NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

A.W.	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
L.G.	:	
	:	
Appellee	:	No. 443 MDA 2019

Appeal from the Order Entered January 25, 2019
In the Court of Common Pleas of Berks County
Civil Division at No(s): 18-3777

BEFORE: PANELLA, P.J., GANTMAN, P.J.E., and MUSMANNO, J.

MEMORANDUM BY GANTMAN, P.J.E.: **FILED OCTOBER 29, 2019**

Appellant, A.W. ("Father") appeals from the order entered in the Berks County Court of Common Pleas, which denied his *pro se* complaint for custody, styled as a petition for visitation with his minor son, I.G. ("Child"), while Father is incarcerated. We affirm.

The trial court issued two opinions, dated January 24, 2019, and April 1, 2019, which set forth the relevant facts and procedural history of this case.[1] Therefore, we have no need to restate them.

On appeal, Father raises the following issues for review:

> DID THE TRIAL COURT ABUSE ITS DISCRETION OR [OVERRIDE] THE LAW WHEN IT CONCLUDED THAT THE UNPROVEN ALLEGATIONS OF PHYSICAL ABUSE WERE FACTUAL EVIDENCE OF ABUSE BY [FATHER] TOWARDS

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[1] The trial court makes clear that Father's notice of appeal was timely filed on February 20, 2019. (***See*** Trial Court Opinion, filed April 1, 2019, at 1 n.1.)

> [MOTHER]?
>
> WHETHER IT IS AN ABUSE OF DISCRETION BY THE TRIAL JUDGE BY HIS STATEMENT OF FACT THAT [FATHER] CONTINOUSLY LIED ABOUT WHAT OCCURRED ON SEPTEMBER 28, 2013 IN AN ATTEMPT TO PRESENT [MOTHER] IN A NEGATIVE LIGHT?
>
> DID THE TRIAL COURT ABUSE ITS DISCRETION, OR [SHOW] BIAS [IN FAVOR OF] MOTHER OR [OVERRIDE] THE LAW IN ITS REASONING AND CONCLUSION THAT [FATHER] WAS UNREMORSEFUL AND COMPLETELY UNREHABILITATED BECAUSE HIS TESTIMONY AT TRIAL WAS CONTRARY TO HIS GUILTY PLEA AS [FATHER] IS NOW EXERCISING HIS RIGHTS OF DUE PROCESS OF CHALLENGING HIS CONVICTION ON THE GROUNDS OF INEFFECTIVE ASSISTANCE OF COUNSEL?
>
> DID THE COURT ABUSE ITS DISCRETION BY NOT FULLY EXPLORING THE MERIT OF [FATHER'S] PETITION AND VISITATION BASED ON ITS UNREASONABLE AND UNSUBSTANTIATED CONCLUSION THAT [FATHER] IS [UNREPENTANT AND] UNREHABILITATED?

(Father's Brief at 1-2, and 9).

Our scope and standard of review of a custody order are as follows:

> [T]he appellate court is not bound by the deductions or inferences made by the trial court from its findings of fact, nor must the reviewing court accept a finding that has no competent evidence to support it…. However, this broad scope of review does not vest in the reviewing court the duty or the privilege of making its own independent determination…. Thus, an appellate court is empowered to determine whether the trial court's incontrovertible factual findings support its factual conclusions, but it may not interfere with those conclusions unless they are unreasonable in view of the trial court's factual findings; and thus, represent a gross abuse of discretion.

A.V. v. S.T., 87 A.3d 818, 820 (Pa.Super. 2014) (quoting ***R.M.G., Jr. v. F.M.G.***, 986 A.2d 1234, 1237 (Pa.Super. 2009)). "On issues of credibility and

weight of the evidence, we defer to the findings of the trial judge who has had the opportunity to observe the proceedings and demeanor of the witnesses." ***Id.***

When deciding an award of custody, the court must conduct a thorough analysis of the best interests of the child based on the factors set forth in the Child Custody Act ("Act"). ***E.D. v. M.P.***, 33 A.3d 73 (Pa.Super. 2011). ***See also A.D. v. M.A.B.***, 989 A.2d 32, 36 (Pa.Super. 2010) (stating: "With any child custody case, the paramount concern is the best interests of the child. This standard requires a case-by-case assessment of all the factors that may legitimately affect the physical, intellectual, moral and spiritual well-being of the child").

"**All** of the factors listed in [S]ection 5328(a) are required to be considered by the trial court when entering a custody order." ***J.R.M. v. J.E.A.***, 33 A.3d 647, 652 (Pa.Super. 2011) (emphasis in original). "The court shall delineate the reasons for its decision on the record in open court or in a written opinion or order." 23 Pa.C.S.A. § 5323(d). "There is no required amount of detail for the trial court's explanation; all that is required is that the enumerated factors are considered and that the custody decision is based on those considerations." ***M.J.M. v. M.L.G.***, 63 A.3d 331, 336 (Pa.Super. 2013), *appeal denied*, 620 Pa. 710, 68 A.3d 909 (2013). A court's explanation of the reasons for its decision, which adequately addresses the relevant custody factors, complies with Section 5323(d). ***Id.*** Further,

> The parties cannot dictate the amount of weight the trial court places on the evidence. Rather, the paramount concern of the trial court is the best interest of the child. Appellate interference is unwarranted if the trial court's consideration of the best interest of the child was careful and thorough, and we are unable to find any abuse of discretion.

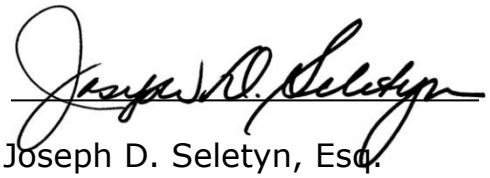
R.M.G., Jr., supra (quoting ***S.M. v. J.M.***, 811 A.2d 621, 623 (Pa.Super. 2002)). "Ultimately, the test is 'whether the trial court's conclusions are unreasonable as shown by the evidence of record.'" ***Ketterer v. Seifert***, 902 A.2d 533, 539 (Pa.Super. 2006) (quoting ***Dranko v. Dranko***, 824 A.2d 1215, 1219 (Pa.Super. 2003)).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinions of the Honorable James M. Bucci, we conclude Father's issues merit no relief. The trial court opinions comprehensively discuss and properly dispose of the questions presented. (***See*** Custody Order and Opinion, filed January 25, 2019, at 1-9) (analyzing all custody factors, including eight additional factors regarding incarcerated party who requests visitation, and concluding denial of Father's petition for visitation is in Child's best interests) and (Trial Court Opinion, filed April 1, 2019, at 3-15) (incorporating court's prior opinion and stating it considered affidavit of probable cause in connection with Father's attack on Mother on February 3, 2013, to provide background for what led Father to attack Mother with machete on September 28, 2013; even if court had not considered events of February 3, 2013, or found those events had not occurred, court still found

