

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

M.J.,

Appellee

v.

S.J.,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 723 WDA 2013

Appeal from the Orders March 28, 2013 and April 17, 2013
In the Court of Common Pleas of Allegheny County
Family Court at No(s): FD07-009307-004

BEFORE: BOWES, ALLEN, and LAZARUS, JJ.

MEMORANDUM BY BOWES, J.:

FILED: December 11, 2013

S.J. ("Father") appeals *pro se* and challenges two orders. The first order was entered on March 28, 2013 and denied his petition for contempt. The second order was entered on April 17, 2013, and granted in part and denied in part cross-exceptions filed by the parties to a December 4, 2012 master's recommendation regarding resolution of a pending petition for modification of custody filed by M.J. ("Mother") regarding the parties' minor child, Su. We conclude that Father's allegations are not properly developed by citation to legal authority, and his arguments are indecipherable, are not pertinent to the trial court's decision, and/or were already litigated. We therefore affirm.

Father and Mother were married on February 5, 1994, and two children were born of the marriage. One child, a son born in 1994, is now

emancipated, and the other child, daughter Su., was born in 2000. On December 21, 2007, Mother instituted the present divorce action, and since that time, Father has engaged in highly obdurate and vexatious litigation.

We have uncovered twelve prior appeals filed by Father; **all** of the appeals were unsuccessful. We will discuss in detail *infra* his appeals involving custody, as they are pertinent in this custody matter. We first briefly outline the nature of Father's other appeals. Since the custody matter is sealed, although the parties are named in the appeals not involving custody matters, we redact the names in the captions. In 2008, Father appealed an order denying a petition to modify a protection from abuse ("PFA") order entered in favor of Mother; Mother prevailed. ***M.J. v. S.J.***, 998 A.2d 1025 (Pa.Super. 2010) (unpublished memorandum). In 2010, Father appealed an equitable distribution order, and, in addition to affirming, we awarded Mother attorney's fees because that appeal was wholly frivolous and Father's conduct was obdurate, dilatory, and vexatious. ***M.J. v. S.J.***, 29 A.3d 824 (Pa.Super. 2011) (unpublished memorandum). In 2010 and 2011, Father filed four appeals involving child support matters. When we disposed of those consolidated appeals, we again imposed against Father the counsel fees incurred by Mother and found that Father had engaged, throughout the litigation, in obdurate, dilatory, and vexatious conduct. ***M.J. v. S.J.***, 29 A.3d 832 (Pa.Super. 2011) (unpublished memorandum).

In 2012, Father filed three appeals in a criminal action where he unsuccessfully attempted to institute criminal proceedings against Mother

and the two attorneys who represented her in the present litigation. ***Commonwealth v. S.J.***, ___ A.3d ___ (Pa.Super. Docket Numbers, 1161, 1162 and 1163 WDA 2012, filed September 27, 2013) (unpublished memorandum). The Court of Common Pleas of Allegheny County affirmed the Allegheny County District Attorney's decision to disapprove Father's three private criminal complaints. In the three consolidated appeals involving the criminal case, we affirmed.

The following procedural background relates to custody. After the parties separated, Mother had primary physical custody of the two children, both of whom were still minors at that time. On December 17, 2009, the court entered a custody order granting Mother primary physical custody and Father partial custody. Father thereafter petitioned for primary physical custody. That petition was denied, and on April 1, 2011, the court again granted Mother primary physical custody of Su. with Father accorded partial physical custody of Su. every other weekend with additional custody of a maximum of two weeknights per week. As to the older child, Father was permitted custody of his son only when requested by the son. Father also filed a petition for sanctions against Mother alleging that she had given false testimony and false statements in connection with the custody proceedings. Father additionally filed a petition for contempt and sanctions against Mother based upon her alleged violation of the December 17, 2009 custody order. Both of his contempt petitions were denied, and Father appealed those orders as well as the April 1, 2011 custody order. In the consolidated appeal

involving the award of primary physical custody to Mother and the denial of the contempt requests, we affirmed. *M.J. v. S.J.*, 40 A.3d 187 (Pa.Super. 2011) (unpublished memorandum).

