financial records. Again, [Mother] had not filed any rebuttal to this exception claimed by the [Father].

5. Did [the trial c]ourt abuse its discretion and commit [an] error of law by ignoring evidence that Mother was in contempt of [the] PACSES Order of December 2008 which required her to inform the [trial c]ourt of [a] change in support expenses that would result in [a] material reduction in support payment for the Father? Mother experienced a material reduction in such expenses starting November 2010, when she was no longer making mortgage payments and the amounts for utilities, real estate taxes, vacation, homeowners association dues, etc. were about 50 percent of [the] amount claimed at [the] October 2009 hearing that established support payment based on Melzer [*sic*]. The H.O. erred in making recommendations on [the] false belief that this matter had been litigated with appeals to the Superior Court and there was no order requiring her to address such matter. Thereafter, based on [the] H.O.[’s] recommendations, when Father filed [a] petition to seek [a] hearing on such contempt of [the] PACSES [o]rder, the [trial c]ourt abused its discretion by denying Father’s petition on such matter on the grounds that it should have been raised at the November 14, 2012 hearing, making it a circular argument and hence the appeal. [The trial c]ourt was ready to incarcerate Father in April 2011 on delay in support payments per [the] PACSES [o]rder, but denied even a hearing on Mother’s contempt with [the] same PACSES [o]rder, showing prejudice against the Father.
6. Did the [trial c]ourt abuse its discretion by failing to declare that [the parties’ son] was emancipated in February 2012 or at least by May 2012? [The c]ourt failed to recognize that [the parties’ son] was earning over \$5,000 per month

starting May 2012 and is on record claiming to be mature [and] to make important decisions relating to his relationship with Father. [The c]ourt recognized such maturity of [the parties' son] at age 16 in [its] [o]pinion to appeal #726 WDA 2011. The [trial c]ourt with help from Mother is destroying son's relationship with [F]ather. [The trial c]ourt[']s record shows that Mother refused to provide child support funds to [the parties' son] for college (when he sought help from Father), while Mother had spent over \$200,000 in counsel fees and [was] living off [the] children's payment. [The trial c]ourt failed to recognize [that the parties' son] was earning more than [M]other's earning capacity and the support payments from Father.

7. Did the [trial c]ourt abuse its discretion by limiting Father's ability to take [the parties' daughter] as [a] dependant [*sic*] for tax matters only for 2012? Father provides almost [one] hundred percent of support for the child and should be allowed to do so in future until further change in [the] support order. The [trial c]ourt claims that Father is litigious and yet the [trial c]ourt is issuing orders requiring [the] parties to come to [c]ourt again and again even when [Mother] did not object or file rebuttal to this request.
8. Did the [trial c]ourt abuse its discretion by allowing [the] County Solicitor to represent Mother, when documents show that Mother has [a] net worth of over \$800,000 and [is] not qualified to receive tax payer[-]funded legal help from the Commonwealth, and that even Court Reporters have complained [about] getting [a] reduced fee for transcript [*sic*] seeing that Mother has so much money?
9. Did the [trial c]ourt abuse its discretion by not allocating [the] Master's fee equally between [the] parties even when the [Mother] sought to expand the trial to a full day hearing with the

Master, and the [Mother] had not filed any rebuttal to such exception by the [Father]?

10. Did the [trial c]ourt continue to abuse its discretion by issuing orders with errors[,] by ignoring Father's request for correction of arrears, by threatening to suspend Father's driver['s] license and reporting to tax authorities? Even after Father obtained [the c]ourt [o]rder of March 28, 2013[,] which stated that no enforcement actions would be issued for 30 days after [the] audit report is shared with the parties, the [trial c]ourt issued amended orders and enforcement actions in violation of its own [o]rder. This is a complete mockery and lack of competency by [the trial] court in handling support matters, and imposing [a] hardship on Father [by] having to get such errors rectified.