Mother's testimony credible about Father's attack on September 28, 2013; Mother's testimony was also consistent with Father's guilty plea to aggravated assault for events on September 28, 2013; Father showed no remorse for his actions; court found Father incredible at custody hearing and found Mother credible; any error in court's consideration of affidavit of probable cause was harmless; Father made only blanket assertions of violations of his due process and equal protection rights; Father's attempts to renounce his guilty plea, his insistence that Mother was responsible for her own injuries, and Father's refusal to accept responsibility for what occurred on September 28, 2013, sustain court's denial of Father's petition for visitation; court was deeply disturbed by serious nature of Father's crimes, which led to his incarceration, and Father's unwillingness to accept responsibility for his actions plus his lack of rehabilitation; upon careful consideration of statutory custody factors and additional factors concerning incarcerated party seeking visitation rights, court concluded that any communication with Father at this time was not in Child's best interest). The record supports the court's decision. Here, the court thoughtfully and meticulously analyzed the testimony and the evidence in light of all of the relevant statutory factors and rendered its decision in the best interests of Child. We see no error in the methodology the court used to make its decision. Accordingly, we affirm based on the trial court's opinions.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/29/2019

A. W.,
Plaintiff/Appellant

V.

L. G.,
Defendant/Appellee

: IN THE COURT OF COMMON PLEAS
: OF BERKS COUNTY, PENNSYLVANIA
: CIVIL ACTION – LAW
: CUSTODY
:
: No. 18-3777
:
: ASSIGNED TO: BUCCI, J.

1925(a) Opinion April 1, 2019 Bucci, J.

On March 11, 2019, Appellant filed a Notice of Appeal of this Court's Order denying Appellant's Petition for Visitation, which constituted a final order of court.[1] *See* Pa. R.A.P. 341 ("A final order is any order that disposes of all claims and all parties."). Appellant's Notice of Appeal contained a discussion of his argument for relief, which the Court considers to be his Concise Statement of Errors Complained of on Appeal pursuant to Pa. R.A.P. 1925(b). Appellant's lengthy and convoluted assignment of errors is summarized by the Court as follows:

1. The Court erred when it denied Appellant's Petition for Visitation based on evidence which was not submitted to the Court by either party, such as the "Affidavit of Probable Cause Attached to the Criminal Complaint filed by the Pennsylvania Attorney General's Office Agent Hannaford."
2. The Court violated Appellant's rights to due process of law and equal protection of law when it considered "unproven allegations of physical abuse" and threats which allegedly occurred on February 3, 2013. Additionally, the Court erred in failing to consider and discuss Judge Eshelman's 1925(a) opinion denying Appellee's appeal from the denial of her Protection from Abuse petition which was filed in response to the February 3, 2013 incident.[2]

[1] Initially, Appellant filed his Notice of Appeal on February 20, 2019, but the Prothonotary mistakenly returned Appellant's Notice of Appeal due to Appellant's failure to enclose filing fees, despite the Court having granted Appellant's Motion to Proceed *In Forma Pauperis* on April 20, 2018. Appellant refilled his Notice of Appeal on March 11, 2019, at which time the Prothonotary filed his Notice of Appeal. The Court considers Appellant's appeal to have been timely filled on February 20, 2019. *See* Pa. R.A.P. 903(a) ("the notice of appeal required by Rule 902 (manner of taking appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken.").
[2] The Court could not locate any record of Appellee filing a PFA in regards to the February 3, 2013 incident nor a record of her appealing a PFA decision.

3. The Court erred when it unreasonably concluded that Appellee would be limited in her ability to encourage the Child to contact Appellant due to his incarceration, when she could encourage the Child to write and to text Appellant without interference from his incarceration.
4. The Court erred when it determined that denying Appellant's Petition for Visitation was in the best interest of the Child because the Court's conclusion "is not supported by any factual evidence submitted at trial." The Court should have concluded that granting Appellant's Petition for Visitation was in the Child's best interest based on Appellant's testimony "that [Appellee] was under the influence of acute alcohol and crack cocain [*sic*] intoxication."
5. The Court erred when it stated that, on September 18, 2013, Appellant threatened to kill Appellee, when the evidence reveals that Appellant only threated to "put a bullet in her ass." Additionally, the Court erred when it determined that it was in the best interest of the Child to remain in the custody of Appellee without entering any "provision for protecting the Child . . . [from Appellee]" despite Appellant's claims that Appellee was and is addicted to drugs and alcohol.
6. The Court erred when it denied Appellant's Motion to Submit Additional Testimony and Exhibits in Support of Visitation Complaint.
7. The Court erred when it considered the risk of Appellant attempting to turn the Child against Appellee during visitation because the Court did not also consider the risk of Appellee attempting to turn the Child against Appellant and that Appellee may have attempted to turn the Child against Appellant during Appellant's incarceration.
8. The Court erred when it determined that Appellee would be responsible for the transportation of the Child even though the matter of transportation was not explored at trial and the Court erred in its analysis because Appellant has family which is available to transport the Child. Additionally, there was no evidence presented at trial which suggests that a six hour round trip to visit Appellant would impact the Child's daily life. The Court also failed to address Appellant's testimony about visitation being conducted virtually.

9. The Court erred in questioning Appellant's delay in his attempt to obtain custody rights with the Child because Appellant's delay in seeking to contact the Child and obtain custody rights was to ensure that he complied with Appellee's PFA order.
10. The Court erred when it denied Appellant's Petition for Visitation because Appellee did not raise a defense as to Appellant's Petition on the record and because Appellee failed to establish a defense to Appellant's Petition at trial.

FACTUAL AND PROCEDURAL HISTORY

Appellant filed his Petition for Visitation on April 16, 2018. The Court conducted a custody trial on December 17, 2018.[3] On January 24, 2019, the Court issued written Findings of Fact, Conclusions of Law and detailed discussion of the § 5328 factors as they relate here, which is attached hereto for the convenience of the Appellate Court. This was the same date that the Court denied Appellant's Petition for Visitation, which is the subject of this appeal. The Court hereby incorporates by reference this Court's previous Findings of Fact, Conclusions of Law, detailed discussion of the § 5328 factors, and Order dated January 24, 2019 in support of this Court's order denying Father's Petition for Visitation. The Court will address Appellant's assignment of errors *seriatim*.

