NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

T. W. Appellee v. R. W. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1256 EDA 2013

Appeal from the Order Entered April 2, 2013
In the Court of Common Pleas of Philadelphia County
Domestic Relations at No(s): 1212V7662

T. W., ON BEHALF OF N. W. Appellee v. R. W. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1257 EDA 2013

Appeal from the Order Entered April 2, 2013
In the Court of Common Pleas of Philadelphia County
Domestic Relations at No(s): 1212V7669

BEFORE: GANTMAN, J., OLSON, J., and WECHT, J.

MEMORANDUM BY GANTMAN, J.: **FILED APRIL 14, 2014**

Appellant, R.W. ("Father") appeals from the orders entered in the Philadelphia County Court of Common Pleas, under the Protection from Abuse Act ("PFAA"), at 23 Pa.C.S.A. §§ 6101-6122, in favor of Appellees, T.W. ("Mother") and T.W. on behalf of N.W. We affirm.

The relevant facts and procedural history of this appeal are as follows. On January 4, 2013, Mother filed two *pro se* PFAA petitions seeking protection for herself and for herself and the parties' minor child, against Father. The court granted two temporary PFAA orders that same day, which prohibited Father from having any form of contact with Mother or child. The court scheduled a hearing for January 10, 2013. The trial court opinion continues:

> On January 10, 2013, only [Mother] appeared before the [c]ourt and the cases were continued to January 31, 2013, due to lack of service of the petitions on [Father]. Thereafter, service of the petitions was made on [Father].
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> [Father], *via* letter addressed to the court dated January 23, 2013, requested a continuance of the January 31, 2013, hearings, stating that he was working in California on a project for his employer and would not be returning to his home in Virginia until February 22, 2013. [Father] also requested time to "…acquire the appropriate defense documentation and attorney."
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> The [c]ourt arranged for [Father] to participate in the January 31, 2013, hearing *via* telephone. [Mother] was present at the January 31, 2013, hearing as was her minor child, [N.W.]. [Father], *via* telephone and under oath, informed the [c]ourt that he would be working in California until mid-March 2013 instead of February 22, 2013, as previously stated in his letter to the [c]ourt. Accordingly, the [c]ourt granted [Father's] continuance request and the hearings were rescheduled for April 2, 2013, to ensure [Father] would be able to attend said hearings and obtain counsel, as he requested. The [c]ourt then verbally advised [Father] of the April 2, 2013 date *via* telephone and that the full temporary PFA orders would remain in effect until the subsequent hearing date. Written notice of said hearing date was also mailed to [Father] at his home address in Virginia. After verbally advising [Father] of the April 2, 2013, hearing date, the [c]ourt stated: "…if you do

> not show up to court that day, and you do not notify us that you are still out of town, then I'm going to make that temporary order permanent for three years. If he doesn't show up, if he doesn't have a good reason for not showing up, I will give you (Mother) an order by default. Do you understand that?" [Father] responded, "Yes, sir…." At the hearing of April 2, 2013, [Mother] and her minor child, [N.W.], were present and represented by counsel. [Father], however, did not appear, but his counsel did appear on his behalf. When questioned by the [c]ourt as to why [Father] was not present, counsel offered no reason for [Father's] absence. The [c]ourt then entered final PFA Orders by default for [Mother] and her minor child against [Father] for a period of three years.
>
> On May 1, 2013, [Father], through his counsel, timely filed Notices of Appeal.

(Trial Court Opinion, filed July 1, 2013, at 1-2) (internal citations to the record omitted).[1] The court ordered Father to file a concise statement of errors complained of on appeal, per Pa.R.A.P. 1925(b), and Father timely complied.

Father presents one issue for review:

> WHETHER THE TRIAL COURT ERRED WHEN IT ENTERED AN ORDER FOR PROTECTION WHERE [FATHER] HAS NO CONTACT WITH THE STATE OF PENNSYLVANIA?

(Father's Brief at v).

