PRINTER'S NO. 1755

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1499 Session of 2025

INTRODUCED BY FLICK, PROBST, COOPER, REICHARD, BOROWSKI, KHAN, SCHLEGEL AND K.HARRIS, MAY 27, 2025

REFERRED TO COMMITTEE ON JUDICIARY, MAY 28, 2025

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, in child custody, further providing for definitions, for award of custody, for standing for partial physical custody and supervised physical custody, for presumption in cases concerning primary physical custody, for factors to consider when awarding custody, for consideration of criminal conviction and for parenting plan; and making editorial changes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5322 of Title 23 of the Pennsylvania Consolidated Statutes, amended April 15, 2024 (P.L.24, No.8), is amended to read:

§ 5322. Definitions.

(a) This chapter.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Abuse." As follows:

(1) As defined in section 6102 (relating to definitions). The term includes the crime of stalking pursuant to 18 Pa.C.S. § 2709.1 (relating to stalking).

(2) The term does not include the justified use of force in self-protection or for the protection of other persons in accordance with 18 Pa.C.S. § 505 (relating to use of force in self-protection) by a party in response to abuse or domestic abuse by the other party.

"Adult." An individual 18 years of age or older.

"Agency." Any organization, society, institution, court facility or other entity which provides for the care of a child. The term does not include a county children and youth social service agency.

"Child." An unemancipated individual under 18 years of age.

"Equal parenting time." As close as practicable to 50% of time spent with neither parent receiving over 60% of the time.

"Household member." A spouse or an individual who has been a spouse, an individual living as a spouse or who lived as a spouse, a parent or child, another individual related by consanguinity or affinity, a current or former sexual or intimate partner, an individual who shares biological parenthood or any other person, who is currently sharing a household with the child or a party.

"Legal custody." The right to make major decisions on behalf of the child, including, but not limited to, medical, religious and educational decisions.

"Nonprofessional supervised physical custody." Custodial time during which an adult, designated by the court or agreed upon by the parties, monitors the interaction between the child and the individual with those rights.

"Parental duties." Includes meeting the physical, emotional and social needs of the child.

["Partial physical custody." The right to assume physical

custody of the child for less than a majority of the time.]

"Physical custody." The actual physical possession and control of a child.

["Primary physical custody." The right to assume physical custody of the child for the majority of time.]

"Professional supervised physical custody." Custodial time during which a professional, with education and training on the dynamics of domestic violence, sexual assault, child abuse, trauma and the impact of domestic violence on children, oversees the interaction between the child and the individual with those custody rights and promotes the safety of the child during the interaction.

"Relocation." A change in a residence of the child which significantly impairs the ability of a nonrelocating party to exercise custodial rights.

"Safety of the child." The term includes, but is not limited to, the physical, emotional and psychological well-being of the child.

"Shared legal custody." The right of more than one individual to legal custody of the child.

"Shared physical custody." The right of more than one individual to assume physical custody of the child[, each having significant periods of physical custodial time with the child].

["Sole legal custody." The right of one individual to exclusive legal custody of the child.

"Sole physical custody." The right of one individual to exclusive physical custody of the child.]

"Supervised physical custody." Custodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors the interaction between the child and the

individual with those rights.

"Temporary housing instability." A period not to exceed six months from the date of the last incident of abuse as determined by a court.

(b) Other law.--In a statutory provision other than in this chapter, when the term "visitation" is used in reference to child custody, the term may be construed to mean[:

[(1) partial physical custody;

(2) shared physical custody; or

(3) supervised physical custody.] shared or limited physical custody, including supervised physical custody.

Section 2. Section 5323(a)(2) and (3), (b) and (d) of Title 23 are amended and the section is amended by adding subsections to read:

§ 5323. Award of custody.

(a) Types of award.--After considering the factors set forth in section 5328 (relating to factors to consider when awarding custody), the court may award any of the following types of custody if it is in the best interest of the child:

* * *

[(2) Primary physical custody.

(3) Partial physical custody.]

* * *

[(b) Interim award.--The court may issue an interim award of custody to a party who has standing under section 5324 (relating to standing for any form of physical custody or legal custody) or 5325 (relating to standing for partial physical custody and supervised physical custody) in the manner prescribed by the Pennsylvania Rules of Civil Procedure governing special relief in custody matters.]

(b.1) Temporary custody orders.--

(1) A party to a custody proceeding may move for a temporary custody order. The following apply:

(i) The motion must be supported by an affidavit as provided in subsection (b.2).

(ii) The court may award temporary custody under the standards of subsection (b.2) after a hearing or, if there is no objection, solely on the basis of the affidavits.

(iii) If the parties present a temporary custody agreement and mutually agreed upon plan for parenting time and the court confirms that the agreement is in the best interest of the child, the agreement shall become the temporary custody order of the court.

(2) Subject to subsection (b.2), in making an order for temporary custody, there shall be a presumption, rebuttable by clear and convincing evidence, that shared physical custody, shared legal custody and equal parenting time are in the best interest of the child.

(3) If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time that each party has with the child and is consistent with ensuring the best interest of the child.

(4) Each temporary custody order shall include specific findings of fact and conclusions of law, except when the court confirms the agreement of the parties in accordance with paragraph (1)(iii).

(5) A temporary custody order shall address the circumstances in which a custody exchange will occur.

(6) Modification of a temporary custody order may be sought if there is a material and substantial change in the circumstances of the parties or child.

(7) If a proceeding for dissolution of marriage or legal separation is dismissed, a temporary custody order is vacated unless a party moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parties and the best interest of the child require that a custody order be issued.

(8) If a custody proceeding that commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, a temporary custody order is vacated.

(b.2) Affidavits, notice and hearing.--A party seeking a temporary custody order under subsection (b.1) shall submit an affidavit specifying facts supporting the requested order. The following apply:

(1) The party shall give notice, together with a copy of the affidavit, to other parties to the proceeding, who may file opposing affidavits.

(2) The court shall deny the motion for the temporary custody order unless the court finds that adequate cause for hearing the motion is established by the affidavits, in which case the court shall set a date for the hearing on an order to show cause why the requested order should not be granted.

* * *

(d) Reasons for award.--The court shall delineate the reasons for its decision [on the record in open court or] in an award of custody, including an interim award, in a written opinion or order. The opinion or order shall include, with

specificity, the reasons for any deviation from equal parenting time.

* * *

Section 3. Sections 5325 heading and introductory paragraph, 5326 and 5327 heading and (a) of Title 23 are amended to read:

§ 5325. [Standing] Grandparent standing for [partial] shared physical custody and supervised physical custody.

In addition to situations set forth in section 5324 (relating to standing for any form of physical custody or legal custody), grandparents and great-grandparents may file an action under this chapter for [partial] shared physical custody or supervised physical custody in the following situations:

* * *

§ 5326. Effect of adoption.

Any rights to seek physical custody or legal custody rights and any custody rights that have been granted under section 5324 (relating to standing for any form of physical custody or legal custody) or 5325 (relating to grandparent standing for [partial] shared physical custody and supervised physical custody) to a grandparent or great-grandparent prior to the adoption of the child by an individual other than a stepparent, grandparent or great-grandparent shall be automatically terminated upon such adoption.

§ 5327. [Presumption in cases concerning primary physical custody.] Presumptions.

(a) Between parents.--In any action regarding the custody of the child between the parents of the child, there shall be [no presumption that custody should be awarded to a particular parent.] a presumption, rebuttable by clear and convincing evidence, that shared physical and legal custody and equal

parenting time is in the best interest of the child. The presumption that shared physical and legal custody and equal parenting time is in the best interest of the child under this subsection may be rebutted if:

(1) the court finds by clear and convincing evidence that joint custody is not in the best interest of the child;

(2) the parents have reached an agreement on all issues related to the custody of the child; or

(3) one of the parents does not request shared physical and legal custody or equal parenting time.

* * *

Section 4. Section 5328(a) and (c) of Title 23, amended April 15, 2024 (P.L.24, No.8), are amended to read:

§ 5328. Factors to consider when awarding custody.

(a) Factors.--In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, [giving substantial weighted consideration to the factors specified under paragraphs (1), (2), (2.1) and (2.2) which affect the safety of the child, including the following:

(1) Which party is more likely to ensure the safety of the child.

(2) The present and past abuse committed by a party or member of the party's household, which may include past or current protection from abuse or sexual violence protection orders where there has been a finding of abuse.

(2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).

(2.2) Violent or assaultive behavior committed by a

party.

(2.3) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party if contact is consistent with the safety needs of the child.

(3) The parental duties performed by each party on behalf of the child.

(4) The need for stability and continuity in the child's education, family life and community life, except if changes are necessary to protect the safety of the child or a party.

(5) The availability of extended family.

(6) The child's sibling relationships.

(7) The well-reasoned preference of the child, based on the child's developmental stage, maturity and judgment.

(8) The attempts of a party to turn the child against the other party, except in cases of abuse where reasonable safety measures are necessary to protect the safety of the child. A party's reasonable concerns for the safety of the child and the party's reasonable efforts to protect the child shall not be considered attempts to turn the child against the other party. A child's deficient or negative relationship with a party shall not be presumed to be caused by the other party.

(9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.

(11) The proximity of the residences of the parties.

(12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child or self from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

(14) The history of drug or alcohol abuse of a party or member of a party's household.

(15) The mental and physical condition of a party or member of a party's household.

(16) Any other relevant factor.] including past abuse committed by a party or member of the party's household, the level of conflict between the parties and the willingness and ability of the parties to cooperate with one another.

* * *

(c) Grandparents and great-grandparents.--

(1) In ordering [partial] shared physical custody or supervised physical custody to a party who has standing under section 5325(1) or (2) (relating to grandparent standing for [partial] shared physical custody and supervised physical custody), the court shall consider the following:

(i) the amount of personal contact between the child and the party prior to the filing of the action;

(ii) whether the award interferes with any parent-child relationship; and

(iii) whether the award is in the best interest of the child.

(2) In ordering [partial] shared physical custody or supervised physical custody to a parent's parent or

grandparent who has standing under section 5325(3), the court shall consider whether the award:

(i) interferes with any parent-child relationship; and

(ii) is in the best interest of the child.

Section 5. Sections 5329(b), 5329.1(b)(1) and (2) and 5331(c) of Title 23 are amended to read:

§ 5329. Consideration of criminal conviction.

* * *

(b) Parent convicted of murder.--No court shall award [custody, partial custody or supervised physical] custody to a parent who has been convicted of murder under 18 Pa.C.S. § 2502(a) (relating to murder) of the other parent of the child who is the subject of the order unless the child is of suitable age and consents to the order.

* * *

§ 5329.1. Consideration of child abuse and involvement with protective services.

* * *

(b) Cooperation.--The following apply:

(1) The Department of [Public Welfare] Human Services and the county children and youth social service agency shall fully cooperate with the court and assist the court in fulfilling its duties under this section.

(2) The Department of [Public Welfare] Human Services and the county children and youth social service agency shall fully cooperate with the governing authority in order to implement the provisions of this section.

* * *

§ 5331. Parenting plan.

* * *

(c) Form.--If the court orders the parties to propose a parenting plan, it shall be submitted to the court in substantially the following form:

CAPTION

PARENTING PLAN

This parenting plan involves the following child/children:

Child's Name	Age	Where does this child live?
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....

If you have children not addressed by this parenting plan, name here:

Child's Name	Age	Where does this child live?
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....

Legal Custody (who makes decisions about certain things):

Circle one

Diet..... Both parties decide together / Plaintiff / Defendant

Religion..... Both parties decide together / Plaintiff / Defendant

Medical Care... Both parties decide together / Plaintiff / Defendant

Mental Health Care... Both parties decide together / Plaintiff / Defendant

Discipline..... Both parents decide together / Plaintiff / Defendant

Choice of School.... Both parents decide together / Plaintiff /

Defendant

Choice of Study..... Both parents decide together / Plaintiff / Defendant

School Activities... Both parents decide together / Plaintiff / Defendant

Sports Activities... Both parents decide together / Plaintiff / Defendant

Additional Items... Both parents decide together / Plaintiff / Defendant

Explain what process you will use to make decisions?

(For example, the parent confronted with or anticipating the choice will call the other parent when the choice presents itself, and the other parent must agree or disagree within 24 hours of any deadline)

.....

.....

Physical Custody (where the child/children live)

The child's/children's residence [is with] will be presumed to be at the home of both parents. If the parties have agreed otherwise, please state where the child/children reside.....

Describe which days and which times of the day the child/children will be with each person:

Sunday Monday Tuesday Wednesday Thursday Friday Saturday

.....

Describe where and when the child/children will be dropped off and/or picked up (day and time of day)?

Drop-Off

Where.....

When.....

.....

Pick-Up

Where .....

When .....

.....

If one of you doesn't show up, how long will the other wait?.....

If there are any extraordinary costs (taxi, train, airplane, etc.), who will pay for which costs?

.....

.....

HOLIDAYS

Where will the child/children stay?

HOLIDAY	YEAR A	YEAR B	EVERY YEAR
Martin Luther King Day	.....	.....	.....
President's Day	.....	.....	.....
Easter	.....	.....	.....
Memorial Day	.....	.....	.....
Fourth of July	.....	.....	.....
Labor Day	.....	.....	.....
Yom Kippur	.....	.....	.....
Rosh Hashanah	.....	.....	.....
Thanksgiving	.....	.....	.....
Vacation after Thanksgiving	.....	.....	.....
Christmas Vacation	.....	.....	.....
Kwanzaa	.....	.....	.....
New Year's Eve/Day	.....	.....	.....
Spring Vacation	.....	.....	.....
Easter Sunday	.....	.....	.....
Child's Birthday	.....	.....	.....

Mother's Day ....

Father's Day ....

Other ....

Other ....

Other ....

Summer Vacation Plans

.....

.....

Special Activities or School Activities

Child's Name	Activity	Will both of you attend? If not, which of you will attend?
.....	.....	.....
.....	.....	.....
.....	.....	.....

Temporary changes to this parenting schedule

From time to time, one of you might want or need to rearrange the parenting time schedule due to work, family or other events. You can attempt to agree on these changes. If you cannot agree, the parent receiving the request will make the final decision. The parent asking for the change will ask.....in person.....by letter/mail.....by phone

No later than

....12 hours..... 24 hours.... 1 week..... 1 month

The parent being asked for a change will reply

.... in person..... by letter/mail..... by phone

No later than

..... 12 hours..... 24 hours..... 1 week..... 1 month

May parents contact one another?.....

When the child/children is/are with one of you, how may they contact the other parent?.....

.....

When and how may .....contact the child?

.....

.....

In the event that proposed changes, disputes or alleged breaches of this parenting plan and custody order are necessary or desired, the parties agree that such changes will be addressed by the following method (specify method of arbitration, mediation, court action, etc.):

.....

.....

The following matter or matters as specified by the court:

.....

.....

Other (Anything else you want to agree on):

.....

.....

.....

Date..... .....

Signature of Mother

Date..... .....

Signature of Father

Date..... .....

Signature of Witness

Section 6. This act shall take effect in 60 days.

357 A.3d 1252
Superior Court of Pennsylvania.

Stella SAWYER
v.
Dominic ANUSIONWU, Appellant

No. 1076 EDA 2025
|
Argued December 9, 2025
|
Filed April 23, 2026

Synopsis

Background: Contempt action was brought against father for failure to pay his court-ordered child support obligation. The Court of Common Pleas, Delaware County, Domestic Relations Division, No. 2020-01124, Richard H. Lowe, J., found father in contempt, and he appealed.

Holdings: The Superior Court, No. 1076 EDA 2025, Lazarus, President Judge, held that:

[1] trial court should have conducted a waiver-of-counsel colloquy and ascertained whether father was indigent and entitled to court-appointed counsel, and

[2] as matter of first impression, to determine indigency, it is appropriate for court to consider any factors relevant to child support obligor's ability to pay for legal representation.

Reversed.

Procedural Posture(s): On Appeal; Motion for Contempt.

West Headnotes (13)

[1] **Child Support** ⇐ Contempt

Contempt order used to coerce a parent into paying a child support obligation and arrearages is properly characterized as civil.

[2] **Contempt** ⇐ Review

Appellate court will reverse a trial court's order denying or granting a civil contempt petition only upon a showing that the trial court misapplied the law or exercised its discretion in a manner lacking reason.

[3] **Contempt** ⇐ Presumptions and burden of proof

In proceedings for civil contempt of court, the general rule is that the burden of proof rests with the complaining party to demonstrate that the defendant is in noncompliance with a court order.

[4] **Contempt** ⇐ Disobedience to Mandate, Order, or Judgment

Contempt ⇐ Weight and sufficiency

To sustain a finding of civil contempt, the complainant must prove, by a preponderance of the evidence, that: (1) the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) the act constituting the contemnor's violation was volitional; and (3) the contemnor acted with wrongful intent.

