

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

N.W.,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant		
v.		
J.S.,		
Appellee		No. 1014 WDA 2015

Appeal from the Order May 28, 2015
In the Court of Common Pleas of Allegheny County
Family Court at No(s): FD -15-8286

N.W.,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant		
v.		
T.F.,		
Appellee		No. 1015 WDA 2015

Appeal from the Order Entered May 28, 2015
In the Court of Common Pleas of Allegheny County
Family Court at No(s): FD-12-002854

BEFORE: BENDER, P.J.E., SHOGAN, and MUSMANNNO, JJ.

MEMORANDUM BY SHOGAN, J.:

FILED FEBRUARY 02, 2016

N.W. ("Mother") appeals from the orders entered on May 28, 2015, by the Allegheny County Court of Common Pleas, denying her petitions to proceed *in forma pauperis* ("IFP") with regard to her complaints for confirmation of custody/complaints for custody of her two minor children,

T.H., a son born in November of 2011, and K.H.S., a daughter born in April of 2015 (collectively, the "Children"). After careful review, we vacate the orders denying IFP status and remand.

The factual background and procedural history of these appeals follows. On May 15, 2015, Mother, acting *pro se*, filed complaints for confirmation of custody/complaints for custody against T.F., regarding T.H., and against J.S., regarding K.H.S. Along with the complaints, Mother filed petitions to proceed IFP on her complaints and attached the required affidavits.

On May 28, 2015, the trial court held an IFP hearing with regard to Mother's IFP request, at which Mother appeared, *pro se*. On the same date, the trial court denied Mother's petitions to proceed IFP but did not enter the complaints and the orders denying Mother's petitions for IFP status on its docket.

On June 26, 2015, Mother filed a notice of appeal along with a concise statement of errors complained of on appeal as to the orders denying her petitions for IFP status. On that same date, Attorney Alison M. Kilmartin entered her appearance as attorney for Mother for purposes of Mother's challenge to the denial of IFP status. Attorney Kilmartin filed a petition and certification for Mother to proceed IFP on appeal. In the petition, Attorney Kilmartin stated, "Pursuant to Pennsylvania Rule of Appellate Procedure 552(d), I certify that [Mother] is indigent and that I am providing free legal

service to [Mother].” **See** Applications and Certifications to Proceed *In Forma Pauperis* on Appeal. On June 26, 2015, the trial court granted Mother’s petitions to proceed IFP on appeal.¹

On June 26, 2015, the trial court also entered orders directing its department of court records to “accept a copy of the Petition for Leave to File In Forma Pauperis: Request for Waiver of Filing and Program Fees and order dated May 28, 2015 as the original and the Complaint for Conf[irmation] of Custody without a Generations scheduling order” in the matters involving both Children. Order, 6/26/15. Consequently, on that same date, the trial court entered on its docket Mother’s complaints and petitions for leave to proceed IFP in litigating the complaints that she previously had filed and presented to the court on May 28, 2015.

On September 4, 2015, this Court granted Mother’s motion to consolidate her appeals. On September 16, 2015, Attorney Nicholas Michael Faas entered his appearance on behalf of Mother.

In her brief on appeal, Mother raises one issue:

Did the trial court err in denying [Mother’s] petition to proceed *in forma pauperis* to seek custody and confirmation of custody for her children, despite her monthly income of only \$1,800, substantial child care for multiple children and housing obligations, and that she was at the very end of nine weeks of unpaid maternity leave when she filed the Complaints for

¹ Inexplicably, the trial court granted Mother’s petition to proceed IFP on appeal. The record contains no additional information regarding the basis for the trial court’s decision.

Confirmation of Custody/Complaints for Custody against J.S. and T.F. because no current custody orders exist?

Mother's Brief at 4.

Mother argues that the trial court improperly denied her petition to proceed IFP. Mother asserts that there are no income guidelines for granting an IFP petition and that a litigant is entitled to IFP status if she cannot afford to pay for the litigation. Mother's Brief at 8-9. Mother claims that she cannot afford to pay for her custody proceedings. **Id.** at 11-13. Further, Mother maintains that the trial court did not afford her a proper evidentiary hearing. **Id.** at 9-10. She argues that, although the trial court held a hearing, it was a hearing in form, not substance. **Id.** Therefore, Mother contends that she is entitled to proceed IFP based on her financial situation. **Id.** at 11.

We first note that this issue is properly before us as our Supreme Court has held that "an order denying *in forma pauperis* status is a final, appealable order." **Amrhein v. Amrhein**, 903 A.2d 17, 19 (Pa. Super. 2006) (quoting **Grant v. Blaine**, 868 A.2d 400, 402 (Pa. 2005)). Furthermore, "[i]n reviewing a trial court's resolution of an application to proceed *in forma pauperis*, we reverse only if the court abused its discretion or committed an error of law." **Id.** at 19. An abuse of discretion is not merely an error in judgment but requires a finding of bias, partiality, prejudice, ill will, manifest unreasonableness, or misapplication of law. **Commonwealth v. Tickel**, 2 A.3d 1229, 1233 (Pa. Super. 2010).