ANALYSIS

Actions in child custody are decided under the Pennsylvania Child Custody Act, 23 Pa.C.S.A. §5321 *et. seq.*, and the decisional law that flows therefrom. "It is axiomatic that the paramount concern in any child custody proceeding is the best interest of the child." *Costello v. Costello*, 666 A.2d 1096, 1098 (Pa. Super. 1995); *see also Kirkendall v. Kirkendall*, 844 A.2d 1261, 1263 (Pa. Super. 2004) ("The best interests of the child is our bedrock in this determination."). "Such a determination, made on a case-by-case basis, must be premised upon consideration of all factors which legitimately have an effect upon the child's physical, intellectual, moral and spiritual well-being." *Alfred v. Braxton*, 659 A.2d 1040, 1042 (Pa. Super. 1995) (internal quotations omitted); *Jackson v. Beck*, 858 A.2d 1250, 1252 (Pa. Super. 2004). A parent's ability to care for a child must be determined as of the time of the trial, and not based on

[3] Appellant participated via video conference as he is incarcerated at SCI Houtzdale.

past behavior at an earlier point in time. *Hall v. Mason*, 462 A.2d 843 (Pa. Super. 1983); *Bresnock v. Bresnock*, 500 A.2d 91 (Pa. Super. 1985). "[I]n custody cases between parents, 'the burden of proof is shared equally by the contestants and the child's well-being is the focus of consideration.'" *M.A.T. v. G.S.T.*, 989 A.2d 11, 17 (Pa. Super. 2010) (quoting *Ellerbe v. Hooks*, 416 A.2d 512 (Pa. 1980)).

The Child Custody Act enumerates 16 factors that the Court must consider in determining whether to grant or deny any form of custody. See 23 Pa. C.S.A. §5328. The Court is required to consider all of the factors set forth in 23 Pa. C.S.A. § 5328. *See J.R.M. v. J.E.A.*, 33 A.3d 647, 652 (Pa. Super. 2011) ("All of the factors listed in § 5328 are required to be considered"). The Court's discussion of the § 5328 factor analysis in this case can be found in the attached Findings of Fact, Conclusions of Law, and detailed discussion of the § 5328 factors dated January 24, 2019.

When an incarcerated parent is seeking custodial rights, the Court is required to consider several other unique factors. See *S.T. v. R.W.*, 192 A.3d 1155, 1167 (Pa. Super. 2018). The Court's review of these additional factors in this case can be found in the attached Findings of Fact, Conclusions of Law and detailed discussion of the § 5328 factors dated January 24, 2019. The scope of review of a trial court's custody decision is of the broadest type and the standard of review is whether the trial court abused its discretion. *J.R.M.*, 33 A.3d at 650.

I. The Court did not err when it used legal documents to summarize the factual history of this case.

Appellant's first issue is that the Court, without any input from the parties, considered evidence in effect *sue sponte*. Appellant specifically states that the Court erred in using the Affidavit of Probable Cause Attached to the Criminal Complaint filed by the Pennsylvania Attorney General's Office Agent Hannaford to describe what happened on February 3, 2013, even though neither party introduced this affidavit into evidence.

Appellant is correct that the Court did consider the allegations in the Probable Cause Statement relating to Appellant's 2013 criminal charges. In its detailed discussion of the § 5328 factors, the Court was concerned about how Appellant appeared to be completely unrepentant for his actions on September 28, 2013, and concerned that Appellant was suggesting that Appellee

was responsible for those events. The Court did consider what occurred on February 3, 2013 to provide background as to what led to Appellant attacking Appellee with a machete on September 28, 2013. Even if the Court did not consider what occurred on February 3, 2013, or found that the February 3, 2013 events did not occur, the Court would have found Appellee's testimony about the events on September 28, 2013 to be credible because her testimony was consistent with Appellant's guilty plea. Appellant in fact plead guilty to the events of September 28, 2013 and his conviction and Appellant's utter lack of remorse was more than sufficient for the Court to determine that it was in the Child's best interests to deny Appellant's Petition for Visitation. *See M.J.M. v. M.L.G.*, 63 A.3d 331, 339 (Pa. Super. 2013) ("It is in the trial court's purview as the finder of fact to determine which factors are most salient and critical in each particular case."). Therefore, this claim is meritless.

Additionally, the Court did not err in considering Agent Hannaford's Affidavit of Probable Cause in its Findings of Fact. Both parties testified at the custody trial about what had occurred on February 3, 2013. Appellee's version of what occurred on February 3, 2013 is consistent with Agent Hannaford's affidavit. Appellant testified at trial that Appellee lied about what occurred that day and denied harming Appellee. However, at a custody trial, the trial court has the ability to make independent factual determinations based on the evidence presented. *See S.W.D. v. S.A.R.*, 96 A.3d 396, 400 (Pa. Super. 2014) (stating that the Superior Court must accept the findings of fact made by the trial court as true, as the Superior Court does not possess the ability to make independent factual determinations). This is because the trial court views the evidence and assesses the witnesses first-hand. *J.R.M.*, 33 A.2d at 650.

In this case, the Court did not find Appellant credible as a witness because he repeatedly claimed that the events that occurred on September 28, 2013 occurred differently from how they were described in his guilty plea. On the other hand, the Court believed that Appellee was a credible witness based on her testimony and the Court's observations of Appellee at trial. Even if the Court erred in considering Agent Hannaford's Affidavit of Probable Cause, it is harmless error because the allegations in the probable cause statement were confirmed by Appellee's testimony at trial.

II. The Court did not err when it determined that Appellee's allegations of what occurred on February 3, 2013 were in fact true.

Appellant next claims that the Court violated Appellant's due process of law and equal protection rights when the Court accepted Appellee's version of what occurred on February 3, 2013, despite Appellant's testimony to the contrary and despite the fact that Judge Eshelman denied Appellee's appeal from the denial of her PFA Petition that Appellee had filed in response to that incident.

The Court first notes that Appellant has failed to show how the Court violated his due process and equal protections rights. He just makes a blanket claim that they were violated. Appellant does not make a proper claim that his equal protection rights were violated, because he has not claimed that he belonged to a certain classification of people which caused the Court to treat him differently him than it would have treated other citizens in general. *Urbanic v. Rosenfield*, 616 A.2d 46, 55 (Pa. Cmwlth. 1992). Additionally, in order for Appellant to have a due process claim, he must show that he was deprived of an interest that is constitutionally protected. *Taylor v. Pennsylvania State Police of Com.*, 132 A.3d 590, 609 (Pa. Cmwlth. 2016) ("Like procedural due process, 'for substantive due process rights to attach there must first be the deprivation of a[n] . . . interest that is constitutionally protected.'"). Appellant has not made such a claim. Therefore, the Court finds that Appellant has not properly raised a due process or equal protection claim. However, as Appellant is representing himself *pro se*, the Court is aware that he may be making these claims in place of making a general claim of error.