Father argues the court lacked personal jurisdiction over him for these proceedings, because Father did not appear in the state. Instead, Father

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[1] This Court designated the appeal at No. 1257 EDA 2013 a Children's Fast Track matter because it could affect custody of the parties' minor child. As a matter of judicial expediency, the appeal at No. 1256 EDA 2013 was also designated a Children's Fast Track case.

claims he obtained a continuance and hired counsel. Counsel brought to the court's attention, at the hearing on April 2, 2013, that (a) his "client has had no contact with the state of Pennsylvania, none whatsoever," and (b) "these allegations that you spoke of were investigated by the state of Virginia and they were unfounded." Father states the PFAA extends personal jurisdiction over the parties to the extent allowed per 42 Pa.C.S.A. § 5322, which Father submits did not permit the court to exercise personal jurisdiction over Father. Father complains the court failed to cite any support for its "minimal contacts" theory, other than the fact that the Department of Human Services ("DHS") in Philadelphia was conducting an investigation. Father insists Mother had the burden to prove the court's personal jurisdiction over Father, but she gave the court nothing once the issue was raised.

Moreover, Father maintains the court tried to secure jurisdiction over Father by stating that it would open the default orders if Father "appeared" within 30 days and gave the court *bona fide* reasons to open the orders. Father submits the court's offer was just a ruse so the court could then use it to say it had jurisdiction over Father, because he was present in the state of Pennsylvania.[2] Father concludes the court abused its discretion by not

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[2] To the extent Father contends the trial court erred in entering the orders by default, Father did not include that claim in his statement of questions involved and does not cite any authority to support the contention in his brief. (Father's Brief at v, 4). Rule 2116 of the Rules of Appellate Procedure provides, in pertinent part: "No question will be considered unless it is stated
(Footnote Continued Next Page)

requiring Mother to present her evidence at the PFAA hearing, when Father's counsel was present; and the protection orders were improperly entered and should be reversed. We cannot agree.

With respect to civil actions, Pennsylvania's Rules of Civil Procedure Provide, in pertinent part:

> **Rule 1028. Preliminary Objections**
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> (a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:
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> > (1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;
>
> * * *

Pa.R.C.P. 1028.

> **Rule 1032. Waiver of Defenses. Exceptions. Suggestion of Lack of Subject Matter Jurisdiction or Failure to Join Indispensable Party**
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> (a) A party waives all defenses and objections which are not presented either by preliminary objection, answer or reply, except a defense which is not required to be pleaded

(Footnote Continued)

in the statement of questions involved or is fairly suggested thereby." Pa.R.A.P. 2116(a). Additionally, "Appellate arguments which fail to adhere to these rules may be considered waived, and arguments which are not appropriately developed are waived. Arguments not appropriately developed include those where the party has failed to cite any authority in support of a contention." ***Lackner v. Glosser***, 892 A.2d 21, 29 (Pa.Super. 2006) (citations omitted). Because Father failed to adhere to the rules of appellate procedure, omitted this issue from the relevant portions of his brief, and failed to develop an argument with respect to this issue, he waived any argument in this regard.

> under Rule 1030(b), the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, the objection of failure to state a legal defense to a claim, the defenses of failure to exercise or exhaust a statutory remedy and an adequate remedy at law and any other nonwaivable defense or objection.

Pa.R.C.P. 1032.

With respect to PFAA petitions, however, the Rules provide:

> **Rule 1901.6. No Responsive Pleading Required**
>
> No pleading need be filed in response to the petition or the certified order and all averments not admitted shall be deemed denied.

Pa.R.C.P. 1901.6.

Prior to filing of preliminary objections, a party waives any objection to personal jurisdiction by submitting to or invoking the court's jurisdiction. ***See Hoeke v. Mercy Hospital of Pittsburgh***, 386 A.2d 71, 74 (Pa.Super. 1978).

