

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BARBARA BARNES,
Appellant

v.

CHAD BARNES,

:
: No. FC 23-20851
: 558 MDA 2025
:
: Custody
:
:
: 1925(a) Opinion

OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE

This opinion is in support of the Opinion and Order dated December 31, 2024 regarding the determinations made by the Court after the parties' Custody Trial as well as the Opinion and Order regarding the Motion for Reconsideration, dated April 16th, 2025. In reviewing a custody order, the Superior Court's scope is of the broadest type and the standard is abuse of discretion. The Superior Court has held:

We must accept findings of the trial court that are supported by competent evidence of record, as our role does not include making independent factual determinations. In addition, with regard to issues of credibility and weight of the evidence, we must defer to the presiding trial judge who viewed and assessed the witnesses first-hand. However, we are not bound by the trial court's deductions or inferences from its factual findings. Ultimately, the test is whether the trial court's conclusions are unreasonable as shown by the evidence of record. We may reject the conclusions of the trial court only if they involve an error of law, or are unreasonable in light of the sustainable findings of the trial court.

M.J.M. v. M.L.G., 63 A.3d 331, 334 (Pa. Super. 2013).

Mother raises twenty-five (25) matters complained of on appeal. The trial court will address each paragraph in the order in which the matters complained of on appeal are presented in mother's statement.

Mother's first issue is “[w]hether the Court demonstrated abuse of discretion by willfully disregarding relevant Kayden's Law factors, resulting in manifest injustice. 23 Pa. Stat. §5328(a)(1)(2)(4)(6)(8)(9)(10)(13)(14).”

Initially, the court disagrees with mother's characterization of what constitutes the Kayden's Law factors. The changes to the custody factors as a result of Kayden's Law went into effect August, 2025 and include specifically the following subsections of Section 5328, (a), (a)(1), (a)(2), (a)(2.1), (a)(2.2), (a)(2.3), (a)(4), (a)(7), (a)(8) and (a)(13). Further, changes under Section 5328 as a result of Kayden's Law include (a.1) and (a.2). Kayden's Law expands the factors to be considered in the custody court's best interest analysis and requires the court to give “substantial weighted consideration” to, *inter alia*, the “safety of the child,” which is defined in Kayden's Law as including “the physical, emotional and psychological well-being of the child,” and any “[v]iolent or assaultive behavior committed by a party.” Act of April 15, 2024, P.L. 24, No. 8, §§ 2-3 (as amended 23 Pa.C.S. §§ 5322(a), 5328(a)). These changes do not undermine the court's custody determination based on other applicable Section 5328(a) factors.

The court was very mindful of the Kayden's Law factors when deciding this matter as evidenced by its analysis of the factors as well as its further discussion of the evidence and testimony that most heavily influenced the court's decision. The factor analysis and discussion may be found in the transcript dated December 3, 2024. Specifically included in the court's analysis was all exhibits entered into evidence by each party. The original exhibits will be forwarded to this Honorable Court with this Opinion.

Mother's second issue is “[w]hether the Court demonstrated a lack of impartiality and fairness in its disregard of the testimony offered by a Licensed Psychologist, medical providers, the First Assistant District Attorney, and the Office of Children Youth and Families. The Court denied these entities credibility on the basis of irrelevant factors and false information. 207 Pa. Code Ch. 33 Rule 2.2.”

The court weighed all of the evidence and testimony received. It appears that mother is implying that the court must place more weight on the individual testimony of a licensed psychologist, a medical provider, a first assistant district attorney and the Office of Children and Youth Families instead of looking at the totality of the circumstances and fairly weighing all of the evidence and testimony received. Furthermore, the court is free to assess the credibility of each witness based on a variety of factors and assign whatever degree of weight to the testimony of that witness as a result thereof. The court's reasoning may be found in the transcript dated December 3, 2024.

Mother's third issue is "[w]hether the Court compromised statutory law by making concessions that deviated from the expectations of Rule 1915.11-2(d)(4). This statute specifically states that the guardian ad litem shall provide the report to the parties and the court when filed but not later than 20 days prior to a hearing or trial or as otherwise ordered by the court. In adjusting this expectation, the Court failed to strictly apply the law as written. Therefore, allowing the guardian ad litem to provide a recommendation without engaging in any documented investigation to support his decision."