However, the Court did not err as a matter of law when it accepted Appellee's version of what occurred on February 3, 2013 because the trial court makes an independent determination as to the facts based on the court's review of the evidence, witness testimony, and the credibility of the evidence and the witnesses. *S.W.D.*, 96 A.3d at 400. Appellant and Appellee both testified as to the events of February 3, 2013. Again, it is important to note that Appellee pled guilty to one count of Aggravated Assault[4] as a result of his conduct on September 28, 2013. However, at the custody trial, Appellant tried to repudiate his plea of guilty and he testified that Appellee was to blame for the incident and that he acted in self-defense when he attacked Appellee multiple

[4] 18 Pa. C.S.A. § 2702(a).

times with a machete. The Court determined that Appellant was not a credible witness and determined that Appellee was a credible witness and the Court based its Findings of Fact, Conclusions of Law, and detailed discussion of the § 5328 factors based on Appellee's testimony at trial.

Appellant also claims that the Court omitted the evidence of Judge Eshelman's 1925(a) opinion which was written in response to Appellee's appeal from the denial of her PFA petition which she filed in response to the February 3, 2013 alleged events. Appellant's Notice of Appeal is the first time the Court has heard Appellant's claim that Judge Eshelman denied Appellee's PFA petition regarding the February 3, 2013 incident and that Appellee subsequently appealed this denial and that Judge Eshelman issued a 1925(a) opinion. Appellant never sought to introduce this evidence at trial nor in any of his previous filings. Appellant cannot seek to introduce new evidence for the first time on appeal and then claim the Court erred in excluding it. *See* Pa. R.A.P. 302 ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.").

Additionally, Appellant's argument is meritless because even if the Court did not consider Appellee's testimony as to the events of February 13, 2013, the events of September 28, 2013, Appellant's guilty plea, his attempt to retract his guilty plea, his attempt to blame Appellee for what occurred on September 28, 2013 and his total lack of remorse is more than sufficient reason for the Court to deny Appellant's Petition for Visitation.

Therefore, this claim is meritless.

III. The Court did not err when it determined that Appellee would be limited in the amount of encouragement that she can give the Child to contact Appellant.

Appellant claims that the Court erred in its consideration of the first § 5328 factor, "[w]hich party is more likely to encourage and permit frequent and continuing contact between the child and another party," because it did not consider certain ways that Appellee could encourage the Child to contact Appellant. However, if Appellant's claim is true, then this factor would favor Appellee. In the Court's discussion of this factor, the Court found that this factor favors neither party because of the limitations that are imposed on the parties' ability to encourage the Child to contact the other parent due to Appellant's incarceration.

Moreover, the Court did not err in its analysis of this factor. The Court noted in its discussion of this factor that the Child has limited means to contact Appellant due to Appellant's incarceration. In Appellant's Notice of Appeal, Appellant states that the Child can contact him through writing letters and through texting. Appellant's own argument acknowledges that the ways that the Child can communicate with Appellant is limited due to Appellant's incarceration. Therefore, this claim is meritless.

IV. The Court did not err when it determined that denying Appellant's Petition for Visitation was in the best interests of the Child.

Appellant claims that the Court erred when it determined that it was in the Child's best interests to deny his Petition for Visitation. Appellant claims that the Court erred in relying on the "prejudicial and unproven allegations" made by Appellee to establish the history of this case because the Court ignored Appellant's claims that Appellee was using drugs and alcohol on September 17, 2013 and September 28, 2013.

Again, the Court based its findings and conclusions on Appellee's testimony that Appellant suddenly attacked her with a machete in her sleep, as confirmed by Appellant himself via his guilty plea. The law as to the effects of a guilty plea are well settled:

> A guilty plea is an acknowledgment by a defendant that he participated in the commission of certain acts with a criminal intent. He acknowledges the existence of the facts and the intent. The facts that he acknowledges may or may not be within the powers of the Commonwealth to prove. However, the plea of guilt admits that the facts and intent occurred, and is a confession not only to what the Commonwealth might prove, but also as to what the defendant knows to have happened.

Commonwealth v. Anthony, 475 A.2d 1303, 1307 (Pa. 1984). "[A] Criminal defendant who elects to plead guilty has a duty to answer questions truthfully. Appellant cannot now challenge his plea by claiming that he lied previously while under oath. "*Commonwealth v. Jones*, 596 A.2d 885, 888 (Pa. Super. 1991) (citations omitted).

Appellant's attempts to renounce his guilty plea, his insistence that Appellee is responsible for her serious injuries, and Appellant's refusal to accept responsibly for what occurred on September 28, 2013 was a substantial reason for the Court's denial of his Petition

for Visitation on the basis that it was not in the Child's best interest. Therefore, this claim is meritless

V. The Court did not err in the way it described the events of September 17, 2013. Additionally, the Court did not err when it did not modify Appellee's custody rights despite Appellant's claims that Appellee was and is addicted to drugs and alcohol.

Next, Appellant complains that the Court mis-characterized Appellant's conduct that occurred on September 13, 2013. Appellant complains that the Court wrote that Appellant "threatened to kill Mother" on that day. Because Appellee only testified that Appellant threatened to "put a bullet in her ass," the Court should not have considered this a threat to kill her.

Again, this issue demonstrates Appellant's failure to understand the serious nature of his criminal conduct, his failure to acknowledge responsibility for his conduct, and his total lack of remorse. He is completely unrepentant in regards to his horrific actions on September 28, 2013, even suggesting that Appellee was responsible for those events. What occurred on September 17, 2013 is relevant to provide background as to what eventually caused the attack on September 28, 2013. Appellant is now attempting to understate the severity of his actions on September 17, 2013, again showing his complete lack of remorse and is another attempt to try to escape the consequences of his actions. The events of September 17, 2013 and September 28, 2013 and Appellant's attitude towards those events was more than sufficient grounds for the Court to determine that it was in the Child's best interests to deny Appellant's Petition for Visitation. *See M.J.M.*, 63 A.3d at 339 ("It is in the trial court's purview as the finder of fact to determine which factors are most salient and critical in each particular case."). Therefore, this claim is meritless.

Appellant's claim that this Court added an "additional criminal element" in regards to Appellant's actions is meritless because this is not a criminal case. Rather, the Court properly focused on whether visitation was in the best interests of the Child. *See Costello*, 666 A.2d at 1098 (stating that the paramount concern in any child custody proceeding is the best interest of the child). Regardless of whether Appellant threatened to shoot Appellee in a non-lethal area of the body or to kill Appellant, the fact remains that Appellant threatened to cause Appellee

serious bodily injury with a deadly weapon. Whether or not Appellant intended to kill Appellee, his actions are inexcusable.

Appellant also argues that it cannot be in the best interest of the Child to leave the Child with Appellee because she is addicted to drugs and alcohol. Appellant did not raise the issue of whether Appellee should have primary custody of the Child or if a custody provision should be entered for the purpose of protecting the Child from Appellee at trial nor in his pleadings. Appellant cannot, for the first time on appeal, argue that Appellee should not have sole physical custody of the Child. *See* Pa. R.A.P. 302 ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.").

