

IN THE SUPERIOR COURT OF PENNSYLVANIA
No. 952 MDA 2021
No.1126 MDA 2021
(CONSOLIDATED)

Heidi Brush,
Appellant

v.

Leland Feldman,
Appellee

BRIEF OF APPELLEE

Appeal from the June 22, 2021 Custody Order and Custody Order Docketed on
July 30, 2021 of the Court of Common Pleas of Centre County, Pennsylvania, at
No. 2012-3103

CHILDREN'S FAST TRACK APPEAL

Leland C. Feldman, Pro Se

[REDACTED]

TABLE OF CONTENTS

APPENDICES.....	3
TABLE OF AUTHORITIES.....	4
COUNTERSTATEMENT OF SCOPE AND STANDARD OF REVIEW.....	8
COUNTERSTATEMENT OF THE CASE.....	10
SUMMARY OF ARGUMENT.....	24
ARGUMENT	26
CONCLUSION.....	46
CERTIFICATIONS.....	47
Includes Certification of Compliance with Word Count Limit, Proof of Service and Averment Regarding Flash Drive	

APPENDICES

Petition for Protection From Abuse of December 17, 2012.....	A
Petition for Protection From Abuse of February 1, 2019.....	B
Transcript of April 11, 2014, selected pages.....	C
Transcript of February 15, 2019, selected pages.....	D
Consent Custody Order of Court of October 15, 2009.....	E
State College Police Department Report of December 13, 2012 Filed by President Judge Pamela Ruest against Appellee.....	F
Appellee’s Petition for Contempt and Special Relief of January 31, 2014.....	G
Transcript of September 7, 2018, selected pages.....	H
Subpoena Duces Tecum and Response to Attorney Rachel Ross regarding threatening communication.....	I
Custody Order and Memorandum of June 22, 2021.....	J
Custody Order docketed on July 30, 2021.....	K
Pa.R.A.P 1925 Opinion of September 16, 2021.....	L
Reproduced Record Missing Page 65 from Petition for Modification Of Custody Order of August 27, 2019.....	M

TABLE OF AUTHORITIES

CASES:	PAGE
<i>A.V. v. S.T.</i> , 87 A.3d 818, 822-23 (Pa. Super. 2014).....	32
<i>AYALA et al. v. Phila. Bd. of Pub. Educ.</i> , 453 Pa. 584 – Pa: Supreme Court 1973.....	31
<i>Buckwalter v. Borough of Phoenixville</i> , 985 A. 2d 728 – Pa: Supreme Court 2009.....	31
<i>Burnet v. Coronado Oil & Gas Co.</i> , 285 US 393 Supreme Court 1932.....	27
<i>Commonwealth v. Starr</i> , 541 Pa. 564, 664 A.2d 1326, 1331 (1995).....	29
<i>Hanson v. Hanson</i> , 878 A. 2d 127, 129 (Pa. Super. 2005).....	8
<i>Helvering v. Hallock</i> , 309 U.S. 106, 119 (1940).....	27
<i>J.R.M. v. J.E.A.</i> , 33 A.3 rd 647 (Pa. Super. 2011).....	8
<i>KB v. MF</i> , 247 A.3d 1146 (Pa. Super. 2021).....	31
<i>Ketterer v. Seifert</i> , 902 A.2d 533, 539 (Pa. Super. 2006).....	9
<i>Landis v. Landis</i> , 869 A.2d 1003, 1011 (Pa. Super. 2005).....	8
<i>M.P. v. M.P.</i> , 54 A.3d 950, 953 (Pa. Super. 2012).....	8
<i>Olin Mathieson C. Corp. v. White C. Stores</i> , 414 Pa. 95 – Pa: Supreme Court 1964.....	31

<i>Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co.</i> , 429 U.S. 363 (1977).....	27
<i>Payne v. Tennessee</i> , 501 U.S. 808 (1991).....	26
<i>PENN. STATE ASS'N. OF COUNTY COM'RS v. Com.</i> , 52 A. 3d 1213 - Pa: Supreme Court 2012.....	31
<i>R.M.G., Jr. v. F.M.G.</i> , 986 A.2d 1234, 1237 (Pa. Super. 2009)...	9
<i>Smith v. Allwright</i> , 321 U.S. 649, 665 (1944).....	26
<i>Swift & Co. v. Wickham</i> , 382 U.S. 111, 116 (1965).....	27
<i>The Genesee Chief v. Fitzhugh</i> , 12 How. 443, 458 (1852).....	27
<i>Tincher v. OMEGA FLEX, INC.</i> , 104 A.3d 328 (2014), Supreme Court of Pennsylvania.....	30
<i>United States v. Title Ins. Co.</i> , 265 U.S. 472 (1924).....	27

STATUTES:

23 Pa.C.S.A. §5323(d).....	31
23 Pa.C.S.A. §5323(e).....	42
23 Pa.C.S.A. §5328(a).....	9,32, 35,41
23 Pa.C.S.A. §5328(a)(1).....	36
23 Pa.C.S.A. §5328(a)(2).....	36,37
23 Pa.C.S.A. §5328(a)(4).....	37
23 Pa.C.S.A. §5328(a)(7).....	38
23 Pa.C.S.A. §5328(a)(8).....	39
23 Pa.C.S.A. §5328(a)(9).....	39
23 Pa.C.S.A. §5328(a)(13).....	40
23 Pa.C.S.A. §5328(a)(15).....	49
23 Pa.C.S.A. §5328(c).....	32
23 Pa.C.S.A. §5338(a).....	33
23 Pa.C.S.A. §6108(d).....	33

CONSTITUTION OF THE UNITED STATES OF AMERICA:

14th Amendment to the Constitution
of the United States of America..... 25,28,29,
30

COUNTERSTATEMENT OF THE SCOPE AND STANDARD OF REVIEW

In an appeal from a Custody Order, the appellate court must review the trial court's legal conclusions for an error of law or an abuse of discretion. *M.P. v. M.P.*, 54 A.3d 950, 953 (Pa. Super. 2012). The appellate court cannot make independent factual determinations, it must accept the findings of the trial court that are supported by the evidence.