Attorney Yates was appointed as the Guardian ad Litem (GAL) in this matter on November 30, 2023. Attorney Yates testified that he remained involved in this matter since the date he was appointed and that he appeared at every scheduled custody hearing. (Day 4 Transcript at pg. 4). The amount of time expended by Attorney Yates in his capacity as GAL is well documented in the itemized invoices that he provided to the court as an exhibit during a special relief hearing following trial. The itemized invoices were previously provided to this Honorable Court as the result of mother appealing this court's Order that reallocated the GAL's fees following a hearing held December 13, 2024. The Order to which mother filed her appeal regarding this narrow issue was dated February 3, 2025. The invoices were attached to the February 3 Order.

The purpose of referencing the invoices in this Opinion is to demonstrate the GAL's documented level of involvement in this matter. Despite no final report submitted in this matter, the GAL was intimately familiar with the facts and circumstances regarding the evolution of this case and as a result, capable of competently testifying during trial.

Although the GAL did indicate that he would draft a final report during the first day of trial, it was also discussed that he would testify at the end of trial. (Day 1 Transcript pg. 105). The trial was originally scheduled for two days but required two additional days. The trial commenced October 31, 2024 and concluded December 3, 2024, at which time the GAL testified. This court does not recall the specific date and time when it was advised by the GAL that a final report was not prepared but the disclosure occurred within a day or two of the last scheduled day of trial. By the time the disclosure was made that no final report was prepared, this court was unable to reschedule the final day of trial in a timely manner due to other matters pending on its calendar. Accordingly, the court advised the GAL that he should be prepared to testify at length in lieu of filing a report. Admittedly, the court failed to memorialize this exchange between the court and the GAL on the record. Nevertheless, the GAL was called by the court during the last day of trial. Following the court's questioning of the GAL, counsel for both parties was provided the opportunity to treat the GAL as if on cross-examination.

The testimony of the GAL with respect to his observations of the children during their periods of supervised custody with father and father's paramour in father's home between November 7, 2024 and December 3, 2024, was very relevant to the court's determination of what was in the best interests of the children. Additionally, the court considered the GAL's testimony regarding his prior interactions with both minor children, but more specifically regarding the oldest child, S.B., as the court intended to meet with S.B. to vet the statements of the GAL's

observations. Because the court had already heard the testimony of the parties' respective witnesses, as well as reviewed the volumes of exhibits previously entered into evidence, the court need not and did not rely on anything testified to by the GAL other than the observations and conversations noted above.

Despite this, following the filing of mother's Motion for Reconsideration, the court wanted to provide mother with the opportunity to challenge any of the GAL's testimony that she felt constituted unfair surprise, protect her record and make argument as to how this court erred. Accordingly, reconsideration was granted and the GAL was ordered to file a final report. Unfortunately, the GAL passed away before a final report was filed. As a result, the court scheduled a conference where it was made clear that the entirety of the GAL's testimony during the last day of trial would be treated as the GAL's final report. As a result of that conference an Order dated February 19, 2025, was issued advising mother who she was permitted to call during the reconsideration hearing to challenge the GAL's final report. At the time of the reconsideration hearing mother presented no additional witnesses and the court denied her motion for reconsideration.

Further, the Superior Court in *J.E.L v. S.L.*, 1171 MDA 2014, a non-precedential decision, faced a similar issue in that the Guardian in that case did not produce a report 20 days prior to trial. The trial court did not strike the recommendation of the Guardian and Father argued that circumventing rule 1915.11-2(c) impeded his right to cross examination of the Guardian's opinion. The trial court in that case did not assign any weight to the report or recommendation, but, "simply referenced the recommendation under the catch-all custody factor without adopting or specifically invoking the recommendation". The Superior Court wrote that, "In light of the trial court's thorough analysis of the enumerated best-interest factors and its

consistent findings in favor of Mother, we cannot conclude that it was reversible error for the trial court to refer to the guardian *ad litem's* recommendation under the heading, '[a]ny other relevant factor.'"

Similar to the case above, this Court did not assign weight to or adopt the recommendation of the Guardian. Rather, the Court simply considered the Guardian's observations of the children along with all other evidence and testimony presented during the trial.

Mother's fourth issue is "[w]hether the Court engaged in ex parte communication with the guardian ad litem when advising the guardian ad litem that he was no longer required to issue a report to the parties. The guardian ad litem testified on December 3, 2024 and December 13, 2024 that the Court advised him of this release of responsibility. The parties were never notified by the Court of this decision, nor was this addressed during trial proceedings in violation of 207 Pa. Code Ch. 33 Rule 2.9."

