NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

E.B., Appellant v. S.T., Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2262 EDA 2012

Appeal from the Order of July 13, 2012
In the Court of Common Pleas of Philadelphia County
Domestic Relations Division at No: 01-71484 & Pacses 923103805

BEFORE: OLSON, J., WECHT, J., and COLVILLE, J.*

CONCURRING MEMORANDUM BY WECHT, J. **FILED MAY 06, 2013**

Unlike the learned majority, I believe that we are constrained to find error in the proceeding below. However, because I find that the error was harmless, I join the learned majority in affirming the trial court's order.

In this case, the hearing officer violated Pa.R.C.P. 1910.12 in failing to conduct a record hearing. The trial court acknowledged that this mistake occurred. The trial court held a record hearing during the exceptions argument, and attempted to recreate the proceeding that transpired before the hearing officer. While there is no applicable rule of civil procedure, it

---

* Retired Senior Judge assigned to the Superior Court.

appears that the trial court attempted to apply the reasoning of Pa.R.A.P. 1923, which allows the parties to file a statement in lieu of notes of testimony. When such a statement is adopted by the trial court, it may be used for appellate review. ***See Allen v. Thomas***, 976 A.2d 1279 (Pa. Cmwlth. 2009) (refusing to use statement not adopted by trial court); ***In re L.D.F.***, 820 A.2d 714 (Pa. Super. 2003) (using statement adopted by trial court to reach merits of issue). As the trial court was hearing exceptions, it was essentially acting in an appellate capacity. It appears that the trial court was able to recreate testimony as well as review the hearing officer's notes.

Maternal Grandmother cites ***Taggart v. Taggart***, 462 A.2d 798 (Pa. Super. 1983), in support of her argument that the case should have been remanded to the hearing officer for a record proceeding. In ***Taggart***, we remanded for a new trial where there was no record of the support hearing. In other cases, we have held that, where meaningful appellate review is impeded, a new trial may be granted.[1] ***See Commonwealth v. Harvey***, 32 A.3d 717 (Pa. Super. 2011) (holding that, because only a portion of the transcripts was missing and no effort was made to recreate the missing record, a new trial would not be granted).

---

[1] ***Taggart*** does not interpret Rule 1910.12, inasmuch as it predates that rule.

The hearing officer erred. The trial court attempted to rectify that error. The most appropriate course of action would have been for the trial court to remand the case to the hearing officer. However, because it was clear that Maternal Grandmother lacked standing to initiate a new support complaint, I find the error harmless. ***See generally Sirio v. Sirio***, 951 A.2d 1188, 1194 (Pa. Super. 2008); ***Bulgarelli v. Bulgarelli***, 934 A.2d 107, 113 (Pa. Super. 2007).

Maternal Grandmother does not indicate how she was prejudiced by the lack of a record, nor how this affected her rights. Maternal Grandmother enjoys only very limited custody of the child (supervised visits of two hours every other week). She simply lacks standing to initiate a support complaint.[2] While it was error not to create a record of the hearing, the error was harmless in this case.

---

[2] It appears that Maternal Grandmother also was seeking enforcement of a prior support order that was entered while she did have custody of the child. However, the filing of a new support complaint is not the proper means for seeking enforcement. Moreover, that prior order was ended at a time when it was determined that Father lacked the ability to pay. Thus, there is nothing currently to enforce.