It is well established that “[a] party who is without financial resources to pay the costs of litigation is entitled to proceed *in forma pauperis*.” Pa.R.C.P. 240(b). That party is required to file a petition and an affidavit describing in detail the inability to pay the costs of litigation. Pa.R.C.P. 240(c). The rule expressly prescribes that the affidavit requires, *inter alia*, the following information from the applicant: present or past salary and wages, other types of income within the preceding year, other contributions for household support, property owned, available assets, debts, and obligations, and persons dependent for support. Pa.R.C.P. 240(h).

This Court has explained the following regarding IFP petitions:

The mere filing of a praecipe for IFP status will not automatically establish the petitioner’s right to proceed in that status. The court must satisfy itself of the truth of the averment of inability to pay. If it believes the petitioner’s averments, there is no requirement that the court conduct an evidentiary hearing. The trial court has considerable discretion in determining whether a person is indigent for purposes of an application to proceed *in forma pauperis*. However, in making that determination, it must focus on whether the person can afford to pay and cannot reject allegations contained in an application without conducting a hearing.

Amrhein, 903 A.2d at 19-20.

In this case, Mother filed two petitions to proceed IFP. IFP Petition, 5/15/15, at 1-5, Case Number FD 15-8286; IFP Petition, 5/15/15, at 1-4, Case Number FD 12-2854. With each of those petitions, Mother filed a “verified financial statement” in which she provided information on her

income, assets, dependents, debts, and obligations. **Id.** at 3-5; **Id.** at 3-4.² As such, Mother made a *prima facie* showing that she could not afford legal counsel. Thus, the trial court could not reject these allegations without conducting a hearing. **Amrhein**, 903 A.2d at 20.

The record reflects that on May 28, 2015, a proceeding was conducted on Mother's request to proceed IFP. While the trial court refers to the proceeding as an evidentiary hearing, we cannot agree that it was sufficient for purposes of Pa.R.C.P. 240. A review of the hearing transcript reveals the entirety of the proceeding consisted of the following exchange:

THE COURT: [Mother]? She needs to be sworn.

(Oath administered.)

THE COURT: Okay. You are currently – You say you have no income at all right now?

[MOTHER]: No. I just started back working off maternity leave. I started back on the 18th.

THE COURT: You were on maternity leave? When did you start back to work?

[MOTHER]: The 18th.

THE COURT: of –

² At Case Number FD 12-2854, it appears that the first page of the verified financial statement was inadvertently omitted. The remainder of the information provided by Mother on this verified financial statement is identical to that provided in the verified financial statement at Case Number FD 15-8286.

[MOTHER]: This month, May.

THE COURT: Of May? And what is – Your income is \$11.91 an hour; is that correct?

[MOTHER]: Yes.

THE COURT: Okay. And there's you and two children in your household?

[MOTHER]: Yes.

THE COURT: That's going to put you over the income guidelines, so you're going to – You certainly can file your action, but you can't file it without payment of fees. Is this for the new baby or the other one?

[MOTHER]: Both.

THE COURT: Both? Same father?

[MOTHER]: No.

THE COURT: This is [T.F.]. That's the older one; right? [F.]?

[MOTHER]: Yes.

THE COURT: I don't have another one. Oh, here it is. Yes.

(Pause)

THE COURT: Okay. Good luck to you. He'll give you instructions.

* * *

(Whereupon, the proceedings were concluded.)

N.T., 5/28/15, at 2-3.

Thus, at the time it ruled on Mother's IFP petition, the trial court considered only Mother's income and household dependents measured against income guidelines in determining Mother's eligibility for IFP status.

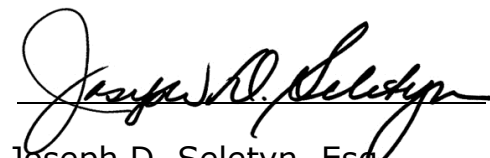
The trial court did not afford Mother an opportunity to present evidence of her costs or living expenses, nor did the court inquire as to these liabilities and obligations. Such limited assessment is improper under Pa.R.C.P. 240.

Additionally, we addressed this issue in ***Amrhein*** and held therein that a trial court's consideration only of income measured against guidelines, without consideration of other obligations and monthly expenditures for purposes of an IFP request, constituted error of law. ***Amrhein***, 903 A.2d at 22. Accordingly, we are constrained to conclude that in this case the trial court erred in considering only Mother's monthly income and dependents measured against guidelines in denying her IFP request.

As a result, we remand this matter for a hearing consistent with Pa.R.C.P. 240. During that hearing, the trial court should consider evidence of Mother's income, assets, dependents, obligations, and monthly expenditures pursuant to Pa.R.C.P. 240 in evaluating Mother's IFP petition.

Orders vacated. Case remanded for proceedings consistent with this Memorandum. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/2/2016