The court acknowledges that it failed to memorialize on the record when it was advised by the GAL that a final report was not prepared, that this disclosure occurred within a day or two of the last scheduled day of trial and that the GAL was advised that he should be prepared to testify at length in lieu of filing a report. The court certainly did not do this out of malice, ill will or for any other reason than to ensure that the trial was concluded in a timely manner.

Mother's fifth issue is "[w]hether the Court permitted bias in proceedings by allowing the guardian ad litem to usurp 6. 7. 8. 9. the Court's authority in a way that openly targeted the Plaintiff and her paramour, while demonstrating support of the Defendant's attorney in violation of 207 Pa. Code Ch. 33 Rule 2.3.(c)"

The court is uncertain how to address this issue as the meaning of or reference to "6. 7. 8. 9." is unknown. Regardless, the transcript of the GAL's testimony reflects that the GAL was asked questions by the court and counsel for each party and answered each question posed to him.

Mother's sixth issue is "[w]hether the Court demonstrated extreme bias when referencing the Plaintiff's reports of possible PFA contempt's to law enforcement as a factor against the Plaintiff when rendering its opinion. In its assessment, the Court implied that the Plaintiff was wrong for reporting crimes committed against her person, despite these crimes resulting in criminal charges against the Defendant. The inference that the Plaintiff is at fault for reporting actionable crimes implies that a victim of a crime should not report them for fear of influencing negative judgments from an officer of the Court, contrary to 23 Pa.C.S.A. § 5328."

In its analysis of the factors, the court did not imply that the Plaintiff was wrong for filing possible PFA contempts. Rather the court only noted that Mr. Gillum was unaware of any PFA contempt's that were filed at the time of his interview with the parties. The court made no inference that the Plaintiff was at fault for filing contempt petitions. It was only the court's position to highlight why it had made a different determination than Mr. Gillum.

Mother's seventh issue is "[w]hether the Court demonstrated prejudice against that Plaintiff in repeatedly referencing the Plaintiffs "mental health issues" as a factor against the Plaintiff. The Plaintiff demonstrated full transparency in testimony regarding her mental health treatment, which was further supported by the testimony offered by licensed psychologist, Michael Gillum. No testimony or evidence was presented by the defendant that indicated safety risks or an inability to care for the minor children on the basis of the Plaintiff's past mental health treatment for diagnosis related to Post Traumatic Stress Disorder. Therefore, they lacked relevance in the matter. These globalized statements constitute an aversion to individuals who seek and maintain treatment for mental health purposes. They were discriminatory in nature and negatively represented the Plaintiff in violation of the Americans with Disabilities Act as well as 207 Pa. Code Ch. 33 Rule 2.3.(2)"

Mother's argument is flawed. The court is required, pursuant to Section 5328(a)(15), to consider the mental and physical condition of a party or a member of the party's household. Father questioned mother's mental health throughout the trial. In support of Father's concerns, he submitted countless text messages where mother repeatedly voiced wanting to die as well as her desire to drink alcohol. Furthermore, the court received testimony regarding an incident where mother's paramour, Ryan Snyder, was so concerned for the mental welfare of mother due to her expression of self-harm that he requested the assistance of law enforcement. Accordingly,

the court had an obligation to take this evidence into consideration, especially when Mr. Michael Gillum's report was largely the product of each party self-reporting her or his medical history.

Mother's eighth issue is "[w]hether the minor children's best interests were improperly represented by the Guardian Ad Litem due to his failure to maintain consistent contact with the minor children, as well as assess the children's over-all well-being by communicating with immediate providers to the children. In his testimony, the guardian adlitem confirmed that he failed to communicate with the children's doctors, daycare providers, therapist, and other important figures."

The GAL testified that he had met with the children six to eight times prior to the involvement of CYS and the evaluation with Mr. Gillum. He also testified that he spoke with Mr. Gillum regarding his report and had consistent contact with Denise Feger regarding the best interest of the children. After the Court ordered supervised visitation between father and the children, the GAL had multiple other contacts with the children while they were in father's care. Finally, the GAL testified that he had met with S.B.'s teacher as well as with Attorney Wade regarding the criminal case pending against father. There is no indication on the record that the GAL failed to conduct an investigation regarding the best interest of the children.