1 Case that cites this headnote

[5] **Child Support** ⇐ Counsel

Trial court should have conducted a waiver-of-counsel colloquy and ascertained whether father was indigent and entitled to court-appointed counsel at hearing to hold father in contempt for failure to pay his court-ordered child support obligation; while father was previously advised in writing that he was entitled to counsel, the court failed to ascertain at contempt hearing whether father was knowingly, intelligently, and voluntarily waiving his right to counsel at that proceeding, an indigent defendant's right to court-appointed counsel was triggered in any proceeding in which there was likelihood of imprisonment, and father was held in contempt and sentenced to seven days' incarceration, thus establishing likelihood of imprisonment. Pa. R. Crim. P. 121, 121(A)(2).

1 Case that cites this headnote

More cases on this issue

[6] **Criminal Law** ⇐ Waiver of right to counsel

Regardless of the defendant's prior experience with the criminal justice system, a penetrating and comprehensive colloquy is mandated when determining if defendant is knowingly, intelligently, and voluntarily waiving his right to counsel. U.S. Const. Amend. 6; Pa. R. Crim. P. 121(A)(2).

[7] **Criminal Law** ⇐ Capacity and requisites in general

Criminal Law ⇐ Indigence

Question of waiver of counsel must be determined regardless of whether the accused can or cannot afford to engage counsel. U.S. Const. Amend. 6; Pa. R. Crim. P. 121(A)(2).

[8] **Child Support** ⇐ Counsel

If the court determines at civil contempt hearing for failure to pay court-ordered child support that there is a likelihood of imprisonment, then the court must ascertain whether child support obligor is entitled to court-appointed counsel. Pa. R. Crim. P. 122.

[9] **Criminal Law** ⇐ Indigence

Among other factors that may be relevant to a defendant's financial ability to hire private counsel are the probable cost of representation for the crime charged and the defendant's liabilities for purposes of criminal procedure rule which authorizes the court to conduct case-by-case evaluations of individual defendants' circumstances in order to ascertain whether counsel should be appointed. Pa. R. Crim. P. 122.

1 Case that cites this headnote

[10] **Child Support** ⇐ Counsel

To determine indigency in cases where a child support obligor faces civil contempt proceedings, in which there is a likelihood of imprisonment, it is appropriate for a court to consider, on a case-by-case basis, any factors relevant to the obligor's current ability to pay for legal representation, including, but not limited to, his current income and liabilities, assets, and the cost of representation. Pa. R. Crim. P. 122.

[11] **Child Support** ⇐ Counsel

Superior Court, as a statewide appellate court, is ill-equipped to promulgate detailed guidelines to be followed by the courts of common pleas of the various counties when rendering indigency determinations for purposes of appointed counsel in cases where a child support obligor faces civil contempt.

[12] **Child Support** ⇐ Counsel

Court shall conduct a waiver-of-counsel colloquy in any civil contempt proceedings in which the court determines that there is a likelihood of imprisonment of child support obligor. Pa. R. Crim. P. 121.

1 Case that cites this headnote

[13] **Child Support** ⇐ Counsel

If parent indicates that he wants to be represented by counsel but cannot afford to pay an attorney, then court shall conduct an inquiry into parent's then-current financial resources to determine whether he is indigent and, thus, entitled to court-appointed counsel in civil contempt proceeding for his failure to pay court-ordered child support. Pa. R. Crim. P. 122.

Appeal from the Order Entered March 13, 2025, In the Court of Common Pleas of Delaware County, Domestic Relations, at No(s): 2020-01124, Richard H. Lowe, Judge.

Attorneys and Law Firms

Ariel J. Shapell, American Civil Liberties Union of Pennsylvania, Philadelphia, for appellant.

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Stella Sawyer, Aidan, appellee, pro se.

BEFORE: LAZARUS, P.J., PANELLA, P.J.E., and SULLIVAN, J.

Opinion

OPINION BY LAZARUS, P.J.:

***1254** Dominic Anusionwu appeals from the order, entered in the Court of Common Pleas of Delaware County, finding him to be in contempt of his court-ordered child support obligation and sentencing him to seven days in jail with a purge amount of $1,200.00. After our careful review, we reverse.

This is a support matter that originated in 2020. On March 12, 2025, Anusionwu appeared before the court, pro se, for a contempt hearing after he fell behind in his monthly support obligations, which at that time consisted of $737.21 in support and $221.16 per month in arrearages. ***See*** N.T. Contempt Hearing, 3/12/25, at 4. As of the date of the hearing, Anusionwu had a total arrears balance of $7,722.22. Despite being employed for the months of November 2024 through January 2025 and taking home approximately $475.00 per week, Anusionwu: made no payment in November 2024; paid $442.32 in both December 2024 and January 2025; and paid $117.57 in February 2025. ***Id.*** at 5. Anusionwu informed the court that he had not made his required payments because his "job was terminated." ***Id.*** at 6. Anusionwu indicated that he had recently been rehired by his former employer, but was still being retrained, for which he would only be paid $100.00, and had yet to receive a paycheck. ***Id.*** at 6-7.

The court sentenced Anusionwu to seven days' incarceration and set a purge condition of $1,200.00. The court based this amount on Anusionwu's net monthly income for the months of November 2024 through January 2025, and concluded "beyond a reasonable doubt" that Anusionwu had the present ability to pay the purge amount. ***Id.*** at 10. ***See*** Pa.R.C.P. 1910.25-5(b). Following the hearing, Anusionwu's son informed Anusionwu's sister that his father had been jailed for contempt and she borrowed money from a friend to pay the purge amount. Brief of Appellant, at 11.

Anusionwu, now represented by the American Civil Liberties Union of Pennsylvania, filed a timely notice of appeal; both he and the trial court have complied with Pa.R.A.P. 1925. Anusionwu raises the following claims on appeal: [1]

> 1. Did the trial court err by denying [ ] Anusionwu his right to counsel when it failed to either appoint counsel before his March 12, 2025, contempt hearing or conduct a waiver of counsel colloquy at the hearing [to] ensure[ ] Anusionwu was waiving his right to counsel "knowingly, intelligently, and voluntarily"[?]
>
> 2. Did the trial court err by imposing an unlawful civil contempt purge condition of $1,200[.00] without making a substantiated finding on the record, beyond a reasonable doubt, that [ ] Anusionwu had the present ability to pay that amount of money at the time he was held in contempt and incarcerated[?]

Brief of Appellant, at 3 (reordered).

[1] [2] [3] [4] Our standard of review for an order regarding civil contempt [2] is as follows:

> This Court will reverse a trial court's order denying [or granting] a civil contempt ***1255** petition only upon a showing that the trial court misapplied the law or exercised its discretion in a manner lacking reason. ***Harcar v. Harcar***, 982 A.2d 1230, 1234 (Pa. Super. 2009) (citations omitted). In proceedings for civil contempt of court, the general rule is that the burden of proof rests with the complaining party to demonstrate that the defendant is in noncompliance with a court order. ***Lachat v. Hinchcliffe***, 769 A.2d 481, 489 (Pa. Super. 2001) (citations omitted). To sustain a finding of civil contempt, the complainant must prove, by a preponderance of the evidence, that: (1) the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) the act constituting the contemnor's violation was volitional; and (3) the contemnor acted with wrongful intent. ***Id.***

MacDougall v. MacDougall, 49 A.3d 890, 892 (Pa. Super. 2012).

Anusionwu first asserts that the trial court erred by denying him his right to counsel when it failed to either appoint counsel before his March 12, 2025, contempt hearing or conduct a waiver of counsel colloquy at the hearing to ensure Anusionwu was waiving his right to counsel knowingly, intelligently, and voluntarily. Anusionwu asserts that "an indigent defendant's right to court-appointed counsel is triggered in any proceeding in which the court finds there is a likelihood of imprisonment." Brief of Appellant, at 17-19, quoting *Commonwealth v. Diaz*, 191 A.3d 850, 862 (Pa. Super. 2018). Anusionwu notes that this Court, in numerous unpublished decisions,[3] has extended the holding in *Diaz* to civil contempt hearings in support matters.[4] *See* Brief of Appellant, at 18, citing *Hamm v. Harris*, 335 A.3d 366, at *2-*3 (Pa. Super. 2025) (Table); *Kopp v. McCarthy*, 324 A.3d 1247 (Pa. Super. 2024) (Table); *Beaman v. Gibbs*, 317 A.3d 567 (Pa. Super. 2024) (Table). *See also B.A.W. v. T.L.W.*, 230 A.3d 402 (Pa. Super. 2020) (right to counsel under *Diaz* applies to contempt hearing for failure to pay, in full, cost of custody evaluation where contemnor at risk of incarceration). Anusionwu further asserts that the fact that he had been made aware of his right to counsel at a prior contempt proceeding[5] did not constitute waiver of that right at the instant hearing. *See* Brief of Appellant, at 20, citing *Diaz*, 191 A.3d at 863.

In his Rule 1925(a) opinion, the Honorable Richard H. Lowe found that Anusionwu was not indigent and, therefore, not entitled to a court-appointed lawyer. *See* Trial Court Opinion, 7/24/25, at 13. The court reached this conclusion based on Anusionwu's prior net weekly income of $475.00.[6] *Id.* at 12. Moreover, the court concluded that

> ***1256** given [Anusionwu's] extensive immersion in support contempt proceedings—and the numerous admonitions[ ] he [ ] received about his right[ ]to[ ]counsel —this court did not err by failing to conduct a waiver-of-counsel colloquy. The record demonstrated that on multiple occasions prior to the hearing, [Anusionwu] was notified orally and in writing[:] 1) [that] if he was found in willful contempt, he faced the possibility of incarceration; 2) that [Anusionwu] had a right to be represented by counsel; 3) how he could find an attorney; and 4) if he could not afford an attorney[,] where to apply for a public defender.

Id. at 14-15. The court further noted that, at an October 2024 contempt hearing, Anusionwu was advised as follows:

> If you come back to this court ... one of the potential outcomes is incarceration, probation, fine, or some combination thereof. Because of that, you have an absolute right to have an attorney. The right to counsel form tells you how to contact the Lawyer's Referral Service [and] the Public Defender's Office. You don't have to do that, but what you can't do is show up in another contempt hearing and say that you didn't know you had the right to have an attorney.

Id. at 15, quoting N.T. Contempt Hearing, 10/28/24, at 20.

The court concluded that Anusionwu's "due process rights and right to counsel were adequately protected by the numerous unambiguous notices he received that highlighted the risk of incarceration, his right to counsel, and instructions on where and how he could find and hire an attorney." Trial Court Opinion, 7/24/25, at 16. Nevertheless, the court noted that "going forward[,] this court will engage in the better practice of performing a waiver-of-counsel colloquy." *Id.* at 16 n.21.

[5] We find persuasive the numerous unpublished decisions of this Court applying *Diaz* to support contempt proceedings and, thus, conclude that the trial court erred by failing to conduct a waiver-of-counsel colloquy at the March 12, 2025 hearing and, relatedly, to ascertain whether Anusionwu was indigent and entitled to court-appointed counsel. As noted above, in *Diaz, supra*, this Court held that "an indigent defendant's right to court-appointed counsel is triggered in any proceeding in which the court finds there is a likelihood

of imprisonment." *Id.* at 862 (footnote omitted). Here, Anusionwu was held in contempt and sentenced to seven days' incarceration, thus clearly establishing a "likelihood of imprisonment."

In addition to holding that an indigent defendant's right to court-appointed counsel is triggered in any proceeding in which the court finds there is a likelihood of imprisonment, the *Diaz* Court also found that an individual's failure to obtain counsel after previously being given notice of his right to counsel at a prior proceeding does not constitute a waiver of counsel at a subsequent proceeding. *Id.* at 863. There, the defendant appeared at a bench warrant hearing after he failed to pay court-imposed fines and costs. At that hearing, the court advised the defendant of his right to counsel and scheduled a contempt hearing. At the contempt hearing, defendant appeared pro se and was not given a waiver-of-counsel colloquy. The trial court ultimately sentenced him to thirty days' imprisonment, with a purge condition of $250.00. On appeal, the Commonwealth argued that, prior to the contempt hearing, Diaz had been advised of his right to counsel ***1257** and, because he failed to request a public defender or retain private counsel prior to the subsequent contempt hearing, he had waived his right to counsel. This Court disagreed, finding that "[t]he record simply does not reflect [Diaz] knowingly, intelligently, and voluntarily waived his right to counsel." *Id.* at 863, citing Pa.R.Crim.P. 121.

[6] Similarly, here, while Anusionwu was previously advised in writing and at the October 2024 hearing that he was entitled to counsel, the court failed to ascertain at the March 12, 2025 hearing whether Anusionwu was knowingly, intelligently, and voluntarily waiving his right to counsel **at that proceeding.** "Regardless of the defendant's prior experience with the justice system, a 'penetrating and comprehensive' colloquy is mandated." ***Commonwealth v. Owens***, 750 A.2d 872, 876 (Pa. Super. 2000), quoting ***Commonwealth v. Dale***, 286 Pa.Super. 308, 428 A.2d 1006, 1007 (1981).

[7] Pennsylvania Rule of Criminal Procedure 121, which this Court has applied in support contempt hearings where there is a likelihood of incarceration, sets forth the following requirements to ensure that a defendant's waiver of counsel is knowing, intelligent, and voluntary:

> To ensure that the defendant's waiver of the right to counsel is knowing, voluntary, and intelligent, the judge ... at a minimum, shall elicit the following information from the defendant:
>
> (a) that the defendant understands that he or she has the right to be represented by counsel, and the right to have free counsel appointed if the defendant is indigent;
>
> (b) that the defendant understands the nature of the charges against the defendant and the elements of each of those charges;
>
> (c) that the defendant is aware of the permissible range of sentences and/or fines for the offenses charged;
>
> (d) that the defendant understands that if he or she waives the right to counsel, the defendant will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;
>
> (e) that the defendant understands that there are possible defenses to these charges that counsel might be aware of, and if these defenses are not raised at trial, they may be lost permanently; and
>
> (f) that the defendant understands that, in addition to defenses, the defendant has many rights that, if not timely asserted, may be lost permanently; and that if errors occur and are not timely objected to, or otherwise timely raised by the defendant, these errors may be lost permanently.

Pa.R.Crim.P. 121(A)(2); **see *also Hamm***, 335 A.3d at *2-*3 (Pa. Super. 2025) (Table) (applying Rule 121 where there is likelihood of imprisonment in civil contempt proceeding for failure to pay child support); ***Beaman, supra*** (same). "The question of waiver must be determined regardless of whether the accused can or cannot afford to engage counsel." ***Commonwealth v. Ford***, 715 A.2d 1141, 1144 (Pa. Super. 1998) (citation omitted).

[8] "If the court determines at the civil contempt hearing that there is a likelihood of imprisonment, then the court **must** ascertain whether [a]ppellant is entitled to court-appointed counsel[.]" ***Diaz***, 191 A.3d at 866 (emphasis added). Anusionwu advocates that the proper standard for determining his indigency and entitlement to court-appointed counsel is the Delaware County Public Defender's eligibility standards, which provide that "[a]ll individuals with income at or under 200% of the federal poverty level are eligible for Delco Defender ***1258** services." Brief of Appellant, at 24 and Exhibit D ("Internal Guidance: Determining Eligibility for Services"). Anusionwu argues that, because he had not been paid in more two months prior to the

March 12, 2024 contempt hearing, he had no employment income under the public defender's eligibility calculation. Thus, Anusionwu asserts, the trial court's conclusion that his "yearly projected income of over $33,000/yr. exceeded any reasonable definition of indigency" was in error, as the defender's eligibility standards control. *Id.* at 25.

We begin by noting that Anusionwu's reliance on *Dauphin Cnty. Pub. Def.'s Off. v. Ct. of Common Pleas of Dauphin Cnty.*, 578 Pa. 59, 849 A.2d 1145 (2004), for the proposition that "it is the public defender, not the Court of Common Pleas [("CCP")], whose standards govern the eligibility determination" for appointment of counsel, is misplaced. Brief of Appellant, at 25, citing *Dauphin Cnty. Pub. Def's Off.*, 849 A.2d at 1149-50. In that case, the question before the Court was "whether the Dauphin County CCP has the authority to exclude individuals who have an income greater than the poverty line from establishing eligibility for Public Defender representation." *Dauphin Cnty. Pub. Def's Off.*, 849 A.2d at 1149. In concluding that it did not, the Court did not hold that, in any case in which a court is confronted with a defendant claiming indigency, it must apply the eligibility standard of its county's public defender's office. Rather, the Court simply held that a court of common pleas may not administratively "dictate income levels above which an individual [who applies for representation] shall not be permitted to show that he or she does not have the financial resources with which to hire private counsel." *Id.* at 1151.

[9] **[10]** **[11]** Although we have found no case specifically addressing the standard for determining indigency in the context of civil contempt, our Supreme Court has noted that Pa.R.Crim.P. 122[7] "authorizes the court to conduct case-by-case evaluations of individual defendants' circumstances in order to ascertain whether counsel should be appointed." *Dauphin Cnty. Pub. Def's Off.*, 849 A.2d at 1151. "Among other factors that may be relevant to a defendant's financial ability to hire private counsel are the probable cost of representation for the crime charged and the defendant's liabilities." *Id.* at 1149, n.4, citing *Commonwealth v. Brown*, 327 Pa.Super. 505, 476 A.2d 381, 386 (1984). Thus, while we decline to impose a test to determine indigency in cases where a child support obligor faces contempt proceedings in which there is a likelihood of imprisonment, we deem it appropriate for a court to consider, on a case-by-case basis, any factors relevant to the obligor's current ability to pay for legal representation, including, but not limited to, his current income and liabilities, assets, and the cost of representation.[8]

***1259** **[12]** **[13]** In light of the foregoing, we are constrained to reverse the trial court's order and hold that, in any future contempt proceedings in which the court determines that there is a likelihood of imprisonment, the court shall conduct a waiver-of-counsel colloquy pursuant to Rule 121. In the event Anusionwu indicates he wishes to be represented by counsel but cannot afford to pay an attorney, the court shall conduct an inquiry into Anusionwu's then-current financial resources to determine whether he is indigent and, thus, entitled to court-appointed counsel.

