IN THE SUPREME COURT OF PENNSYLVANIA
No. 196 MAL 2022

Heidi Brush,
Petitioner

v.

Leland Feldman,
Respondent

ANSWER TO THE PETITION FOR ALLOWANCE OF APPEAL

Petition for Allowance of Appeal
From the Published Opinion of the Superior Court of Pennsylvania
Entered on April 7, 2022
Affirming the June 22, 2021 Order of the Court of Common Pleas of Centre County, No. 2012-3103
Superior Court Docket No. 952 MDA 2021

CHILDREN'S FAST TRACK APPEAL

Leland C. Feldman, Pro Se
[redacted]

TABLE OF CONTENTS

APPENDICES

TABLE OF CITATIONS

CASES:

STATUTES:

CONSTITUTION OF THE UNITED STATES OF AMERICA:

WEBSITES:

Domestic Violence and False Allegations: What Everyone Needs to Know, Law Office of Patrick J. McLain, PLLC
https://www.patrickjmclain.com/blog/2020/june/domestic-violence-and-false-allegations-what-eve/

False Allegations of Domestic Violence: More Common than You Think, Law Office of John E. MacDonald, Inc.
https://www.aggressivelegalservices.com/false-allegations-of-domestic-violence/

Fatherless Daughters: How Growing Up Without a Dad Affects Women, McKenna Meyers
https://wehavekids.com/family-relationships/When-Daddy-Dont-Love-Their-Daughters-What-Happens-to-Women-Whose-Fathers-Werent-There-for-Them#:~:text=Fatherless%20Daughters%20Have%20Self%2DEsteem%20Issues&text=Countless%20studies%20have%20shown%20that,her%20father%20isn't%20there

5 Things Every Woman Who Grew Up Without a Father Needs to Know, The authors of The Fatherless Daughter Project share their inspiration and insight. Tori Rodriguez
https://www.womansday.com/relationships/family-friends/q-and-a/a56444/fatherless-daughters/

The Developmental Effects on the Daughter of an Absent Father Throughout her Lifespan, Carlee Castetter, Merrimack College, castetterc@merrimack.edu,
https://scholarworks.merrimack.edu/cgi/viewcontent.cgi?article=1049&context=honors_capstones

Statistics on Fatherless Children in America, Wayne Parker,
https://www.liveabout.com/fatherless-children-in-america-statistics-1270392

The Statistics Don't Lie: Fathers Matter, National Fatherhood Initiative,
https://www.fatherhood.org/father-absence-statistic

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT AGAINST THE ALLOWANCE OF APPEAL

My name is Leland Feldman and I am the pro se Respondent / Appellee in this matter.

My answer to Andrew Taylor's PETITION FOR ALLOWANCE OF APPEAL may be summarized in two words: **caveat emptor**. Please proceed for the details supporting the summary.

One of Voltaire's statements mirrors this case and this pivotal moment**:** **"Those who can make you believe absurdities can make you commit atrocities".** Absurdities, in this matter, fronted by a mother who Judge Klementik found had manipulated the system and deceived the court. A mother whose credibility in this matter was found to be nil. The Superior Court of Pennsylvania affirmed Judge Klementik's Order.

You have in your possession the Superior Courts Memorandum, Senior Judge David C. Klementik's custody order, his 1925 opinion, my brief, my post-submission, and several supporting records.

Those documents begin to reflect the WHOLE truth of this case and adequately demonstrate that neither the Superior Court nor Judge Klementik committed an error of law nor abused their discretion.

Attorney Andrew Taylor provides this court with some appalling statistics about children who are killed by fathers. The fact that this happens is deeply abhorrent to me. Nonetheless, I must point out this is a veiled attempt to paint me as a potential murderer of my own daughter. An implied allegation which is sickeningly beyond outrageous.

Here are some other appalling statistics:

According to the Law Office of Patrick J. McClain, on his website of patrickjmcclain.com, at least 10% of domestic violence accusations are false.

According to the Law Office of John E. MacDonald, on his website of aggressivelegalservices.com, approximately 700,000 people in the United States are falsely accused of domestic violence annually.