Mother's ninth issue is "[w]hether the minor children's best interests were improperly represented by the Guardian Ad Litem due to his perjured testimony in which the Guardian Ad Litem referenced false custody recommendations under oath for the purposes of misleading the Court in performing its official function. 18 Pa.C.S.A. § 4903 (a)(1)(2)."

The court believes that mother is referencing the GAL's hearsay testimony where he testified that Denise Feger "believes the custody schedule should return to the way it was." (Day 4 Transcript pg. 10). Not only was the court aware that the children did counsel with Denise Feger, the parties were also well aware as evidenced by father's inclusion of Denise Feger on his witness list coupled with the prior orders that were issued in this matter leading up to trial. Moreover, the itemized invoices previously submitted by the GAL evidence his contacts with

Denise Feger. It should be noted that it was mother's attorney that asked the question that lead to Denise Feger's hearsay statement coming into evidence through the GAL (Day 4 Transcript pg. 10). Despite the court receiving this statement, the court is well aware that it was hearsay and applied no weight to the GAL's answer. Again, as previously stated, the court focused most heavily on the GAL's testimony regarding his observations of the minor children.

Mother's tenth issue is "[w]hether the minor children's best interests were improperly represented by the guardian ad litem when he never observed the children with their sibling, O.S., and made no mention of this vital sibling relationship in his testimony despite this being a factor when determining custody."

Although some testimony was provided regarding the nature of this relationship, only marginal weight was applied as O.S. is not a sibling of the minor children at issue in this matter. O.S. is the child of mother's paramour, Ryan Snyder. The sibling relationship for which the court was most concerned is the relationship shared by the children of mother and father in the instant matter.

Mother's eleventh issue is "[w]hether the guardian ad litem improperly represented the minor children when refusing to communicate with the Plaintiff from March of 2024 until the conclusion of the trial in December of 2024. The Plaintiff attempted contact numerous times in an effort to address concerns regarding the children. The guardian ad litem refused to respond despite the children being in the Plaintiff's sole physical custody."

The court is unaware of any question presented to the GAL during his testimony by either counsel for mother or father regarding this issue.

Mother's twelfth issue is "[w]hether the guardian ad litem demonstrated bias in his frequent and ongoing contact with the Defendant despite the suspension of the Defendant's custodial rights and the absence of the children in his home, while refusing to communicate with the Plaintiff with whom maintained primary physical custody of the children."

The court is unaware of any question presented to the GAL during his testimony by either counsel for mother or father regarding the issue of the GAL refusing to communicate with

Mother. It is believed that mother is referring to the window of time between November 7, 2024 and December 3, 2024, when the GAL was instructed to report to the court as to his observations of the children during father's periods of supervised visitation.

Mother's thirteenth issue is "[w]hether the guardian ad litem demonstrated bias when making numerous statements during trial proceedings in defense of actions of the defendant and his paramour, despite the negative and established criminal nature of those actions. In his defense of these actions, the guardian ad litem sanctioned criminal acts employed by the defendant and failed to advocate for the best interests of the children who are named victims in pending criminal charges against the defendant."

The GAL testified that he believed both parties were in the wrong. After a review of the record the court failed to find any instance where he made statements in defense of either party. Rather, he advised the Court of the children's wishes and advocated for the best interest of the children in accordance with his duties under 23 Pa. C.S.A. § 5334. Ultimately, the court weighed the testimony of Attorney Yates, as well as, all other testimony and evidence presented, and decided to deviate from the GAL's recommendation.

Mother's fourteenth issue is "[w]hether the guardian ad litem failed in his role to advocate for the minor children by refusing to acknowledge that the defendant was indicated for severe emotional abuse and criminally charged for actions in which the children are named victims. The Plaintiff's attorney challenged the guardian ad litem to explain his recommendation following testimony from the First Assistant District Attorney (Martin Wade), a licensed psychologist (Michael Gillum), and the investigating caseworker from the Office of Children, Youth, and Families (Shawna Schwab). The guardian ad litem disregarded the information provided by professional witnesses, stating that it was "not in his role". In this assertion, the guardian ad litem confirmed that he did not consider existing safety risks to the children."

Simply because mother did not solicit the response she wanted when questions were posed to the GAL by her attorney, this does not translate to a failure on the part of the GAL to represent the best interests of the children. Regardless, the court applied no weight to the GAL's responses to the questions regarding his thoughts on the testimony of Assistant District Attorney (Martin Wade), a licensed psychologist (Michael Gillum), and the investigating caseworker from

the Office of Children, Youth, and Families (Shawna Schwab) as the court had occasion to be present for the testimony of each of these witnesses and draw its own conclusions.

