

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

<b>JOSEPH LONGO, JR.,</b>	:	
<b>Plaintiff</b>	:	<b>NO. FC-13-20,057</b>
	:	
<b>vs.</b>	:	
	:	
<b>SANDRA MOSHER,</b>	:	<b>CUSTODY</b>
<b>Defendant</b>	:	

**OPINION**

On November 8, 2019, Joseph Longo, Jr. (Father) filed a Motion to Modify Custody in the above referenced matter. A pre-trial conference was held with the undersigned Judge on March 3, 2020 at which time Father appeared personally with his Counsel, Andrea Pulizzi, Esquire and Sandra Mosher (Mother) appeared via telephone and was unrepresented. During the conference, trial was set for June 15, 2020 and the parties were specifically advised by the Court of the date, time, and location of trial. A written Order memorializing the conference and containing the details of the custody trial was mailed to the parties on March 5, 2020. The Order was mailed to Mother at 910 Orchard Road, Ortanna [sic], PA.

Trial was held on June 15, 2020 and, despite receiving notification from the Court of the date and time of trial, Mother failed to appear. Following the conclusion of the trial, the Court issued an Order granting Father primary physical custody of the children during the school year. A copy of the Order was mailed to Mother at 910 Orchard Road, Orrtanna, PA. On June 25, 2020, Mother filed a Petition for Special Relief asking the Court to reconsider its June 15, 2020 Order for several reasons but primarily because she never received the paperwork scheduling trial and because Father informed her that the Courthouse

was closed at the time of trial due to the COVID-19 pandemic. On the Petition, Mother listed her address as 910 Orchard Road, Orrtanna, PA.

Argument was held on July 31, 2020 on Mother's Petition. Mother argued that the Court should set aside its June 15, 2020 Order and re-try this matter because she did not receive notice of the trial date and was misled by Father. Specifically, Mother states that she attempted to call Lycoming County Family Court several times the week prior to trial but was unable to get ahold of anyone. She does not remember who she called. She states that she never received the March 3, 2020 pre-trial Order setting the date and time of trial. She alleges she did go to the post office to ensure there was no mail waiting there for her but was informed that they were three weeks behind. Finally, she states that she had a conversation with Father on either June 12<sup>th</sup> or June 13<sup>th</sup> and Father told her that, as far as he knew, the Courthouse was still closed.

A person has notice of a fact if that person has, among other things, actual knowledge of it, received information about it, or reason to know about it. NOTICE, *Black's Law Dictionary* (11th ed. 2019). *Black's Law Dictionary* defines actual notice as "[n]otice given directly to, or received personally by, a party." ACTUAL NOTICE, *Black's Law Dictionary*, (11th ed. 2019). Constructive notice is denied as "[n]otice arising by presumption of law from the existence of facts and circumstances that a party had a duty to take notice of . . . ." CONSTRUCTIVE NOTICE, *Black's Law Dictionary*, (11th ed. 2019).

Here, Mother clearly had actual notice of the date and time of the custody trial. First, Mother personally participated via telephone during the pre-trial conference where she was verbally given the exact date and time of trial.

Second, Mother never claimed that the 910 Orchard Road address to which the March 3<sup>rd</sup> pre-trial Order was sent was a bad address. To the contrary, she admitted that she received the June 15<sup>th</sup> trial Order which was also sent to 910 Orchard Road and she listed 910 Orchard Road as her address on her Petition. Mother stated during argument that she filled out the Petition herself and that all information contained in the Petition was accurate. Finally, while it may be true that the post office was three weeks behind on delivering mail, there was over three months between the time the pre-trial conference Order was sent and the date of trial.

Father's Counsel states that Mother never contacted her to ask if trial was still occurring despite having her contact information. Further, while Mother states she contacted Family Court, Mother never contacted the Court directly to find out if trial was going forward as scheduled. Rather, she alleges that she contacted Father directly and asked him "if they were still going to Court on June 15<sup>th</sup>." Yet, Mother still failed to appear. Father claims he has no recollection of having a conversation with Mother at any time prior to trial. It is clear that Mother received actual notice of the date of trial. Even assuming Mother did not receive the written pre-trial Order, she was given verbal notification from the Court, was given several months to prepare, had plenty of opportunities to contact the Court, and admitted to the Court that she knew when trial was scheduled to take place. It would be prejudicial to Father to force him to re-try this matter and therefore, Mother's Petition is denied.

**ORDER**

**AND NOW**, this 11<sup>th</sup> day of **August, 2020**, upon consideration of Defendant's Petition for Special Relief and Plaintiff's response thereto, it is hereby Ordered that Plaintiff's Petition is **DENIED**. The June 15, 2020 Order shall remain in full force and effect.

BY THE COURT,

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Hon. Ryan M. Tira, Judge

RMT/ads

CC: Sandra Mosher  
910 Orchard Road, Orrtanna, PA 17353  
Andrea Pulizzi, Esquire  
Gary L. Weber, Lycoming Reporter