Order reversed.[9]

All Citations

357 A.3d 1252, 2026 PA Super 83

Footnotes

1 We note with disapproval that the Delaware County Office of Support Enforcement did not file an appellee's brief in this matter.

2 A contempt order used to coerce a parent into paying a support obligation and arrearages is properly characterized as civil. ***See Barrett v. Barrett***, 470 Pa. 253, 368 A.2d 616, 619 (1977).

3 ***See*** Pa.R.A.P. 126(b)(1)-(2) (non-precedential memorandum decisions of this Court filed after May 1, 2019, may be cited for persuasive value).

4 In ***Diaz***, the appellant was subject to contempt proceedings for failure to pay court-imposed fines and costs imposed in conjunction with a guilty plea to a drug offense.

5 Anusionwu appeared before the Honorable Rachel Ezzell Berry on October 28, 2024, for a contempt hearing after he failed to pay his support obligations. At that hearing, Anusionwu was advised of his right to counsel, but only **after** the court had held him in contempt and sentenced him to seven days' incarceration, with a purge condition of $2,000.00.

6 In its opinion, the trial court characterized this amount as Anusionwu's **current** weekly net income. However, a review of the portion of the transcript on which the court bases this assessment demonstrates that $475.00 was Anusionwu's weekly income from November 2024 through January 2025, prior to being discharged from his employment. ***See*** N.T. Contempt Hearing, 3/12/25, at 9 ("THE COURT: So how much were you making in those three months? MR. ANUSIONWU: Four sixty a week, I believe, after—no, before tax. Because it's $16 an hour, so [$]460 before the taxes. MS. MANN: So[,] $16 an hour at 40 hours before taxes is $640, not [$]460. And if you take the average tax rate, he was bringing home about $475 a week, net.... MR. ANUSIONWU: Six forty, yes.").

7 Rule 122 provides, in relevant part, as follows:

> (A) **Counsel shall be appointed**:
>
> (1) in all summary cases, for all defendants who are without financial resources or who are otherwise unable to employ counsel **when there is a likelihood that imprisonment will be imposed**;
>
> (2) in all court cases, prior to the preliminary hearing to all defendants who are without financial resources or who are otherwise unable to employ counsel;
>
> (3) in all cases, by the court, on its own motion, when the interests of justice require it.

Pa.R.Crim.P. 122(A) (emphasis added).

8 We, as a statewide appellate court, are ill-equipped promulgate detailed guidelines to be followed by the courts of common pleas of the various counties when rendering indigency determinations. Nevertheless, it is apparent that there is a need for greater consistency among the trial courts, both within individual counties and across the Commonwealth as a whole. As such, we strongly encourage our Supreme Court, in its rule-making and advisory capacity, to adopt state-wide, across-the-board standards to provide trial judges with clearer guidance when making indigency determinations.

9 Due to our disposition, we need not address Anusionwu's remaining appellate claim.

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2026 WL 2330272
Superior Court of Pennsylvania.

Michele MCGUIRE and Sean McGuire, Appellants
v.
Joshua A. LUCCHINO
v.
Arin T. Yeager

No. 1276 WDA 2025
|
Argued February 24, 2026
|
Filed: August 12, 2026

Synopsis

Background: Child's paternal grandmother and step-grandfather brought action against child's biological mother, seeking partial physical custody of child. The Court of Common Pleas, Allegheny County, Family Division, No. FD-16-008562, Tiffany E. Sizemore, J., sustained mother's preliminary objections and dismissed the complaint. Grandmother and step-grandfather appealed.

Holdings: The Superior Court, No. 1276 WDA 2025, Olson, J., held that:

[1] grandmother did not have standing to petition for physical custody of grandchild because, although two potentially qualifying parental custody proceedings had been commenced in past, those proceedings had either expired or been withdrawn and were not presently before court, and

[2] current or pending custody proceeding between the parents serves as a prerequisite to grandparent standing to seek custody of grandchild.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Physical Custody.

West Headnotes (13)

[1] **Child Custody**

Paternal grandmother did not have standing to petition for physical custody of grandchild because, although two potentially qualifying parental custody proceedings had been commenced in the past, those proceedings had either expired or been withdrawn and were not presently before court; current or pending custody proceeding between the parents served as a prerequisite to grandparent standing under statute providing that grandparents have standing and may file an action for partial physical custody and supervised physical custody of their grandchildren when the relationship with the child began with consent of child's parent and the parents of the child have commenced a proceeding for custody. 23 Pa. Cons. Stat. Ann. § 5325.

[2] **Appeal and Error**

Because paternal grandmother and step-grandfather abandoned, for purposes of appeal, their standing argument with respect to step-grandfather, appellate court would affirm the trial court's order dismissing their complaint for custody of grandchild as it pertained to step-grandfather. 23 Pa. Cons. Stat. Ann. § 5325.

[3] **Appeal and Error**

Appellate court's standard of review of an order of the trial court overruling or granting preliminary objections is to determine whether the trial court committed an error of law.

[4] **Appeal and Error**

Threshold issues of standing are questions of law, and thus, appellate court's standard of review is de novo, and appellate court's scope of review is plenary.

[5] **Child Custody**

Generally, the Child Custody Act does not permit third parties to seek custody of a child contrary to the wishes of that child's parents, but Act provides several exceptions to this

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rule, which apply primarily to grandparents and great-grandparents. 23 Pa. Cons. Stat. Ann. §§ 5324(3), 5325.

[6] **Statutes**

When interpreting a statute, courts are constrained by the rules of statutory interpretation, particularly as found in the Statutory Construction Act. 1 Pa. Cons. Stat. Ann. § 1501 et seq.

[7] **Statutes**

Goal in interpreting any statute is to ascertain and effectuate the intention of the General Assembly.

[8] **Statutes**

When statutory language is clear, explicit, and free from any ambiguity, courts discern legislative intent from the language alone, and not from the arguments based on legislative history or spirit of the statute.

[9] **Statutes**

When interpreting statute, courts must construe words and phrases in the statute according to their common and approved usage.

[10] **Statutes**

Courts must construe a statute in such a way as to give effect to all its provisions, if possible, thereby avoiding the need to label any provision as mere surplusage.

[11] **Statutes**

It is presumed that the legislature did not intend an absurd or unreasonable result, and in this regard, appellate courts are permitted to examine the practical consequences of a particular interpretation of statute.

[12] **Statutes**

Legislature's intent can only be derived by reading all sections of the statute together and in conjunction with each other and construed with reference to the entire statute.

[13] **Child Custody**

Current or pending custody proceeding between the parents serves as a prerequisite to grandparent standing under statute providing that grandparents have standing and may file an action for partial physical custody and supervised physical custody of their grandchildren when the relationship with the child began with consent of child's parent and the parents of the child have commenced a proceeding for custody; statute is written in the present tense and should be interpreted as such. 23 Pa. Cons. Stat. Ann. § 5325.

Appeal from the Order Dated September 16, 2025, In the Court of Common Pleas of Allegheny County, Family Court, at No(s): FD-16-008562, Tiffany E. Sizemore, Judge.

Attorneys and Law Firms

Kristen A. Bojarski, Pittsburgh, for appellants.

Alexandra L. Kovalchick, Pittsburgh, for appellee.

BEFORE: OLSON, J., MURRAY, J., and BECK, J.

Opinion

OPINION BY OLSON, J.:

***1** Appellants, Michele and Sean McGuire, [1] appeal from an order entered on September 19, 2025, which sustained preliminary objections and dismissed their complaint for partial child custody of Z.L. (Child), a male born in November 2015. After careful consideration, we affirm.

We briefly summarize the facts and procedural history of this case as follows. On August 2, 2016, Child's biological mother, Arin T. Yeager (Mother), filed a complaint for primary physical custody of Child against Child's biological

father, Joshua A. Lucchino (Father). On October 31, 2016, after receiving notification of Mother's intent to withdraw her custody claims, Father consented to the withdrawal. By order entered on October 31, 2016, the trial court directed Mother's complaint for custody to be withdrawn. Approximately seven months later, on May 24, 2017, Mother obtained a temporary order for Protection from Abuse (PFA order) against Father, for both herself and Child. On June 29, 2019, the trial court entered a final PFA order, with Mother's and Father's consent, that contained a provision permitting Father to have supervised visitation with Child. That final PFA order was in effect for three years, or until June 29, 2022. After the expiration of the final PFA order, there were no further custody actions taken by Mother or Father.

On May 7, 2025, Appellants filed a complaint for partial custody of Child. Therein, Appellants alleged that following an argument in late 2024, Mother forbid Child to have contact or spend weekends with them, as previously permitted. On May 30, 2025, Mother filed preliminary objections to the custody complaint, arguing that Appellants lacked standing pursuant to 23 Pa.C.S.A. § 5325. Separately, Mother asserted that Step-Grandfather lacked standing because he was not a biological relative of Child. [2]

More specifically, and at issue herein, Section 5325 currently provides in pertinent part:

> **§ 5325. Standing for partial physical custody and supervised physical custody**
>
> In addition to situations set forth in section 5324 (relating to standing for any form of physical custody or legal custody), grandparents and great-grandparents may file an action under this chapter for partial physical custody or supervised physical custody in the following situations:
>
> * * *
>
> (2) where the relationship with the child began either with the consent of a parent of the child or under a court order and where the parents of the child:
>
> (i) have commenced a proceeding for custody; and
>
> (ii) do not agree as to whether the grandparents or great-grandparents should have custody under this section[.]

***2** 23 Pa.C.S.A. § 5325.

On June 9, 2025, Appellants filed a response to Mother's preliminary objections. Following hearings held on July 3, 2025, and September 4, 2025, the trial court dismissed Appellants' complaint for custody by order entered on September 16, 2025. Therein, the trial court noted that the parties agreed that Child's relationship with Appellants began with Mother's consent. However, the trial court determined that "there [was] no qualifying custody proceeding that would entitle [Appellants] to proceed with their custody" claim, reasoning:

> There was a custody complaint filed by [Mother] against [Father in 2016]. However, it was later withdrawn with [Mother's] consent. There was also a custody provision ordered as part of a PFA proceeding between [Child's] parents on June 29th, 2017. That PFA expired on June 29th, 2019. **There is currently no custody proceeding pending by either parent.**
>
> * * *
>
> [Because no custody proceeding is currently pending between Child's parents, Appellants] have not met the first prong of Section [5325(2)]. As a result, their [c]omplaint must be dismissed.

Trial Court Order, 9/16/2025, at *2-3 (unpaginated) (emphasis added), ¶ III(a)-(c). Additionally, the trial court "agree[d] with [Mother's] claim that [Step-Grandfather did] not have standing in this matter" because he was not biologically related to Child, but the trial court explained that "the issue was largely moot because the matter [was] dismissed" for lack of standing as detailed above. ***Id.*** at *3, ¶ III(d).

In its subsequent opinion under Pa.R.A.P. 1925(a), the trial court looked at the plain, statutory language of Section 5325(2)(i), *to wit* "have commenced a proceeding for custody," found that the legislature used the present verb tense, and concluded that Appellants "did not meet 23 Pa.C.S.A. § 5325(2)(i) because the prior custody proceeding and PFA proceedings were not currently pending." Trial Court Opinion, 11/3/2025, at *7 (unpaginated); ***see also id.*** at *6 ("[T]here is not presently a qualifying custody proceeding. [T]he only custody proceedings in this matter have either expired or been withdrawn."); ***see also id.*** at *5 ("[T]here is no pending custody action between the legal parents of [Child]. The first custody action was withdrawn nearly a decade ago, and the most recent one expired with the PFA [order] almost six years ago."). This timely appeal resulted. [3]

On appeal, Appellants present the following issue for our review:

> Whether the trial court erred in determining that no qualifying custody proceeding existed under 23 Pa.C.S. [A.] § 5325(2), thus sustaining Mother's preliminary objections and dismissing [Appellants'] custody case, although the record reflects that custody proceedings between [C]hild's parents commenced?

***3** Appellants' Brief at 11.

[1] **[2]** Appellants argue that the trial court misinterpreted the statutory language of Section 5325(2) to conclude that Grandmother[4] lacked standing because there was no custody proceeding pending by either parent at the time Appellants filed their custody complaint. Appellants claim "[t]he record is clear that custody proceedings commenced between the parents in this case, thus Section 5325(2)(i) [was] met." ***Id.*** at 16-17. More specifically, Appellants posit "a [parental] custody proceeding was commenced when Mother filed for custody in 2016, and there was a 3-year PFA [order filed by Mother] in place that contained custody provisions." ***Id.*** at 21. Appellants maintain that the trial court erred in relying on the use of the present tense in Section 5325(2)(ii) to conclude that a parental custody proceeding must currently be pending before the court in order to find grandparent standing because "Section 5325(2)(ii) does not state that the [parental] custody action has to be commenced *and pending*." ***Id.*** at 21-23 (emphasis in original). Appellants contend that Section 5325(2)(ii) was amended in 2018 and previously permitted grandparent standing "where the parents of the child have been separated for a period of at least six months or have commenced and continued a proceeding to dissolve their marriage." ***Id.*** at 19, 21-22. Appellants assert that the amendment "eliminate[d] the relationship status of the parents as a factor" to establish grandparent standing and "[t]he legislature specifically left out the 'and continued' language in the rewrite of the statute." ***Id.*** at 20 and 22. Accordingly, Appellants argue in sum:

> In the instance case, the plain language of [Section] 5325(2)(i), "have commenced a proceeding for custody" is clear, explicit, and free from any ambiguity. The record is clear and undisputed that custody proceedings were commenced in this case. The trial court, however, interpret[ed] the language to mean that since the prior custody action was withdrawn, and the PFA matter expired, that there is not "presently a qualifying custody proceeding." If [this] Court were to adopt the trial court's interpretation, it would mean that only in cases where custody proceedings are actively pending could grandparents seek partial custody. The trial court's interpretation of the statute goes beyond its plain [terms].

Id. at 25-26. Hence, "Grandmother [ ] requests [this] Court reverse the trial court's order and remand the case for further proceedings." ***Id.*** at 26.

4** **[3]** **[4]** **[5]** "Our standard of review of an order of the trial court overruling or granting preliminary objections is to determine whether the trial court committed an error of law." ***P.J.A. v. H.C.N., 156 A.3d 284, 287 (Pa. Super. 2017) (*per curiam*) (internal citation omitted). Likewise, "[t]hreshold issues of standing are questions of law; thus, our standard of review is *de novo* and our scope of review is plenary." ***Raymond v. Raymond***, 279 A.3d 620, 627 (Pa. Super. 2022) (citations omitted). "Generally, the Child Custody Act does not permit third parties to seek custody of a child contrary to the wishes of that child's parents." ***Id.*** (citation omitted). As we have further stated:

> The concept of standing is vital in ensuring that cases are presented to the court by an individual who has a genuine, and not merely a theoretical, interest in the matter. Thus, the traditional test for standing is that the proponent of the action must have a direct, substantial and immediate interest in the matter at hand.
>
> * * *
>
> In the area of child custody, principles of standing have been applied with particular scrupulousness because they serve a dual purpose: not only to protect the interest of the court system by assuring that actions are litigated by appropriate parties, but also to prevent intrusion into the protected domain of the family by those who are merely strangers, however well-meaning.

M.S. v. J.D., 215 A.3d 595, 598 (Pa. Super. 2019). "The [Custody] Act[, however,] provides several exceptions to this rule, which apply primarily to grandparents and great-grandparents." ***Raymond***, 279 A.3d at 627, *citing* 23

Pa.C.S.A. §§ 5324(3), 5325 ("Standing for partial physical custody and supervised physical custody.").

[6] [7] [8] [9] [10] [11] To resolve whether Grandmother has standing in this case, we must ascertain and effectuate the legislature's intent when it amended Section 5325 in 2018. When interpreting a statute,

> we are constrained by the rules of statutory interpretation, particularly as found in the Statutory Construction Act. 1 Pa.C.S.A. §§ 1501–1991. The goal in interpreting any statute is to ascertain and effectuate the intention of the General Assembly. Our Supreme Court has stated that the plain language of a statute is in general the best indication of the legislative intent that gave rise to the statute. When the language is clear, explicit, and free from any ambiguity, we discern intent from the language alone, and not from the arguments based on legislative history or "spirit" of the statute. We must construe words and phrases in the statute according to their common and approved usage. We also must construe a statute in such a way as to give effect to all its provisions, if possible, thereby avoiding the need to label any provision as mere surplusage.
>
> Under Section 1921(c), the court resorts to considerations of "purpose" and "object" of the legislature when the words of a statute are not explicit .... Finally, it is presumed that the legislature did not intend an absurd or unreasonable result. In this regard, we ... are permitted to examine the practical consequences of a particular interpretation.