In rendering its April 1, 2011 custody decision, the trial court rejected Father's position that he be granted primary physical custody because Mother was neglectful, had mental health issues, and was an alcoholic. The custody court rendered the following factual findings, upon which we relied in affirming. After the separation, the parties' son suffered from significant mental health issues that required hospitalization. Through therapy, he vastly improved and developed into an articulate and academically successful young man who was entering a rigorous college after his junior year of high school. During his son's treatment, Father interfered with his counseling to such an extent that one therapist refused to treat the boy further. The son did want to have a relationship with Father, but, due to Father's intensity and anger management issues, wanted any affiliation to continue on son's terms when he wanted to interact with Father.

The custody court noted that Father had palpable animosity toward Mother, drew his children into that situation, and involved them in his hostilities toward her. Concomitantly, Father exaggerated any incident involving Mother's care and accused her of neglect. For example, Father averred Mother was incapable of parenting when she failed to retrieve Su. from school on one occasion. The custody court noted that Mother was ill at that time and called Father and asked him to pick up Su. Father also

maintained that Mother was unfit because Su. once said that she felt like an orphan. Meanwhile, the custody court ascertained from Su. that she meant that she felt like an orphan not due to Mother's caretaking, but when her parents could not cooperate about her schedule.

The custody court noted that both children were excelling in school under Mother's care and discounted Father's position that he was a better parent and that the children were not safe with Mother. The custody court specifically found Mother to be a capable and loving parent and rejected Father's position that she suffered from mental illness that interfered with her parenting abilities. It noted that Mother took antidepressants and concluded that the medication did not adversely affect Mother's ability to provide a loving and nurturing environment for the children. Finally, the custody court addressed Father's accusation that Mother was an alcoholic and discounted it completely on the basis that she had resolved her problem with alcohol. It found that continuing primary physical custody in Mother was in the children's best interest.

In affirming the April 1, 2011 custody order, we noted that the custody court's conclusions were supported by the evidence. We held that the record established that the two children were "adapting successfully to their lives with Mother as the primary custodian. Moreover, the record is replete with examples of Father's failure to cooperate with Mother in scheduling his periods of custody." *Id.* unpublished memorandum at 10. We concluded that the trial court did not abuse its discretion in rejecting Father's

allegations regarding Mother's mental health as "baseless and unsupported."

Id. unpublished memorandum at 11.

On September 26, 2012, Mother filed a petition for modification of the April 1, 2011 custody order and asked that Father's custodial time with Su. be reduced. Mother asked that "due to [Su.'s] earlier school times, and to ensure [Su.] receives adequate rest, [Su.] should return to her Mother's home by 7:30 p.m. on school nights and on Sunday nights." Petition, 9/26/12, at ¶ 5. Mother also averred that Father was impeding Mother's efforts to obtain counseling for Su. and that he was obstructing Su.'s custodial time with Mother. The matter proceeded to a hearing before the master, who issued a report and recommendation on December 5, 2012. On December 4, 2012, the court entered a temporary custody order adopting the master's recommendations pending the filing and resolution of exceptions.

The order is seven pages in length and details the custodial schedule of the parties. Father's custodial periods were not significantly curtailed. He enjoyed one less overnight each week but still had custody of his daughter that weekday from after school until her bedtime. He was granted custody of Su. for two Hindu holidays as well as one-half of her in-service school days. The order also mandated that Mother and Father attend co-parenting counseling sessions and that Su. begin counseling sessions relating to the problems that she experienced with the parties and the extensive custody litigation. The order required Father to execute documents necessary to

facilitate counseling and to cooperate with obtaining Su.'s presence at the sessions. The order did not address the issue of international travel. Both parties filed exceptions to the recommendations and order adopting them.

