

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL DIVISION

HEIDI BRUSH, :
Plaintiff/Respondent :
v. : No. 2012-3103
LELAND FELDMAN, :
Defendant/Petitioner : In Custody

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JEREMY S. EREON
PROTHONOTARY
CENTRE COUNTY, PA

Pa.R.A.P. 1925 OPINION

This opinion responds to Appellant’s Concise Statement of Matters Complained of on Appeal as regards this Court’s Final Custody Order and June 22, 2021.

The custody order represents what is probably the first critical review of the custodial relationship between Appellant Heidi Brush [hereinafter “Brush”, “Appellant”, or “Mother”] and Appellee Leland Feldman [hereinafter “Feldman”, “Appellee”, or “Father”] and to their only child, [REDACTED] [hereinafter [REDACTED] or “the Child”]. It is undisputed that the parties last cohabited in November 2008 at the point in time when the Child was only ten months old. To the present Father has never had any form of regular physical custody of the Child from 2008. In that context, is difficult to find in what fashion Father could have abused his daughter in the twelve years which have intervened.

We shall address the matters complained of in the order listed.

1. Evidence of Child Abuse

Appellant correctly notes the Court’s express statement that it deemed the fact of “child abuse” as bogus. This Court was assigned to this case as a Senior Judge pursuant to a full bench

recusal and assumed the responsibility to do a “deep dive” into the facts of record. The history of the case is predominantly a series of Protection from Abuse orders which directed and denied a custodial relationship for Father. Appellant asserts that this court disregarded the three-year Protection from Abuse order entered by Judge Bradley Lundsford and as was affirmed by the Superior Court. This Court’s Memorandum of June 22, 2021 reflects the deep dive made by the court in the facts and circumstances surrounding the various protection from abuse allegations in order to make a realistic view of any impediments to a future custodial relationship which Father may have with the Child. A long time has passed since November 2008 when the parties cohabited, and from the Child’s perspective, she would have no knowledge of those facts but for what Mother has related to her to place her in fear of Father.

While we appreciate that the relationship between Father and Mother was turbulent for the less than two years of cohabitation, the straw which ended the relationship was a “pushing” or “punching” in the chest of Mother by Father in November 2008. There is no reference to the Child having been affected in any way by this assault, and accordingly we cannot consider this to have been a threat to the Child. The incident of throwing a coffee cup sometime prior to November 2008 is clouded by the fact that Mother could not remember the details of any impact affecting her. In any event we have trouble raising these instances to a meaningful consideration of “course of conduct” for a Protection from Abuse Act proceeding seven years later.

As the parties departed in their separate ways Father lost his job as a police officer and was forced to go back to school for training in a meaningful profession. He chose to receive training as a registered nurse and has been occupied in that profession for nearly 10 years. The court received testimony from various acquaintances, classmates, and one former spouse who attested to his positive character and trustworthiness around others, including children to which he was

entrusted without concern. Those testimonials weighed heavily on the court as they were totally at odds with the inconsistent allegations raised by Mother and her PFA actions. In addition, father supplied copies of numerous personal letters and emails forwarded to [REDACTED] which provided significant evidence of Father's desire to establish a meaningful relationship with his daughter and which tried to paint a picture of himself as a person she would want to know and to be a part of his life. It is unclear how these communications were received and edited by Mother. There was evidence that father had routinely sent checks to [REDACTED] to allow her to either save for school or to currently purchase things that she wanted or needed. These checks were kept from her by Mother until some later point in time.

Father had two visits with [REDACTED] in 2011 and in April 2012 a petition for modification of custody was filed in Fayette County. The case was transferred to Centre County where mother and the child resided, and a face-to-face meeting in May 2012 failed to result in an acceptable physical custody relationship for Father. A custody conference on December 12, 2012 set in motion a bizarre chain of events which were not resolved for over four years. Specifically, the custody conference was the function of an "attorneys only" meeting with the court and the agreement for a shared legal and supervised physical custody relationship for Father was accepted. Father was not in the Commonwealth of Pennsylvania at the time of the morning hearing; however, in the afternoon Mother was assaulted by an unknown assailant while on the campus of the Pennsylvania State University. With no evidence whatsoever Mother claims that Father must have arranged for the assault by proxy due to his prior involvement as a police officer. An emergency PFA against father was granted within forty-eight hours to include protection of the Child who was in no way involved in the allegations of assault. Father was never accused by the investigating authorities, and for that matter, was never interviewed in any fashion regarding Mother's allegations.