Moreover, Appellant presented no evidence as to Appellee's use of drugs and alcohol other than his own testimony. Therefore, he failed prove that Appellee is or ever was addicted to drugs and alcohol and that it was in the best interest of the Child for the Court to take action to protect the Child from Appellee. *See M.A.T.*, 989 A.2d at 17 (Pa. Super. 2010) (*quoting Ellerbe v. Hooks*, 416 A.2d 512 (1980) ("[I]n custody cases between parents, 'the burden of proof is shared equally by the contestants and the child's well-being is the focus of consideration.'"). Therefore, this claim is meritless.

VI. The Court did not err when it denied Appellant's Motion to Submit Additional Testimony and Exhibits in Support of Visitation Complaint.

Appellant claims that the Court erred when it denied his post-trial Motion to Submit Additional Testimony and Exhibits in Support of Visitation Complaint. This Motion was received by the Court on December 27, 2018, ten days after the custody trial, and consists of an additional discussion by Appellant as to why he believes he should be granted visitation rights. Everything Appellant states in his Motion was heard by the Court at trial. Incredibly, he continues to shirk responsibility as to what occurred on September 28, 2013, claiming that his guilty plea was the result of ineffective assistance of counsel. *See Plaintiff's Motion to Submit Additional Testimony and Exhibits in Support of Visitation Complaint.* As discussed above, Appellant is bound by his guilty plea and cannot challenge it by claiming that he lied at the plea hearing. *Jones*, 592 A.2d at 888.

Appellant's Rule 1925 Statement also alleges that Appellee is addicted to drugs and alcohol, and he alleges that Appellee does not allow the Child to see his paternal family. Appellant raised these issues and arguments at trial and in previous filings with the Court. Therefore, the Court did not err by not granting Appellant's Motion.

Appellant claims that the Court should have accepted additional exhibits he submitted into evidence. However, while Appellant stated in the Motion that five exhibits were attached to the Motion, none of them were included in the Motion. Additionally, Appellant had from April 16, 2018, when he filed his custody complaint, until December 17, 2018, the date of the trial, to obtain these exhibits. The Court believed that Appellant had an ample amount time to obtain and present these exhibits at trial. The Court saw no legitimate reason to delay resolution and disposition of Appellant's Petition for Visitation following the conclusion of the trial on December 17, 2018.

The substance of the additional evidence and exhibits that Appellant raised in his post-trial motion was nothing more than another attempt by Appellant to deny responsibility for his criminal conduct.[5] As discussed above, as Appellant had pled guilty, he cannot now challenge his guilty plea by claiming that he lied under oath. *Jones*, 592 at 888. Therefore, evidence that attempts to prove the contrary is irrelevant because, as a matter of law, Appellant cannot challenge the facts that he admitted to have occurred within his guilty plea. *Jones*, 592 A.2d at 888; *see* Pa. R.E. Rule 401 (stating that evidence is relevant if it has any tendency to make a fact more or less probable). Therefore, this claim is meritless.

[5] Appellant's Exhibits which he claimed were attached to the Motion are as follows:

"A: PFA application [Appellee] filed on 10/10/18 based on false statement to authorities in an attempt to derail my request for visitation. But this is he[r] MO.
B: PFA application [Appellee] filed on 9/18/13 based on false information to authorities because I took custody of [the Child] for his safety and well being as [Appellee] was active in her alcohol and crake cocaine addiction. [Appellee] orchestrated the illegal eviction of me from out home and the only investment she made in our home was a 4 year old computer.
C: Medical report to support my statement of fact that [Appellee] was active in her addiction when [I] removed our son form her care and gladly assumed the responsibility of the well being of [the Child].
D: The Affidavit of probable cause attached to Preliminary hearing transcript for comparison by the court just to see if the court see what I saw. The discrepancy in her stories and fact of me turning on a light that didn't exist.
E: Transcript of my allocution at the 1/20/15 plea and sentence hearing. I accepted my responsibility for the role I played in that 9/28/13 tragedy but did not stating [sic] what my role was. I did point directly to alcohol and drugs as the real destroyer of our family and our lives. My Public Pretender [*sic*] Counsel was suppose to introduce the evidence of the drug and alcohol addiction and the falsified complaints against me but he did nothing to help or protect me during the hearing. In fact he undermined my entire defense and delivered me gift wrapped to the prosecution in a boat with a hole in the bottom and no life preserver."

VII. The Court did not err when it considered the risk of Appellant attempting "to turn the Child against Appellee" if visitation was granted.

Appellant next claims that the Court's consideration that Appellant may attempt to disparage Appellee during visits is unreasonable given the fact that the Court did not discuss whether Appellee may turn the Child against Appellant. The Court assumes that Appellant is referencing the Court's language from the factor, "the effect on the child physically and emotionally," that the Court should consider when the parent is incarcerated. *S.T.*, 192 A.3d at 1167. In the Court's discussion of this factor, the Court was concerned that Appellant may speak ill about Appellee or blame Appellee for his incarceration during visits with the Child if Appellant is granted visitation rights. The Court's concerns stems from Appellant's conduct and testimony at trial, where he continuously blamed Appellee for his incarceration and accused her of being addicted to drugs and alcohol.

Appellant's dissatisfaction with the Court's failure to address Appellee's statements against Appellant is more appropriately addressed in factor 8 of the § 5328 factors: "the attempts of a parent to turn the child against the other parent." Appellant points to Appellee's accusations against Appellant, including Appellee's allegation that Appellant had threaten to kill the Child and her allegation that Appellant had kidnapped the Child, as instances where Appellee spoke ill against Appellant. However, Appellant does not claim that Appellee ever made these statements to the Child, nor offers any other evidence to show that Appellee has or is actively attempting to turn the Child against Appellant. Additionally, any testimony that Appellant made which suggests that Appellee is attempting to turn the Child against Appellant is not credible given that Appellant continuously lied about what occurred on September 28, 2013 in an attempt to present Appellee in a negative light. It was Appellant's burden to present evidence of Appellee's attempts to turn the Child against him. *See M.A.T.*, 989 A.2d at 17 (*quoting Ellerbe v. Hooks*, 416 A.2d 512 (1980) ("[I]n custody cases between parents, 'the burden of proof is shared equally by the contestants and the child's well-being is the focus of consideration.'"). Appellant has failed to do so, and therefore, in the Court's discussion of this factor, the Court stated that no evidence was presented which suggests that either party has attempted to turn the Child against the other parent. Therefore, this claim is meritless.

VIII. The Court did not err when it considered the need for transportation and the impact that transportation would have on the Child.