Id. The appellate court defers to the trial judge regarding credibility and the weight of the evidence. *Id.* The trial judge's deductions or inferences from its factual findings, however, do not bind the Appellate Court. *Id.* The appellate court may reject the trial court's conclusions, but only if they involve an error of law or are unreasonable in light of its factual findings. *Id. See also J.R.M. v. J.E.A.*, 33 A.3rd 647 (Pa. Super. 2011); *Hanson v. Hanson*, 878 A. 2d 127, 129 (Pa. Super. 2005); *Landis v. Landis*, 869 A.2d 1003, 1011 (Pa. Super. 2005).

When a trial court orders a form of custody, the best interest of the child is paramount. *J.R.M v. J.E.A.*, 33 A.3rd 647, 650 (Pa. Super. 2011). To determine the child's best interest, the trial court must

consider the sixteen factors as stated in 23 Pa.C.S. Section 5328(a) when “ordering any form of custody.”

On issues of credibility and weight of the evidence, the appellate court defers to the findings of the trial court, which has had the opportunity to observe the proceedings and demeanor of the witnesses. *R.M.G., Jr. v. F.M.G.*, 986 A.2d 1234, 1237 (Pa. Super. 2009). The parties cannot dictate the amount of weight the trial court places on evidence. Rather, the paramount concern of the trial court is the best interest of the child. Appellate interference is unwarranted if the trial court’s consideration of the best interest of the child was careful and thorough, and we are unable to find any abuse of discretion. *Id.* The test is whether the evidence of record supports the trial court’s conclusions. *Ketterer v. Seifert*, 902 A.2d 533, 539 (Pa. Super. 2006).

COUNTER-STATEMENT OF THE CASE

A. Factual History

Appellee, Leland C. Feldman shall be referred to as Father;
Appellant, Heidi Brush, shall be referred to as Mother.

At the Hearing of 7-22-2020 (R. 678a-679a) the trial court, in reference to Appellee's under oath examination of Appellant in the Hearing of 2-15-2019 stated, "I read the transcript. I got it." ; **"There are major inconsistencies . . . "** ; ". . . I have already looked and compared" ; "It was in a 2019 transcript with Judge Oliver if I'm correct. I read it all." To which Appellee responded, "That is correct, Your Honor, and then I'm going to request that you take judicial notice". To which the trial court responded, "It's part of the record. Done."; "And I am taking judicial notice of the transcript, which I read item-by-item".

Father and Mother have never had any unwitnessed, in-person interaction of any kind since, at least, May 2012, with the exception of a single instance at the Children's Resource Center in Maryland in July of 2014.

Mother has intentionally and knowingly provided false material

information to the trial courts (which this trial court referred to as “major inconsistencies” and “part of the record”). Some of that false material information is as follows:

Both the 12-17-2012 and 2-1-2019 Abuse Checklists (Appendices A,B) contain a question asking if Father threatened Mother “By displaying or pointing a weapon” at Mother. 2012 Checklist, Mother circled “No”; on the 2019 Checklist, Mother circled “Yes”.

Both the 2012 and 2019 Abuse Checklists contain a question asking if Father abused Mother by “Using any weapon (including, but not limited to a gun)” against Mother. 2012 Checklist, Mother circled “No”; on the 2019 Checklist, Mother circled “Yes”.

Both the 2012 and 2019 Abuse Checklists contain a question asking if Father abused Mother by “Forcing to stay in closet, room home, or location”. 2012 Checklist, Mother circled “Yes” and on the 2019 Checklist, Mother circled “No”.

Both the 2012 and 2019 Abuse Checklists contain a question asking if Father abused Mother by “Physically restraining / holding down the victim”. 2012 Checklist, Mother circled “Yes” and on the

2019 Checklist, Mother circled “No”.

Both the 2012 and 2019 Abuse Checklists contain a question asking if Father committed abuse by “Physically abusing children in the household”. 2012 Checklist, Mother circled “No” and on 2019 Checklist, Mother circled “Yes”.

Recall that on the 2019 Abuse Checklist Mother circled “Yes” as to whether “Using any weapon (including, but not limited to a gun)” was a type of abuse she had experienced by Father.

However, in the Hearing of 2-15-2019 (Appendix D) Mother was asked, “Have you ever suffered abuse by the Defendant (Father) using a weapon?” Mother answered, “No.”, **in direct contradiction to her verification of the Abuse Checklist Attachment to Protection from Abuse Petition of 2- 1-2019 made only two weeks prior to her sworn testimony.**

Both the 2012 and 2019 Abuse Checklists contain a question asking if Father abused Mother by “Slapping (with an open hand)”. 2012 Checklist, Mother circled “No”; on the 2019 Checklist, Mother did not circle either “Yes” or “No”.

During the hearing of 2-15-2019 (Appendix D), Mother was asked “Has the Defendant (the Father) abused you by slapping with an open hand?” Mother’s response was “Yes, I think so. I mean, there have been several times.”