ORDER ON COUNSEL FEES AWARD

1. Did the [trial c]ourt abuse its discretion and err by awarding counsel fees when the hearing transcript shows that [Mother] failed to have the counsel and forensic expert testify about the validity of the legal fees and be available for cross[-]examination by the [Father]?
2. Did [the] [trial c]ourt abuse its discretion and commit [an] error of law by awarding counsel fees when the hearing transcript shows [the] H.O. acknowledged that [Mother] had failed to make the attorney and expert available for cross[-]examination and that [Mother]'s claims were hearsay.
3. Did [the trial c]ourt abuse its discretion and commit [an] error of law by ignoring citation[s] of Superior Court decisions provided in [Father]'s brief for oral argument which state 'in almost every setting where important decisions turn on questions on fact, due process requires an opportunity to confront and cross-examine adverse witnesses,' and 'where a party requests and is denied an opportunity

to cross-examine the author of a report, a remand is ordinarily required' and the [Mother] failed to make the counsel and expert available?

4. Did the [trial c]ourt abuse its discretion by admitting exceptions filed by [Mother] when [Mother] had failed to make a deposit of \$50 for transcript [*sic*] required with such exceptions per Local Rule #1920, provided to prose [*sic*] litigants as part of instructions for filing exceptions?

5. Did the [trial c]ourt abuse its discretion by drafting [a] petition and proposed order for reimbursement of counsel and expert fees[,] thus providing legal service to Mother?

6. Did the [trial c]ourt abuse its discretion by admitting a pretrial statement not filed by [Mother], who is prose [*sic*] and did the [trial c]ourt err by issuing one order for support modification and counsel fees knowing that these were two separate hearings and the [Mother] is prose [*sic*] on counsel fees?

7. [The trial c]ourt erred by not reducing the amount by payments already made to [Mother] directly by [Father] leading to erroneous amounts in support and PACSES orders.

Father's Brief at 5-7.³

As his first issue on appeal, Father asserts that the trial court erred by including \$400,000 of retained earnings as income. Father's Brief at 10-11. The trial court found that the \$400,000 of retained earnings was income

³ We reordered the issues for ease of disposition. Our standard of review for the issues raised by Father on appeal remains the same – we review the trial court's decision for an abuse of discretion. **Kimock**, 47 A.3d at 854.

pursuant to Rule of Civil Procedure 1910.16-2(a)(8),⁴ which “requires the court to consider as income any form of payment due and collectible by an individual regardless of source.” Trial Court Opinion, 7/15/13, at 4. Father argues that this was error, as “the distribution from [an] S Corp[oration] business to [a] personal account is not income but [the] transfer of retained earnings made up of income from prior years and taxed in the year it was earned.” **Id.** at 11. He states that counting this as income “amounts to giving a second, third and on and on bites of the same apple depending on [the] number of years that retained earnings was [*sic*] accumulated in [the] business account.” **Id.** (emphasis in the original).

This issue was previously decided by our Court in **Fennell v. Fennell**, 753 A.2d 866 (Pa. Super. 2000). In **Fennell**, the father appealed from the trial court’s order that included retained earnings from a Subchapter S Corporation as income. After reviewing existing precedent on the issue, we stated:

Our jurisprudence is clear, therefore, that the owner of a closely-held [*sic*] corporation cannot avoid a support obligation by sheltering income that should be available for support by manipulating salary, perquisites, corporate expenditures, and/or corporate distribution amounts. By the same token, however, we cannot attribute as income funds not actually available to or received by the party.

Id. at 868.

⁴ The trial court erroneously referred to this as Rule 1916.16 2(a)(8). **See** Trial Court Opinion, 7/15/13. However, it correctly stated the content of Rule 1910.16-2(a)(8).

The trial court in **Fennell** had determined that the father did not have a controlling interest in the corporation and thus had no control over the decision of whether or not he would receive a distribution. **Id.** at 869. It further found “that retaining earnings had been a long-standing practice of the corporation and that the decision to retain earnings had been a business decision.” **Id.** There was no evidence that the corporation retained the funds to help Father shield income from his support obligation. Based upon the evidence presented below, we concluded that the trial court erred by including Father’s retained earnings from the corporation as income for calculating his support obligation. **Id.** We cautioned, however, that our holding “does not create a presumption that corporate retained earnings *per se* are to be excluded from available income for purposes of support calculations.” **Id.** Rather, “in situations where the individual with the support obligation is able to control the retention or disbursement of funds by the corporation, he or she still will bear the burden of proving that such actions were ‘necessary to maintain or preserve’ the business.” **Id.**

The case at bar is factually distinguishable from **Fennell**. Here, Father is the sole owner of the Subchapter S Corporation, S.J. Consulting. N.T., 11/14/12, at 141. He controls the assets of the corporation. **Id.** at 144. Father presented no evidence below that indicates the retention of earnings in 2011 were necessary to maintain or preserve the business. Based upon our holding in **Fennell**, we conclude that Father failed to show that the

\$400,000 in retained earnings should not be included as income. As such, the trial court did not abuse its discretion in this regard.