Raymond, 279 A.3d at 629–630 (citation omitted).

[12] The legislature's intent "can only be derived by reading all sections of the statute together and in conjunction with each other and construed with reference to the entire statute." *Holland ex re. Holland v. Marcy*, 817 A.2d 1082, 1085 (Pa. Super. 2002). Moreover, "the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable" and "intends the entire statute to be effective and certain." 1 Pa.C.S.A. § 1922(1)-(2).

***5** As set forth above, Section 5325 provides that grandparents have standing and "may file an action ... for partial physical custody and supervised physical custody" of their grandchildren "where the relationship with the child began ... with the consent of a parent of the child ... and where the parents of the child [ ] have commenced a proceeding for custody." 23 Pa.C.S.A. § 5325. In this case, there is no dispute that Grandmother's relationship with Child began with the consent of Mother. As such, the terms of the first portion of the statute have been met. Accordingly, we focus our analysis on the legislative intent of the statutory terms "where the parents of the child [ ] **have commenced** a proceeding for custody." *Id.* (emphasis added).

[13] In this case, as detailed above, the trial court determined that the legislature intended the phrase in Section 5325, "where the parents **have commenced** a proceeding for custody," to mean "a **current**" or "a **pending** custody action between the legal parents" of Child. Trial Court Opinion, 11/3/2025, at *7 and 9 (unpaginated) (emphasis added). The trial court noted that Mother filed a custody action in 2016, but "both Mother and Father agreed to withdraw it on October 31, 2016" and, therefore, there was no current or pending parental custody action at the time that Appellants filed for custody. *Id.* at *5. Moreover, the trial court noted that although Mother's "previously filed PFA order [ ] contained a custody provision[,] the custody provisions of a [PFA] are temporary [and] expire[d] when the PFA expire[d]" more than six years prior. *Id.* at *5 and 7. More specifically, the trial court determined that phrase "have commenced" is in "the present tense." *Id.* at *6. Here, the trial court recognized that although two potentially qualifying parental custody proceedings had been commenced in the past, those proceedings had "either expired or been withdrawn" and were not presently before it. *Id.*

The trial court found support for its interpretation in our decision in *Raymond, supra*, wherein we examined a different provision of the Custody Act, 23 Pa.C.S.A. 5324. *See* Trial Court Opinion, 11/3/2025, at *5-6. In *Raymond*, the maternal grandparents entered into a custody agreement with the adoptive parents for annual visitation with their five-year-old granddaughter. The adoptive mother subsequently died and when the adoptive father was diagnosed with, and later died from cancer, the maternal grandparents filed an emergency petition for custody. "In their complaint, the [maternal g]randparents sought standing [ ] under Section 5324(4) of the Child Custody Act, alleging that the [a]doptive [f]ather's illness prevented him from caring for the [c]hild." *Raymond*, 279 A.3d at 624. As this Court recounted in *Raymond*:

> In 2018, the Child Custody Act was amended to grant standing to another class of individuals. *See* 23 Pa.C.S.A. § 5324(4). Section 5324(4) provides that the following individuals may file for any form of physical or legal custody:

(4) [...] an individual who establishes by clear and convincing evidence all of the following:

(i) The individual has assumed or is willing to assume responsibility for the child.

(ii) The individual has a sustained, substantial and sincere interest in the welfare of the child. In determining whether the individual meets the requirements of this subparagraph, the court may consider, among other factors, the nature, quality, extent and length of the involvement by the individual in the child's life.

(iii) Neither parent has any form of care and control of the child.

23 Pa.C.S.A. § 5324(4) (emphasis added).

Id. at 627. "[T]he trial court [in ***Raymond***] determined that the [maternal g]randparents met the first two prongs of the statute, but failed to establish that '[n]either parent has any form of care and control of the child' under Section 5324(4)(iii)" because the adoptive father "exercised a posthumous 'form of care and control,' " when "he had selected Marcy Raymond (the Great-Aunt) to be the [c]hild's guardian upon his death." *Id.* at 623.

6** On appeal in ***Raymond, our Court disagreed:

> The trial court opined that [the a]doptive [f]ather's care and control of the child continued after his death. However, the statute uses the present tense to evaluate care and control: Neither parent ***has*** any form of care or control of the child. Thus, the question is whether either parent has, presently, at the time of the decision, any form of care or control of the child. We find the use of the present verb tense to be clear, explicit, and free from any ambiguity. Upon his death, it cannot be said that the [a]doptive [f]ather still has such control. We conclude the court's rationale does not comport with the plain reading of the statute.

Id. at 623 (internal citations, quotations, and footnote omitted; emphasis in original).

Ultimately, applying the rational of ***Raymond***, the trial court herein determined that although there were prior custody proceedings between Child's parents in the past, those parental custody matters had concluded, having either expired or been withdrawn, by the time Grandparents sought custody.

Furthermore, the trial court herein found our judgment order in *G.P. v. M.O.*, 2020 WL 914723 (February 25, 2020) persuasive, wherein:

> Father's parental rights were terminated on January 31, 2017. Paternal Grandfather filed a custody action on March 13, 2017; however, six months later, on September 14, 2017, Paternal Grandfather withdrew that action. Mother remarried and her husband (stepfather) adopted the minor children. Paternal Grandfather filed [a new custody] complaint on March 21, 2019. The trial court concluded that since no custody action between the legal parents of the minor children existed at that time, Paternal Grandfather lacked standing. Accordingly, the court dismissed the complaint. 23 Pa.C.S.A. § 5325(2). We [found] no error.

G.P. v. M.O., 2020 WL 914723, at *1. Without much discussion of Section 5325, this Court affirmed, finding no error because the paternal grandfather in *G.P.* had "not alleged that the parents [ ] commenced a proceeding for custody, nor [had he] alleged that the parents [did] not agree as to whether he should have custody rights." *Id.* at *2.

Based upon the rules of statutory interpretation and our review, we agree with the trial court's assessment that Section 5325 is clearly and unambiguously written in the present tense and should be interpreted as such, consistent with our prior decision in *Raymond*. To the extent that the term "have commenced" could be considered ambiguous, we note the following. As detailed above, principles of

grandparent standing have been applied with particular scrupulousness to prevent intrusion into the protected family domain and the Child Custody Act does not generally permit third parties to seek custody of a child contrary to the wishes of that child's parents. This is readily apparent in the plain language of Section 5325. Even setting aside the provision at issue, the legislature also specifically included two additional requirements to establish grandparent standing pursuant to Section 5325 – proof of a preexisting relationship with the child and parental disagreement as to whether the grandparents should have custody. *See* 23 Pa.C.S.A. § 5325(2)(ii). Accordingly, it stands to reason that grandparent standing would also be proper only if there were a current parental custody dispute pending before the court, together with parental disagreement to the exercise of grandparent custody, at the time a grandparent initiates a custody proceeding. We do not believe that the General Assembly intended for grandparents to disrupt a settled custody arrangement, especially when the custody dispute was terminated years earlier. That would be an absurd and unreasonable result and, under our rules of statutory construction, we presume the legislature did not intend such a result.

*7 Because a **pending** custody proceeding between the parents serves as a prerequisite to grandparent standing under Section 5325, we conclude that the trial court did not err in sustaining Mother's preliminary objections to Appellant's complaint for custody.

Order affirmed.

All Citations

--- A.3d ----, 2026 WL 2330272, 2026 PA Super 182

Footnotes

1 "Michele McGuire is the ... Paternal Grandmother of [C]hild. .... Sean McGuire, [has been] the husband of Paternal Grandmother for the last 12 years" and has been Child's Step-Grandfather "since the day [Child] was born." Appellants' Brief at 11. We refer to the parties individually as "Grandmother" and "Step-Grandfather" but collectively as "Appellants."

2 As we shall explain below, Step-Grandfather's custody claim has been abandoned. ***See*** Appellant's Brief at 18, fn. 1.

3 On October 3, 2025, Appellants filed a timely notice of appeal and concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i). The trial court filed an opinion pursuant to Pa.R.A.P. 1925(a) on November 3, 2025.

4 The trial court noted that "Section 5325 is clear and unambiguous. If the legislature wanted the statute to extend to step-grandparents, it would have included step-grandparents in the list of people who are eligible to bring an action under this provision." Trial Court Opinion, 11/3/2025, at *8 (unpaginated). Presently, as noted above, "Grandmother agrees [Step-Grandfather] is not the biological paternal grandparent and will focus her [appellate] brief on the other issues." Appellants' Brief at 18, n.1. Because Appellants abandon their standing argument with regard to Step-Grandfather, we affirm the trial court's order entered on September 16, 2025, dismissing the complaint for custody as it pertains to him. ***See Commonwealth v. Vega***, 754 A.2d 714, 719 (Pa. Super. 2000) ("This [C]ourt will not assume the role of advocate for an appellant when the issues in his brief are improperly raised and undeveloped or abandoned, lack support in the record, and are presented without reference to legal authority."); ***see also Commonwealth v. Rodgers***, 413 Pa.Super. 498, 605 A.2d 1228, 1239 (1992) (This Court will consider an issue abandoned where an appellant has identified the claim on appeal, but failed to develop it in his appellate brief.)

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Civil Procedure (Refs & Annos)
Actions for Support (Refs & Annos)

Pa.R.C.P. 1910.16-6

Rule 1910.16-6. Support Guidelines. Basic Support Obligation Adjustments. Additional Expenses Allocation

Effective: January 1, 2026
Currentness

Even if a basic support order is inappropriate under the facts of the case, the trier-of-fact shall determine whether to allocate between the parties the additional expenses as provided below.

Except for the subdivisions (b)(4) and (e) expenses, the trier-of-fact shall calculate the parties' proportionate share of the additional expenses after adjusting the parties' monthly net income by the spousal support or alimony *pendente lite* obligation received or paid, and dividing each party's adjusted monthly net income by the parties' combined monthly net income. However, the trier-of-fact shall not adjust the parties' monthly net incomes when allocating the expenses in child support only cases.

(a) Child Care Expenses.

(1) The trier-of-fact:

(i) shall allocate reasonable child care expenses paid by the parties, if necessary to maintain employment or appropriate education in pursuit of income.

(ii) may allocate reasonable child care expenses that would be paid by the parties when the trier-of-fact imputes an earning capacity to a party pursuant to Pa.R.Civ.P. 1910.16-2(d)(4)(i)(D).

(2) The trier-of-fact may require that the obligor's share be added to the basic child support obligation, paid directly to the service provider, or paid directly to the obligee.

(3) When a party is receiving a child care subsidy through the Department of Human Services, the expense allocated between the parties is the amount actually paid by the party receiving the subsidy.

(4) The party seeking allocation of child care expenses shall provide to the other party the expense's documentation, such as a receipt or an invoice, promptly after receipt unless the service provider invoices the parties separately, or a written proposal or estimate from the service provider for the imputation of earning capacity, for the party's proportionate share of the expense.

(5) The trier-of-fact shall have the discretion to not allocate expenses if documentation is not timely provided to the other party.

(6) Except as provided in subdivision (a)(7), the total child care expenses shall be reduced to reflect the federal child care tax credit available to the eligible party, regardless of whether the credit is actually claimed by that party, up to the maximum annual cost allowable under the Internal Revenue Code.

(7) If the eligible party is not qualified to receive the credit, the federal child care tax credit shall not be used to reduce the child care expenses subject to allocation between the parties.

(b) Health Insurance Premium.

(1) The trier-of-fact shall allocate the health insurance premium paid by the parties, including the premium attributable to the party paying the premium, provided that a statutory duty of support is owed to the party or child covered by the health insurance.

(i) If the party paying the health insurance premium is the obligor, the obligee's share is deducted from the obligor's basic support obligation.

(ii) If the obligee is paying the health insurance premium, the obligor's share is added to the obligor's basic support obligation.

(iii) A health insurance premium allocated between the parties shall also include health insurance that is provided and paid by a third-party resident of a party's household (*e.g.*, step-parent) for a child who is the subject of the support order.

(2) The trier-of-fact shall not allocate an employer-paid premium or a premium paid for a party, person, or child to whom no statutory duty of support is owed.

(i) If the parties present evidence of the excluded premium's actual amount--the amount attributed to a party, person, or child not owed a statutory duty of support--the trier-of-fact shall deduct the actual amount excluded from the total premium before allocating the health insurance premium between the parties.

(ii) If the parties do not present evidence of the excluded premium's actual amount, the trier-of-fact shall calculate the excluded amount as follows:

(A) determine the premium's cost per person by dividing the total premium by the number of persons covered under the policy;

(B) multiply the cost per person by the number of persons who are not owed a statutory duty of support, or are not parties to, or the subject of, the support action; and

(C) the resulting amount is excluded from allocation.

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(3) Pursuant to 23 Pa.C.S. § 4326(a), in every support proceeding, the trier-of-fact shall ascertain a parent's ability to provide medical support for the parties' child and the support "order shall include a requirement for medical support to be provided by either or both parents, provided that such medical support is accessible to the children."

(i) The obligor bears the initial responsibility of providing the child's health care coverage if it is available at a reasonable cost.

(A) "Reasonable cost" to an obligor shall be defined as an amount that does not exceed 5% of the obligor's monthly net income and, when added to the basic child support obligation plus additional expenses the obligor is ordered to pay, does not exceed 50% of the obligor's monthly net income.

(B) If the obligee is providing the coverage, the "reasonable cost" of the obligor's share shall be defined as an amount that does not exceed 5% of the obligor's monthly net income and, when added to the basic child support obligation plus additional expenses the obligor is ordered to pay, does not exceed 50% of the obligor's monthly net income.

(ii) Unless the child's health care coverage is provided by the obligee or a third party, the court shall issue the National Medical Support Notice required by 23 Pa.C.S. § 4326(d.1) to the obligor's employer in response to notification that the obligor is employed.

(A) The notice shall direct the employer to enroll the obligor's child who is the subject of the support proceeding if the coverage is available at a reasonable cost to the obligor.

(B) However, the notice shall direct that enrollment shall not occur earlier than 25 days from the date of the National Medical Support Notice to allow the obligor time to object.

(C) Concurrent with the issuance of the National Medical Support Notice, the court shall provide notice to the obligor setting forth the process to object to the enrollment based upon unreasonable cost, mistake of fact, or availability of alternative health care coverage for the child.

(D) If there is more than one employer-provided health care coverage option, the obligor shall select the coverage, subject to the obligee's right to seek a court order designating a different option.

(iii) Absent the availability of health care coverage to the obligor for the parties' child at a reasonable cost, the court shall order the obligee to provide health care coverage for the child if it is available at a reasonable cost. "Reasonable cost" to the obligee shall be defined as an amount not to exceed 5% of the obligee's monthly net income.

(iv) If health care coverage is not available to the parties at a reasonable cost, the court may order the party having primary custody to apply for government-sponsored coverage, such as the Children's Health Insurance Program ("CHIP"), with any co-premium or other cost allocated between the parties in proportion to the parties' respective monthly net incomes.

(v) Within 30 days after the entry of the support order, the party ordered to provide health care coverage shall provide written proof to the other party that medical insurance has been obtained, including insurance cards and all other materials set forth

in the form order in Pa.R.Civ.P. 1910.27(e). There shall be a continuing obligation to provide the other party and the domestic relations section with proof of any changes in coverage.

(vi) The trier-of-fact shall give preference to health care coverage that is readily accessible to the child, as defined by geographic coverage area, access to local treatment providers, or other relevant factors.

(4) If the obligor is paying for the health insurance, the obligee has no income or minimal income, and the obligor will bear 90% or more of the health insurance premium:

(i) the trier-of-fact may, as fairness requires, deduct part or all of the premium actually paid by the obligor to provide coverage for the other party or the child from the obligor's gross income to determine monthly net income for support purposes.

(ii) If such a deduction is taken from the obligor's gross income, the premium allocation as set forth in subdivision (b)(1) shall not be applied.

(c) Reasonable Unreimbursed Medical Expenses. The trier-of-fact shall allocate the obligee's or child's reasonable unreimbursed medical expenses. However, the trier-of-fact shall not allocate reasonable unreimbursed medical expenses incurred by a party who is not owed a statutory duty of support by the other party. The trier-of-fact may require that the obligor's expense share be included in the basic support obligation, paid directly to the health care provider, or paid directly to the obligee.

(1) *Medical Expenses.*

(i) For purposes of this subdivision, medical expenses are annual unreimbursed medical expenses in excess of $250 per person.

(ii) Medical expenses include insurance co-payments, deductibles, and all expenses reasonably incurred for necessary medical services and supplies, including but not limited to surgical, dental, and optical services, psychiatric and psychological services, and orthodontia.

(iii) Medical expenses do not include cosmetic, chiropractic, or other services unless specifically directed in the order of court.

(2) The trier-of-fact may impose an annual limitation when the burden on the obligor would otherwise be excessive.

(3) Annual expenses shall be calculated on a calendar year basis.

(i) In the year in which the initial support order is entered, or in any period in which support is being paid that is less than a full year, the $250 threshold shall be pro-rated.