Appellant next argues that the matter of transportation was not addressed at trial and that the Court, on its own initiative, felt the need to address this issue in a biased and unreasonable manner. However, the Court is required to consider all of the 23 Pa. C.S.A. § 5328 factors in rendering a custody decision, and must also consider an additional eight factors in a custody matter regarding an incarcerated parent. *S.T.*, 192 A.3d at 1167; *J.R.M.*, 33 A.3d at 652. One of the § 5328 factors is "[t]he proximity of the residencies of the parties." 23 Pa. C.S.A. § 5328(a)(11). Additionally, in custody matters regarding an incarcerated parent, the trial court is to consider "[t]he distance and hardship to the child in traveling to the visitation site." *S.T.*, 192 A.3d at 1167. Therefore, the Court was required to examine the matter of transportation and Appellant's argument that it was unreasonable for the Court to address this issue is meritless.

Appellant also claims that the Court's analysis as to the issues regarding transportation is flawed because the Court did not consider the fact that Appellant has family and friends that could transport the Child. Appellant is attempting to make this argument for the first time in his 1925(b) statement, and therefore, this issue is waived. Pa. R.A.P. 302; *see also In re Oren*, 159 A.3d 1023, 1026 (Pa. Cmwlth. 2017) (dismissing issues raised for the first time in Appellant's 1925(b) statement).

Appellant also argues that the Court's discussion on how a six hour round-trip would impact the Child's lifestyle is unreasonable and not supported by any evidence because the impact that the trip would have on the Child was not discussed at trial. It is self-evident that to spend six hours in a car would affect the Child and be a burden on the Child and Appellee.

Appellant also claims that he submitted the option of virtual visitation which would have reduced the travel time significantly. Even if virtual visitations are available, the Court still would have denied Appellant's Petition for Visitation for all the other reasons listed in its Findings of Fact, Conclusions of Law and detailed discussion of the § 5328 factors dated January 24, 2019.

Therefore, this claim is meritless.

IX. The Court did not err when it considered the delay in Appellant's attempt to contact the Child.

Appellant next argues that the Court erred in its analysis of the factors; "[w]hether the parent has and does exhibit a genuine interest in the child," and "[w]hether reasonable contacts where maintained in the past." *S.T.*, 192 A.3d at 1167. In the Findings of Fact, Conclusions of Law and detailed discussion of the § 5328 factors dated January 24, 2019, the Court questioned the sincerity of Appellant's attempt to reestablish contact with the Child because he has never attempted to contact the Child since Appellant was incarcerated. Appellant now argues that his delay in contacting the Child was motivated by a desire not to violate Appellee's September 27, 2013 PFA Order.

Even if we accept Appellant's argument as true, the Court would have denied Appellant's Petition for Visitation. As previously discussed, the Court was mainly concerned about the events that occurred on September 28, 2013, and the fact that Appellant is completely unrepentant as to his part in those events. The Court was required to analyze whether Appellant had a genuine interest in the Child and whether he maintained reasonable contacts with the Child in the past. *See S.T.*, 192 A.3d at 1167. However, the Court did not consider these factors to be significant when compared to the factors which addressed the criminal conduct that Appellant had committed and his attitude towards his role in that conduct. *See M.J.M.*, 63 A.3d at 336 (stating that there is no required level of detail necessary for the court's discussion of the factors, only that the factors are considered); *See also M.J.M.*, 63 A.3d at 339 ("It is in the trial court's purview as the finder of fact to determine which factors are most salient and critical in each particular case."). Therefore, even if the Court had found that Appellant had a genuine interest in the Child and had a legitimate reason for the delay in his attempt to contact the Child, this factor would not have changed the Court's determination that granting Appellant's Petition for Visitation was not in the Child's best interests. Therefore, this claim is meritless.

X. The Court did not err in dismissing Appellant's Petition for Visitation.

Appellant's last claim is that the Court erred in dismissing his Petition for Visitation because Appellee did not proffer a defense on the record in response to Appellant's Petition for Visitation and because Appellee failed to establish a defense to Appellant's Petition at the

custody trial. Apparently, Appellant is trying to argue that the Court should have ruled in his favor because Appellee did not file a responsive pleading to his Petition. In accordance with the explanatory comment to Pa. R.C.P. 1915.5, no responsive pleading is required. The defendant may but is not required to file an answer to plaintiff's complaint.

Appellant does not state what defense Appellee was required to raise or why Appellee was required to raise a defense. The burden at a custody trial is shared among the parties and requires the parties to prove what is in the best interests of the child. *M.A.T.*, 989 A.2d at 17. Appellee was not required to raise any specific defense in response to Appellant's Petition for Visitation, but was only required to establish why visitation was not in the Child's best interests at the time of trial, which she did via her testimony. Appellee satisfied her burden at trial for the reasons stated in the attached Findings of Fact, Conclusions of Law and detailed discussion of the § 5328 factors dated January 24, 2019.

Even if there was a defense that Appellee was required to raise, Appellant 's 1925(b) is so vague as to prevent meaningful review, and therefore, this issue is waived. *Commonwealth v. Butler*, 756 A.2d 55, 57 (Pa. Super. 2000). Therefore, this claim is meritless.

CONCLUSION

In conclusion, the Court considered the evidence presented at trial, including Appellant's and Appellee's testimony, and the Court carefully considered the § 5328 factors as well as additional factors as outline by *S.T.*, 192 A.3d at 1167, to reach its conclusion that denying Appellant's Petition for Visitation was in the Child's best interest.

For the above reasons, the Court respectfully request that Appellant's appeal be DENIED and our dismissal order AFFIRMED.

A. W., Plaintiff	: IN THE COURT OF COMMON PLEAS : OF BERKS COUNTY, PENNSYLVANIA : CIVIL ACTION – LAW
V.	: CUSTODY
L. G., Defendant	: No. 18-3777
	: ASSIGNED TO: BUCCI, J.

Findings of Fact, Conclusion of Law & Discussion January 24th 2019 Bucci, J.

This matter comes before the Court on Plaintiff's Complaint for Custody filed on or about April 16, 2018. The parties are the parents of minor child I.G., age 13, who is the subject of this litigation.

The Court conducted a custody trial on December 17, 2018, at which time the Court heard testimony from Mother and Father.

