

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

D.F.D., : IN THE SUPERIOR COURT OF
 : PENNSYLVANIA
 Appellant :
 :
 v. :
 :
 M.L.C., :
 :
 Appellee : No. 1506 WDA 2013

Appeal from the Order Entered August 23, 2013,
In the Court of Common Pleas of Allegheny County,
Family Court Division, at No. FD-12-008443-016.

D.F.D., : IN THE SUPERIOR COURT OF
 : PENNSYLVANIA
 Appellant :
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 M.L.C., :
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 Appellee : No. 1507 WDA 2013

Appeal from the Order Entered August 23, 2013,
In the Court of Common Pleas of Allegheny County,
Family Court Division, at No. FD-12-008443-016.

BEFORE: SHOGAN, OLSON and WECHT, JJ.

MEMORANDUM BY SHOGAN, J.:

FILED: April 11, 2014

D.F.D. ("Father") appeals *pro se* from orders that denied his requests for (1) a court-appointed attorney and/or a temporary restraining order and preliminary injunction and (2) a court-appointed notary. We consolidated the appeals *sua sponte* on October 10, 2013, and now affirm.

Father and M.L.C. ("Mother"), who never married, are the parents of two minor children, a son and a daughter. The family lived with the maternal grandparents. Mother financially supported Father, who was unable to work. In the summer of 2012, Father and Mother separated, and Father moved in with his sister. The parties agreed to share custody of the children. On November 16, 2012, Father filed a complaint to establish a formal custody schedule with Mother. While his complaint was pending, Father filed a counseled petition for special relief because he was concerned about the condition of Mother's home and the children's health. Petition for Special Relief: Interim Custody, 12/6/12, at ¶¶ 1-13, 20, 23. In response, the trial court ordered the continuation of shared custody, an investigation of Mother's home, and an expedited conciliation for December 17, 2012. Order of Court, 12/6/12. Following the conciliation, the trial court entered an interim order, referring the parties for psychological evaluations, providing Mother with primary physical custody, and providing Father with partial physical custody on a two-week rotating basis. Interim Order of Court, 12/19/12. The parties continued to share legal custody of the children.

In June 2013, counsel for Father was permitted to withdraw. Father proceeded *pro se* and filed a petition for emergency relief on July 17, 2013. In response, the trial court filed a pretrial order, setting a hearing date of

November 22, 2013, to dispose of Father's custody complaint. Order of Court, 8/6/13.

While awaiting the hearing, Father served the trial court with multiple *pro se* pleadings: (1) "Motion to Compel; And/or Sanctions," (2) "Assignment of counsel and/or TRO/preliminary injunction," (3) "Objections to Proposed Relocation and Order for Injunction and Counter-affidavit," (4) "Petition: Court Appointed Notary," and (5) "Petition Raising Claims, & Appointment of Counsel." Certified Record Nos. 27-31. The trial court denied all of Father's requests by orders dated August 20, 2013, and entered August 23, 2013. Thereafter, Father filed a motion for reconsideration and another petition for special relief. Certified Record Nos. 32, 33. The record indicates no action by the trial court on these two filings.

Father then filed two notices of appeal, one on September 6, 2013, from the denial of his request for counsel and/or a temporary restraining order ("TRO")/preliminary injunction (1506 WDA 2013), and one on September 19, 2013, from the denial of his request for a court-appointed notary (1507 WDA 2013). Father did not file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) with his notice of appeal at 1506 WDA 2013; however, he did file a Rule 1925 statement with his notice of appeal at 1507 WDA 2013. The trial court filed an opinion

addressing Father's request for counsel and/or TRO/preliminary injunction on October 4, 2013, and an opinion addressing Father's request for a court-appointed notary on October 17, 2013.¹

In his appeal at 1506 WDA 2013, Father presents ten questions, some with multiple sub-parts, all of which he awkwardly relates to his chief complaint: the denial of his request for court-appointed counsel. Father's Brief at unnumbered 6. Initially, we must first determine which issues are properly before us. As this case arose from a custody complaint, it is a children's fast track appeal. Pa.R.A.P. 102 (Definitions). In a children's fast track appeal, "[t]he concise statement of errors complained of on appeal shall be filed and served with the notice of appeal required by Rule 905. See Pa. R.A.P. 905(a)(2)." Pa.R.A.P. 1925(a)(2)(i). We have addressed the failure of an appellant to file a statement of errors complained of on appeal with the notice of appeal, holding:

[H]enceforth, the failure of an appellant in a children's fast track case to file contemporaneously a concise statement with the notice of appeal pursuant to rules 905(a)(2) and 1925(a)(2), will result in a defective notice of appeal. The disposition of the

¹ While Father's appeals were pending, Mother presented a petition for special relief to the trial court on October 4, 2013, wherein she sought sole legal and physical custody of the children based on an incident on September 4, 2013, that resulted in Father being charged with endangering the welfare of the children. In response, the trial court entered an order suspending Father's partial custody. The trial court also entered an order that day granting Father's uncontested oral motion for a continuance of the custody hearing scheduled for November 22, 2013. Orders of Court, 10/7/13.

defective notice of appeal will then be decided on a case by case basis.