(ii) The party seeking allocation for an unreimbursed medical expense shall provide to the other party the expense's documentation, such as a receipt or an invoice, promptly upon receipt, but not later than March 31st of the year following the calendar year in which the final bill was received by the party seeking allocation.

(iii) For purposes of subsequent enforcement, unreimbursed medical bills need not be submitted to the domestic relations section prior to March 31st.

(iv) The trier-of-fact shall have the discretion to not allocate an expense if documentation is not timely provided to the other party.

(4) If the trier-of-fact determines that out-of-network unreimbursed medical expenses were not obtained due to medical emergency or other compelling factors, the trier-of-fact may deem those expenses to be unreasonable and decline to assess the expenses against the other party.

(d) Private School Tuition or Summer Camp. Other Additional Expenses. Expenses outside the scope of typical child-rearing expenses, such as private school tuition, summer camp fees, and other additional expenses as set forth in subdivision (d)(2), have not been factored into the Basic Child Support Schedule.

(1) *Private School Tuition or Summer Camp.* If the trier-of-fact determines that private school or summer camp is reasonable under the parties' circumstances, the trier-of-fact shall allocate the expense to the parties.

(2) *Other Additional Expenses.* The trier-of-fact shall allocate an additional expense to the parties, if the trier-of-fact determines that the expense:

(i) is related to the child's educational, extra-curricular, or developmental activities; and

(ii) is reasonable under the parties' circumstances.

(3) The trier-of-fact may require that a party's proportionate share of a subdivision (d)(1) or (d)(2) expense is:

(i) included in or excluded from the basic child support obligation;

(ii) paid directly to the service provider; or

(iii) paid directly to the other party.

(4) *Documentation.*

(i) The party seeking allocation of an expense shall provide the other party with the expense's documentation, such as a receipt or an invoice, promptly upon receipt, but not later than March 31st of the year following the calendar year in which the party incurred the expense, unless the service provider invoices the parties separately.

(ii) For subsequent enforcement purposes, a party does not need to submit the expense's documentation to the domestic relations section before March 31.

(iii) The trier-of-fact shall have the discretion to not allocate an expense if documentation is not timely provided to the other party.

(e) Mortgage Payment. The support guidelines assume that the spouse occupying the marital residence will be solely responsible for the mortgage payment, real estate taxes, and homeowners' insurance. Similarly, the trier-of-fact shall assume that the party occupying the marital residence will be paying the items listed unless the recommendation specifically provides otherwise.

(1) If the obligee is living in the marital residence and the mortgage payment exceeds 25% of the obligee's monthly net income (including amounts of spousal support, alimony *pendente lite*, and child support), the trier-of-fact may require the obligor to assume up to 50% of the excess amount in the obligor's support obligation.

(2) If the obligor is occupying the marital residence and the mortgage payment exceeds 25% of the obligor's monthly net income (less any amount of spousal support, alimony *pendente lite*, and child support the obligor is paying), the trier-of-fact may downwardly adjust the obligor's support obligation.

(3) This rule shall not be applicable after a final resolution of the outstanding economic claims in the parties' divorce action.

(4) For purposes of this subdivision, "mortgage" shall include a first mortgage, real estate taxes, and homeowners' insurance and may include a subsequent mortgage, a home equity loan, and other marital obligations secured by the marital residence.

Comment: The allocation of additional expenses may be subject to a deviation analysis pursuant to Pa.R.Civ.P. 1910.16-5. For example, a deviation may be considered if the allocation of additional expenses would reduce a party's monthly net income below the self-support reserve.

Subdivision (a)(1)(i) Example: Mother has primary custody of the parties' two children and Father has partial custody. The parties' respective monthly net incomes are $2,000 and $3,500. At the combined monthly net income of $5,500 for two children, the basic child support obligation is $1,694. As Father's income represents 64% of the parties' combined monthly net income, Father's basic child support obligation is $1,084. Mother incurs monthly child care expenses of $400, and Father incurs $100 per month. The total child care expenses, $500, will be allocated between the parties, with Father paying 64%, or $320. As Father is paying $100 for the children's child care during his partial custody, he would pay the remaining $220 to Mother for a total child support obligation of $1,304 ($1,084 + $220).

Concerning subdivision (a)(1)(ii), see Pa.R.Civ.P. 1910.16-2(d)(4) for earning capacity determination. Hypothetical child care expenses that are less than a parent's earning capacity may be allocated pursuant to subdivision (a)(1)(ii). Only those hypothetical child care expenses that the parent would actually pay, if employed, should be allocated. *See* Pa.R.Civ.P. 1910.16-2, cmt.

Subdivision (b) does not apply to Medical Assistance. *See* 23 Pa.C.S. § 4326(l).

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Subdivision (b)(1)-(b)(2) Example 1: If the parties are separated, but not divorced, and Husband pays $200 monthly for employer-provided health insurance for himself, Wife, the parties' child, and two additional children from a previous marriage, the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing $200 by five persons and then multiplying the resulting amount of $40 per person by the two additional children, for a total of $80 to be excluded from allocation. Deduct this amount from the total premium to arrive at the premium to be allocated between the parties--$120. Since Husband is paying the premium, and spouses have a statutory duty to support one another pursuant to 23 Pa.C.S. § 4321, Wife's percentage share of the $120 is deducted from Husband's support obligation. If Wife had been providing the coverage, Husband's percentage share would be added to his basic support obligation.

Subdivision (b)(1)-(b)(2) Example 2: If the parties are divorced and Father pays $200 monthly for employer-provided health insurance for himself, the parties' child, and two additional children from a previous marriage, the premium attributable to Father and the two additional children will not be allocated between the parties. Thus, using the same calculations in Example 1, the premium attributable to Father and the two other children is $150 ($200 premium divided among four covered persons equals $50 per person multiplied by three) and that amount is deducted from the total premium, leaving $50 ($200 - $150 = $50) to be allocated between the parties.

Subdivision (b)(1)-(b)(2) Example 3: The parties are divorced, and Mother is the obligee of a child support order. Father, the obligor, pays $200 monthly for employer-provided health insurance for himself and the parties' child. Mother pays $400 per month for her employer-provided health insurance that covers only herself. The premium Father pays to cover the parties' child, $100 ($200 premium divided between two covered persons, Father and the child), will be allocated between the parties in proportion to their respective monthly net incomes. The premium that covers Father will not be allocated because the parties are no longer married, and he is not owed a duty of support by Mother. The premium Mother pays to provide her own coverage will not be allocated because the parties are no longer married and she is not owed a duty of support by Father.

Concerning subdivision (b)(3), the maximum amount of any attachment for child and medical support is set forth by the federal Consumer Credit Protection Act, 15 U.S.C. §§ 1601 et seq.

Subdivision (c) is intended to implement 23 Pa.C.S. § 4326(e).

An unreimbursed medical expense may be unreasonable if it was an avoidable expense incurred solely by the party requesting reimbursement, *e.g.*, expenses for missed office visits, excessive supplies, purchases of name brand medications when generic medications are suitable and available, denial of insurance coverage because of a failure to comply with plan requirements, or non-emergency out-of-network expenses pursuant to subdivision (c)(4).

The determination of medical necessity of a medical service or medical supplies can be made in a support proceeding or a custody proceeding. Even if challenged during a support proceeding (rather than a custody proceeding), the necessity of a medical service or medical supplies, which results in an unreimbursed medical expense for which a party seeks allocation subject to subdivision (c)(1)(ii), should be determined by the trier-of-fact, and subject to review by a judge if the trier-of-fact is not a judge.

If the trier-of-fact determines that a party acted reasonably in obtaining services that were not specifically set forth in the order of support, payment for such services may be ordered retroactively.

Pursuant to subdivision (c)(1)(iii), medical expenses for cosmetic, chiropractic, or other services may be, but are not required to be, allocated between the parties by the trier-of-fact if such expenses are reasonable and necessary.

Credits

Adopted Dec. 8, 1998, effective April 1, 1999. Amended Oct. 27, 2000, imd. effective; June 5, 2001, imd. effective; Oct. 30, 2001, imd. effective; Oct. 31, 2002, imd. effective; July 30, 2003, imd. effective; Sept. 24, 2003, imd. effective; Nov. 9, 2004, imd. effective; May 17, 2005, imd. effective; Sept. 27, 2005, effective in 4 months [Jan. 27, 2006]; Oct. 17, 2006, imd. effective; Aug. 13, 2008, effective Oct. 12, 2008; Dec. 8, 2009, imd. effective; Jan. 12, 2010, effective May 12, 2010; July 8, 2010, effective Sept. 6, 2010; Aug. 26, 2011, effective Sept. 30, 2011; April 9, 2013, effective Aug. 9, 2013; May 14, 2014, effective June 13, 2014; March 12, 2015, effective April 11, 2015; Feb. 10, 2017, effective May 1, 2017; June 23, 2017, effective Oct. 1, 2017; Dec. 28, 2018, effective Jan. 1, 2019; Aug. 17, 2021, effective Jan. 1, 2022; Oct. 25, 2024, imd. effective; April 15, 2025, effective July 1, 2025; Aug. 11, 2025, effective Jan. 1, 2026.

Editors' Notes

HISTORICAL COMMENTARY

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

EXPLANATORY COMMENT--2004

Subdivision (a), relating to the federal child care tax credit, has been amended to reflect recent amendments to the Internal Revenue Code, 26 U.S.C. § 21. By generally referencing the Tax Code, rather than incorporating current Code provisions in the rule, further amendments will be incorporated into the support calculation.

EXPLANATORY COMMENT--2005

Pa.R.C.P. No. 1910.16-6 governs the treatment of additional expenses that warrant an adjustment to the basic support obligation.

Subdivision (a) relates to child care expenses. Subdivision (a) has been amended to require that child care expenses incurred by either party are to be allocated between the parties in proportion to their respective net incomes. Subsection (a)(1), relating to the federal child care tax credit, was amended in 2004 to reflect recent amendments to the Internal Revenue Code. 26 U.S.C. § 21. By referring to the Tax Code in general, rather than incorporating current Code provisions in the rule, any further amendments will be incorporated into the support calculation. Since the tax credit may be taken only against taxes owed, it cannot be used when the eligible parent does not incur sufficient tax liability to fully realize the credit. For this reason, subsection (2) provides that no adjustment to the total child care expenses may be made if the eligible parent does not qualify to receive the credit.

Subdivision (b) addresses health insurance premiums. The cost of the premiums is generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. Subdivision (b)(1) of the rule permits allocation of the entire premium, including the portion of the premium covering the party carrying the insurance, when the insurance benefits the other party and/or the children. Subdivision (b)(2) clarifies that, in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, so long as there is a statutory duty of support owed to that party, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order. Subdivision (b)(2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action or owed a statutory duty of support. Subdivision (b) also permits an alternative method for dealing with the cost of health insurance premiums in certain

circumstances. While, in general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes, in cases in which the obligee has no income or minimal income, subsection (4) authorizes the trier-of-fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. This is to avoid the result under a prior rule in which the entire cost of health insurance would have been borne by the obligor, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of this provision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (c) deals with unreimbursed medical expenses. Since the first $250 of medical expenses per year per child is built into the basic guideline amount in the child support schedule, only medical expenses in excess of $250 per year per child are subject to allocation under this rule as an additional expense to be added to the basic support obligation. The same is true with respect to spousal support so that the obligee-spouse is expected to assume the first $250 per year of these expenses and may seek contribution under this rule only for unreimbursed expenses which exceed $250 per year. The definition of "medical expenses" includes insurance co-payments, deductibles and orthodontia and excludes chiropractic services.

Subdivision (d) governs apportionment of private school tuition, summer camp and other unusual needs not reflected in the basic guideline amounts of support. The rule presumes allocation in proportion to the parties' net incomes consistent with the treatment of the other additional expenses.

Subdivision (e) provides for the apportionment of mortgage expenses. It defines "mortgage" to include the real estate taxes and homeowners' insurance. While real estate taxes and homeowners' insurance must be included if the trier-of-fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by the marital residence is within the trier-of-fact's discretion based upon the circumstances of the case.

EXPLANATORY COMMENT--2006

A new introductory sentence in Pa.R.C.P. No. 1910.16-6 clarifies that additional expenses contemplated in the rule may be allocated between the parties even if the parties' respective incomes do not warrant an award of basic support. Thus, even if application of either formula Pa.R.C.P. No. 1910.16-4 results in a basic support obligation of zero, the trier-of-fact may enter a support order allocating between the parties any or all of the additional expenses addressed in this rule.

The amendment of subdivision (e) recognizes that the obligor may be occupying the marital residence and that, in particular circumstances, justice and fairness may warrant an adjustment in his or her support obligation.

EXPLANATORY COMMENT--2008

Federal and state statutes require clarification to subdivision (b) to ensure that all court orders for support address the children's ongoing need for medical care. In those instances where the children's health care needs are paid by the state's medical assistance program, and eligibility for the Children's Health Insurance Program ("CHIP") is denied due to the minimal income of the custodial parent, the obligor remains required to enroll the parties' children in health insurance that is, or may become, available that is reasonable in cost.

Government-sponsored health care plans represent a viable alternative to the often prohibitive cost of health insurance obtainable by a parent. Except for very low income children, every child is eligible for CHIP, for which the parent

with primary physical custody must apply and which is based on that parent's income. A custodial parent may apply for CHIP by telephone or on the Internet. While co-premiums or co-pays increase as the custodial parent's income increases, such costs are generally modest and should be apportioned between the parties. Moreover, health care coverage obtained by the custodial parent generally yields more practical results, as the custodial parent resides in the geographic coverage area, enrollment cards are issued directly to the custodial parent, and claims may be submitted directly by the custodial parent.

EXPLANATORY COMMENT--2010

Subdivision (e), relating to mortgages on the marital residence, has been amended to clarify that the rule cannot be applied after a final order of equitable distribution has been entered. To the extent that *Isralsky v. Isralsky*, 824 A.2d 1178 (Pa. Super. 2003), holds otherwise, it is superseded. At the time of resolution of the parties' economic claims, the former marital residence will either have been awarded to one of the parties or otherwise addressed.

EXPLANATORY COMMENT--2018

The amendments provide for an adjustment to the parties' monthly net incomes prior to determining the percentage each party pays toward the expenses set forth in Pa.R.C.P. No. 1910.16-6. Previously, the Rules of Civil Procedure apportioned the enumerated expenses in Pa.R.C.P. No. 1910.16-6(a)-(d), with the exception of subdivision (c)(5), between the parties based on the parties' respective monthly net incomes as calculated pursuant to Pa.R.C.P. No. 1910.16-2. This apportionment did not consider the amount of support paid by the obligor or received by the obligee.

The amended rule adjusts the parties' monthly net incomes, upward or downward, by the spousal support/APL amount paid or received by that party prior to apportioning the expenses. This methodology is not new to the Rules of Civil Procedure. In Pa.R.C.P. No. 1910.16-6(c)(5)(rescinded), the parties' monthly net incomes in spousal support/APL-only cases were similarly adjusted prior to the apportionment of unreimbursed medical expenses. Likewise, Pa.R.C.P. No. 1910.16-6(e) considers the parties' monthly net income after the receipt or payment of the support obligation for purposes of determining a mortgage deviation. As the new procedure adopts the methodology in former subdivision (c)(5), that subdivision has been rescinded as delineating the spousal support only circumstance is unnecessary.

Lastly, the amendment consolidates Pa.R.C.P. No. 1910.16-6(b)(1), (2), and (2.1).

Notes of Decisions (23)

Rules Civ. Proc., Rule 1910.16-6, 42 Pa.C.S.A., PA ST RCP Rule 1910.16-6
Current with amendments received through September 15, 2026. Some rules may be more current; see credits for details.

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PRINTER'S NO. 80

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 97 Session of 2025

INTRODUCED BY KULIK, PASHINSKI, SANCHEZ, HILL-EVANS, CIRESI, SCHLOSSBERG AND HOHENSTEIN, JANUARY 14, 2025

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 14, 2025

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, in preliminary provisions relating to divorce, further providing for legislative findings and intent, for definitions and for effect of agreement between parties; and, in property rights, further providing for equitable division of marital property.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 3102(b) of Title 23 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding a subsection to read:

§ 3102. Legislative findings and intent.

* * *

(a.1) Companion animals.--The Commonwealth recognizes that companion animals are living beings that are generally regarded as cherished family members that offer their owners companionship, security and assistance. Companion animals occupy a special category of personal property which does not include inanimate personal property. Therefore, it is the policy of the Commonwealth that special consideration be extended to companion

animals when the division of personal property is planned or determined under this part.

(b) Construction of part.--The objectives and policies set forth in [subsection (a)] subsections (a) and (a.1) shall be considered in construing provisions of this part and shall be regarded as expressing the legislative intent.

Section 2. Section 3103 of Title 23 is amended by adding a definition to read:

§ 3103. Definitions.

The following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Companion animal." As follows:

(1) An animal that:

(i) is a domesticated, living being commonly referred to as a pet; or

(ii) has been bought, bred, raised or otherwise acquired in accordance with applicable law for the primary purpose of providing the owner with assistance in relation to a disability, security or companionship, rather than for business or agricultural purposes.