Andrew Taylor wants this court to make a "finding" of domestic violence as if carved in stone, irrefutable, irrevocable, even (and especially) after the accuser is found not credible. Courts are comprised of fallible humans who endeavor to correctly and justly interpret evidence and the law. No human is perfect. As such, courts MUST maintain the capacity to self-correct when errors are made. Justice, the law and a working judiciary demand such.

Here is another appalling statistic:

From Fatherhood.org website, The Statistics Don't Lie: Fathers Matter, National Fatherhood Initiative, 18.4 million children (25%) are living in

households without a father, according to the U.S. Census Bureau. (2021). Living arrangements of children under 18 years old: 1960 to present. Washington, D.C.: U.S. Census Bureau.

According to the Fatherless Daughter Project, by McKenna Meyers on the wehavekids.com website, little girls who grow up without fathers are prone to poverty, low self-esteem, depression, promiscuity, drug or alcohol abuse, eating disorders, intimacy issues, choosing unreliable male partners who are likely to abandon them.

I hope to soon be in a position to possibly help prevent that from happening to my fatherless daughter at this critical age in her life, as the Pennsylvania Courts and Mother have, with the exception of four dates, completely denied me the fundamental right to be a presence in my Daughter's life since 2010.

On February 15, 2019 I was finally able to prove to Centre County that Mother has a very loose relationship with the material truth in this case and I then thoroughly documented 19 instances in which Mother had knowingly and intentionally given false material information to the court. During the custody hearing of July 22, 2020, Judge Klementik took judicial notice of these actions by Mother and declared them part of the record labeling them "numerous inconsistencies". Based on my understanding of Pennsylvania Law, I believe some of Mother's "numerous inconsistencies" fall into the following categories:

Perjury

False Swearing

Unsworn Falsification to Authorities

False reports to law enforcement authorities.

Contempt for noncompliance with any custody order

Andrew Taylor knows full well of these illegal actions by Mother yet willingly promotes her ongoing deceptions. Prior to Andrew Taylor, Attorney Abigail Jones knew full well of these illegal actions by Mother yet willingly promoted her deceptions. I ask, have Taylor and Jones violated their Rules of Professional Conduct by representing someone they know has knowingly and intentionally duped the court, and continues as such?

Judge Anne E. Lazarus, Judge Carolyn H. Nichols and Judge Megan M. King of the Superior Court and Judge David C. Klementik of the Trial Court have all conducted de novo reviews of this matter (a CUSTODY matter, NOT a PFA matter) and did not find credible the absurdity that I have ever been abusive to my daughter, or that I have ever been or am currently a threat to her safety and well-being in any way; nor a threat to the mother, her fear being baseless.

Judge Klementik carefully considered and documented the enumerated factors stated in § 5328(a) and based his custody decision on those considerations.

The Superior Court judges and Judge Klementik acted judiciously, lawfully, in an unbiased manner, and without ill will, in the best interest of my daughter, which is the primary duty and command of every Pennsylvania Court when adjudicating custody matters.

Judge Klementik has constructed, and the Superior Court affirmed, a mechanism to belatedly end the atrocity of my daughter forcefully living her life as a fatherless child because of the courts' gross misreading of my character (his words).

Judge Klementik upheld my rights guaranteed by the 14th amendment which he found had been violated in this matter by the previous courts.

The PFA on which Andrew Taylor toggles his house of cards in his PETITION FOR ALLOWANCE OF APPEAL to this court expired in December of 2018. Andrew Taylor claims that Judge Klementik overturned the PFA. How could he overturn something that by statute has expired, and is no longer in effect? Andrew Taylor claims that Judge Klementik disregarded the PFA. Judge Klementik's thorough analysis of it belies this claim. The Superior Court unanimously disagrees with Andrew Taylor.

Yet Andrew Taylor appeals to you to, in essence, create a permanent PFA as statue in the state of Pennsylvania, in violation of the legislature's current statute and clear intention.

It took the purging of incredibly incompetent and/or blatantly dishonest counsel from representing me in my case, teaching myself the rudiments of Pennsylvania Family Law and 11 years for me to finally be able to prove Mother's lack of credibility in this matter (eventually, untruthful people do reveal themselves); such that one day my Daughter might have what she so definitely deserves, which is a loving Father in her life.