However, in the Hearing of 4-11-2014 (Appendix C), with respect to Father “slapping” Mother, Mother was asked, “now this November 1 incident of 2008 involved a punch to the chest a single time by Mr. Feldman on you, correct?” To which Mother stated “Yes.” In this same line of questioning during the hearing of 4-11-2014 regarding any alleged physical abuse Father had perpetrated against Mother prior to 11-1-2008 Mother stated “I will say very specifically he had not struck me and he had not punched me before”. When one is “slapped”, one is indeed struck.

2019 Abuse Checklist Mother circled “Yes” regarding “Has the Defendant avoided being arrested for domestic violence”.

However, in the Hearing of 2-15-2019 (Appendix D) “Has the Defendant (Father) avoided being arrested for domestic violence?” Mother answered “I don’t know.”, a different answer than she gave on

the 2019 Abuse Checklist **only two weeks prior to her sworn testimony.**

Father denies and has never been shown to have avoided arrest for domestic violence.

In Paragraph 13a of Mother's PFA Petition of 12-17-2012 (Appendix A), Mother answered NO in response to the question, "Has Defendant (Father) used or threatened to use any firearms or other weapons against Plaintiff (Mother) or the minor child/ren?"

In Paragraph 12a of Mother's PFA Petition of 2-1-2019 (Appendix B), Mother answered YES in response to the question, "Has Defendant (Father) used or threatened to use any firearms or other weapons against Plaintiff (Mother) or the minor child/ren?"

Given the lack of interaction between Mother and Father and non-existence of fresh allegations against Father, there can be no doubt that one of each of the contradictory answers given by Mother, whether on the Abuse Checklists, the Checklists compared to Mother's testimony, or the Petitions filed by Mother regarding Father's alleged abuses, must be false.

Father has admitted to one brief physical act against Mother on 11-1-2008 in a measure of pure self-defense to violence initiated by Mother when she attacked him and Father had no means of regress to avoid having his previously damaged front teeth knocked out or further damaged by Mother. Father has always testified and categorically denied he ever took any illegal abusive action against Mother.

Father has never given contradictory testimony and has never been accused of having given contradictory testimony nor of filing contradictory information with any court.

In her PFA Petition of 12-17-2012 in Paragraph 11, Mother verified as true, “On the afternoon of the 12th, I (the Mother) was attacked while taking a walk on PSU hiking trails – hours after a custody dispute that didn’t go the Defendant’s (Father’s) way.” The order of 12-12-2012 contradicts Mother’s verified statement in Paragraph 11 as the order states, “AND NOW, this 12th day of December, 2012, upon agreement of the parties...”. Mother’s statement of “a custody dispute that didn’t go the Defendant’s (Father’s) way” is false, as the order was made “upon agreement of the parties”. Father got everything he had

petitioned for up to that point in time in the Custody Order of 12-12-2012, which was a specific and regular schedule by which he and his daughter could spend time together.

A more complete recitation of the false information Mother has intentionally and knowingly given to the trial courts is detailed in Father's Petition of 8-27-2019 (R. 37a–64a).

A form of the word love was used in every letter sent to child, Father let child know in letters “she was not forgotten” by Father and Father wanted more than anything to spend time with her (R.773a-777a).

Charges regarding Mother's allegation against Father in November 2008 were dropped because “the interests of Justice would be served by the dismissal as herein requested” and “**Cannot prove beyond a reasonable doubt**” (R. 740a).

Father paid for Attorney Mark Weaver and Attorney Frank Sluzik to arrange supervised physical custody at either the CCCAC or another facility. Neither Attorney was able to perform that task (R. 697a-698a).

In spite of Officer Todd purportedly believing Father was creepy, Officer Todd did not run Father for warrants, ask Father for any

identification, or confirm his address with either Wisconsin or Pennsylvania DOT (R. 783a-794a). A more complete recitation of Officer Todd's incompetent investigation is detailed in Father's 8-27-2019 Petition for Modification of Custody Order (R. 100a-104a and Appendix M as Page 65 is missing from Reproduced Record).

Jack Bratich never observed Father yell at Mother, never observed Feldman take physical action against Mother, and did not testify to being present in the Maryland parking in July 2014 when he testified on 9-15-2015 (R. 858a-861a).

Approximately 15-20 checks sent to the child from Father in 2017 were never cashed (R.701a-702a)

At the request of Mother, Father left his job as a Milwaukee Police Officer. Mother wanted to leave Milwaukee because she was denied tenure at the University of Wisconsin-Milwaukee and lost her UWM job and no longer wanted to reside in that urban area.

No therapist ever testified regarding Father's statements or actions during any therapy session.

B. Procedural History

10-15-2009 Consent Custody Order of Court (Appendix E)
awarded Mother and Father shared legal custody of the minor child,
Mother primary physical custody and Father partial physical custody.

4-3-2012 Father filed a Petition for Modification of Custody that
requested a specific partial custody schedule.

5-8-2012 this matter was transferred from Fayetteville County to
Centre County.

Father from June of 2012 thru 12-12-2012 made multiple requests
to Mother to be allowed to spend time with the minor child. All such
requests to spend time with the child were denied by Mother.

12-12-2012 upon **agreement** of the parties, Judge Ruest ordered
the parties shall share legal custody of the child and scheduled visitation
with the child for Father.

12-12-2012 at approximately 2:00pm, Mother claims she was
attacked while walking alone on Pennsylvania State University hiking
trails.

Father was in the vicinity of Milwaukee, Wisconsin for the entirety
of 12-12-2012.

