

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DANIEL BOZOCHOVIC,
Plaintiff,

vs.

ANGELA GAIR,
Defendant.

: No. 16-21,481
:
: CIVIL ACTION - LAW
:
:
: *Rule 1925(a)*
: *Opinion in Support of Order*

MEMORANDUM 1925(A) OPINION
IN SUPPORT OF THE COURT'S OCTOBER 30TH ORDER

AND NOW, this 23rd day of January, 2020, Appellant Daniel Bozochovic having filed an appeal of this Court's Order denying Appellant's Petition for Special Relief, the Court hereby issues the following Opinion in Support of its Order of October 30, 2019.

This instant matter arises from a custody dispute between Daniel Bozochovic ("Plaintiff") and Angela Gair ("Defendant") regarding their two minor children, K.M.B. ("daughter") and B.D.B. ("son"). Following a custody conference and pursuant to the parties' agreement, on January 13, 2017, this Court issued a Custody Order granting the parties joint legal custody and Defendant primary physical custody. Plaintiff was granted physical custody every Saturday and Sunday from 12:00 noon until 6:00 p.m.

On April 18, 2019, Plaintiff filed a Petition for Contempt for Defendant's failure to comply with the January 13th Custody Order. Following a hearing on the Petition, the Court issued an Order on June 18, 2018, holding Defendant in contempt for failure to provide Plaintiff custody in February of 2018. The Court suspended sanctions, instead ordering that the parties resume the custody arrangements established in the January 13th Custody Order. The Court further ordered Defendant to share any medical information relevant to B.D.B.'s mental health condition, and ordered both parties to appear at the office of Dr. Lindauer for an appointment scheduled for June 19, 2018, regarding their son's condition. The Court further ordered that the parties follow the medication regime previously prescribed by B.D.B.'s physicians, although Plaintiff was instructed that he could have B.D.B. examined by another psychiatrist or related mental health physician at his own expense.

Defendant then filed a Petition for Emergency Custody Relief on June 29, 2018, averring that Plaintiff did not appear at the appointment with Dr. Lindauer and was ordering B.D.B. not to follow his prescribed medication regime.¹ She further averred that Plaintiff was using controlled substances during visitation with the children. Following an ex parte hearing held the same date, the Court issued an Order for Special Relief temporarily granting Defendant sole custody of the children. Thereafter, the Court held an Emergency Custody hearing on July 16, 2018, and issued an Order requiring that Plaintiff have no conversations with B.D.B. regarding his belief that B.D.B. should stop taking his currently prescribed medication, and again directing Plaintiff to consult with physicians should he have concerns about his son's current medication regime. The Order also directed Plaintiff that he could not be under the influence of any illegal substance while in physical custody of the children.

The Court subsequently altered the terms of the January 13th Custody Order by entry of a Final Protection from Abuse ("PFA") Order on March 29, 2019, under docket FC-19-20,199. Per the terms of the Final PFA Order, Plaintiff was to arrange visitation with the children through his paternal grandmother, Sherry Ungard. Contact between the parties was to be limited to text message communications between Ms. Ungard and K.M.B.

While the custody arrangement established under the Final PFA Order remained in effect, Plaintiff filed a Petition for Special Relief on October 7, 2019. In his Petition, Plaintiff averred that he had not seen or heard from the children for over six months. He asserted that he was concerned for the mental health of the children due to his belief that B.D.B. had been misdiagnosed and that Defendant was asserting a negative influence over K.M.B., which he referred to as "malicious mother syndrome". He requested that the Court appoint a guardian ad litem for B.D.B. Plaintiff conceded in his Petition that he had recently been under investigation by Children and Youth Services, but asserted that the findings of that investigation were unfounded.