One day I may be able to prove that my part on that awful day of November 1, 2008 was purely an act of self-defense against a violent woman.

Yet Andrew Taylor posits that my Daughter and I must be permanently and forcefully estranged from each other for my not apologizing or checking myself into an anger management rehab facility. Mother has made so many contradictory claims it would be impossible to know for what I should apologize and self-defense is not, in and of itself, an act that warrants contrition.

One of the fascinating patterns of this case has been the false and / or unprovable statements made by the attorneys involved. The most recent is Andrew Taylor's statement that the bench recusal of the Centre County judges was because of Father's behavior toward President Judge Pamela Ruest. Andrew Taylor provides no documentation from the Centre County Bench or Law Enforcement to support this absurd assertion. Ex-Judge Bradley Lunsford did not recuse himself

from this matter, rather he retired. Why Ex-Judge Lunsford retired is an interesting question.

It seems that Ex-Judge Lunsford's conduct as a Judge and his integrity were brought into serious question during the Case of Commonwealth of Pennsylvania v. Jalene R. McClure, 172 A. 3d 668 (2017) 2017 PA Super 334. Judge Solano wrote in his opinion "McClure produced telephone records showing that Lunsford exchanged more than 150 text messages with prosecutors during the four days he was presiding at McClure's trial. There also were several additional messages on dates before and after trial when significant events took place in the case." "She also presented evidence that during at least one criminal trial other than this one (the Brooks trial in 2012), Parks Miller had sent text messages to Lunsford about that proceeding. When these issues first surfaced, Lunsford made blanket denials, which later turned out to be inaccurate, about posing for photographs with prosecutors and exchanging text messages with some of them". In footnote 33 of Judge Solano's Opinion, it is noted that Ex-Judge Lunsford stated "There is no photo of Mr. Boob and I after the Color Run. I can guarantee you that" and "There are no text messages between me or either of these two prosecutors [Boob and Parks Miller]. None whatsoever. None." And "I will reiterate there are no text messages between me and these two [Boob and Parks Miller]. I swear to God."

Judge Solano seemingly found that instances in the above case exist in which Ex-Judge Lunsford's judicial conduct and integrity are at best, questionable. As such, how appropriate is it to rely on Ex-Judge Lunsford's ruling in this matter?

Judge Katherine Oliver presided over a PFA hearing between Mother and Father in 2018 in which she ruled in my favor, and Judge Katherine Oliver most recently presided over a PFA hearing between Mother and Father in 2019 in which she again ruled in my favor. It is patently absurd that I have ever made any threat against any Judge at any time.

Andrew Taylor falsely states I did not make use of supervised visitation. Check the record of the case, **THE UNFORTUNATE TRUTH IS I HAVE BEEN PRESENT AND TAKEN ADVANTAGE OF EVERY INSTANCE OF SUPERVISED VISITATION WHICH THE COURT HAS ALLOWED ME OVER THESE MANY YEARS.** It is disgraceful that the Pennsylvania Courts have only, in the real world, allowed me only 4 instances of visitation with my beloved daughter over these many years. One of Andrew Taylor's spectacular contrivances is to leave out years of material information in this case in the hopes he can keep Mother's false narrative in play.

The opposition has tried to paint a landscape of me being a really bad guy: volatile, violent, a scornful suppressor of women, and by extension an irrepressible threat to my daughter.

The truth is significantly different. 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. Father was decorated with the Navy Achievement Medal and the Good Conduct Medal during his service, in addition to multiple other ribbons and medals as is documented on his DD-214. Father is a Registered Nurse with an unblemished record of providing care over the entirety of his ten plus 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.

The opposition posits that I abandoned my daughter and willfully estranged myself from her. Dr. Brush insists that my daughter was always highly agitated when she had to be with me. Witnesses testify to the opposite. The opposition's position is that I have no interest in my daughter whatsoever. What has their evidence ever been? Opposition counsel does not have, nor have they ever had in these past many years, any believable witnesses to any of their client's accusations. They have no evidence to support her statements. The only thing opposition counsel has is a heavily embroidered tale presented by Mother who is a professional wordsmith.