Mother's fifteenth issue is "[w]hether the Court demonstrated bias against the Plaintiff by identifying the Plaintiff as "deceitful and manipulative". In doing so, the Court did negatively represent the character and motives of the Plaintiff while failing to adequately explain the reasoning for this credibility determination."

The court rendered each of its voiced observations on the totality of the testimony and evidence received during trial.

Mother's sixteenth issue is "[w]hether the Court demonstrated bias and abuse of discretion in its disregard of the defendant's animal abuse convictions. Despite the defendant's three animal abuse convictions, the Court asserted that the defendant pled guilty to said charges and that his explanation for these were "credible". In doing so, the Court did willfully disregard convictions issued by an Officer of the Court that the defendant did not appeal. In accordance with 207 Pa. Code Ch. 33 Rule 2.2.(2), a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question. 17. Whether the Court demonstrated bias in its disregard of the defendant's DUI, child abuse indication, and pending criminal charges. The Defendant is the only participant of the trial that the Court described as "credible" in its review of testimony. In doing so, the Court demonstrated a lack of impartiality and fairness."

The court rendered each of its voiced observations on the totality of the testimony and evidence received during trial. Unfortunately, in almost every contested custody, especially in cases where the relationship between the parties is very strained like the instant matter, one party will inevitably disagree with determinations that are necessary for the court to arrive at a decision that is in the best interests of the children.

Mother's eighteenth issue is "[w]hether the Plaintiff's right to a fair defense was inhibited by the court's failure to explain the scope of S.B.'s testimony prior to the start of the trial. This failure denied the Plaintiff a fair trial, as the defendant relied heavily upon statements that S.B. allegedly made and the Plaintiff was robbed of the opportunity to enter an objection of hearsay. The Defendant listed S.B. as a witness in their pre-trial witness list. The Plaintiff was advised by the court that S.B. would be participating and was led to believe that S.B. would be cross-examined to establish the validity of these statements. Additionally, the Court permitted the introduction of videos of S.B. into

evidence that the Plaintiff was not afforded the right to object to. The Court further asserted these statements in its opinion. Therefore, significant evidence was permitted by the court that constituted hearsay pursuant to 225 Pa. Code Rule 801.”

On day three of the trial the court stated that “I can tell you that I am not going to take S.B. in chambers and pepper him with a lot of questions.” (Day 3 Transcript pg. 145). Moreover, on day four of the trial, the court asked both parties if “I am permitted to meet with S.B. in chambers.” Both parties stated yes. (Day 4 Transcript pg. 18). The court made the conscious decision to not question S.B. about whether he lied to law enforcement at the request of his father because one, S.B. was previously questioned about this on numerous occasions by other interested parties (including the GAL) and two, the court was cognizant of the criminal charges pending against father relative to this situation and did not want to jeopardize either the Commonwealth’s case against father or father’s defense.

Mother’s nineteenth issue is “[w]hether the Court demonstrated bias in its alteration of the minor child's testimony to support the desired outcome. In its opinion, the Court states that the minor child, S.B., made the following assertion regarding the defendant's paramour, "he doesn't have a strong relationship with Adrienne, but he hasn't had the time to really develop that relationship." However, this specific assertion was introduced by the Court to the child and no such statements were introduced by the child, as evidenced by Court transcript.”

The court rejects mother’s characterization of this exchange with the child. As the court was questioning the child about the nature of his relationship with mother, mother’s paramour, father and father’s paramour, Adrienne, the court asked “Your relationship isn’t probably good with Adrienne because you haven’t seen her as much?” The child responded by stating “No, and I don’t - - I don’t really know Adrienne as much....” (Day 4 Transcript pg. 24-25). Furthermore, the court was aware that the child was not exposed to Adrienne to the extent he was with mother’s paramour because the court previously suspended father’s physical custody. Accordingly, it was proper for the court, based on the exchange with the child coupled with the

court's awareness that the child was not around Adrienne with much regularity leading up to the time of trial, to infer that the child did not have a strong relationship with Adrienne because he has not had time to develop that relationship.