(2) Notwithstanding paragraph (1), an animal that is used for business or agricultural purposes, but that has not been incorporated into the family household as a pet, may be considered as a companion animal, as determined by the court.

* * *

Section 3. Sections 3105 and 3502 of Title 23 are amended by adding subsections to read:

§ 3105. Effect of agreement between parties.

* * *

(d) Possession and care of companion animal.--Parties may enter into an enforceable agreement regarding the possession or care, or both, of a companion animal. Among other things, the agreement may specify the following:

(1) The periods of time during which each party will possess the companion animal.

(2) The financial responsibility of each party regarding the care of the companion animal.

§ 3502. Equitable division of marital property.

* * *

(g) Companion animal.--

(1) Upon the request of either party, the court shall provide for the possession or care, or both, of a companion animal of the parties in accordance with this subsection.

(2) If the companion animal is a service animal, as that term is defined in section 2 of the act of October 24, 2018 (P.L.733, No.118), known as the Assistance and Service Animal Integrity Act, for a party or for an individual who is under 18 years of age and in the custody of that party, there shall be a rebuttable presumption of custody of the companion animal to that party.

(3) If paragraph (2) does not apply, the court shall consider all relevant factors, including the following:

(i) Whether the companion animal was acquired prior to or during the marriage.

(ii) The basic daily needs of the companion animal.

(iii) The party who generally facilitates veterinary care for the companion animal.

(iv) The party who generally provides the companion

animal with social interaction.

(v) The party who generally ensures compliance with State and local regulations regarding the companion animal.

(vi) The party who provides the greater ability to financially support the companion animal.

Section 4. This act shall take effect in 60 days.

362 A.3d 744
Superior Court of Pennsylvania.

Gregory STAPP, Appellant
v.
Brenda STAPP

No. 683 MDA 2025
|
Argued May 6, 2026
|
Filed: June 4, 2026

Synopsis

Background: Husband, who was a self-employed personal injury attorney, filed divorce complaint seeking equitable distribution, and wife filed counterclaims for equitable distribution, alimony, and attorney's fees and costs. The Court of Common Pleas, Lycoming County, Civil Division, No. FC-2023-20486-DI, Charles H. Saylor, J., held a discovery conference, granted wife's discovery request by ordering husband to provide wife with documents concerning his interest on lawyer trust account (IOLTA), and, other than making a correction to the scheduling order, denied husband's motion for reconsideration. Husband appealed.

Holdings: The Superior Court, No. 683 MDA 2025, Bender, P.J.E., held that:

[1] trial court's order denying husband's motion for reconsideration was an appealable collateral order;

[2] Superior Court would decline to grant bar organization's request to reverse trial court's alleged statement regarding a law firm employee's confidentiality obligations as to IOLTAs; and

[3] trial court properly exercised its discretion in ordering husband to produce records from his IOLTA with restrictions.

Affirmed.

Procedural Posture(s): On Appeal; Motion to Compel Discovery.

West Headnotes (10)

[1] **Divorce** ⇐ Decisions reviewable

Trial court's discovery-related order denying husband's motion for reconsideration of order requiring him to produce records of his interest on lawyer trust account (IOLTA) in response to wife's discovery requests constituted an appealable collateral order within parties' pending divorce litigation; issue of discoverability of the IOLTA account was separate from the parties' equitable distribution claims, husband had an important interest in maintaining the privacy of the IOLTA account which involved policy beyond parties' divorce litigation, and claim to privacy would have been irreparably lost if review was postponed. Pa. R. App. P. 313(b).

More cases on this issue

[2] **Appeal and Error** ⇐ On motion for new trial

An order denying reconsideration is usually not appealable.

[3] **Appeal and Error** ⇐ Relating to witnesses, depositions, evidence, or discovery

Appeal and Error ⇐ Affecting collateral matters and proceedings

Discovery orders are typically deemed interlocutory and not immediately appealable, because they do not dispose of the litigation; however, an exception exists when an appeal is taken from a collateral order. Pa. R. App. P. 313, 341(b)(1).

[4] **Appeal and Error** ⇐ Discovery

Discovery orders are subject to an abuse of discretion standard of review.

[5] **Appeal and Error** ⇐ Abuse of discretion

Appeal and Error ⇐ Construction, Interpretation, or Application of Law

A trial court may abuse its discretion by making a ruling that is manifestly unreasonable, arbitrary or capricious, that fails to apply the law, or that is motivated by partiality, prejudice, bias or ill-will.

[6] **Pretrial Procedure** ⇐ Right to Discovery and Grounds for Allowance or Refusal

Trial court can and should craft discovery orders that strike proper balance between party's privacy interests and rights of other parties.

[7] **Divorce** ⇐ Scope and extent in general

Superior Court would decline to grant bar organization's request to reverse trial court's alleged statement regarding a law firm employee's confidentiality obligations as to interest on lawyer trust accounts (IOLTA) on husband's appeal from trial court's discovery-related order in divorce litigation between husband, who was a self-employed attorney, and wife, who previously worked at husband's firm; it was unclear what statement the organization attributed to the trial court, and organization did not cite, quote, or otherwise identify the statement despite rule requiring reference to the record. Pa. R. App. P. 2119(c).

More cases on this issue

[8] **Divorce** ⇐ Discovery

Trial court properly exercised its discretion in ordering, with restrictions, husband, who was a self-employed attorney, to produce to wife records from his interest on lawyer trust account (IOLTA) in divorce litigation involving claims for equitable distribution; wife alleged husband had more than $2 million in his IOLTA account and that husband was using IOLTA to shield settlements received during the marriage from equitable division, trial court's order protected all confidential client information by permitting husband to redact client identifier information as he saw fit, trial court required discovery only of monetary values, and trial court found husband was dilatory. Pa. R. Civ. P. 1930.5.

[9] **Costs, Fees, and Sanctions** ⇐ Dilatory or untimely conduct

A party's conduct is "dilatory" where the record demonstrates a lack of diligence that delayed proceedings unnecessarily and caused additional legal work.

[10] **Courts** ⇐ Operation and Effect of Rules

The purpose of procedural rules is to facilitate the administration of justice, and courts should apply them with that purpose in mind.

Appeal from the Order Entered April 30, 2025, In the Court of Common Pleas of Lycoming County, Civil Division, at No. FC-2023-20486-DI, Charles H. Saylor, Judge.

Attorneys and Law Firms

Gregory Stapp, Williamsport, pro se, appellant.

Christina I. Dinges, Williamsport, for appellee.

BEFORE: BECK, J., NEUMAN, J., and BENDER, P.J.E.

Opinion

OPINION BY BENDER, P.J.E.:

***746** In this divorce action, Gregory Stapp, Esquire (Husband), appearing *pro se*,[1] appeals from the April 30, 2025 order denying reconsideration of the March 21, 2025 order compelling his responses to the discovery requested by Brenda Stapp (Wife). We affirm.

CASE HISTORY

Husband is a self-employed personal injury lawyer at Stapp Law, LLC. He and Wife were married in April 2014. Husband states that Wife "worked with [him] from the formation of Stapp Law, LLC in March of 2016 until January 31, 2023." Husband's Brief at 6. Wife agrees that she "worked at Stapp

Law firm as [Husband's] secretary from 2016, when the firm was started, ... to 2023 when they began having marital issues." Wife's Brief at 6.

On May 24, 2023, Husband filed a divorce complaint seeking equitable distribution. On June 15, 2023, Wife filed an answer with counterclaims for equitable distribution, attorney's fees and costs, and alimony.

On October 12, 2023, Wife filed a motion to compel Husband's responses to discovery. Wife averred that Husband had not responded to the first set of interrogatories and request for production of documents she sent him on April 30, 2023. Motion to Compel Discovery, 10/12/23, at ¶¶ 2, 4. Wife claimed that without "the information requested, this case is unable to move forward." ***Id.*** at ¶ 6.

The trial court summarized the ensuing procedural history:

> On November 2nd, 2023, th[e trial c]ourt issued an order compelling [Husband] to provide [Wife] with full and complete answers to [her] interrogatories and request for documents. On February 14th, 2024, [Wife] moved for sanctions against [Husband] because he had failed to provide the information requested by [Wife]. This court issued a rule to show cause on April 3rd, 2024, ordering [Husband] to file an answer as to why [Wife] should not be entitled to the relief ***747** sought. An answer was filed on April 17th, 2024.
>
> On May 2nd, 2024, upon request of [Husband,] a Master was appointed with respect to the Equitable Distribution claims. On October 18th, 2024[, Wife] filed a motion for special relief requesting that [Husband] provide answers to the prior discovery request sent on September 12th, 2024. After a conference on October 29th, 2024, the court ordered that all discovery be completed within 60 days, including all documents requested by [Wife]. On January 21st, 2025, after a discovery conference[,] the parties came to an agreement as to a portion of the outstanding discovery requests, but a conference was scheduled to resolve the remaining issues. On March 2[1st], 2025, after a discovery conference, the court ordered exactly which documents [Husband] should provide to [Wife] within 45 days of that date.
>
> [Husband] filed a motion for reconsideration of this [c]ourt's March 2[1st], 2025 order. That request was granted in part to make a correction as to the scheduling order, but otherwise denied on April [30th,] 2025. After denial of the Motion for Reconsideration[, Husband] filed a notice of appeal on May 23rd, 2025. A concise statement order was issued on June 2nd, 2025, and [Husband] filed [his concise] statement on June 19th, 2025.

Trial Court Opinion (TCO), 11/17/25, at 2.

Husband specifically assails the discoverability of his IOLTA account.[2] The order pertaining to Husband's IOLTA account states:

> 1. As to [Wife's] Request for Production of Business Documents:
>
> a. Number 1, [Husband] shall provide the 2024 federal and state tax return once filed.
>
> b. Number 10, [Husband] shall provide the statements for all financial accounts, including the IOLTA accounts; however, all client identifiers shall be redacted.
>
> c. Number 12, [Husband] shall provide a list of all settlements of contingent fee cases by date received, and the attorney fees realized as to each from 2012 [*sic*] to present; however, all client identifiers or any opposite settling party information and identifiers may not be provided to protect confidentiality, and to comply with, confidentiality agreements.
>
> d. Number 14, there shall be provided the date and year of any case-sharing by transfer to another attorney and law firm; and, if settled the amount received by [Husband] with the date thereof. No attorney information shall be provided.
>
> e. Number 15, there shall be provided all tax returns for the years 2016-2020, as well as 2024 once filed. There shall be no direct identifiers provided.

Order, 3/21/25, at 1-2.[3]

On appeal, Husband presents the following questions:

> I. WHETHER AN ATTORNEY'S IOLTA ACCOUNT IS SUBJECT TO DISCOVERY IN A DIVORCE ACTION?

II. WHETHER A TRIAL COURT CAN ORDER DISCLOSURE OF A ***748** LAWYER'S IOLTA ACCOUNT IN LIGHT OF PENNSYLVANIA RULES OF PROFESSIONAL RESPONSIBILITY NO. 1.4 AND 1.6 RELATING TO CLIENT CONFIDENTIALITY?

III. WHETHER THE TRIAL COURT OR ANY COURT HAS THE AUTHORITY TO FORCE A CLIENT OR CLIENTS WHO ARE NOT PARTY TO THE DIVORCE ACTION TO RELEASE THEIR CONFIDENTIAL INFORMATION?

IV. WHETHER THE TRIAL COURT ERRED IN FAILING TO SUFFICIENTLY EXPLAIN THE REASONING BEHIND FORCING [HUSBAND] TO REVEAL CONFIDENTIAL CLIENT INFORMATION?

V. WHETHER THE TRIAL COURT ERRED IN REVIEWING THE PENNSYLVANIA BAR ASSOCIATION ETHICS COMMITTEE OPINION LETTER AND THEN ORDERING [HUSBAND] TO PROVIDE CONFIDENTIAL CLIENT INFORMATION WITHOUT ACKNOWLEDGING THE CLIENT'S RIGHT TO CONFIDENTIALITY?

VI. WHETHER THE TRIAL COURT ERRED IN ITS REASONING AS TO WHY IT ORDERED [HUSBAND] TO PROVIDE CONFIDENTIAL CLIENT INFORMATION WHEN IT STATED, "THE 'INFORMAL OPINION' DID NOT CONSIDER THE PARTICULAR CIRCUMSTANCES PRESENT HERE EMBRACED BY THE COURT ORDER AFTER EXTENSIVE DISCUSSIONS OF PROPER DISCOVERY TO WHICH NEITHER [HUSBAND] OR HIS PRESENT ATTORNEY PARTICIPATED"?

Husband's Brief at 5.

APPEALABILITY

[1] Husband did not appeal from the March 21, 2025 discovery order. Rather, he appeals from the April 30, 2025 order which denied his request for reconsideration of the March 21, 2025 order. *See* Pa.R.A.P. 903(a) (requiring that an appeal be filed within 30 days after the entry of an order).

In his docketing statement, Husband acknowledged that the April 30, 2025 order was not a final order. Superior Court Docketing Statement, 7/11/25, at 1. Husband checked "Yes" to the question asking if the April 30, 2025 order was interlocutory as of right under Pa.R.A.P. 311, and cited subsections 311(a)(4)(i) (involving injunctions in divorce actions), and 311(a)(8) (involving "other cases" where an order "is made final or appealable by statute or general rule, even though the order does not dispose of all claims and of all parties."). Husband also indicated that the order was appealable as a collateral order under Pa.R.A.P. 313.

On July 18, 2025, this Court issued a rule to show cause to Husband. We observed "it is long settled that orders denying motions for reconsideration are not appealable." Order, 7/18/25, at 2 (citing ***Huntington Nat. Bank v. K-Cor, Inc.***, 107 A.3d 783, 787 (Pa. Super. 2014)). We also noted that neither the March 21, 2025 or April 30, 2025 orders appeared to be final. *See* Pa.R.A.P. 341(b)(1) (a final order is any order that disposes of all claims and of all parties); ***Fried v. Fried***, 509 Pa. 89, 501 A.2d 211 (1985) (issues in a divorce action are reviewable after entry of a divorce decree and resolution of all economic claims)). Therefore, we ordered Husband to explain why this appeal should not be quashed.

Husband filed a response asserting that the April 30, 2025 order was appealable: 1) as a collateral order under Pa.R.A.P. 313; 2) as an interlocutory order as of right ***749** under Pa.R.A.P. 311(a)(4)(i) and 311(a)(8); and 3) because "the issues raised in this appeal were not raised before the trial court before the March 21, 2025 order." *See* Response to Rule to Show Cause, 7/28/25, at ii. By *per curiam* order entered August 21, 2025, this Court referred the appealability issue to this merits panel and discharged the rule to show cause. After further review, we conclude that the April 30, 2025 order is an appealable collateral order.

[2] [3] As indicated above, an order denying reconsideration is usually not appealable. ***See Huntington Nat. Bank, supra***. Also, discovery orders are typically "deemed interlocutory and not immediately appealable, because they do not dispose of the litigation." ***McIlmail v. Archdiocese of Phila.***, 189 A.3d 1100, 1104 (Pa. Super. 2018). However, an exception exists when an appeal is taken from a collateral order. Although Husband did not cite ***Cabot Oil & Gas Corp. v. Speer***, 241 A.3d 1191 (Pa. Super. 2020) (***Cabot Oil***) in his Response to Rule to Show Cause or in his Brief, we find it to be dispositive of the appealability issue.

In *Cabot Oil*, the plaintiffs were corporations which sued the defendants — attorneys and their law firms — for wrongful use of civil proceedings under the Dragonetti Act.[4]

The plaintiffs sought the defendants' financial records to ascertain the defendants' net worth, which was relevant to the plaintiffs' claim for punitive damages. In response to the plaintiffs' request, the trial court entered an order compelling the defendants to produce income statements, profit/loss statements, tax returns, and other financial documents. The defendants sought reconsideration of the discovery order, and after the trial court denied the motion for reconsideration, the defendants appealed. The defendants argued that the order denying reconsideration "violate[d] their privacy rights and the corresponding rights of their spouses and law partners by requiring production of tax returns, bank records and net worth documents from 2013 onward." *Id.* at 1195-96 (footnote omitted). Although the plaintiffs argued that the appeal should be quashed as untimely, we held that the order denying reconsideration of the discovery order was an appealable collateral order. ***See id.*** at 1198 (stating there "is no rule, however, that a collateral order *must* be appealed within thirty days after its entry; Rule 313(a) only provides that an appeal '*may*' be taken from a collateral order.") (emphasis in original).

"A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost." Pa.R.A.P. 313(b). We explained:

> The first prong, separability, occurs when we can address the issue surrounding the disputed order without analyzing the ultimate issue in the underlying case. As for the second prong, importance, "it is not sufficient that the issue be important to the particular parties." Instead, the issue "must involve rights deeply rooted in public policy going beyond the particular litigation at hand." We must interpret the collateral order doctrine narrowly, and each of the above prongs must be clearly present for us to deem an order collateral.
>
> "[T]he question of whether the collateral order doctrine has been met is jurisdictional ***750** in nature." "Where an order satisfies Rule 313's three-pronged test, an appellate court may exercise jurisdiction even though the order is not final."