On March 28, 2013, the court issued an order granting in part and denying in part exceptions by both parties. The requirement that the parties attend co-parenting counseling sessions was eliminated, and the court noted that Father had altered his behavior and consented to Su.'s counseling, so provisions requiring his compliance in that respect were dismissed from the previous order. In the March 28, 2013 directive, detailed provisions were made for custody on Easter and Christmas. In the order, the court also scheduled a hearing to determine whether the parties should continue to share legal custody of Su. The court then issued an order on April 17, 2013, amending the March 28, 2013 order. From our review of this order, it appears that it accorded Mother five more hours weekly with Su. in the summer, but also gave Father four hours more per week year round.

While the custody matter was pending, Father filed a motion for contempt against Mother. He averred that Mother submitted false allegations in her petition for modification of custody and that she had violated the December 4, 2012 custody order. The trial court denied the contempt petition on March 28, 2013. On April 26, 2013, Father filed the present appeal from both the March 28, 2013 order denying his contempt petition and the April 17, 2013 custody order. Father raises these issues on appeal:

1. Court abused its discretion by denying Father's petition for a hearing on contempt with several provisions of custody orders (including failing to pickup child from after school programs) that are issued at Mother's request. This hearing denial has encouraged Mother to further disregard custody orders by not allowing father to pickup child on his custody day and causing emotional harm to the child who is now crying and feels helpless.

2. Court abused its discretion and erred by denying Father's Petition for a hearing on numerous false verification statements by Mother with her petition of Sept. 26, 2012 on modification to partial custody order. However, the Court granted a hearing to Mother to seek reduction in Father's custody time merely on allegations, which record shows were false statements made subject to penalty under 18 Pa. C.S. 4904.

3. Court abused its discretion and erred by issuing Order of March 28, 2013 that provides for hearing on legal custody when neither party filed a petition or requested such hearing. Court has become emotionally involved in this case and issuing orders not in the best interest of the child but motivated by a desire to punish Father for not giving up on his parental rights.

4. Court abused its discretion and committed error of law in crafting the amended custody order of April 17, 2013 (correction to Order of March 21, 2013) by ignoring evidence that Mother has history of alcohol abuse, depression and physical abuse of child, which is contributing to stress on the child and failing to attend to child's medical needs as found by the H.O., and to her school homework resulting in noticeable drop in grades.

5. The Court abused its discretion and committed error of law by incorporating provisions in the Custody Order of April [17], 2013 that were not requested by either parent or not objected to by the responding parent. Examples of such abuse of discretion include: a) Custody time for the child with Mother on Fridays during summer on her weekend that Mother sought to start at 10 am instead of 10 pm on Friday. Father did not file any objection to such request. Yet, the Court arbitrarily changed it to 5 pm instead of 10 am; b) Father sought to travel internationally with child without court order. Mother did not file objections. Yet,

Court denied it and requires parties to follow provisions of June 24, 2008 order. The child has since traveled with Father in the US and to India without any incidence; c) Mother sought clarity for sharing of custody time on Easter and winter/Christmas break that H.O. granted be shared equally. Instead, Court reduced Father's custody time on Easter and winter/Christmas break granted by the H.O.; d) Father sought parental right to take the child to medical appointments. The Mother did not file objections and the H.O. found father was more responsible in attending to the child's medical needs. Yet, the Court denied such parental right of the Father.

Instead of resolving conflict between parents about how to raise their child, the Court is promoting conflict and contributing to emotional abuse on the child and then ordering parents to take child to therapists for help in dealing with such stress.

6. The Court abused her judicial power to punish Father for seeking a meaningful role in the health, welfare and development of his child and for appealing her orders to higher courts and seeking her recusal. The Court is issuing orders that are arbitrary, not based on documents on record and with disregard to the harm such orders cause to the development and well being of the child while claiming that it is in the "best interest of the child". Such orders are issued to hurt Father's relationship with the daughter and infringing on Father's parental rights.