12-13-2012 Judge Pamela Ruest filed a Police Report (Appendix F) against Father in spite of the fact that Judge Ruest had never interacted in any manner with Father prior to Judge Ruest filing a Police Report against Father. No explanation of Judge Ruest's unwarranted and unethical conduct has ever been given to Father by Judge Ruest.

12-14-2012 Judge Ruest ordered Father's periods of supervised visitation with the Parties' Daughter be suspended.

12-17-2012 Mother filed a Petition for Protection from Abuse with the Centre County Court of Common Pleas.

1-11-2013 Judge Ruest signed a Temporary Protection from Abuse Order against Father, which Father only agreed to after being promised by Attorney Raquel Ross that if he agreed to said Temporary Protection from Abuse Order, Father would in return receive visitation with the Child. Attorney Ross lied to Father regarding visitation commencing with the Child, as no such visits ever occurred.

4-14-2013 at 1:42 AM Father fired Attorney Ross by means of email.

4-15-2013 Attorney Ross intentionally and knowingly falsely

stated to opposition counsel, Attorney Jennifer Bierly, that Father had sent emails to Attorney Ross that threatened the safety of Judge Ruest, Mother and Attorney Bierly. Again, Attorney Ross had lied by making false criminal allegations against Father, as an investigation conducted by the FBI and other law enforcement agencies found Father had never made threats (Appendix I) and (R. 75a-83a).

The trial court found in its memorandum to the Custody Order of 6-22-2021 that on 5-5-2013 during a conference call which included Judge Ruest, Attorney Bierly, Attorney Ross, and a representative from Attorney Weaver's office, "Attorney Bierly had to admit that the email communications from Father were, indeed, non-threatening".

A much more complete description of both Attorney Ross' and Judge Ruest's misconduct can be found on Father's Petition for Modification of Custody Order of 8-27-2019 (R. 66a-69a; 75a-83a; 86a-99a; Appendix M).

Judge Ruest presided over the Custody Conference of 12-27-2013 and issued the Custody Order of 12-27-2013 which was agreed to by both parties.

1-31-2014 Attorney Mark Weaver filed a Petition for Contempt and Special Relief for Father against Mother for multiple violations of the 12-27-2013 Custody Order.

4-11-2014 Judge Pamela Ruest presided over the hearing regarding the Petition of 1-31-2014.

The trial court found in its 1925 Opinion (Appendix L) that “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.”

7-2-2014 Mother filed a Petition for the Extension of the Temporary Protection from Abuse Order against Father.

Judge Pamela Ruest recused herself on 4-15-2015 from both the PFA and Custody Cases.

9-10-2015 Ex-Judge Bradley Lunsford ruled that a Protection from Abuse Order was to be placed against Father for three years.

8-23-2018 Mother filed a Petition for Extension of the Final Protection from Abuse Order, in spite of Father having had no direct contact with Mother or the child since July 2014.

9-7-2018 Proceeding regarding the PFA Order and the Custody Matter, Appellant's Attorney went on the record refusing any supervised physical custody for Father (Appendix H).

9-7-2018 proceeding Appellant's Attorney falsely accused Father of hitting Mother when she was pregnant (Appendix H).

During hearing of 7-22-2020 (R. 680a-681a) Mother testified that Father never hit Mother when she was pregnant and admitted she did not speak up to correct Attorney's false allegation to the trial court during the Hearing of 9-7-2018.

Following a hearing on 11-14-2018 the Final Protection Order Extension requested on 8-23-2018 was denied.

2-1-2019 Mother filed another PFA action against Father which was denied following the hearing of 2-15-2019.

8-27-2019 (R. 36a-117a), the Father filed a Petition for Modification of Custody Order.

The trial court held a hearing regarding Father's Petition for Modification of Custody Order on 7-22-2020.

The trial court issued a decision on 6-22-2021 (Appendix J)

regarding Father's Petition for Modification of Custody Order.

Father took over two months off of work as a Registered Nurse in Tucson, Arizona, and arrived in the vicinity of Centre County, Pennsylvania on or about 7-11-2021 with the sole purpose of spending time with his Daughter as was ordered and permitted by Court Order at that time.

Father left the vicinity of Centre County, Pennsylvania on or about 8-10-2021 after having been denied by Mother and this Appeals Court of any opportunity to spend time with his Daughter.

SUMMARY OF ARGUMENT

The fundamental challenge that this case presented to the trial court was whether it would find the truth in this matter or would this trial court, also, fall prey to Appellant's deceptions.

The trial 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 the record in order to make a realistic view of any impediments to a future custodial relationship which Father may have with the child.

The trial court found that aside from Mother's uncorroborated allegations against Father, Father's record is perfectly clean. Father is a 56-year-old Honorably Discharged United States Marine Corps Combat Veteran, a Registered Nurse with an unblemished record of providing care over the entirety of his ten-year Nursing career, and one who was repeatedly trusted with the care of a former colleague's young children without incident. No testimony was given by any witness who ever observed or had first-hand knowledge of Father doing anything criminal,

threatening, or violent, except of course, the deceiving and not credible Mother.

Appellant Attorney Andrew Taylor's action of flat-out ignoring and not explaining, in his brief, the many instances of contradictory and false material information intentionally and knowingly provided by his client (Mother) to the trial court in 2019 is not only alarming, but very telling.

Father's right to child custody is constitutionally protected under the 14th Amendment to the United States Constitution; a right to which Father has been unjustly deprived by the Pennsylvania courts for many years.

