

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

VAO,		: NO. FC-19-20,758
	Plaintiff,	:
	vs.	: PROTECTION FROM ABUSE
		:
CB,		:
	Defendant.	: <i>Petition to Amend PFAs</i>
.....		
CB,		: NO. FC-19-20,789
	Plaintiff,	:
	vs.	: PROTECTION FROM ABUSE
		:
VAO,		:
	Defendant.	: <i>Petition to Amend PFAs</i>

ORDER

AND NOW, following prehearing conference and argument held January 8, 2020 on Petitioner CB’s Petition to Amend Final Protection from Abuse Orders (“Petition to Amend”), the Court hereby issues the following ORDER.¹

On September 25, 2019, this Court held a joint hearing on Protection from Abuse Petitions separately filed by CB and VAO. The parties entered a consent agreement without an admission and the Court granted their requests for a Final Protection from Abuse Order (“PFA”) in each of the above-captioned matters. The PFA issued to protect Ms. O under docket FC-19-20,758 also included the parties’ minor child as a protected individual and granted Ms. O primary physical custody, providing Mr. B only limited supervised visitation. The PFA issued to protect Mr. B under docket FC-19-20,789 also granted Ms. O primary physical custody. Both PFAs stipulated that either party could initiate custody proceedings and that a valid custody order would supersede the temporary custody provisions of the PFA.

At the time of the PFA hearing, the parties were informed that the custody schedule then in place was temporary and could be modified at the upcoming custody

¹ The Court had ordered Petitioner to file a brief in support of his position by November 22, 2019. Respondent was ordered to file a responsive brief by December 3, 2019. Although Respondent timely

conference scheduled for October 15, 2019. However, counsel for Mr. B represents that the family court hearing officer subsequently informed counsel that because the PFA issued under docket FC-19-20,758 included the minor child as a protected party, they would not modify the existing custody schedule. Consequently, Mr. B filed this Petition to Amend on October 10, 2019, seeking the child be removed as a protected party.

The Court must first determine whether Mr. B is entitled to a hearing on his Petition to Amend. Pursuant to Pa.R.C.P. 1901.8(c):

If either party seeks a modification after a final judgment has been entered in a protection from abuse action, the party shall petition the court to modify the final order. The court shall enter an order granting or denying the petition following an appearance by the petitioner before the court.

This provision would appear to enable a defendant in a PFA action to unilaterally petition the Court for modification of a PFA. However, the Superior Court held to the contrary in *Castaneda v. Castaneda*, instead determining that the Pennsylvania Legislature's intent in promulgating Pa.R.C.P. 1901.8(c) was to supplement 23 Pa.C.S.A. § 6117(a), which enables hearings solely on petitions for modification that have been filed pursuant to the joint agreement of plaintiff and defendant.² This Court finds this ruling appealing on policy grounds, as it would serve to prevent a PFA defendant from harassing the plaintiff through the constant filing of petitions for modification even after the Court had entered a final PFA.³ However,

filed her brief, Petitioner failed to file a brief, his counsel instead arguing at the time of the January 8, 2020 conference that the Court should rely on the "plain language" of 23 Pa.C.S.A. § 6117(a).

² 23 Pa.C.S.A. § 6117 ("The plaintiff and the defendant may seek modification of an order issued under section 6108 (relating to relief) at any time during the pendency of an order. Except as otherwise indicated in this chapter, modification may be ordered after the filing of a petition for modification, service of the petition and a hearing on the petition.").

³ See *Castaneda v. Castaneda*, No. 2217 MDA 2013, 2014 WL 10913750, at *11 (Pa. Super. June 24, 2014) ("[I]t is difficult to imagine that the intent of Pa. R.C.P.1901.8(c) or 23 Pa.C.S.A. § 6117 was to allow PFA defendants an ability to unilaterally petition a court to modify a final PFA Order, entered after a hearing and a finding of abuse, so the Order would terminate immediately. Such an interpretation would not only disturb the finality of a Final PFA Order, but it would allow PFA defendants to force their victims to re-appear in court to defend an action for which the victims had previously prevailed. This result would be absurd and unreasonable. . . . The notion that a PFA defendant may petition to modify a final PFA order without the consent or participation of the victim, after a hearing and finding of abuse, is

Castaneda fails to account for the plain language of 23 Pa.C.S.A. § 6108(a), which enables the Court to amend a PFA entered by order or agreement “at any time upon subsequent petition by either party.” Subject to the plain language of the PFA statutes, Mr. B was entitled to an opportunity to appear before the Court to argue in support of his Petition to Amend, which he was provided at the conference and argument held January 8, 2020.