> [T]o find a waiver of *in personam* jurisdiction the courts ordinarily have looked for "some other and further action on the merits" beyond the mere filing of an appearance by the party seeking not to be bound. Exemplary of such "further action on the merits" are cases like ***O'Barto v. Glossers Stores, Inc.***, 324 A.2d 474 ([Pa.Super.] 1974). In that case this court had little difficulty finding a waiver of a jurisdictional objection when the third party defendant served interrogatories on the original plaintiff, filed an answer to the third party complaint, and sought to join another defendant before questioning the propriety of service. Similarly the courts have found waiver when there has been a demurrer prior to raising the jurisdictional objection as in ***Yentzer v. Taylor Wine Co.***, 409 Pa. 338, 186 A.2d 396 (1962), or, when the defendant takes the case to a master before challenging the court's

> power to adjudicate his rights vis à vis the plaintiff. ***Hohlstein v. Hohlstein***, 296 A.2d 886 ([Pa.Super.] 1972).

Id. at 74-75.

Additionally, in objecting to a court's personal jurisdiction, the law requires more than mere objection from the movant:

> The moving party has the burden of **supporting** its objections to the court's jurisdiction. Once the plaintiff has produced some evidence to support jurisdiction, the defendant must come forward with some evidence of his own to dispel or rebut the plaintiff's evidence. The moving party may not sit back and, by the bare allegations as set forth in the preliminary objections, place the burden upon the [non-moving party] to negate those allegations. It is only when the moving party properly raises the jurisdictional issue that the burden of proving jurisdiction is upon the party asserting it.

Schmitt v. Seaspray-Sharkline, Inc., 531 A.2d 801, 803 (Pa.Super. 1987) (citations omitted) (emphasis in original). ***See also Gaboury v. Gaboury***, 988 A.2d 672, 675 (Pa.Super. 2009), *appeal denied*, 606 Pa. 672, 996 A.2d 492 (2010) (stating: "Once the moving party supports its objections to personal jurisdiction, the burden of proving personal jurisdiction is upon the party asserting it").

Instantly, Father elected not to file preliminary objections to Mother's PFAA petition. In our view, the Rules of Civil Procedure permit the filing of a preliminary objection to personal jurisdiction, even in PFAA cases. ***Compare*** Pa.R.C.P. 1901.6 ("No pleading **need be filed** in response to the petition…") ***with*** Pa.R.C.P. 1901.7(b) ("No motion for post-trial relief **may be filed** to

the final order"). Father's failure to file any preliminary objection to the court's exercise of personal jurisdiction over him arguably waived his contention. ***See*** Pa.R.C.P. 1032.

Even if Father did not waive the issue at this early stage, Father subsequently moved for a continuance by letter and appeared by telephone at the January 31, 2013 hearing. In his motion for continuance, Father requested the court's indulgence to acquire an attorney and prepare a defense. At the hearing, Father specifically contested the allegation of sexual abuse, attempted to address issues concerning the parties' marital home in Virginia, and again sought the court's indulgence to continue the hearing until he could personally appear before the court. Through his actions, and his decision not to object at this time, Father endeavored to proceed on the merits and manifested submission to the court's jurisdiction. As a result, Father was estopped from subsequently objecting to personal jurisdiction. ***See Hoeke, supra*** at 74-75.

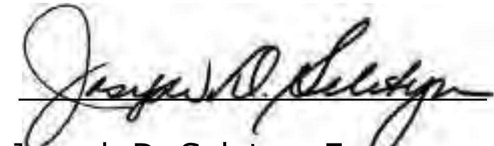
Setting aside Father's *pro se* omissions and waivers, at the time Father's counsel objected to the court's jurisdiction at the second PFAA hearing, counsel for Father solely averred: "[J]ust for the record, my client has had no contact with the state of Pennsylvania, none whatsoever." (N.T., 4/2/13, at 2). Counsel proffered no evidence to support his assertion or further discussion of the matter other than to characterize the parties' marriage in Pennsylvania as "alleged." (***See id.*** at 4). Counsel's statement

constituted only a bare allegation that the trial court lacked personal jurisdiction and was insufficient to support an objection to personal jurisdiction. ***See Gaboury, supra***; ***Schmitt, supra***. In omitting any support for the objection, Father failed to shift any burden of proof to Mother on the issue. Consequently, even when represented by counsel, Father waived the issue of personal jurisdiction. Accordingly, we affirm.

Orders affirmed.

*JUDGE OLSON CONCURS IN THE RESULT.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/14/2014