In re K.T.E.L., 983 A.2d 745, 747 (Pa. Super. 2009). In ***K.T.E.L.***, we declined to quash or dismiss and appeal due to a mother's failure to strictly comply with Pa.R.A.P. 1925(a)(2), where there was "no prejudice to any party and in light of the presumed purpose of the new amendments—to expedite the disposition of children's fast track cases." ***Id.*** at 748.

Since ***K.T.E.L.***, we have consistently overlooked an appellant's failure to comply with Rule 1925(a)(2) in the absence of prejudice. ***See J.M.R. v. J.M.***, 1 A.3d 902 (Pa. Super. 2010) (holding father's failure to comply with Pa.R.A.P. 1925(a)(2)(i) was harmless where misstep was not prejudicial to any parties and did not impede trial court's ability to issue thorough opinion); ***Harrell v. Pecynski***, 11 A.3d 1000 (Pa. Super. 2011) (addressing merits of appeal where father filed Rule 1925(a)(2) statement a full month after notice of appeal, but mother did not object or claim prejudice and trial court addressed father's claims of error). ***In re R.N.F.***, 52 A.3d 361, 362–363 (Pa. Super. 2012) (citing ***K.T.E.L.*** to overlook appellant's failure to comply with Rule 1925(a)(2)(i) when no court order has been violated).

As stated above, Father did not file a Rule 1925(a)(2) statement with his notice of appeal at 1506 WDA 2013. However, Mother has not objected,² and the trial court filed an opinion in which it addressed the denial of

² Indeed, Mother has not filed a responsive brief in either appeal.

Father's request for counsel and a TRO/preliminary injunction. Thus, we decline to dismiss Father's appeal for failing to comply with Rule 1925(a)(2).

K.T.E.L., 983 A.2d at 748.

We note, however, that Father did not raise the denial of his request for a TRO/preliminary injunction in his statement of questions presented. **See** Pa.R.A.P. 2116(a) ("No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby."). Therefore, we shall address only Father's right-to-counsel issue.

Generally:

[o]ur standard of review over a custody order is for a gross abuse of discretion. If a trial court, in reaching its conclusion, overrides or misapplies the law or exercises judgment which is manifestly unreasonable, or reaches a conclusion that is the result of partiality, prejudice, bias or ill will as shown by the evidence of record, then discretion is abused. Our scope of review over custody disputes is broad; this Court is not bound by the deductions and inferences the trial court derives from its findings of fact, nor must we accept the trial court's findings of fact when these findings are not supported by competent evidence of record. Our paramount concern in child custody matters is the best interests of the children.

L.A.L. v. V.D., 72 A.3d 690, 692 (Pa. Super. 2013) (quoting **Yates v. Yates**, 963 A.2d 535, 539 (Pa. Super. 2008) (citations omitted)).

In essence, Father complains that Mother received free legal counsel, but he did not. The trial court disposed of this issue as follows:

As stated above, Father did not file a Concise Statement of Matters Complained of on Appeal. The Court, therefore, bases its discussion on Father's Memorandum in Support of Appointment of Counsel and/or Temporary Restraining Order

and Preliminary Injunction (hereinafter referred to as "Memorandum"), which was attached to his Proposed Order for Appointment of Counsel and/or Temporary Restraining Order and Preliminary Injunction presented to the Court on August 20, 2013.

I. APPOINTMENT OF COUNSEL

Father states in his Memorandum that he is indigent and lacks income, assets, an earning capacity and other resources that he could use to obtain counsel. (Memorandum, 2). Father also states that he made efforts to obtain counsel. *Id.* Father asserts that the State's provision of counsel to Mother combined with its decision not to supply Father with counsel deprives him of his liberty and burdens his presentation of the best interest doctrine to the Court. *Id.* at 3. Father states that these actions are in direct violation of the Equal Protection and Due Process clauses of the United States Constitution. *Id.* Father further asserts that he has a need for a proper defense when a State agency such as Neighborhood Legal Services Association (hereinafter referred to as "NLSA") is threatening prosecution, allegations, or deprivations of liberties. *Id.*

Father states that his "household," "family," and "income" as defined by both federal and state regulations render him more eligible than Mother for legal services. *Id.* at 5. Father requests a disqualification of Mother's NLSA counsel because the Court allows NLSA applicants to proceed *in forma pauperis* without any personal statements of ability to pay. *Id.*