ARGUMENT

1. Whether the trial court erred as a matter of law and/or abused its discretion by finding Appellant’s “claim” of child abuse was bogus, that the child was never placed in danger and that there was no evidence of abuse by the Appellee since there was a three-year Protection from Abuse order entered following a hearing naming Appellant and the child as protected parties, and that Order was affirmed by the Superior Court.

The overarching argument presented by Appellant is that the trial court violated *stare decisis* by ordering unsupervised custody of the child to Father. Appellant bases this argument on the now long-expired Final PFA ordered by Judge Bradley Lunsford in 2015 and completely ignores many instances of new evidence presented to the trial court after 2015.

In *Payne v. Tennessee*, 501 U.S. 808 (1991), the opinion of Chief Justice William Rehnquist of the Supreme Court of the United States of America states, ... “when governing decisions are unworkable or are **badly reasoned**, this Court has never felt constrained to follow precedent.” *Smith v. Allwright*, 321 U.S. 649, 665 (1944).

“*Stare decisis* is not an inexorable command; rather, it ‘is a principle

of policy and not a mechanical formula of adherence to the latest decision.’” *Helvering v. Hallock*, 309 U.S. 106, 119 (1940). “**This is particularly true in constitutional cases**, because in such cases ‘correction through legislative action is practically impossible.’” *Burnet v. Coronado Oil & Gas Co.*, *supra*, at 407 (Brandeis, J., dissenting). “Considerations in favor of *stare decisis* are at their acme in cases involving **property and contract rights**, where reliance interests are involved”, see *Swift & Co. v. Wickham*, 382 U.S. 111, 116 (1965); *Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co.*, 429 U.S. 363 (1977); *Burnet v. Coronado Oil & Gas Co.*, *supra*, at 405-411 (Brandeis, J., dissenting); *United States v. Title Ins. Co.*, 265 U.S. 472 (1924); *The Genesee Chief v. Fitzhugh*, 12 How. 443, 458 (1852).

After Appellant’s failure to extract yet another PFA extension against Appellee on 11-14-2018 and Appellant’s failure to extract a new PFA against Appellee on 2-15-2019, there was a full bench recusal by the Centre County Court. In the Custody Order of 6-22-2021 the trial court states: “The custody order represents what is probably the first

critical review of the custodial relation ...,” in this case. The trial court further states that it “assumed the responsibility to do a ‘deep dive’ into the facts of record. As a result of this “deep dive” into the facts of record, the trial court ascertained: “. . . the Child has never been made unsafe . . .the Child has never suffered an unsafe minute at the hands of Father”; “. . . 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”; “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”, therefore the entirety of the Temporary and Final PFAs in this case had been **badly reasoned** by attaching the child to the PFAs. The trial court’s finding negates the necessity of placing unnecessary so-called safety measures / punitive restrictions on the relationship between Father and the child.

The trial court states in the Custody Order of 6-22-2021: “A parent’s right to child custody is **constitutionally protected** as a fundamental liberty under the 14th Amendment to the United States

Constitution.” The trial court states in its 1925 opinion, “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”. As the trial court found the child had never been in danger from Father, nor does any such credible evidence exist, the child’s safety and proper treatment were not at issue.

The case in question is very much about the well-being of the child who has wrongly been denied the presence of a loving father in her life and the Constitutional rights of Father, but certainly **not** at all about property and contract rights, as Chief Justice Rehnquist states where stare decisis is most applicable.

The concept of stare decisis is not applicable in matters where there has been “a **substantial change in the facts or evidence** giving rise to the dispute in the matter, or where **the prior holding was clearly erroneous and would create a manifest injustice if followed**”, *Commonwealth v. Starr*, 541 Pa. 564, 664 A.2d 1326, 1331 (1995).

There has been a **substantial change in facts**: proof after the 2015 hearing that Mother has many times given contradictory and false

testimony and information on materially relevant items to the trial courts. The aggregate of Mother's false testimony and information substantially weakened her credibility and therefore the trial court weighted the preponderance of the evidence in favor of Father. The trial court was able to determine "the Child has never suffered an unsafe minute at the hands of Father" making the **prior holding clearly erroneous** by having attached the child to the PFAs. There has been a **manifest injustice** by violating Father's 14th Amendment constitutional right and preventing the child from having a father; per the trial court in its 1925 response: "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".

In *Tincher v. OMEGA FLEX, INC.*, 104 A.3d 328 (2014), Supreme Court of Pennsylvania: "In this sense, we have long recognized that the doctrine of *stare decisis* is **not a vehicle for perpetuating error**, but "a legal concept which responds to the demands of justice and, thus, permits the orderly growth processes of the law to flourish." *Pa. State*

Ass'n of County Comm'rs v. Commonwealth, 617 Pa. 231, 52 A.3d 1213, 1230 (2012) (quoting *Buckwalter v. Bor. of Phoenixville*, 603 Pa. 534, 985 A.2d 728, 730-31 (2009)). Common law permits adjustment and development in the law, recognizing that precedent is not infallible and **judicial honesty demands corrective action** in appropriate cases. *See Ayala*, 305 A.2d at 888 (quoting *Olin Mathieson C. Corp. v. White C. Stores*, 414 Pa. 95, 199 A.2d 266, 268 (1964)).

The trial court's custody orders of 6-22-2021 and 7-30-2021 (Appendix J, K) used facts of record and the hearings to prevent itself from **perpetuating error** and exercised **judicial honesty to take corrective action** in this case.