In Defendant's Response to Plaintiff's Petition for Special Relief, Defendant averred that in addition to not attending the June 19th appointment with Dr. Lindauer,

¹ Lycoming County had long had a local rule of procedure that permitted the filing of "Emergency Custody Petitions" and allowed for the holding of ex parte hearings. As the local rule was inconsistent with

Plaintiff never sought an alternate diagnosis and instead continued to encourage B.D.B. not to take his prescribed medication. Defendant further asserted that following entry of the Final PFA Order, Plaintiff never contacted Ms. Ungard to schedule visitation and was otherwise uncommunicative with Defendant. Contending that Plaintiff's inability to maintain contact with the children was a result of his own failure to comply with the Court's prior orders, Defendant claimed that Plaintiff's Petition for Special Relief was filed in bad faith and consequently requested attorney fees. The Court held a hearing on Plaintiff's Motion for Special Relief on October 30, 2019, at which Plaintiff appeared unrepresented and Defendant appeared with her attorney, Michael Morrone. At the close of the hearing, the Court dictated the following Order:

Following hearing, the Court finds that Mr. Bozochovic has failed to present persuasive evidence that Ms. Gair has in any way obstructed his efforts to have custody and visitation with their children. In fact, contrary to the representations in his petition, Mr. Bozochovic's grandmother has not made reasonable efforts to coordinate visitation as required by the existing PFA.

Furthermore, by Mr. Bozochovic's own admission, he has made no efforts since the contempt hearing in June of 2018 before Judge Gray to communicate with any of his son's physicians or to seek out a second opinion regarding his son's diagnosis or course of treatment. Further, contrary to the representations in his petition, there is an indicated Children and Youth report naming Mr. Bozochovic as a perpetrator of sexual abuse of his daughter.

For all of these reasons, the Court finds Mr. Bozochovic's petition frivolous and without merit and not only denies Mr. Bozochovic's Petition for Special Relief, grants Ms. Gair's request that attorney fees be paid. Mr. Bozochovic shall pay attorney fees to Attorney Michael Morrone in the amount of \$600 no later than ninety (90) days from today's date.²

Plaintiff thereafter filed a Notice of Appeal to the Superior Court on November 27, 2019. Following this Court's issuance of a 1925(b) Order, Plaintiff filed his Concise Statement of Matters Complained of on Appeal on December 27, 2019. In his Concise Statement of Matters Complained of on Appeal, Plaintiff raises the following matters:

Pa.R.C.P. §§ 1915 *et seq.*, the local rule has since been eliminated.

² *Bozochovic v. Gair*, FC-16-21,481; Order (Nov. 8, 2019).

- a. That the weight of the evidence / testimony presented during the hearing does not support the fact-finder's decision and order.
- b. That the evidence / testimony presented during the hearing was insufficient to support the fact-finder's decision and order.
- c. That the Honorable Judge Linhardt improperly considered evidence of unfounded, unsubstantiated, and currently contested allegations against Mr. Bozochovic in a Children and Youth Report promulgated against Mr. Bozochovic absent proper due process.
- d. That Judge Linhardt sat not as an impartial and unbiased fact-finder, but rather having bias and impartiality against Mr. Bozochovic for a host of reasons, including *inter alia* his admitted prior drug dependency and his prior criminal record.
- e. That the evidence and testimony presented at the hearing does not support a finding that Mr. Bozochovic's Petition was without merit, and thereby Judge Linhardt's ordering that Mr. Bozochovic pay Ms. Gair's reasonable attorney's fees was improper.
- f. That the Court failed to fully consider the requisite custody / visitation factors during the hearing.
- g. That the Court failed to allow Mr. Bozochovic the opportunity to present all relevant evidence / testimony, thereby removing his ability to have a fair and proper hearing.^{3,4}

Addressing these matters, the Court first notes that the evidence provided at hearing was limited to testimony from Plaintiff and Defendant, and a letter from Children and Youth Services provided by Defendant. In denying Plaintiff's Petition for Special Relief, the Court received conflicting testimony from Plaintiff and Defendant as to whether Ms. Ungard had contacted K.M.B. to arrange visitation. Specifically, Plaintiff claimed that he had Ms. Ungard reach out to K.M.B. to arrange visitation,⁵ while Defendant claimed that K.M.B. had informed her that Ms. Ungard had not contacted K.M.B. within the previous six months.⁶ As neither party called Ms. Ungard nor any other party as a corroborating witness or otherwise introduced evidence supportive of his or her claim, the Court's ruling was limited to its findings as to the credibility of the

³ Concise Statement of Matters Complained of on Appeal Pursuant to Rule 1925(B) Order (Dec. 27, 2019).

