

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

JUSTIN HASSELMAN,
Plaintiff

v.

MARIEL ADAMS,
Defendant

:
:
: **FC-19-20085**
:
: **CIVIL ACTION – LAW**
:
: **CUSTODY**

OPINION

This matter arises from a Custody Complaint filed by Plaintiff Father on February 1, 2019. The Custody Trial was initially set to begin September 3, 2020. Prior to the September 3rd trial, Defendant Mother filed a separate action for a Petition for Protection From Abuse [hereinafter “PFA”] against Father on behalf of their minor child, M.A. The majority of Mother’s evidence in the PFA case rested upon statements made to her and others by the minor child. Because Mother intended to enter these statements into evidence, a Tender Years hearing was held on August 31, 2020 at which point the Court ruled the minor child available to testify pursuant to 42 Pa.C.S.A. § 5985.1. A competency review hearing was held on September 3, 2020 just prior to the start of the PFA hearing, at which point the Court interviewed the minor child on record and ruled her incompetent to testify pursuant to Pa.R.E. 601.¹ Mother’s Petition for Protection From Abuse against Father was ultimately denied. After the conclusion of the PFA case, the Court proceeded with the Custody Trial on September 3, 2020. Due to time restraints, the custody trial was set to continue on a second date on October 12, 2020. The Orders in the PFA case issued after the August 31st and September 3rd hearings have been appealed by Mother.

¹ The Opinions of August 31, 2020 and September 9, 2020 fully detail the Court’s findings and rationale regarding these two decisions.

Mother now files a Motion for Stay of Proceedings relating to the above captioned custody action. In support of her position, Mother cites to Pennsylvania Rule of Appellate Procedure 1701 which states, in part: "Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter." Pa.R.A.P. 1701(a). Mother argues that the Court cannot proceed with the custody matter because the rulings made in the Protection From Abuse matter directly affect Mother's ability to present evidence in the custody matter, particularly the testimony of the minor child.

However, as Father points out, Mother's argument fails. Mother has appealed the Court's rulings relating to the Protection From Abuse action docketed at FC-20-20486 and captioned Mariel Adams v. Justin Hasselman. The present action – a custody matter – is an entirely separate action. Rule 1701 states that, after an appeal is filed, the Court cannot proceed further "*in the matter.*" The matter in which Mother filed the Motion to Stay is separate from the matter in which Mother filed the appeal. Therefore, Rule 1701 is inapplicable. Further, the Court's rulings are likely to be affirmed on appeal, considering the testimony from the minor child as well as the parties and Lycoming County Children and Youth Services' decisions to not pursue a claim against Father for the alleged abuse. Finally, Father is currently exercising unsupervised custody and will be doing so unless the Superior Court reverses this Court's rulings. Therefore, even assuming the Court erred in its rulings, there is no harm in proceeding in the custody action as Father will continue exercising his unsupervised custody rights until the appeal is decided. For these reasons, Mother's Motion for Stay of Proceedings is denied.

ORDER

AND NOW, this 5th day of **October, 2020**, upon consideration of Defendant's Motion for Stay of Proceedings and Plaintiff's response thereto, Defendant's Motion is **DENIED**. The October 12, 2020 Custody Trial shall take place as previously scheduled.

By the Court,

Ryan M. Tira, Judge

RMT/ads

Cc: Michael Morrone, Esquire
Mary Kilgus, Esquire
Jeri Rook, Judge McCoy's Office
Gary Weber, Esquire