The Pennsylvania appellate courts have mandated in numerous cases that an analysis of **ALL** the 16 custody factors listed under 23 Pa. C.S.A. 5328 must be performed by trial courts when rendering a custody decision, in accordance with Section 5323(d), which states the trial court "shall delineate the reasons for its decision on the record in open court or in a written opinion or order". *KB v. MF*, 247 A.3d 1146 (Pa. Super. 2021) remanded that case back to the trial court "to make an

independent consideration and assessment of all the relevant custody factors set forth in Section 5328(a) and (c) on the record or in a written report.” *A.V. v. S.T.*, 87 A.3d 818, 822-23 (Pa.Super. 2014) found that “The record must be clear on appeal that the trial court considered all the factors.” *JRM v. JEA*, 33 A. 3d 647 (Pa: Superior Court 2011) ruled “All of the factors listed in section 5328(a) are required to be considered by the trial court when entering a custody order. *Id.* As the trial court failed to properly consider the statutorily mandated factors in arriving at its custody determination, **it erred as a matter of law**. We are therefore compelled to vacate its order and remand the case for further findings of facts.”

At no time did Ex-Judge Bradley P. Lunsford, Judge Pamela Ruest, the Superior Court or any Judicial Authority, with the exception of Senior Judge David C. Klementik, in this matter or any matter related to it, act in accordance with Section 5328(a) which demands a court’s custody decision must be substantiated by documenting each and every factor in 5328(a). As such, all Judicial Authorities prior to Senior Judge David C. Klementik erred.

Section 5338(a) states “Upon petition, a court may modify a custody order to serve the best interest of the child.” Stated another way, by statute, Custody Orders in Pennsylvania are never final.

Section 6108(d) states “A protection order or approved consent agreement shall be for a fixed period of time not to exceed three years.” Nonetheless what the Appellant is again trying to do is to create a “permanent” PFA within a “final” custody order.

2. Whether the trial court erred as a matter of law and/or abused its discretion when it based its decision, in part, on the trial court’s personal opinion on the Protection from Abuse Act.

As the Appellant’s counsel has stated question 2 three different times in his brief with some inconsistency, it’s difficult for the Appellee to know which to answer. The Appellee has chosen the above version. The trial court stating dictum regarding a matter of law is not an abuse of its discretion. It is merely a statement of fact.

In light of the many instances of contradictory and false information provided intentionally and knowingly to the trial courts by

Mother, the trial court concluded, “I do believe that [Father] has been improperly denied access to his child and I candidly believe that Mother has done practically everything in her power to make sure that he did not spend time with his daughter”. The preponderance of the evidence in this case clearly supports the fact that Mother abused the PFA Law to prevent Father from exercising his constitutionally protected Custodial Rights to his Child. It is alarming Appellant’s counsel is aiding in the perpetuation of this abuse. The trial court stating truth regarding a case that has been improperly adjudicated since its transfer to Judge Ruest in 2012 is not the trial court abusing its discretion, it is the first step any court has taken in righting a constitutional wrong that has harmed a child by denying her the presence of her loving father in her life.

The fact that Mother, with the assistance of Legal Counsel, **agreed** to the Custody Consent Order of 10-15-2009 (Appendix E) which granted Father shared legal custody of the child and granted Father partial physical custody of the child, clearly demonstrates that Mother had no fear of Father as late as 2009 and Father has taken no actions that would reasonably alter that.

3. Whether the trial court erred as a matter of law and/or abused its discretion when it analyzed the Factors in 23 Pa.C.S.A. §5328(a), as the findings are not supported by the record and/or there was a capricious disbelief of evidence.

The trial court did not error as a matter of law and/or abused its discretion when it analyzed all the Factors in 5328(a), as the findings are supported by Mother’s lack of credibility as a witness due to the multiple instances of Mother having given false material information and testimony to the trial courts. Appellant’s Brief merely rehashes some of what little was known about this matter in 2015 and fails to discuss, analyze, or even mention any of the **new** evidence presented to the trial court of Katherine A. Oliver in 2019 and later presented to the trial court of Senior Judge David C. Klementik. The Appellee finds the Appellant Attorney’s action of ignoring, in his brief, all such post-2018 evidence in a case that concerns the wellbeing of a child to be alarming and a calculated disbelief of material evidence.

During the Hearing of 7-22-2020, in reference to the Appellee’s Petition for a Modification of Custody Order, which thoroughly documented the new evidence, the trial court stated, “... this is a

voluminous file. I have read a lot. I spent hours reading this...”(R.672a).

Doing what is best for the child demanded the trial court review **all** evidence that is presented to it and the total record, such that the trial court could render a decision which is in the best interest of the child, which is what it did. There is no capricious disbelief of evidence as indicated by the trial court’s exhaustive and thorough examination of **all** evidence and the total record, as opposed to Appellant’s counsel ignoring the two most recent years of evidence. The following supports the trial court’s more complete analysis and representation of **all** evidence and the **total** record:

a) Section 5328(a)(1) states which party is more likely to encourage and permit frequent and continuing contact between the child and another party. 5328(a)(1) is a factor that is weighted in Father’s favor as per the trial court’s finding as stated in the Memorandum of Custody Order 6- 22-2021 states: “. . . Mother has done everything in her power to deny Father contact with his daughter . . .”.