⁴ Mr. Bozochovic failed to request preparation of the transcript of these proceedings or pay the deposit fee for same, pursuant to Pa.R.A.P. § 1911. Nevertheless, the Court has ordered that the transcript be prepared to assist it in issuing its opinion.

⁵ See *Bozochovic v. Gair*, FC-16-21,481; Transcript of Proceedings 25 (Jan. 15, 2020) ("Transcript").

parties' testimony. Plaintiff protested at the hearing that he lacked notice that he would need to call witnesses or otherwise present evidence because he did not receive Defendant's Response prior to the hearing.⁷ However, the Court found that Final PFA's requirement that all custody visitation be arranged through Ms. Ungard was sufficient to put Plaintiff on notice that Ms. Ungard would be a relevant witness. Additionally, Plaintiff was generally on notice that he would need to present evidence in support of his Petition. At no point did the Court deny Plaintiff the opportunity to call witnesses or otherwise present relevant evidence.

The Court ultimately determined that Defendant was the more credible witness. This finding was based in part on Defendant's admission of a letter obtained from Children and Youth Services confirming that there is an indicated report against Plaintiff for the sexual abuse of his daughter.⁸ The Court credited Defendant's testimony that she and Plaintiff received notice that the report had been indicated over a month prior to the hearing and prior to Plaintiff filing his Petition for Special Relief.⁹ The Court therefore found that Plaintiff's description of the Children and Youth report in the Petition for Special Relief as "unfounded" was a deliberate mischaracterization. The Court's citation of this indicated report in its October 30th Order was in reference to the Court's finding as to Plaintiff' lack of credibility, and was in no way a ruling as to the content of the report.

The Court ultimately ordered that Plaintiff pay Defendant's attorneys' fees, finding that Plaintiff's commencement of the action was arbitrary, vexatious, and in bad faith.¹⁰ This ruling was supported by the Court's findings: that Plaintiff had failed to present persuasive evidence that he had made reasonable efforts to schedule visitation with Ms. Ungard that had been obstructed by Defendant; that Plaintiff, by his own admission, had made no attempts following the Court's issuance of its June 18th Order to consult with B.R.B.'s physicians or otherwise seek a second opinion as to B.R.B.'s medication regime; and, that Plaintiff deliberately mischaracterized the indicated status of the Children and Youth Report in his Petition for Relief. In light of these findings, the

⁶ Transcript at 35.

⁷ See Transcript 12-13.

⁸ See Transcript at 36-37.

⁹ *Id.*

Court ruled that Plaintiff's Petition for Relief was wholly without merit.¹¹ The Court's ruling was not in any way based on Plaintiff's prior criminal record or his history of substance abuse.

While the Court did not review all of the statutory custody factors before issuing its ruling, it was not obliged to do so. In granting or modifying an award of custody, the Court must consider sixteen factors indicative of the best interest of the child pursuant to 23 Pa.C.S.A. §§ 5323 and 5328. However, these statutes "require neither a consideration of all sixteen factors nor delineation of the court's rationale on the record unless the ruling awards custody or modifies an award of custody."¹² While hearings on petitions to modify custody *do require* the Court to address all sixteen factors, even in situations where the Court merely affirms its previous Order,¹³ Plaintiff's Petition for Special Relief sought *enforcement* of the January 13th Custody Order, not modification.

For the reasons stated above, it is requested that Plaintiff's appeal be denied.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/cp

cc: Michael Morrone, Esq.

Daniel Bozochovic

56 Overhill Rd., Williamsport, PA 17701

¹⁰ 24 Pa.C.S.A. § 2503(9).

¹¹ A Court may award attorneys' fees based upon its credibility determinations. See *M.C. v. R.W.*, 580 A.2d 1124, 1127 (Pa. Super. 1990), overruled on other grounds by *G.B. v. M.M.B.*, 670 A.2d 714 (Pa. Super. 1996) (en banc).

¹² *S.W.D. v. S.A.R.*, 96 A.3d 396, 402 (Pa. Super. 2014) (quoting *M.O. v. J.T.R.*, 85 A.3d 1058, 1063 n.4 (Pa. Super 2014)).

¹³ See *C.M. v. M.M.*, 215 A.3d 588, 593 (Pa. Super. 2019).