In consideration of all the above, the Court now enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff is A. W. ("Father"), age 59, currently incarcerated at SCI Houtzdale, Pennsylvania 16698.
2. Defendant is L. G. ("Mother"), age 53. Mother's address is confidential.
3. The parties are the natural parents of I.G. (the "Child"), age 13.
4. On February 3, 2013, Father and Mother were watching the Super Bowl game together with their friends. Father believed that one of the friends was trying to seduce Mother and Father became irritated. Father and Mother proceeded upstairs and the two started to argue. Father than repeatedly struck Mother in her head with his fists and then proceeded to choke her. Father released Mother before Mother passed out and told her that "[i]f you call the cops, I will fucking kill you" and he then left the house. *See Affidavit of Probable Cause attached to the Criminal Complaint filed by the Pennsylvania Attorney General's Office Agent Hannaford.*

5. On February 3, 2013, Father was arrested in regards to the incident that occurred that same day and charged in criminal docket CP-06-CR-874-2013 with Simple Assault,[1] two counts of Terroristic Threats with Intent to Terrorize Another,[2] and Harassment.[3] Father was released on bail on February 4, 2013.
6. On September 18, 2013, Mother filed a Petition for Protection from Abuse against Father before the Honorable Thomas J. Eshelman of the Berks County Court of Common Pleas.
7. In her PFA petition, Mother alleged that, on September 17, 2013, Father broke Mother's computer and then threatened to kill Mother if she called the police.
8. On September 23, 2013, Judge Eshelman issued a Final PFA Order. The Final PFA Order stated that there was to be no contact between Father and Mother, I.G., and Desmond Gaans, Mother's other child.
9. On September 28, 2013, a day after Judge Eshelman issued the Final PFA Order, Father broke into Mother's home between 4:00 A.M. and 5:00 A.M. and attacked Mother with a machete while she was sleeping. Father repeatedly struck Mother in the head, arms and legs.
10. During the attack, Father stated "[b]itch, you think you are going to take my son," "that shit you pulled with the PFA," and "I'm going to kill him so he never comes back to you." *See Affidavit of Probable Cause attached to the Criminal Complaint filed by the Pennsylvania Attorney General's Office Agent Adler.*
11. Father then told Mother "to tell him something he wants to hear so he would not kill her," and shortly after told Mother that "he was not going to kill her because he wanted her to remember the night." *Id.*
12. Shortly after the attack, Mother contacted the police, and she was treated at Reading Hospital.
13. Father was subsequently arrested and charged in criminal docket CP-06-CR-5006-2013 with Criminal Attempt – Murder of the First Degree,[4] Criminal Attempt – Murder of the Third Degree,[5] two counts of Aggravated Assault,[6] two counts of Simple Assault,[7]

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[1] 18 Pa.C.S.A. § 2701(a).
[2] 18 Pa.C.S.A. § 2706(a).
[3] 18 Pa.C.S.A. § 2709(a).
[4] 18 Pa.C.S.A. § 901(a).
[5] 18 Pa.C.S.A. § 901(a).
[6] 18 Pa.C.S.A. § 2702(a).

Terroristic Threats with Intent to Terrorize Another,[8] Recklessly Endangering Another Person,[9] Possession of Weapon,[10] and Criminal Trespass.[11]

14. On January 20, 2015, Father entered an open plea to one count of Aggravated Assault. Father was sentenced to incarceration at a state correctional facility for not less than nine years nor more than twenty years.
15. In addition to his incarceration, Father was ordered to have no contact with Mother and her family, including the Child, unless a custody agreement allowed it.
16. All other charges against Father were *nolle prossed*.
17. Father made no attempt to contact or to see the Child since his incarceration began until he filed a custody complaint on April 16, 2018.

CONCLUSIONS OF LAW

1. Actions in Child Custody are decided under the Pennsylvania Child Custody Act, 23 Pa.C.S.A. §5321 *et. seq.* and the decisional law that flows therefrom.

2. The Court has jurisdiction of the parties, the Child and the custody issues in this case. See 23 Pa.C.S.A. §5422.

3. "It is axiomatic that the paramount concern in any child custody proceeding is the best interests of the child." Costello v. Costello, 446 Pa.Super. 371, 375, 666 A.2d 1096, 1098 (1995). Kirkendall v. Kirkendall, 844 A.2d 1261, 2004 Pa.Super 55 (2004) ("The best interests of the child is our bedrock in this determination.").

4. "Such a determination, made on a case-by-case basis, must be premised upon consideration of all factors which legitimately have an effect upon the child's physical, intellectual, moral and spiritual well-being." Alfred v. Braxton, 442 Pa.Super. 381, 385, 659 A.2d 1040, 1042 (1995)(internal quotations omitted); Jackson v. Beck. 858 A.2d 1250, 1253 (Pa.Super. 2004).

5. A parent's ability to care for a child must be determined as of the time of the trial, and not based on past behavior at an earlier point in time. Hall v. Mason, 462 A2d 843 (Pa. Super. 1983); Bresnock v. Bresnock, 500 A.2d 91 (Pa.Super. 1985).

[7] 18 Pa.C.S.A. § 2702(a).
[8] 18 Pa.C.S.A. § 2706(a)(1).
[9] 18 Pa.C.S.A. § 2705.
[10] 18 Pa.C.S.A. § 907(b).
[11] 18 Pa.C.S.A. § 3503(a)(1)(ii).

6. The Child Custody Act enumerates 16 factors that this Court must consider in determining whether to grant or deny any form of custody. See 23 Pa. C.S.A. §5328, discussed more fully below.

7. The Court is required to consider all the factors set forth in 23 Pa. C.S.A. §5328. See JRM v. JEA, 33 A.3d 647, 652 (Pa.Super. 2011) ("*All* of the factors listed in §5328 are required to be considered").

8. When an incarcerated parent is seeking custodial rights, courts are required to consider several other unique factors. See S.T. v. R.W., 192 A.3d 1155, 1167 (Pa.Super. 2018), discussed more fully below.

§5328 Factors to Consider in Custody Trials

1. Which party is more likely to encourage and permit frequent and continuing contact between the child and another party. Father's incarceration means that he does not possess the ability to encourage the Child to contact Mother. Mother, however, would be limited in the amount of encouragement that she can give to the Child, as Father's incarceration would limit when and how the Child is able to contact Father.

2. The present and past abuse committed by a party or member of the party's household. This factor strongly favors Mother. Father has committed several acts of violence against Mother in the past. On February 3, 2013, he repeatedly punched and strangled Mother, which led to his arrest. On September 28, 2013, Mother was granted a PFA against Father due to an incident on September 17, 2013 where Father broke Mother's computer and threatened to kill Mother. A day after the PFA was granted, Father attacked Mother with a machete in an attempt to kill her.

3. The parental duties performed by each party on behalf of the child. Mother has had sole physical custody and therefore she has performed all parental duties. Father is unable to perform any parental duties due to his incarceration.

4. The need for stability and continuity in the child's education, family life and community life. This factor favors Mother, as Father is unable to provide the Child with anything that would grant the Child stability due to his incarceration.

5. The availability of extended family. This factor favors neither party. Neither party offered any evidence as to the availability of extended family at the custody trial.