Andrew Taylor posits that *stare decisis* and coordinate jurisdiction were violated. Nowhere in Pennsylvania Statute is it written or implied that theoretical concepts such as *stare decisis* or coordinate jurisdiction are to supersede what is paramount in Child Custody Matters, which is the best interest of the Child.

The Respondent requests that the Supreme Court take into account the following passages, precedents, and cases stated in the custody case of ***K.D. v. E.D***, 2021 PA Super 224 - Pa: Superior Court 2021:

a. "Significantly, however, "the coordinate jurisdiction rule does not bar a judge at a later and different procedural stage of the case from overruling another judge's decision . . ., even on an identical legal issue and even where the record is unchanged." ***Xtreme Caged Combat v. Zarro***, 247 A.3d 42, 47 (Pa.Super. 2021). As articulated by our High Court, the "general prohibition against revisiting the prior holding of a judge of coordinate jurisdiction . . . is not absolute." Zane supra at 29 (citations omitted)."

b. "Pursuant to the Child Custody Act, a custody order may be modified at any time, provided the modification is in the best interest of the child. See 23 Pa.C.S. §5338(a) ("Upon petition, a court may modify a custody order to serve the best interest of the child."); 23 Pa.C.S. §5328 (relating factors to determine child's best interest). As we explained in ***Holler v. Smith***, 928 A.2d 330, 331–32 (Pa.Super. 2007), "[c]ustody matters

are a special creature. . . . Unlike other actions which have a clear beginning, middle, and end, custody orders may be repeatedly modified.""

I know of no precedent in Pennsylvania or anywhere else, nor has Andrew Taylor presented to this court such, which holds that *stare decisis* or coordinate jurisdiction supersedes what is in the best interest of a Child in a Custody Matter.

Stare decisis and coordinate jurisdiction are legal constructs to allow for a logistical efficiency in the court system best suited for business cases and do not take precedence over the best interest of the child. The Supreme Court of the United States is very clear about the intended application of *stare decisis* and its limitations.

Not every question of "first review" is worthy of review by the Supreme Court of Pennsylvania. As the legislature has made clear that the Court's paramount concern is to be what is in the best interest of the child, a hearing in regards to the question of *stare decisis* or coordinate jurisdiction taking precedence over what is in the best interest of the child is unworthy of the Court's time. If Andrew Taylor and his confederates truly believe that *stare decisis* and/or coordinate jurisdiction should indeed take precedence over what is in the best interest of a child, Taylor et al should direct their efforts towards convincing the legislature to draft such a law, as opposed to attempting to cajole the judiciary to, in essence, create such legislation from the bench.

On May 20, 2014 Judge Pamela A. Ruest issued a custody order without considering or enumerating, either verbally in court or in writing in the custody order itself, the 16 factors of § 5328(a). Judge Ruest effectively stripped my Daughter of her right to have a loving father in her life, in a manner that ignored the well-established precedent that demands a Judge consider or enumerate either verbally in court or in writing the 16 factors of § 5328(a). Was that an action of ill-will, or caprice, or ignorance of the law? Is that the action of someone who deserves a seat on the bench?

If Judge Ruest does remain on the bench, when does she plan to rule on the matters she has still failed to rule on since April of 2014? It is my understanding that ruling on matters in a timely fashion is her job as a Judge.

I thought that my service in the United States Marine Corps was to defend the Constitution of the United States of America, which I thought included the right to Due Process, as supported by the 5th and 14th Amendments to the Constitution.

The Superior Court issued an emergency stay of Judge Klementik's custody order whereby reinstating Judge Ruest's custody order, an order that failed to consider and document all 16 factors of § 5328(a). It appears as if the stay remains in place while the Supreme Court of Pennsylvania considers the PETITION FOR ALLOWANCE OF APPEAL.

In the entire history of this case Judge Klementik is the only judge to consider and document all 16 factors with respect to any aspect of custody.

II. ABBREVIATED STATEMENT OF THE CASE

A. Factual History

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 Paragraph12a 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 always testified and categorically denied he ever took any physical action of any sort against his Daughter.

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).

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).

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 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. Attorney Ross subverted Father's efforts to develop a relationship with his Daughter by her 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 presided over by Senior Judge David C. Klementik on 7-22-2020, following a full bench recusal by all Centre County Judges.

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 the Superior Court of any opportunity to spend time with his Daughter.