Father admits that no right to counsel exists in a "private parent-parent custody dispute" in Pennsylvania. *Id.* Father states that a party's right to counsel in dependency cases, termination of parental rights cases and paternity cases was established when a serious liberty interest was at risk. *Id.* When the Court is faced with a parent-child interest, Father believes that the right to counsel should be viewed in light of the risks of a potential taking of a future liberty interest, even if that interest involves an underlying private claim. *Id.* at 6. Father asserts that economical and educational barriers exist that threaten his liberty interest and leave indigents with a disadvantage. *Id.*

It is well settled that there is no absolute right to counsel in civil cases. See *Rich v. Acrivos*, 815 A.2d 1106, 1108 (Pa. Super. 2003) (the Superior Court affirmed the trial court's decision to deny Husband a court-appointed attorney in his divorce proceedings because there is no right to counsel in civil cases) and *Wilt v. LaLonde*, 762 A.2d 1109 (Pa. Super. 2000) (the Sixth Amendment right to counsel only applies to criminal cases, and this right did not apply to a custody/visitation case).

The Court further finds that the judiciary was not the proper venue for Father to raise an issue with governmental allocation of funds to legal services organizations. As the court in *Bredbenner v. Bredbenner*, 73 Pa. D. & C. 2d 232, 235 (C.P. Luzerne 1975) stated, "In almost all cases, the decision of [the propriety of] representation is a legislative and administrative function and not one which should be judicially determined." Father's complaints in the case at bar concerning Mother's representation by counsel should be raised with the Pennsylvania Legislature or the Federal Congress.

Trial Court Opinion, 10/4/13, at 3-5.

Upon review, we discern no abuse of the trial court's discretion. Father acknowledged that he is not entitled to counsel in this civil matter. Memorandum in Support of Appointment of Counsel and/or TRO/Preliminary Injunction, 8/20/13, at 5. Furthermore, we agree with the trial court that Father's frustration with the provision of representation to indigents is a legislative matter, not a judicial concern.

Notably, Father presents a brief that violates our rules of appellate procedure. He provides a table of authorities, but does not relate any of the citations to his argument. Pa.R.A.P. 2119(b). His argument section consists of a random array of words and phrases, incomplete thoughts, sentences trailing off into silence, passionate — but incoherent — complaints of

constitutional infringements, due process violations, and threats by police officers, state-funded counsel, and the trial court. Father provides a gratuitous discourse on the mechanics of Neighborhood Legal Services, the IOLTA Board, and state funding of legal representation for indigents.³ However, we discern no substantive discussion of how the trial court overrode or misapplied the law or exercised judgment which was manifestly unreasonable, or reached a conclusion that was the result of partiality, prejudice, bias, or ill will as shown by the evidence of record. Pa.R.A.P. 2119(a); **L.A.L.**, 72 A.3d at 692. Hence, we affirm the trial court's order denying court-appointed counsel.

Next, we address the appeal at 1507 WDA 2013 from the order denying Father's request for a court-appointed notary. As indicated above, Father filed a Rule 1925(a)(2) statement with his notice of appeal, alleging ten errors. The trial court addressed Appellant's complaints in an opinion filed on October 17, 2013. On appeal, however, Appellant filed a single brief

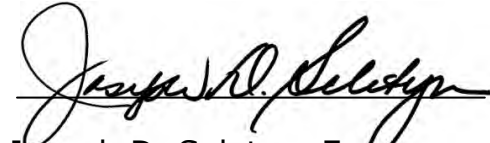
³ Determined to be heard, Father filed a "Notice to Attorney General of Challenge to Constitutionality," wherein he expressed his intent to challenge "a statute of the Pennsylvania Access to Justice Act (AJA), codified: Pa. Code 204 IX (Chapter 401 et seq.)." Notice to Attorney General, 9/25/13. Father also served the Court Administrator's Office of the Pennsylvania Supreme Court with notice of his intent to challenge "certain rules, and practices with regards to the practice of the Pa. Supreme court's IOLTA board, funding attorneys and other to advocate the dissolution of my family, in family court and to make argument that my parental rights should be hindered, or terminated (absent any showing of harm)." Notice to Court Administrator, 10/10/13 (verbatim).

for both appeals, and his statement of questions presented does not include any of the issues set forth in the Rule 1925(a)(2) statement filed at 1507 WDA 2013. Father's Brief at unnumbered 6.

We repeat, "No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby." Pa.R.A.P. 2116(a). Because Father failed to present any issues related to his request for a court-appointed notary, we are constrained to affirm the trial court's order denying that request.

Orders affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above the printed name.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/11/2014