Cabot Oil, 241 A.3d at 1196–97 (citations omitted). We further observed:

> [T]he timeliness of appeals from collateral orders depends not upon entry of the order itself, but upon resolution of the collateral matter. And, although collateral orders may be appealed within 30 days of their entry, the substance of the collateral order is not forever precluded when an appeal is not taken within this period. As the order involved here is a discovery matter, by definition preliminary and in addition concerned with resolution of collateral issues, clearly no finality is implicated.

Id. at 1198 (citation omitted).

In *Cabot Oil*, we concluded that the discoverability of the defendants' financial records presented a separate issue from the plaintiffs' claim involving the Dragonetti Act; that the defendants had an important privacy interest in their financial records; and, given the privacy interests, irreparable harm would occur if review was postponed. *Id.* at 1197. Consistent with *Cabot Oil*, we conclude that Husband is appealing from a collateral order. The issue of the discoverability of the IOLTA account is separate from the parties' equitable distribution claims; Husband has an important interest in maintaining the privacy of the IOLTA account which involves policy beyond the parties' divorce litigation; and the claim to privacy would be irreparably lost if review is postponed. *See* Pa.R.A.P. 313(b). Thus, we consider the merits of the appeal.

THE DISCOVERY ORDER

[4] [5] [6] "Discovery orders are subject to an abuse of discretion standard of review. A trial court may abuse its discretion by making a ruling that is manifestly unreasonable, arbitrary or capricious; that fails to apply the law; or that is motivated by partiality, prejudice, bias or ill-will." ***King v. Kappa Sigma Fraternity***, 331 A.3d 695, 699 (Pa. Super. 2025) (citations omitted). This Court has recognized that "the right to privacy ... is not an unqualified one; it must be balanced against weighty competing private and state interests." *Cabot Oil*, 241 A.3d at 1200 (citation omitted). Consequently, a trial court "can and should craft discovery

orders that strike a proper balance between [a party's] privacy interests and the rights of other parties." *Id.*

The Pennsylvania Rules of Civil Procedure provide for discovery "in accordance with Pa.R.C.P. Nos. 4001[-]4025 in alimony, equitable distribution, counsel fee and expense, and complex support proceedings." Pa.R.C.P. 1930.5(b). Pennsylvania Rule of Civil Procedure 4003.1 defines the scope of discovery as "any matter not privileged, which is relevant to the subject matter involved in the pending action."

The Pennsylvania Association for Justice

[7] Before we consider Husband's argument, we address the advocacy of the Pennsylvania Association for Justice (PAJ).[5] Unlike Husband, the PAJ believes "IOLTA account details may be subject to discovery in cases involving equitable distribution or alimony." PAJ's Brief at 11. However, the PAJ states that such discovery ***751** "raise[s] concerns about client confidentiality and fiduciary duties." *Id.* The PAJ claims repeatedly that the trial court erred "by stating that client confidentiality does not apply to the law firm's employees." *Id.* at 1; ***see also id.*** at 4 (same). The PAJ asserts the "trial court's statement that client identities were not confidential to [W]life if she was privy to them at the time constitutes a fundamental misreading of the Rules of Professional Conduct and must be reversed." *Id.* at 7. In addition, the PAJ claims "enhanced safeguards are required under Pennsylvania discovery rules" and "enhanced protocol is necessary to comply with Pennsylvania law." *Id.* at 9-10. The PAJ advocates for:

> 1) redacted IOLTA statements ... limited to account-level balances and aggregate deposits/withdrawals, with removal of client names, matter numbers, check images, and narrative descriptions;
>
> 2) a sworn declaration describing the dates and gross amounts of case-sharing or fee transfers ... provided without disclosing client identities and submitted for *in camera* review; and
>
> 3) a protective order [to] restrict use of produced materials to this litigation, prohibit dissemination, require sealed filing of IOLTA-related exhibits, and mandate in-camera review for any disputed entries.

Id. at 10-11. The PAJ "requests that this Court reverse the trial court's statement regarding employee confidentiality obligations and remand with instructions to implement the enhanced safeguards outlined herein." *Id.* at 12. We decline the request.

It is unclear what "statement" the PAJ is attributing to the trial court in its multiple references to the trial court's "statement regarding employee confidentiality."[6] ***See id.*** at 1, 4, 7, 12. The PAJ does not cite, quote or otherwise identify the statement. ***See*** Pa.R.A.P. 2119(c) (requiring reference to the record, and providing, where "reference is made to the pleadings, evidence, charge, opinion or order, or any other matter appearing in the record, the argument must set forth, in immediate connection therewith, or in a footnote thereto, a reference to the place in the record where the matter referred to appears").

Husband's Argument

We consider Husband's questions together, as the crux of his argument is that he cannot be compelled "to disclose confidential client information, including but not limited to, IOLTA account information in a domestic relations case." Husband's Brief at 24. Husband maintains "the funds contained in a lawyer's IOLTA account belong to the client; and, therefore, cannot be discovered by a third party in a domestic relations case." *Id.* Husband also implies that his IOLTA account is subject to attorney-client privilege, and states that the "privilege is sacrosanct."[7] *Id.* at 14. ***752** Husband cites "the seminal case" of ***Beasley v. Beasley***, which involved, *inter alia*, the valuation of a divorcing husband's "law practice, conducted as a sole proprietorship." *Id.* at 18; ***Beasley v. Beasley***, 359 Pa.Super. 20, 581 A.2d 545, 546 (1986) (*en banc*).

Although no divorce decree had been granted in ***Beasley***, this Court considered the wife's appeal and husband's cross-appeal relating to the valuation of marital property as being from a collateral order. We found "[t]he exceptional ingredient [was] the issue concerning the right of appraisal of a professional sole proprietorship and the possibility of irreversible harm by the intrusion into confidential records and relationships of clients." *Id.* at 549. Ultimately, we held that the appraisal of the husband's law practice, "not including confidential records, is permissible to ascertain present value and a basis for alimony." *Id.* at 557. We explained:

> The right of appraisal provides an extremely difficult issue to resolve because aside from the interests of

> the parties in whatever business the firm may pursue, there is the right of confidentiality and for the clients to have their personal affairs be absolutely privileged and private. On balance, it would appear that the trial judge approached this in a sensible manner. It is undeniable that he carefully considered the rights of the individual clients, ... and the ability of the court to exercise control over such confidential information. ... Unquestionably, lawyers cannot be carved out as a special category of professionals who are immune from evaluation as to present value, but to permit inquiry into confidential files for the purpose of evaluating contingent fees as potential earnings is inappropriate. The review by an outsider of confidential files, which can contain information which would never be revealed except to the lawyer in a confidential relationship, would have a chilling effect on that relationship which far outweighs the need to appraise those files for these purposes. With these limitations, it is believed that adequate means are provided by [the rule concerning discovery in divorce matters, Pa.R.C.P. 1930.5], for this purpose.

Id. at 555-56 (footnote omitted). In addition, we determined the wife was entitled to information regarding the "transfer of airplanes by [the husband] to a trust fund for his sons." *Id.* at 557. We observed that the information "would divulge both the value of the assets and particularly in regard to the airplane, which appears to have been placed in trust under questionable circumstances, aid in determining whether that trust, in fact, is not an improper divestiture of marital property." *Id.* Thus, we held that "appraisal of property transferred into a trust is permitted without a prior determination that it is marital property." *Id.*

Similar to *Beasley*, this Court determined in *Cabot Oil* that a trial court "can and should craft discovery orders that strike a proper balance between [a party's] privacy interests and the rights of other parties." *Cabot Oil*, 241 A.3d at 1200. We affirmed the trial court's discovery order because it included an "attorneys' eyes only" (AEO) provision. *See id.* at 1194. We explained:

> The AEO order effectuates [the plaintiffs'] right to punitive damages discovery by providing access to [the defendants'] financial records while also "setting forth appropriate restrictions ***753** as to ... the dissemination of the material discovered." Pa.R.C.P. 4003.7. The AEO order, in short, is a proper exercise of discretion because it properly balances the parties' competing interests.

Id. at 1200 (footnote omitted).

[8] Here, we also conclude that the trial court properly exercised its discretion by setting forth restrictions in the March 21, 2025 order. Wife notes that she learned from Husband's "initial disclosures ... that there were unusually sizeable sums" in his IOLTA account. Wife's Brief at 7. She states:

> It is believed that [H]usband has more than $2 million dollars in his IOLTA account. Because of this, [Wife] has become concerned that [Husband] has been or may be shielding sizeable settlements that were received during the course of the marriage in an effort to shield them from equitable division.

Id.

As Wife observes, the March 21, 2025 order "is narrowly tailored in a manner that appropriately protects all confidential client information." *Id.* at 9. She states that the trial court gave Husband "free rei[ ]n to redact any client identifier information that he saw fit on the IOLTA statements, but still ordered him to turn the statements over given the circumstances surrounding the IOLTA account activity and the divorce." *Id.* at 7. Wife emphasizes that all client information was to be redacted to show only "monetary values," and reiterates that the order "allowed [H]usband to remove any client identifying information he saw fit." *Id.* at 23.

[9] The trial court, like Wife, observes that the order "was clearly and carefully drawn to protect all clients from disclosure of their identities." TCO at 3. The court states that "Husband paints [with] a broad brush as to confidentiality," and notes "Wife has the ability to use discovery to obtain full financial information for a proper award in equitable distribution." ***Id.*** The court adds that Wife "has a notion" from working in Husband's office "as to the accuracy of Husband's representations." ***Id.*** In addition, the court found Husband to be dilatory. "Conduct is 'dilatory' where the record demonstrates ... a lack of diligence that delayed proceedings unnecessarily and caused additional legal work." ***Cnty. of Fulton v. Sec'y of Commonwealth***, ——, Pa. ——, 292 A.3d 974, 1014 (2023) (citations omitted). The trial court states:

> As shown by the history of this divorce, Husband has been dilatory. Perhaps the appeal further reflects an intent to delay resolution. By way of background, this action began after [Husband] filed his divorce complaint on May 24th, 2023. The complaint sought a divorce based upon [23 Pa.C.S. §§] 3301(c), 3301(d), or 3301(a)(6) of the Divorce Code.[8]

TCO at 1.

[10] Again, we discern no abuse of discretion. The trial court explained that following a conference, it granted Wife's discovery request, "in part after discussion [and] with qualification," for Wife "to ascertain [Husband's] financial statements for purposes of equitable distribution." ***Id.*** Rule 1930.5 provides for discovery in equitable distribution matters. "The purpose of our procedural rules is to facilitate the administration of justice, and our courts should apply them with that purpose in ***754** mind." ***Huntington Nat. Bank***, 107 A.3d at 786.

Order affirmed.

All Citations

362 A.3d 744, 2026 PA Super 113

Footnotes

1 Husband was represented by Melody Protasio, Esquire, from the inception of this case on May 24, 2023, until March 1, 2024. On March 1, 2024, Attorney Protasio withdrew her appearance, and Bradley Hillman, Esquire entered his appearance for Husband. On March 28, 2025, Attorney Hillman withdrew his appearance and Teresa C. Marino, Esquire entered her appearance for Husband. Attorney Marino withdrew her appearance on July 2, 2025, when Husband entered his appearance as a self-represented party pursuant to Pa.R.C.P. 1930.8.

2 IOLTA is an acronym for an Interest on Lawyer's Trust Account. When a lawyer is "in possession of funds or property in which two or more persons, one of whom may be the lawyer, claim an interest, the funds or property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property ... as to which the interests are not in dispute." Pa.R.P.C. 1.15(f).

3 The order is dated March 20, 2025, but was docketed the following day.

4 42 Pa.C.S. §§ 8351-8354.

5 The PAJ has filed an *amicus curiae* brief but did not appear at oral argument. The PAJ describes itself as "a nonprofit organization with over 2,000 members of the Commonwealth of Pennsylvania's trial bar." PAJ's

Brief at 1. The PAJ says that it "promote[s] the rights of individual citizens by advocating for trial by jury, full and just compensation for innocent victims, and the maintenance of a free and independent judiciary." ***Id.***

6 As Husband observes, "despite the numerous motions to compel, a hearing was never held, and a record was never created for any of them." Husband's Brief at 9.

7 Throughout his argument, Husband cites the PBA Ethics Opinion (PBA Opinion) he attached to his motion for reconsideration. The PBA Opinion was issued in response to Husband's inquiry, and states that it is an "informal opinion" which "does not address any issues of substantive law but is limited to advice based on the Pennsylvania Rules of Professional Conduct." PBA Opinion, 4/7/25, at 1-2; ***id.*** at 5 (stating the "opinion is advisory only and is not binding on ... any other Court."). The Pennsylvania Supreme Court "has held that the Rules of Professional Conduct do not have the effect of substantive law but, instead, are to be employed in disciplinary proceedings." ***In re Adoption of M.M.H.***, 981 A.2d 261, 272 (Pa. Super. 2009) (citation omitted). This Court has reversed a trial court's order after finding that the trial court "erred when it relied upon the Pennsylvania Rules of Professional Conduct as a source for its authority." ***Id.***

8 Section 3301(a)(6) provides for fault-based divorce when a party is an "innocent and injured spouse," while Sections 3301(c) and 3301(d) base divorce on mutual consent and irretrievable breakdown of the marriage.

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353 A.3d 816
Superior Court of Pennsylvania.

Jessica L. PEARSON, Appellant
v.
Kyle PEARSON

No. 1109 MDA 2025
|
Argued February 3, 2026
|
Filed: March 4, 2026

Synopsis

Background: After mother and father separated and were granted shared legal and physical custody of child pursuant to stipulated custody order, mother petitioned for custody modification. Following non-jury custody trial, the Court of Common Pleas, York County, Civil Division, No. 2024-FC-001687-03, Gregory M. Snyder, J., entered custody order which granted parents shared legal custody and granted mother primary physical custody and father supervised physical custody until he completed several requirements, after which custody would be modified, without court involvement, so that mother and father equally shared physical custody. Mother appealed.

Holdings: The Superior Court, No. 1109 MDA 2025, Lane, J., held that:

[1] part of custody order that provided for automatic modification, without further court involvement, violated provisions of Child Custody Act that required court to consider and evaluate all statutory custody factors before changing or modifying an existing award of custody, and

[2] same part of custody order violated provision of the Act requiring court, after father filed petition, to review risk of harm posed to child and determine whether continued supervision was needed.

Affirmed in part and vacated in part; remanded.

Procedural Posture(s): On Appeal; Motion to Modify Physical Custody.

West Headnotes (13)

[1] **Child Custody** ⇐ Review
Child Custody ⇐ Discretion
In reviewing a child custody order, the Superior Court's scope is of the broadest type and the standard is abuse of discretion.

[2] **Child Custody** ⇐ Questions of Fact and Findings of Court
In reviewing a child custody order, the Superior Court must accept findings of the trial court that are supported by competent evidence of record, as the Superior Court's role does not include making independent factual determinations.

[3] **Child Custody** ⇐ Credibility of witnesses
With regard to issues of credibility and weight of the evidence on appeal from a child custody order, the Superior Court must defer to the presiding trial judge who viewed and assessed the witnesses first-hand.

[4] **Child Custody** ⇐ Questions of Fact and Findings of Court
In reviewing a child custody order, the Superior Court is not bound by the trial court's deductions or inferences from its factual findings.

[5] **Child Custody** ⇐ Questions of Fact and Findings of Court
In reviewing a child custody order, the test is whether the trial court's conclusions are unreasonable as shown by the evidence of record.

[6] **Child Custody** ⇐ Questions considered
Child Custody ⇐ Questions of Fact and Findings of Court

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In reviewing a child custody order, the Superior Court may reject the conclusions of the trial court only if they involve an error of law or are unreasonable in light of the sustainable findings of the trial court.

[7] **Child Custody** ⇐ Welfare and best interest of child

The paramount concern in a child custody case is the best interests of the child based on consideration of all factors that legitimately affect the child's physical, intellectual, moral, and spiritual wellbeing. 23 Pa. Cons. Stat. Ann. § 5328(a).

2 Cases that cite this headnote

[8] **Child Custody** ⇐ Grounds and Factors in General

The requirement that the trial court consider the statutory custody factors when determining custody is not limited to the initial award of custody over a child. 23 Pa. Cons. Stat. Ann. § 5328(a).

2 Cases that cite this headnote

[9] **Child Custody** ⇐ Operation and Effect

Child Custody ⇐ Welfare and best interest of child

Child Custody ⇐ Change in circumstances or conditions

Child custody orders are temporary in nature and always subject to change if new circumstances affect the welfare of a child. 23 Pa. Cons. Stat. Ann. § 5338(a).

[10] **Child Custody** ⇐ Modification

Child Custody ⇐ Hearing and Determination

A change in custody is just as important to the child and to others as an original award of custody, and the parties should be afforded the same type of hearing on the subsequent application for modification of custody as they are entitled to on an original award. 23 Pa. Cons. Stat. Ann. §§ 5328(a), 5338.

[11] **Child Custody** ⇐ Conditions

Custody order that provided for automatic modification from father having only limited periods of supervised physical custody to unsupervised custody equally shared between mother and father at some point in future when father completed court-imposed requirements, without further involvement by trial court, violated provisions of Child Custody Act that required court to consider and evaluate all statutory custody factors before changing or modifying an existing award of custody; custody order as written would modify custody at indeterminate future time without determination of best interest of child based on consideration of custody factors under current circumstances, particularly as related to child's safety. 23 Pa. Cons. Stat. Ann. §§ 5323(a), 5328(a), 5338(a).