III. SUMMARY OF LEGAL ARGUMENT

1. The Superior Court did not error by affirming the trial court's June 22, 2021 Custody Order, as the trial court did not abuse its discretion and/or err as a matter of law regarding the prior judicial finding of abuse in the PFA matter, based upon the trial court's conclusion that Mother's "claim" of child abuse was bogus, the child was never placed in danger, and there was no evidence of child abuse by Father.

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. The Superior Court did not err by affirming the trial court's June 22, 2021 Custody Order, as the trial court did not abuse its discretion and/or err as a

matter of law, by basing its decision, in part, on the trial court's personal opinion that PFA orders are "one of the most powerful tools in the court system" and that the trial court did not find there was fear of imminent serious bodily harm in this case, despite the fact that there was an expired three-year PFA order entered following a hearing naming Mother and the child as protected parties, which was affirmed by the Superior Court.

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. The Superior Court did not err by affirming the trial court's June 22, 2021 Custody Order, as the trial court did not abuse its discretion and / or err as a matter of law in its analysis of the Factors in 23 Pa. C.S.A. 5328(a).

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 Audrey 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. The Superior Court did not error by affirming the trial court's June 22, 2021 Custody Order, as the trial court did not abuse its discretion and / or err as a matter of law by how it gave weighted consideration to those factors in 23 Pa. C.S.A. 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. The Superior Court did not error by affirming the trial court's June 22, 2021 Custody Order, as the trial court did not abuse its discretion and / or err as a matter of law by how it provided conditions in its order designed to protect the child and/or Mother 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. The Superior Court did not error by affirming the trial court's June 22, 2021 Custody Order, as the trial court did not abuse its discretion and/or err as a matter of law by how it considered and discussed 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. The Superior Court did not error by affirming the trial court's June 22, 2021 Custody Order, as the trial court did not abuse its discretion and / or err as a matter of law in ordering shared legal custody when the child does not at this time does not recognize both parents as a source of security and love or that there is possibility of a minimum degree of cooperation between the parents.

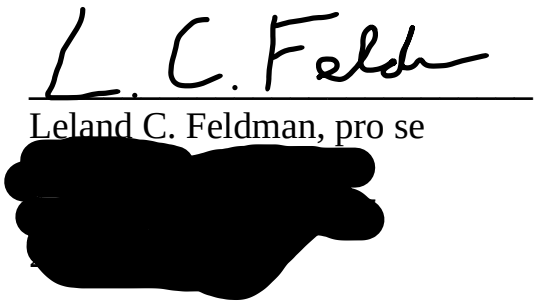
Father has never stated or implied that he could not cooperate with Mother regarding caring for the child and taking appropriate action for the child's benefit in concert; Mother has (R. 901a). Father intends, as a defensive measure, to use audio-visual equipment for recording interactions between Father 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".

IV. CONCLUSION

Pennsylvania Law and Precedent are crystal clear in regards to every Court's primary duty in custody matters. Every Court must act in a manner that is in the Child's best interest. The Respondent therefore respectfully requests that this Court **DENY** Mother's PETITION FOR ALLOWANCE OF APPEAL.

The Appellee requests this Court take Judicial Notice and any other appropriate actions with respect to President Judge Pamela Ruest's continuing failure to enter decisions regarding multiple matters (including Contempt and Special Relief) brought before her at the hearing of April 11, 2014.

Respectfully Submitted,



Leland C. Feldman, pro se

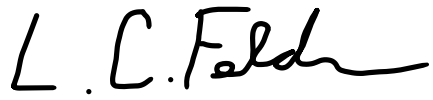
[redacted]

Date: May 12, 2022

CERTIFICATION OF COMPLIANCE OF WORD COUNT LIMIT

I, Leland C. Feldman, hereby certify that this Answer to Petition for Allowance of Appeal complies with the word count limit based on the word count of the word processing system used to prepare this Answer to Petition for Allowance of Appeal pursuant to Pa. R.A.P. 1116(c) because it contains 8960 words.

Respectfully Submitted,



Leland C. Feldman, pro se

[redacted]

Date: May 12, 2022

PROOF OF SERVICE

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

First Class Mail:
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: May 12, 2022