Nonetheless, he was denied access to his daughter in the first of a string of protection from abuse orders.

On January 11, 2013, following the emergency PFA, an agreed temporary PFA was entered which, again, prohibited father from access to his daughter. Father claimed that he had been misled by his attorney regarding that aspect of the agreed PFA order and emailed her regarding his displeasure with the result. The attorney, Raquel Ross, viewed the email as threatening and notified the Court, opposing counsel, and indirectly the FBI, University Police Department, State College Borough Police Department. Following his retention of new counsel and subpoenas to Attorney Ross, Father was able to receive an admission by Appellant's counsel that the subject email was not threatening in any manner. Nonetheless, the damage had been done, and six more months had passed without physical custody rights.

In December 2013 another temporary PFA order was entered through which Father had an opportunity to visit his child three nights per week and supervised visits were to be arranged through the Center County Child Access Center. On January 31, 2014 father filed a Petition for Contempt

regarding the cooperation during Skype calls; however, with a hearing having been held on April 11, 2014, no decision was ever entered.

With the temporary PFA to expire in July, 2014, Mother filed a Petition for Extension of PFA which was granted for an extension to August 31, 2014. At a supervised visit at an independent custody agency, Mother claimed that Father had followed her out of the facility and she felt threatened. In fact, the supervisor of the independent facility issued a letter to the court stating that he personally observed Father remain in the facility after Mother and the Child had left

and that, in his opinion, it was Mother's fault there was any physical proximity of the parties. Thereafter, Mother refused any visitations until another Petition to Modify Custody was filed by mother on August 14, 2014. The temporary PFA was again continued in September 2014 based on these allegations. It was not until September 10, 2015 that an actual "hearing" occurred on the original PFA filed on December 14, 2012 arising from the assault on Mother by a still unknown assailant.

In the PFA hearing before Judge Lundsford in 2015 Father was unrepresented while Mother was present with legal counsel. Judge Lundsford's conclusions that Father's conduct constituted abuse towards the Child arose from facts based on **statements** made before the Child was even born in 2008. Whatever was said by Father toward Mother about whether he wanted to have a child or not pre-birth has been long overcome by the manner and to the extent to which he has attempted to be a part of the child's life since 2008. The pushing/punching of Mother in anger in 2008 had nothing to do with the child. The coffee cup incident in 2008 is further clouded by Mother's inability to remember the details as to whether the incident represented imminent fear of serious bodily injury.

The Court's reliance on Mother's bald claim that father must have been behind the assault on her in 2012 is, in this Court's opinion, troubling. If the assertion was so direct and clear, why would the investigating authorities have failed to even question Father about his potential involvement?

If Father is to suffer an additional three-year Protection From Abuse Order in 2015 for conduct which occurred prior to 2008 as well as a speculative assertion for a 2012 incident without proof, and if this Court cannot weigh what it perceives to be a gross misreading of his character,

his quest for a relationship with his daughter should be abandoned forever because there is no way any court will find him to be a suitable individual to have custody of his daughter.

The testimony of Father's witnesses as to their observations of his relationships with children and his standing as a registered nurse for ten years convinced this Court that Mother had deceived the court over time and was not credible in her assertions of his unfitness to have an unsupervised custodial relationship with the Child.

2. Dictum.

Appellant argues that the court abuse its discretion in basing its decision, in part, on his personal opinion that "protection from abuse orders are one of the most powerful tools in the court system". The Court's opinion in this regard is pure dictum and had little, if anything, to do with the weight given to the custodial factors utilized in its decision.

