NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

DENISE M. MILLER,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
BRIAN K. MILLER,	:	
	:	
Appellee	:	No. 82 MDA 2012

Appeal from the Order Entered December 2, 2011
in the Court of Common Pleas of Clinton County
Domestic Relations at No(s): 219-2004

BEFORE: BOWES, J., OTT, J., and STRASSBURGER, J.*

CONCURRING AND DISSENTING MEMORANDUM BY STRASSBURGER, J.:

Filed: February 22, 2013

I join the Majority insofar as its Memorandum cogently discusses the impropriety of filing a notice of appeal by FAX. I also join the discussion of the inapplicability of the prisoner mailbox rule. I respectfully but vigorously dissent regarding the Majority's failure to recognize the breakdown in court machinery that warrants the relief of a *nunc pro tunc* appeal.

The Majority quashes Mother's appeal based upon its determination that the record before this Court is insufficient to sustain a finding that Mother is entitled to equitable relief as a result of a breakdown in the court's machinery. The Majority agrees that the Clinton County domestic relations section's policy requiring filings to be made with it directly, as opposed to with the prothonotary, "is contrary to Pennsylvania jurisprudence[.]"

*Retired Senior Judge assigned to the Superior Court.

Majority Memorandum at 14. The Majority disavows placing its imprimatur on this "irregular and unpublished practice[.]" ***Id.*** at 16. Yet that is the exact result of the quashal.

The Majority states that Mother has failed to prove that the notice of appeal was received by January 3, 2012. However, that is because the Prothonotary did not time-stamp it. That is hardly Mother's fault. Although the Majority notes that another document was transferred from the Prothonotary to the domestic relations section within two hours, that does not mean that the notice of appeal was transferred within two hours. Generalizing from a sample of one is a logical fallacy. ***See, e.g., Dehn v. Edgecombe***, 834 A.2d 146, 156 n. 1 (Md. App. 2003) ("Arguing the existence of a pattern from an inadequate empirical predicate is referred to as the logical fallacy of '*secundum quid*.'").

Mother followed the Rules as to where to file. The Prothonotary did not. Mother is made to suffer for the Prothonotary's error. These facts establish the extraordinary circumstance of a breakdown in court operations and thus Mother should be permitted to appeal *nunc pro tunc*.

Although the Majority does not reach the merits of Mother's appeal, I would do so and reverse. "In Pennsylvania, a parent cannot bind a child or bargain away that child's right to support." ***Kesler v. Weniger***, 744 A.2d 794, 796 (Pa. Super. 2000). ***See also Sams v. Sams,*** 808 A.2d 206, 213

(Pa. Super. 2002) (noting the mother's agreement to reduce the father's child support obligation was invalid on public policy grounds).