However, upon review of Mr. B’s Petition and consideration of the applicable law, the Court declines to amend the currently effective PFAs. The two PFAs in the instant matter were entered pursuant to the parties’ consent agreement. A PFA entered by consent of the parties will only be subject to review upon the objecting party’s demonstration of fraud or mutual mistake.⁴ Mr. B makes no allegation of fraud in his Petition to Amend, and the Court finds only unilateral mistake as to the agreed upon terms of the PFAs on the part of Mr. B. As the Court finds that Mr. B’s Petition to Amend is unsupported by law, his Petition to Amend is DISMISSED. Additionally, because the Court dismisses Mr. B’s Petition to Amend as a matter of law, it finds that Mr. B is not entitled to an evidentiary hearing on the Petition.⁵

The Court next addresses whether the family court division has jurisdiction to expand the current custody schedule while the PFA naming the minor child as a protected party remains in effect. The PFA Act expressly allows parties to file custody petitions after a PFA has been entered.⁶ However, the Superior Court has held that

extremely troubling. Such a result would clearly favor the private interest of a PFA defendant over the public interest of abuse victims who seek protection through our courts.”).

⁴ *Lee v. Carney*, 645 A.2d 1363, 1365 (Pa. Super. 1994) (quoting *Sarsfield v. Sarsfield*, 380 A.2d 899, 901 (Pa. Super. 1977)) (“A decree entered by consent of the parties is so conclusive that it will be reviewed only on a showing that an objecting party’s consent was obtained by fraud or that it was based upon a mutual mistake.”) (internal citations omitted).

⁵ Pa.R.C.P. 1901.8(c) permits the Court to grant or deny a petition for modification following an appearance by petitioner before the court, but does not require a full evidentiary hearing. While this must be read in conjunction with 23 Pa.C.S.A. § 6117(a), which requires a “hearing” before the Court grants modification, there is no similar requirement applicable to a Court’s denial of modification. In fact, nothing in the PFA Act suggests that Mr. Bennett’s mere filing of a simple petition entitles him to a full evidentiary hearing at this stage of the proceeding. Importantly, other than his claim of unilateral mistake, Mr. Bennett does not allege any facts that would warrant modification of the PFA to remove the minor child as a protected party.

⁶ See 23 Pa.C.S.A. § 6108(a)(4)(v) (“Nothing in this paragraph [relating to temporary custody as a form of relief] shall bar either party from filing a petition for custody under Chapter 53 (relating to custody) or

neither a previously or subsequently issued custody order may render a PFA Order a nullity.⁷ Pursuant to these rules, the Court finds that the family court division retains jurisdiction to hold a hearing and issue a custody order that may expand the current custody schedule, as long as the custody terms provided in the currently effective PFAs are not contravened. Specifically, any custody order issued while the PFAs remain in effect will limit Mr. B's contact with the child to supervised visits.

In summary, Mr. B's Petition to Amend is DISMISSED. The Court will provide the family court division with a copy of this Order prior to the custody conference currently scheduled for March 11, 2020 at 3:00 p.m. in courtroom 6.⁸

IT IS SO ORDERED this 6th day of February 2020.

BY THE COURT,

Eric R. Linhardt, Judge

cc: Michael C. Morrone, Esq.,
Kathleen O'Donnell Raker, Esq.
Jerri Rook, Executive Secretary to Judge McCoy
Family Court
Gary L. Weber, Lycoming Reporter

under the Pennsylvania Rules of Civil Procedure.”); *see also C.H.L. v. W.D.L.*, 214 A.3d 1272, 1281 (Pa. Super. 2019) (“Custody wise, a PFA order is not designed to impose anything but emergency relief.”).

⁷ *See Dye for McCoy v. McCoy*, 621 A.2d 144, 145 (Pa. Super. 1993) (“[S]ection 6108(a)(4) precludes a custody award, pre-existing or following the PFA Order, from nullifying the PFA Order as its purpose is to assure the safety of a child or children above and beyond any other Orders or relationships involving the children.”).

⁸ *See Corey Bennett v. Vanessa Otieno*, FC-19-20,685; Application for Continuance (Jan. 3, 2020).