Mother's twentieth issue is "[w]hether the Court abused its discretion when denying the Plaintiff's Motion for Reconsideration by stating that the court had been offered no new evidence. A Motion to Quash Subpoena had been filed by Dr. Denise Feger, in which it is clearly stated that Dr. Feger could not offer testimony at the hearing for the Motion for Reconsideration because she did not offer any custody recommendations to the guardian ad litem. Therefore, establishing that the Court was made aware that the guardian ad litem offered false testimony under oath for the purposes of misleading the Court."

Mother is referencing the GAL's hearsay testimony where he testified that Denise Feger "believes the custody schedule should return to the way it was." (Day 4 Transcript pg. 10). Again, the court did not apply any weight to this hearsay statement as the court received significant evidence and testimony other than this statement from which a determination was made regarding the best interests of the child.

Nevertheless, mother's implication that the GAL lied is misleading. Following the trial and the court's review of the factors, mother issued a subpoena to Denise Feger on or about March 12, 2025 to attend and testify at the Reconsideration Hearing. The subpoena was issued by mother with the instruction to bring with her "[a]ny verifying documentation regarding custody recommendations issued to W. Jeffrey Yates, Esquire." Per paragraphs 7, 8 and 9 of Denise Feger's Motion to Quash Subpoena that was filed March 25, 2025, it is clear that Denise Feger had "documentation related to her recommendation submitted to W. Jeffrey Yates, Esquire." Denise Feger makes it further clear that she did not have "any documentation in her possession, custody or control regarding the child custody recommendations made to W. Jeffrey Yates, Esquire" and that Denise Feger "did not make the custody recommendation at issue in the March 12, 2025 subpoena." In other words, it is very probable that Denise Feger made

recommendation(s) to the GAL in her capacity as counselor for the children, but she did not make a specific recommendation regarding the custody factors. There was no follow-up question(s) by counsel for mother to add additional clarity to the hearsay response provided the GAL regarding how the GAL interpreted this statement attributed to Denise Feger. Nevertheless, because the statement by the GAL included hearsay, the court did not apply any weight to the statement as the court received significant evidence and testimony other than this statement from which a determination was made regarding the best interests of the child.

Mother's twenty-first issue is “[w]hether the Court abused its discretion by restricting the Plaintiff from calling a key witness, Michael Gillum, to testify at the hearing regarding the Motion for Reconsideration. The Plaintiff identified new information that was not available at the time of the trial that directly addressed the Court's credibility determination. This evidence upheld the psychological evaluation completed by Michael Gillum that supported the findings of OCYF in which the defendant and his paramour were both indicated for the CPS offense of Severe Emotional Abuse against the parties' children. Following the Plaintiff's request for Mr. Gillum's attendance, the Court issued an order restricting the Plaintiff from calling Mr. Gillum by falsely quoting the Plaintiff's explanation for this request. In this restriction, the Court demonstrated obvious unfairness that had a direct and observable unconscionable effect.”

Prior to the date of the Reconsideration Hearing, the court scheduled a conference to better flesh out various issues raised by mother in her Motion for Reconsideration. During that hearing, mother provided the names of various individuals that she wanted to call during the reconsideration hearing. The court inquired with mother why she wanted to call each witness. With respect to her request to recall Michael Gillum, mother stated “[b]ecause during the course of the trial his credibility was come to question, and Miss Knittle had testified that they were challenging his credibility of his report with the Board. That issue has been resolved, and his report was found to be credible.” (February 7, 2025 Transcript pg. 6). The court put absolutely no weight on Adrienne Knittle's testimony that challenged the credibility of Mr.

Gillum. Adrienne Knittle did not receive a positive report from Mr. Gillum following the evaluation so it came as no surprise that she challenged his report at the time of trial.

Moreover, during the court's remarks following its analysis of the factors, the court stated that Mr. Gillum rendered credibility determinations in his report to arrive at his various recommendations. The court also stated during its remarks following trial that the court is free to make its own credibility determinations of each witness called by each party. The court, unlike Mr. Gillum, had the benefit of receiving considerably more information by way of testimony and exhibits and rendered determinations not consistent with Mr. Gillum's conclusions as a result thereof. The fact that the court disagreed with various conclusions drawn by Mr. Gillum does not mean that the court found Mr. Gillum's testimony to be discredited. Rather, the court rendered a different conclusion based on all the information received during the trial. Mr. Gillum's testimony, his report and notes constituted one witness and two exhibits among the many other witnesses who testified and exhibits that were entered into evidence. The court considered all of the testimony and evidence when evaluating the custody factors and made a determination that was in the best interests of the children.