6. The child's sibling relationships. This factor favors neither party. Neither party offered any evidence as to any siblings and as to their relationship with the Child at the custody trial.

7. The well-reasoned preference of the child, based on the child's maturity and judgment.

The Court interviewed the Child in chambers without the presence of counsel. When asked if he would like to see Father again, the Child hung his head low and said that he "did not know." The Child appeared to be very nervous.

8. The attempts of a parent to turn the child against the other parent. This factor favors neither party. No evidence was presented at the custody trial that suggested that Mother or Father had attempted to turn the Child against the other.

9. Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs. This factor favors Mother. Father's incarceration means that he cannot invest the time and resources that are necessary to provide a stable, consistent, and nurturing relationship with the Child.

10. Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child. This factor favors Mother. Mother is the current caretaker of the Child and has been attending to the Child's daily needs. Father is unable to attend to the Child's daily needs due to his incarceration.

11. The proximity of the residences of the parties. This factor favors Mother. Mother's address is confidential, however, she resides in Berks County. It takes over three hours to drive one way from Berks County to SCI Houtzdale. *See* Google Maps,

www.google.com/maps. In his petition for visitation, Father did not specify what form of visitation he is requesting. However, any physical visitation with the Child would impact the Child's daily life, as he would need to sit in a car for more than six hours. Mother would also be burdened by the distance between the parties, as she would be required to provide for all of the transportation due to Father's incarceration.

12. Each party's availability to care for the child or ability to make appropriate child-care arrangements. This factor favors Mother, as Father is unable to care for the Child due to his incarnation.

13. The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. This factor favors Mother. While Mother is opposed to granting Father visitation rights, the Court is much more concerned about Father's propensity to act violently towards Mother. Father tried to kill Mother after Mother was granted a PFA. During that incident, Father stated that he would kill the Child so that Mother could not take him. Mother's opposition to visitation is reasonable when these factors are considered, as attempting to cooperate with Father could put her life and the Child in danger.

14. The history of drug or alcohol abuse of a party of member of a party's household.

Father claims that Mother was addicted to cocaine and alcohol before he went to prison, and believes that she is still using drugs and alcohol. However, Father presented no evidence at trial to support his claims.

15. The mental and physical condition of a party or member of a party's household. Mental and physical impairment is not an issue in this case.

16. Any other relevant factor. When addressing whether to grant visitation rights to an incarcerated parent, we consider eight additional facts. *See S.T. v. R.W.*, 192 A.3d 1155, 1167 (Pa. Super. 2018).

I. The age of the Child. The Child is 13. Due to the Child's age and maturity, visitation with Father in prison may or may not be an intolerable experience.

II. The distance and hardship to the Child in traveling to the visitation site. This factor favors Mother. As stated in our earlier analysis, Mother would be required to drive more than three hours one way, a six hour roundtrip, for the Child to visit Father. Granting visitation rights would mean that the Child would be required to spend a substantial amount of time in a car, which would interfere with his current lifestyle.

III. The type of supervision at the visit. This factor favors Mother. Father did not provide details as to how the visitation he is requesting would be supervised. However, even if the Child will be physically protected, the Court is concerned about the harm that may result from the Child speaking with Father. Throughout the proceedings leading to trial and at the trial itself, Father has continuously spoken ill of Mother by accusing her of being addicted to drugs and stating that she orchestrated his arrest and imprisonment. If Father were to speak to the Child about his Mother, the Court fears that Father would try to harm the Child's relationship with Mother. The Court believes that some sort of supervision would be necessary to prevent such conversations, however, Father has not suggested any supervision.

IV. Identification of the person(s) transporting the Child and by what means. This factor favors Mother. Father has not stated who he knows who could transport the Child and how transportation would occur. Mother is available to transport the Child, however, this would mean that Mother will be solely responsible with driving for more than six hours each time visitation is to occur.

V. The effect on the Child both physically and emotionally. This factor strongly favors Mother. The Court is greatly concerned about the emotional effects that any visitation between Father and the Child would have on the Child. Despite the serious nature of his crimes, Father is completely unrepentant and unrehabilitated. Father had entered into a guilty plea in which he admitted to attacking Mother with a machete. He

stated at the guilty plea that his admissions were true and correct. Now, Father claims he that he attacked Mother in self-defense and that Mother is the cause for his incarceration and that he did nothing wrong. Due to this, the Court believes that it is not in the Child's best interests to visit Father. The Court is concerned that Father will attempt to turn the Child against Mother and blame her for his incarceration. Additionally, Father's inability to take responsivity for the horrendous acts he committed could confuse the Child and cause him to doubt both of his parents. Neither of these results would be in the Child's best interest. The Child has a good relationship with his Mother who is his primary caretaker. The Court is concerned that any visitation with Father could lead to a deterioration of this relationship and negatively impact the Child's mental stability.

VI. Whether the parent has and does exhibit a genuine interest in the child. Father has presented no evidence that, until filing this custody action in April 2018, he had attempted to contact the Child during his incarceration. This means that this action is Father's first attempt to establish a connection with his Child for three years, despite his sentencing order stating that he could have contact with the Child through a custody order. While the Court respects Father's decision to try to be a part of his son's life at this time, the Court is concerned about the sincerity of his intentions given the complete lack of contact or any attempts at communication until this time.

VII. Whether reasonable contacts where maintained in the past. This factor favors Mother. As addressed above, Father has not maintained any contact with the Child since his incarceration, although the sentencing order prohibited Father from having contact with Mother and the Child unless there was a custody agreement to the contrary.

VIII. The Nature of the criminal conduct that culminated in the parent's incarcerated, regardless of whether that incarceration is the result of a crime enumerated in 23 Pa.C.S.A. § 5329. This factor strongly favors Mother. The Court is deeply concerned about Father's violent conduct that led to his incarceration. Father seems to possess a propensity for violence and has acted violently in the past and in total disregard to the law. Father assaulted Mother with a machete in an attempt to kill her. This occurred after

he was arrested earlier that year for assaulting her and after she was granted a PFA which prohibited Father from having contact with Mother. This crime is incredibly serious and its impact on the Child cannot be understated. The Court finds the fact that Father refuses to take responsibility for his actions even though he had admitted his violent conduct at his guilty plea hearing. Despite his guilty plea, Father is now claiming that his guilty plea was due to the incompetency of his lawyer and that Mother is somehow the responsible party for the very serious injuries she received after Father attacked her.

Conclusion

In summary, the Court is deeply disturbed not only by the serious nature of Father's crimes that led to his incarceration, but also by his unwillingness to accept responsibly for his actions and his lack of rehabilitation. The Court believes that, under the statutory factors and the additional factors that our courts have required to consider when an incarcerated party seeks visitation rights, it would not be in the best interest of the Child to have any communications with Father at this time. Therefore, Father's request for visitation with the Child is denied.