7. The Court abused its discretion by issuing orders without reading the petition and supporting documents filed by the Father related to custody order and contempt with custody order; and petitions and briefs with false verification statements filed by the Mother.

Appellant's brief at 1-2.

Initially, we note that Father's brief does not contain a single citation to pertinent authority governing custody and contempt matters. It does not contain the applicable standard of appellate review in such matters. The law is clear that the "argument portion of an appellate brief **must** include a

pertinent discussion of the particular point raised along with discussion and citation of pertinent authorities.” *In re Estate of Whitley*, 50 A.3d 203, 209 (Pa.Super. 2012) (emphasis added) (quoting *Estate of Lakatos*, 656 A.2d 1378, 1381 (Pa.Super. 1995)); **accord** 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.”). We will not “not consider the merits of an argument which fails to cite relevant case or statutory authority.” *Estate of Whitley, supra* at 209 (quoting *Iron Age Corp. v. Dvorak*, 880 A.2d 657, 665 (Pa.Super. 2005)). Hence, the appellant’s “[f]ailure to cite relevant legal authority constitutes waiver of the claim on appeal.” *Estate of Whitley, supra* at 209. As Father does not proffer a single citation to pertinent legal authority in support of his positions that the custody award was infirm and that his contempt petition was improperly denied, we conclude that all of his issues are waived.

We also note that Father attempts to re-litigate matters that are already decided. Specifically, Father derides the fact that he must obtain approval for international travel. The trial court observed that travel requirements were imposed on both Mother and Father in an order entered June 24, 2008. Since the order presently on appeal did not, to any extent, address the issue of international travel, that question is not properly before this Court. Additionally, Father’s allegations that Mother suffers from

alcoholism and mental health issues were litigated and rejected when the April 1, 2011 order, which we affirmed, was entered denying Father's request for primary physical custody.

Additionally, Father's arguments are extremely confusing. He fails to delineate precisely how the April 1, 2011 custody order was altered so as to reduce his overall time with his daughter. Even though Father characterizes the new custodial arrangement as punitive and detrimental to his relationship with Su., our review indicates that Father's custodial periods were modified negligibly. Father also complains about the trial court's decision to outline the holiday schedule in detail. However, the trial court explained that it did so to avoid further litigation against the backdrop of the parties' inability to cooperate with each other. Father also accuses the trial court of promoting conflict between the parties when the detailed nature of the custodial schedule was necessitated by Father's well-established obstructionist behavior and demonstrated hostility toward Mother.

As to the trial court's refusal to find Mother in contempt, we note the following. Father has repeatedly leveled spurious claims that Mother lied in court filings and did not abide by the custody schedule. He went so far as to try to file criminal charges against her, which efforts were soundly rejected. Mother's September 26, 2012 petition for modification was extremely brief, and Father fails to specify in what respect she made false allegations in the document. At the time the petition was filed, Father was refusing to cooperate with Mother's efforts to obtain counseling for Su. Father then

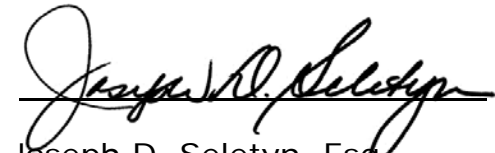
altered his behavior, that fact was acknowledged, and the portion of the December 4, 2012 order demanding that he execute documents necessary to effectuate counseling was dropped.

Father also complains about the fact that the trial court ordered a hearing as to whether legal custody should be shared or awarded to one party. However, that aspect of the order does not aggrieve Father since it only ordered a hearing on the issue and did not alter the extant legal custody arrangement.

After a review of the record and briefs, we cannot find a basis upon which to disturb the trial court's rulings herein. Hence, we affirm.

Orders affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/11/2013