b) Section 5328(a)(2) states the present and past abuse committed by a party or member of the party’s household, whether there is a

continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child. 5328(a)(2) is a factor weighted in Father's per the trial court's finding as stated in the Memorandum of Custody Order 6-22-2021 states in reference to the 11-1-2008: "By all accounts the child was never placed in danger . . ." and from the trial court's 1925 opinion, the uncorroborated allegations of verbal abuse were " . . . **statements** made before the Child was even born . . .", thus again nothing against the Child and giving fair consideration to the alleged coffee cup incident "we have trouble raising these instances to a meaningful consideration of 'course of conduct' for a Protection from Abuse Act proceeding seven years later".

c) Section 5328(a)(4) states the need for stability and continuity in the child's education, family life and community life. 5328(a)(4) is a factor weighted in Father's favor as, while it might be true that the short-term phasing in of physical custody may rock the boat for the child (as the trial court stated and has taken appropriate action to minimize by maintaining primary physical custody with Mother), in the medium and

long term the child is more likely to benefit from having a loving father in her life and such a presence can result in the child growing into a more stable and robust adult. Appellee finds it hard to imagine how breaking-bread and playing tennis with Father disrupts the Childs stability.

d) Section 5328(a)(7) states the well-reasoned preference of the child, based on the child's maturity and judgment. 5328(a)(7) is a factor weighted in Father's favor as the child is unable to make a well-reasoned preference at this time since she knows very little about Father, and the trial court's recollection is that the child was not even aware that her father is a Registered Nurse, even though he communicated that information many times in his letters to her. The trial court has rightly determined that the Child's reluctance exists not because of her own experience with Father, but rather "Without really knowing her Father, she has been placed in fear of him by Mother", Memorandum of the 6-22-2021 Custody order. The trial court has not disregarded the Child's preference as she is still residing with Mother and attending her

existing school. The trial court has a well-considered belief that the child will be a better person having a two-parent relationship.

e) Section 5328(a)(8) states the attempts of a parent to turn the child against the other parent, except in cases of domestic violence where the reasonable safety measures are necessary to protect the child from harm. Section 5328(a)(8) is a factor weighted in Father's favor as the trial court determined there has never been "domestic violence" perpetrated by Father **against the Child**, that "...Mother's credibility in raising these matters to court is nil", as stated by the trial court in the Memorandum of the Custody Order of 6-22-2021. Father contends the child needs protection from Mother's never-ending efforts at denying the child a healthy and loving relationship with her father.

f) Section 5328(a)(9) states which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs. Section 5328(a)(9) is a factor that is weighted in Father's favor, as Mother has shown herself to be neither stable nor consistent as evidenced by the many instances of false material information she has knowingly and intentionally given to the

trial courts. Mother's demonstrated lack of integrity brings rise to concern about how such a lack is negatively impacting the child's emotional needs and is an example of why Father originally requested Sole Legal Custody and Primary Physical Custody of the child.

g) Section 5328(a)(13) states the level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. 5328(a)(13) is a factor that is weighed in Father's favor as there are no stated instances in which Father has demonstrated or stated an unwillingness and ability to cooperate with Mother. However, Mother, when asked during hearing of 7-22-2020 if she could directly coordinate visits or make joint decisions regarding [REDACTED] said, "Definitely not" (R. 901a). The conflict here is from Mother's side. No allegation or Petition for Contempt has ever been filed against Father. Mother has not been cleared from multiple allegations of Contempt of Court that were filed by Father on 1-31-2014 and argued in front of Judge Ruest on 4-11-2014, of which the trial court found "no decision was ever entered". A Petition for Contempt of Court was filed against Mother for separate violations of the Custody Order in 2019 that is

pending. Father protecting himself against more false allegations by the use of audio/visual recording equipment is for his protection, and does not impact either parties' cooperation.

h) Section 5328(a)(15) states the mental and physical condition of a party or member of a party's household. 5328(a)(15) is a factor that is weighted in Father's favor. A reasonable court must, to some degree, be concerned regarding the psychological well-being and mental condition of a mother who intentionally and knowingly provided many instances of false and / or contradictory material information to the trial courts. A reasonable court must have some degree of concern regarding how such a pattern of blatant dishonesty might affect the long-term development of a child.

4. Whether the trial court erred as a matter of law and/or abused its discretion by failing to give weighted consideration to those factors in Section 5328(a) which affect the safety of the child.

Mother has no credibility as a witness due to the multiple instances of her having given false / contradictory material information and testimony to the trial courts. The trial court explains and supports in its

6-22-2021 Memorandum and Pa.R.A.P. 1925 Opinion, the decision for Father to be subjected to a 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 is troubling, as is the prior Courts gross misreading of Father's character. Trial court's finding "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 Mother, "was not credible in her assertions of his (the Father's) unfitness to have an unsupervised custodial relationship with the Child". Trial court was attempting to right the wrong of denying Father Custodial Rights for years and took action which it deemed best for the child.

5. Whether the trial court erred as a matter of law and/or abused its discretion by failing to provide conditions in its order designed to protect the child and/or Appellant, as abused parties, pursuant to 23 Pa.C.S.A. §5323(e).

Mother has no credibility as a witness due to the multiple instances of her having given false / contradictory material information and testimony to the trial courts. Trial court finding 1925 Opinion, “...Mother had deceived the court over time and was not credible...” ; “. . . the Child has never suffered an unsafe minute at the hands of Father.”; therefore, trial court does not need to put special protection in place for the Child. It has never been shown that Father has a temper or lack of impulse control as he is 56 years of age, Father has no criminal convictions and no one in his personal life has ever made any complaint about his conduct, with the sole exception of the deceiving and not credible Mother.