3, Custody Factors

a) The Court stands behind its conclusion that Mother manipulated the system to the best of her ability throughout these custody proceedings initiated twelve years ago. She continued to request PFA extensions under circumstances where there was no demonstrated threat to the Child.

b) This conclusion has been discussed at length in the Court's rationale for its determination that Father's actions over time do not support a finding that Mother should be in fear of serious bodily injury for herself or her daughter.

c) The continuing stability exists by virtue of the fact that Mother continues to be the primary custodian and the Child continues in her existing school. The fact that Father will be

phasing in a physical custody relationship obviously “rocks the boat” of the one-parent relationship she has experienced.

d) The Court has not disregarded the child’s “well-reasoned preference” because, as she wished, she continues in the primary custody of her mother and she continues in her existing school. Beyond that, if it was her wish to have no relationship with her Father, then her preference will be disregarded in favor of the court’s belief that she will be a better person having a two parent relationship. To the extent that the child is in fear of Father, any such view could only have come from Mother. By all appearances from his correspondence with his daughter Father made every attempt to acquaint himself with her. The court’s recollection is that the Child was not even aware that her father was a registered nurse.

e) This allegation may be reversed. The court believed that Appellant’s conduct led the child to believe that her father was a threat to her and her happiness.

f) The Court did not disregard the child’s emotional needs by failing to provide any therapeutic support for the Child. On the contrary, the initial custody order provided that the parties should submit to the court a plan going forward. As proposals were submitted the court incorporated some level of counseling which would thereafter be dictated by demonstrated need. It was the belief of the Court that Father, being a registered nurse, would proceed gently with his reintroduction to establish a comfort level for the Child which would minimize the need for therapy. In other words, the need for therapeutic support would be analyzed on an as-needed basis without it being mandated at the outset.

g) The Court has had an opportunity to review first-hand the character of the parties from both the basis of their in-court appearances as well as their actions over time. Consistent with

the Court's belief that there has been no child abuse, it follows that the court would find that Mother clings to claims of abuse which are nonexistent.

h) The Court stands by his findings.

4. Safety of the Child

The essence of the court's decision in this case as discussed in the review of the Section 5328(a) factors is that the child has never been unsafe. Short of the fuzzy allegation of a coffee cup incident in 2008, the Child has never suffered an unsafe minute at the hands of Father. Based on the testimony of Father's witnesses as well as the obvious fact that Father has an unblemished record as a professional caregiver, the custody factors are correctly viewed with the safety of the child as paramount.

5. Protection of the Child

Consistent with the Court's conclusions that the child is not in need of protection from Father, no conditions are necessary. With respect to Appellant, the Court provided exchanges occur in a public place which should preclude her safety concerns.

6. Effect on the Child

The Court has gone to great length to fairly weigh Father's constitutional right to have a relationship with his daughter against the right of the child to be safe and properly treated. It is Appellant's view that any grant of custody whatsoever will have a negative effect on the child. If this were the case there would never be a reunification of parent and child because it would be presumed that all reunification's were psychologically harmful. It is the Court's belief that the proposed custody reunification set forth by the court reached a fair balance considering what it

believed to be the injustice of having been denied a fair relationship with his daughter for many years.

7. Shared Legal Custody

The Court concludes that Father is sincere in wanting to have a relationship with his daughter. As a professional registered nurse Father has some meaningful insights into the various factors which go into making medical decisions. At the same time, Mother, as a professional educator, has some meaningful insights into the various factors which go into making educational decisions. There will not always be agreements, but it is believed that both parties will act in the best interests of the Child. It is believed that as Father is allowed to expose his character to the Child she will rapidly learn that both parents are a source of security and love.

BY THE COURT



David C. Klementik, Senior Judge
Specially Presiding

NOTICE OF ENTRY OF
ORDER OR DECREE,
PURSUANT TO PA. R.C.P.
236 NOTIFICATION, THIS
DOCUMENT HAS BEEN
FILED IN THIS CASE.

PROTHONOTARY, CENTRE
COUNTY, PA.

DATE: 09/17/21