Mother's twenty-second issue is "[w]hether the Court demonstrated continued bias in its denial of the Plaintiff's Motion for Reconsideration by upholding false statements rendered in its opinion issued on December 3, 2024. The Plaintiff identified numerous factors that the Court referenced as primary supports to its decision that were factually incorrect and damaging to the Plaintiff's case. Despite evidence admitted throughout the trial, and the Plaintiff's oral argument identifying these significant discrepancies, the Court did not correct or recant any of these false statements and upheld its original decision. In doing so, the Court affirmed the truth of statements previously made that the Court is aware were not true to maintain its position in the matter."

The court rendered each of its voiced observations on the totality of the testimony and evidence received. Unfortunately, in almost every custody matter that is contested, especially in cases where the relationship between the parties is very strained like the instant matter, one party

will inevitably disagree with determinations that are necessary for the court to arrive at a decision that is in the best interests of the children.

Mother's twenty-third issue is "[w]hether the Court demonstrated bias in its refusal to hear the Plaintiff's Motion for Reconsideration until March 27, 2025. The Plaintiff filed a Motion for Reconsideration on December 12, 2024. Due to the timeline permitted for Appeal, the Plaintiff filed a Notice of Appeal on December 20, 2024 to ensure that it was filed in a timely manner. The Court granted the Plaintiff's Motion for Reconsideration one hour after the Notice of Appeal was filed, effectively preventing the Plaintiff from proceeding with an Appeal. A decision was not rendered in this matter until April 16, 2025; three days before the Court's deadline. While the Court is permitted 190 days to issue a decision from the date in which the motion is granted, the Plaintiff requested expedited consideration on the basis of concerns of continued safety risk to the minor children."

The court scheduled the hearing in this matter in a timely manner and as expeditiously as its schedule would allow. Furthermore, the court did timely file its Order following the Reconsideration Hearing.

Mother's twenty-fourth issue is "[w]hether the Court demonstrated abuse of discretion in its sudden change of opinion in the matter, despite a lack of substantive evidence presented to support such an extreme modification of judgement. The Court suspended the Defendant's physical custody of the minor children on May 23, 2024 on the basis of the same information and evidence that was later presented during the trial. The Court stipulated that the trial would not be scheduled until the completion and receipt of the psychological evaluation conducted by licensed psychologist, Michael Gillum, establishing the Court's affirmation of credibility with regards to information provided by OCYF, Michael Gillum, and the Lycoming County District Attorney's office. Following the defendant's appointment of new representation, the Court demonstrated a significant change in its demeanor during proceedings and subsequently then rendered credibility determinations that allowed for the disregard of all professional testimony provided. Such conduct conveyed to the parties the appearance of bias towards the Plaintiff.

It is true that the court had a different outlook on this matter following the conclusion of the parties' testimony and evidence as it was only at the conclusion of the trial the court was armed with all information for which the court was not previously privy. The court expressed disappointment in itself for arriving at its earlier decision to suspend father's physical custody

based on the testimony of Shawna Schwab. During that prior hearing where Ms. Schwab testified by phone, the court was led to believe that the party's minor female child was subject to repeated invasive pelvic examinations at father's request. The description of what constituted a pelvic examination by the healthcare providers during trial cast in a far different light this court's prior judgment on the matter. Moreover, the court received significantly more information from father at the time of trial to include, among other things, the countless messages shared between father and mother that provided additional layers of detail that were previously unknown to the court. The court did consider this additional information when analyzing the custody factors and rendering its decision. This is not bias, it is reasoned judgment based on the totality of all of the evidence.

Mother's final issue raised on appeal is Whereby, the Plaintiff moves to appeal this matter to the Superior Court with the true belief that the Court did allow for violation of rules and procedure that reflected egregious abuse of discretion, bias, and prejudice that established manifest injustice.

Following review of all testimony and evidence in this matter, there was no abuse of discretion, bias, prejudice or manifest injustice as the decision was just, considerate and in the best interests of the children.

For the forgoing reasons, the Court submits that it did not err and respectfully requests that the Orders dated December 31st, 2024, and April 16th, 2025, be affirmed.

DATE: _____

By The Court,

Ryan C. Gardner, Judge

cc: Barbara Osborn
Christina Dinges, Esq.
Superior Court (original & 1)
Gary Weber, Esq.