As his second issue on appeal, Father contends that the trial court's decision was not based on the facts, was meant to punish Father for appealing the trial court's prior orders, and that the trial court is prejudiced in Mother's favor. Father's Brief at 16-17. Father states that case law required the trial court to conduct an independent review of the hearing officer's recommendations and that the trial court failed to comply with this mandate. ***Id.*** at 17 (citing, *inter alia*, ***Neil v. Neil***, 731 A.2d 156, 159 n.4 (Pa. Super. 1999)). We have reviewed the trial court's decision and find there is no support for this claim. To the contrary, as the discussion of the first issue reflects, the trial court conducted a thorough review, identifying income for Father that Hearing Officer Ferber failed to account for in her report and recommendation.

Father further cites to the trial court's treatment of testimony and evidence in other matters between the parties, stating that it reveals the trial court's bias against him and prejudice in favor of Mother. ***Id.*** at 17. He points to nothing in the matter presently before us on appeal to suggest that the trial court was biased against him or prejudiced in favor of Mother, nor do we see any indication that this is the case.

We find no merit to Father's arguments raised in support of this issue. As such, we conclude there was no abuse of discretion by the trial court in the manners alleged.

Father raises an additional 15 issues for our review. In a clear violation of our Rules of Appellate Procedure, Father has failed to include citations to any authority in support of his remaining arguments. **See** Pa.R.A.P. 2119(a) ("The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part--in distinctive type or in type distinctively displayed--the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent."), (b) ("Citations of authorities must set forth the principle for which they are cited.").⁵

In an appellate brief, parties must provide an argument as to each question, which should include a discussion and citation of pertinent authorities. This Court is neither obliged, nor even particularly equipped, to develop an argument for a party. To do so places the Court in the conflicting roles of advocate and neutral arbiter. When an appellant fails

⁵ Father cites to Allegheny County Local Rule 1920.12(j) in support of his fourth issue from the order awarding Mother attorney's fees. Our research reveals that Rule 1920.12 has no subsection (j) and does not pertain to the administrative dismissal of a *pro se* litigant's exceptions based upon her failure to obtain transcripts. Rather, that rule addresses the contents and filing of a complaint. **See** Pa. R. ALLEGHENY CTY CIV FAM Rule 1920.12. We have attempted to locate the local rule to which Father intends to cite, but have found none that states the failure to obtain transcripts results in an administrative dismissal of the litigant's exceptions. Thus, although Father includes a citation to an authority, it does not stand for the proposition for which he cites it. **See** Pa.R.A.P. 2119(b).

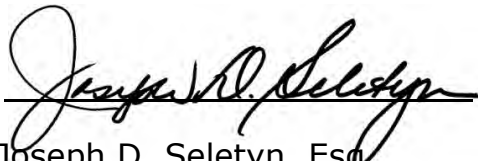
to develop his issue in an argument and fails to cite any legal authority, the issue is waived.

In re S.T.S., Jr., 76 A.3d 24, 42 (Pa. Super. 2013), *appeal denied*, ___ A.3d ___, 2014 WL 2011712 (Pa. May 2, 2014).

Although Father is *pro se*, he “is not entitled to any particular advantage because he lacks legal training. [A]ny layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing.” ***Kovalev v. Sowell***, 839 A.2d 359, 367 n.7 (Pa. Super. 2003) (citation and quotation omitted). Based upon Father’s failure to cite to any pertinent authority in support of his remaining claims, we conclude that they are waived.⁶

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/16/2014

⁶ We note that Father’s appellate brief contains various other defects, including violations of Rules 124(a)(3) (“Text must be double spaced”), 124(a)(4) (“Lettering shall be on only one side of a page”), and 2111(a)(3) (no substantive statement of the scope and standard of review included). **See** Pa.R.A.P. 124(a)(3), (4), 2111(a)(3). We remind Father that the Rules of Appellate Procedure are mandatory, and that briefs must conform to the requirements of the Rules. Failure to do so may result in the appeal being quashed or dismissed. Pa.R.A.P. 2101.

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