Mother agreed on 10-15-2009 to shared legal custody with the Father and agreed that Father be granted partial physical custody. If Mother had any legitimate fear of Father or believed that the child had been abused by Father prior to 2009, it’s neither logical nor reasonable to believe Mother would have voluntarily agreed to that custody. No credible evidence was presented that Father abused the child in any way before, during, or after 2009. There is no credible evidence that Father

perpetrated any abuse on Mother at any time, as Father's actions regarding 11-1-2008 were completely defensive.

6. Whether the trial court erred as a matter of law and/or abused its discretion by failing to fully consider and discuss the possible effect that the change in custody will have on the child.

Trial court's Memorandum of 6-22-2021, the trial court stated "The emotional aspects going forward, however, may require outside professional assistance" and "Going forward, a custody order extending to Father periods of physical custody will undoubtedly rock the boat of "stability and continuity"; however, in order for the Child to experience the benefits of a two-parent childhood, the road forward will not necessarily be smooth". The trial court clearly discussed the possible effects of a change in custody, and determined it's in the child's best interest.

7. Whether the trial court erred as a matter of law and/or abused its discretion in ordering shared legal custody when the record in this case does not support a finding that the child recognizes both parents as a source of security and love or that there is possibility of a minimum degree of cooperation between the parents.

Father has never stated or implied that he could not cooperate with Mother regarding caring for the child and taking appropriate action for the child's benefit in concert; Mother has (R. 901a). Father intends, as a defensive measure, to use audio-visual equipment for recording interactions between Father and Mother, due to the many false allegations and absurdities that have been leveled against Father in the course of this matter. Trial court determined in the Memorandum of 6-22-2021 that "substantial damage to the Father's constitutional right to the parenting of his child as a result of the Mother's antics to paint him as abusive and not worthy of having a normal relationship with his daughter". Trial court further determined in the Pa. R.A.P. 1925 Opinion 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" and in the Memorandum of the Custody Order of 6-22-2021 states, ". . . Father has demonstrated a variety of talents which suggest that he could be an excellent role model".

CONCLUSION

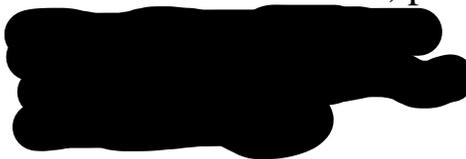
For the foregoing reasons Appellee requests this Court affirm the trial court's Custody Order of June 22, 2021 and affirm the trial court's Custody Order dated June 22, 2021, docketed on 7-30-2021. The Appellee requests that this matter not be assigned to a different trial judge as no bias against Mother has been established.

The Appellee requests this Court take Judicial Notice of President Judge Pamela Ruest's failure to enter a decision regarding the Contempt matters on which she held a hearing on April 11, 2014. The Appellee requests this Court take appropriate action regarding President Judge Pamela Ruest's failure to enter a decision regarding the Contempt matters on which she held a hearing on April 11, 2014.

Respectfully Submitted,



Leland C. Feldman, pro se



Date: November 15, 2021

IN THE SUPERIOR COURT OF PENNSYLVANIA – MIDDLE DISTRICT

HEIDI BRUSH,	:	NO. 952 MDA 2021
<i>Appellant</i>	:	NO. 1126 MDA 2021
	:	(CONSOLIDATED)
	:	
vs.	:	
	:	
LELAND FELDMAN	:	IN CUSTODY
<i>Appellee</i>	:	CHILDREN’S FAST TRACK

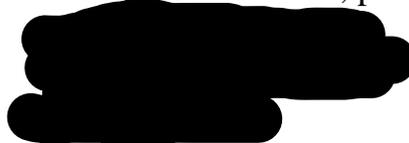
CERTIFICATION OF COMPLIANCE OF WORD COUNT LIMIT

I, Leland C. Feldman, hereby certify that Brief of Appellee complies with the word count limit based on the word count of the word processing system used to prepare Brief of Appellee pursuant to Pa. R.A.P. 2135 (d).

Respectfully Submitted,



Leland C. Feldman, pro se



Date: November 15, 2021

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<i>Appellant</i>	:	NO. 1126 MDA 2021
	:	(CONSOLIDATED)
	:	
vs.	:	
	:	
LELAND FELDMAN	:	IN CUSTODY
<i>Appellee</i>	:	CHILDREN’S FAST TRACK

PROOF OF SERVICE

I, Leland C. Feldman, hereby certify that I am this day serving two (2) copies of the foregoing Brief of Appellee upon the person and in the manner indicated below which service satisfies the requirements of Pa. R.A.P. 121:

Personal Service:

Andrew D. Taylor, Esquire
Shemtob Draganosky Taylor, PC
790 Penllyn Blue Bell Pike, Suite 303
Blue Bell, PA 19422

Respectfully Submitted,



Leland C. Feldman, pro se



Date: November 15, 2021

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	:	(CONSOLIDATED)
	:	
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	:	
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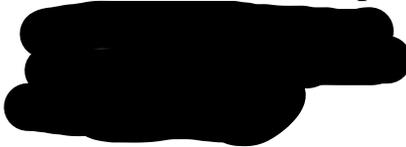
AVERMENT REGARDING FLASH DRIVE BEING AN ACCURATE AND COMPLETE REPRESENTATION OF THE PAPER VERSION

AND NOW, this date of November 15, 2021, APPELLEE, Leland C. Feldman, submits an Averment in which I hereby aver and affirm that the contents of the submitted Flash Drive contains an accurate and complete representation of the paper version of the filing.

Respectfully Submitted,



Leland C. Feldman, pro se



Date: November 15, 2021