2 Cases that cite this headnote

[12] **Child Custody** ⇐ Conditions

Constitutional Law ⇐ Delegation of Powers by Judiciary

Custody order providing for automatic modification from father having limited periods of supervised physical custody to equally shared unsupervised physical custody with mother at point in future when father completed court-imposed requirements of therapy and anger management classes, without further court involvement, violated provision of Child Custody Act requiring court, after father filed petition, to review risk of harm posed to child and determine if continued supervision was needed; court determined father posed risk of harm such that his contact with child had to be supervised, and imposed safety conditions, restrictions, and safeguards, and order impermissibly delegated judicial powers to therapist, who was given authority to make determinations required by Act to be made by court. 23 Pa. Cons. Stat. Ann. § 5323(e)(2).

[13] **Child Custody** ⇐ Hearing

Constitutional Law ⇐ Delegation of Powers by Judiciary

In a non-jury custody trial, the role of the judge is to interpret the law, determine the facts, and apply the facts to the law for an eventual decision of the controversy; the trial court may not delegate its judicial powers.

Appeal from the Order Entered July 15, 2025, In the Court of Common Pleas of York County, Civil Division, at No(s): 2024-FC-001687-03, Gregory M. Snyder, Judge.

Attorneys and Law Firms

Todd M. Mosser, Bryn Mawr, for appellant.

Thomas M. Clark, Camp Hill, for appellee.

BEFORE: PANELLA, P.J.E., KING, J., and LANE, J.

Opinion

OPINION BY LANE, J.:

818** Jessica L. Pearson ("Mother") appeals from the order which awarded: shared legal custody to her and Kyle Pearson ("Father") over their child, O.P. ("Child"); primary physical custody to Mother; and supervised physical custody to Father. The order also imposed several requirements that Father must satisfy in order to enjoy unsupervised periods of custody with Child, including attending anger management classes and individual therapy sessions. After careful review, we hold that the order violates the provisions of the Child Custody Act, ***see 23 Pa.C.S.A. §§ 5321-5340, to the extent that it includes additional provisions which would modify the existing custody award upon Father's completion of the requirements without any determination by the trial court of the best interest of Child based on the court's consideration of the custody factors set forth in section 5328(a). Accordingly, we affirm in part and vacate in part.

The facts relevant to our disposition are as follows. Mother and Father married prior to Child's birth in July 2022. In May 2024, the parties separated. The trial court entered a stipulated custody order on October 24, 2024, granting the parties shared legal and physical custody. In December 2024, when Child was two and one-half years old, Mother petitioned for modification of the custody order on the basis that: (1) Mother is familiar with Father's anger issues because, prior to the parties' separation, Father broke furniture, cell phones, and windows on multiple occasions when he was angry; (2) during Mother's phone calls with Child during Father's periods of custody, Father frequently yells and screams at Mother and calls her inappropriate and derogatory names; (3) during custody exchanges, Father openly disparages Mother and screams at her; (4) since the entry of the October 2024 custody order, Child's behavior has deteriorated, and her aggression toward other children has escalated; (5) Child has started to repeat some of Father's inappropriate language; (6) Child reports that Father kicks the family dog; and (7) Father left Child alone during at least one of his periods of custody. ***See*** Petition for Modification, 12/19/24, at unnumbered 2-4. The trial court conducted a hearing on December 24, 2024. On December 27, 2024, the trial court entered a temporary custody order in which it maintained shared legal custody, but reduced Father's periods of physical custody of Child to supervised visits on two evenings per week and some weekends.

Mother filed another petition for modification in January 2025. On February 27, 2025, the trial court entered an interim custody order pending a custody trial in the matter. In its interim custody order, the court indicated that the terms and conditions of the December 27, 2024 temporary custody order were to remain in full force and effect, along with any terms and conditions of the October 24, 2024 stipulated custody order which do not conflict with the December 27, 2024 temporary custody order. ***See*** Trial Court Order, 2/27/25, at 3-4.

819** The matter proceeded to a custody trial on June 30, 2025, at which both Mother and Father testified, as well as other witnesses. Mother testified that she separated from Father because of his temper, which would cause him to engage in "screaming, name[-]calling, cursing, throwing things, punching things, breaking things." N.T., 6/30/25, at 26. Mother related that Father destroyed various types of property by, *inter alia*, kicking and breaking a television cabinet, punching a hole in a wall, throwing a post through a storm door window, and throwing a shop-vac through a carport window. ***See id. at 26-27. Mother expressed her concern about the effect of Father's temper on Child and indicated that she has seen him "lose his cool" with Child "a few times." ***Id.*** at 31. Mother described that "[t]ypically, [Father] would just yell [at Child] and tell her to stop or tell

her she was acting like a baby for crying." *Id.* Mother related that Father also called Child a "loser" when she was two years old. *Id.* at 32. Mother testified that Father regularly uses foul language, whereas Mother does not, and that Child has begun to repeat foul language. *See id.*

Mother indicated that Child has "a lot of challenges of regulating her emotions, and she can become aggressive at times." *Id.* at 32. Mother explained that "[o]ften when [Child] comes back from time with [Father], she states things like, Daddy hates me, or my daddy is ... upset with me[, and she will] often have more challenging days at school where she's having extreme behaviors for a day or two." *Id.* at 64. Mother stated that Child "often can have [twenty-thirty] minute meltdowns where she's kicking and screaming" and that "she kicked a baby at daycare when she was having a tantrum." *Id.* at 33. Mother further testified that "[Child] is inconsolable. If you try to talk her through it, it generally increases the meltdown." *Id.* Mother noted that, "[d]uring our marriage and prior to marriage, [Father] very much advocated for corporal punishment" for Child. *Id.* at 36.

Mother discussed Father's significant marijuana use of "four to five times a day," failure to keep marijuana products and paraphernalia away from Child, and his fits of rage when Child would get ahold of the marijuana products or a glass bong or pipe and break it. *See id.* at 42. Mother also indicated that Father sold marijuana, and he was selling marijuana up to the time they separated, with people coming to their house to purchase it from him. *See id.* at 42-43. Mother testified regarding a road rage incident with Child in the vehicle, where Father cut off another vehicle, yelled, and drove erratically by weaving in between other vehicles. *See id.* at 44-45. Mother explained that Father "very frequently would become upset when driving and flip people off, yell at them, curse, and proceed to cut them off or speed the remain[der] of the drive." *Id.* at 45.

Mother testified that Father would call her names, including a bitch, c**nt, stupid, ugly, fat and lazy during her FaceTime calls with Child. *See id.* at 46. On one occasion prior to their separation, Mother told Father that "if the outbursts and the name calling and yelling didn't stop, that I was going to leave. And [Father] proceeded to tell me if I took [Child] away from him, that he would kill my family, me, [Child], and then himself." *Id.* at 57. Mother indicated that Father "said that he would kill me a few other times if I ever took [Child] away from him or threatened to ruin my life." *Id.* Mother described Father's threats to kill her as "terrifying," and indicated that "his anger was so strong, and after our separation for quite a few months, it was - - I didn't know what he was capable of at that time because of how angry he was." *Id.* at 82. Mother ***820** indicated that Father has "hurt the dogs on multiple occasions." *Id.* at 82.

Mother also presented the testimony of Father's mother, Cherrlyn Donahue ("Ms. Donahue"). Ms. Donahue testified regarding Father's anger issues and explained that "we've had these issues for as long as I can remember with [Father]. He's always had a hair trigger temper." *Id.* at 95. According to Ms. Donahue, Father has a "very volatile personality" and that "[t]o be around him is chaotic ... if something sets him off, he gets very loud, verbally abusive." *Id.* at 93. Ms. Donahue continued, "if something would set him off, be that something about work, whatever, the raging would start. And even if it wasn't aimed at [Child], [she] still had to experience, you know, all that chaos and yelling and everything." *Id.* at 94. Ms. Donahue indicated that her primary concern is Child, and that "if [Child] would cry and not stop, [Father] would name-call her, like, quit being a baby, you're such a loser." *Id.* at 93-94. Ms. Donahue expressed her concerns about Child's safety when in Father's custody, and described his house as "unsafe" due to "guns laying on the kitchen table, to saws and blades and glass things out in the carport that would be dropped and broken ... laundry everywhere, dirty dishes with mold ... baby cups would ... be filled with mold. It's just total chaos. It's not safe for a child." *Id.* at 95-96. Ms. Donahue also expressed concerns about drugs in Father's home and Child's exposure to his drug usage. *See id.* at 96. According to Ms. Donahue, "[Father] runs with a crowd of people that do drugs and smoke marijuana," and she has seen drug paraphernalia in his house, including bongs and blow torches used to smoke marijuana dabs. *Id.*

Mother also presented the testimony of Sydney Black ("Ms. Black"). Ms. Black testified that Father became enraged when he learned that someone had told Mother about the time he left Child alone in his home, and Father was attempting to discover who it was that had revealed this fact to Mother. *See id.* at 73.

The trial court also heard the testimony of Pauline Wallin, PhD ("Dr. Wallin"), a licensed psychologist who conducted a psychological examination of Father. Dr. Wallin concluded, *inter alia*, that "[f]uture physical attacks on people, whether intentional or unintentional, cannot be ruled out due to his poor self-control." *Id.* at 9; ***see also*** Exhibit 1. Dr. Wallin further testified that Father's profile is consistent with traits

of having a personality disorder, and that his testing scores are consistent with people who are "immature, sarcastic, narcissistic, and self-indulgent," and at risk for overreacting. N.T., 6/30/25, at 10, 12. Dr. Wallin explained that such individuals "tend to misinterpret other people's motivations over suspicious distrusting and have difficulty maintaining a relationship. They tend to justify their own actions while blaming others and often having problems with authority." ***Id.*** at 12.

During Father's testimony, he conceded that he says things because he is angry or upset, and he regrets it. ***See id.*** at 115. Father additionally conceded that his anger gets the best of him and he has destroyed various types of property, including a piece of furniture by kicking it during an argument, breaking a window with a post, throwing a shop-vac through a carport window when he was angry, and punching a hole in a wall when he got angry and lost control. ***See id.*** at 129-130, 132, 145. Father also conceded that he a history of heavy marijuana use, and he failed a drug test for marijuana in 2024. ***See id.*** at 114, 144.

On July 15, 2025, the trial court entered the subject custody order which included the following provisions:

> ***821** Pending completion of the requirements set forth below, Mother shall have primary physical custody of the Child. Father shall have partial physical custody of the Child. Father's periods of physical custody shall be supervised by Nichole Dwyer, Michelle Proper, Caitlin Shaffer or another mutually agreed supervisor which agreement shall not be unreasonably withheld. As long as Father's periods of custody are required to be supervised, he shall have custody of the Child on the first, second and fourth weekend of every month from Thursday at 6:00 p.m. until Saturday at 6:00 p.m., on every Monday from 5:00 p.m. to 8:00 p.m. and every Wednesday from 5:00 p.m. to 8:00 p.m.
>
> Father must meet the following requirements in order to enjoy unsupervised periods of custody with the Child:
>
> A. Provide independent documentation from the course provider showing that Father successfully completed an anger management training consisting of at least eight (8) sessions;
>
> B. Provide independent documentation from the course provider showing that Father successfully completed additional anger management training consisting of at least eight (8) additional sessions[;]
>
> C. Engage in individual therapy with a provider of Father's choice on a frequency as recommended by the treatment provider, with the treatment provider confirming Father's participation. Father shall provide a copy of Dr. Wallin's psychological evaluation report dated February 27, 2025 and a copy of this order to his individual therapist: and
>
> D. Provide independent documentation from the individual therapy provider stating that in the provider's professional opinion, the risk of harm to the Child is such that Father's periods of physical custody should be unsupervised.
>
> Beginning with Father's first regularly scheduled physical custody period ***after he complies with Paragraphs A through D above, Father's periods of custody will be unsupervised. The parties will enjoy an equally shared physical custody schedule*** based on a two-week rotation, with Mother having custody in week one from Sunday at 8:30 a.m. until Wednesday at 5:00 p.m. and in week two from Saturday at 8:30 a.m. until Wednesday at 5:00 p.m. and Father having custody in week one from Wednesday at 5:00 p.m. until Saturday at 8:30 a.m. and in week two from Wednesday at 5:00 p.m. until Sunday at 8:30 a.m.

Trial Court Order, 7/15/25, at 1-2 (emphasis, some capitalization, and punctuation added, unnecessary capitalization omitted).

Mother filed a timely notice of appeal from the custody order, as well as a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i). The trial court thereafter authored an opinion pursuant to Rule 1925(a)(2)(ii).

Mother raises the following issue for our review: "Should this Court reverse the lower court's order that automatically converts the custody order from one with Father's limited supervised visits to equally shared physical custody upon Father's completion of therapy, without conducting an independent review of the child custody factors before the change in physical custody?" Mother's Brief at 2-3.

[1] [2] [3] [4] [5] [6] Our standard of review of a custody order is well-settled.

> ***822** In reviewing a custody order, our scope is of the broadest type and our standard is abuse of discretion. We must accept findings of the trial court that are supported by competent evidence of record, as our role does not include making independent factual determinations. In addition, with regard to issues of credibility and weight of the evidence, we must defer to the presiding trial judge who viewed and assessed the witnesses first-hand. However, we are not bound by the trial court's deductions or inferences from its factual findings. Ultimately, the test is whether the trial court's conclusions are unreasonable as shown by the evidence of record. We may reject the conclusions of the trial court only if they involve an error of law, or are unreasonable in light of the sustainable findings of the trial court.

H.R. v. C.P., 224 A.3d 729, 735 (Pa. Super. 2019) (*quoting V.B. v. J.E.B.*, 55 A.3d 1193, 1197 (Pa. Super. 2012) (citations omitted)).

[7] The paramount concern in a child custody case is the best interests of the child based on consideration of all factors that legitimately affect the child's physical, intellectual, moral, and spiritual wellbeing. ***See Landis v. Landis***, 869 A.2d 1003, 1011 (Pa. Super. 2005). Section 5323(a) delineates the types of custody that a trial court may award: (1) shared physical custody; (2) primary physical custody; (3) partial physical custody; (4) sole physical custody; (5) supervised physical custody; (6) shared legal custody; and (7) sole legal custody. ***See*** 23 Pa.C.S.A. § 5323(a). Importantly, section 5323 directs that the court may only award these types of custody "***after considering the factors set forth in section 5328*** (relating to factors to consider when awarding custody) ... if it is in the best interest of the child." ***Id.*** (emphasis added, unnecessary capitalization omitted). The mandate for the trial court to consider the section 5328 custody factors before entering any award of custody is reasserted in section 5328(a), which directs that "***in ordering any form of custody***, the court shall determine the best interest of the child by considering all relevant factors ...." 23 Pa.C.S.A. § 5328(a).

[8] [9] [10] The requirement that the trial court consider the custody factors set forth in section 5328(a) is not limited to the initial award of custody over a child. Our courts have ruled that the trial court must consider and evaluate each of the section 5328(a) custody factors before changing or modifying any prior award of custody. ***See E.D. v. M.P.***, 33 A.3d 73, 80 (Pa. Super. 2011) (holding that when deciding a petition to modify custody, a court must conduct a thorough analysis of the best interests of the child based on the section 5328(a) factors); ***see also*** 23 Pa.C.S.A. § 5338(a) (pertaining to modification of custody orders and requiring that the modification must "serve the best interest of the child"). This is because "child custody orders are temporary in nature and always subject to change if new circumstances affect the welfare of a child." ***Holler v. Smith***, 928 A.2d 330, 331-32 (Pa. Super. 2007) (unnecessary capitalization omitted). Moreover, "[a] change in custody is just as important to the child and to others as an original award of custody, and the parties should be afforded the same type of hearing on the subsequent application as they are entitled to on an original award." ***Clapper v. Harvey***, 716 A.2d 1271, 1275 (Pa. Super. 1998) (*quoting* ***Rosenberg v. Rosenberg***, 350 Pa.Super. 268, 504 A.2d 350, 353 (1986)).

In addition to a child's physical, intellectual, moral, and spiritual wellbeing, our General Assembly has prioritized the safety of children and emphasized their need for protection in custodial situations. As ***823** provided by section 5328(a), when considering the statutory custody factors, the trial court is required to give "***substantial weighted consideration to the factors ... which affect the safety of the child.***" 23 Pa.C.S.A. § 5328(a) (emphasis added). Specifically, the trial court is compelled to give "substantial weighted consideration" to:

> (1) Which party is more likely to ensure the safety of the child.
>
> (2) The present and past abuse committed by a party or member of the party's household, which may include past or current protection from abuse or sexual violence protection orders where there has been a finding of abuse.
>
> (2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).
>
> (2.2) Violent or assaultive behavior committed by a party.

*Id.*at § 5328(a)(1)-(2.2).

As is applicable to the instant matter, after considering each of the section 5328 factors and giving "substantial weighted consideration" to the factors which affect the safety of the child, the trial court may order supervised custody if the court finds, *inter alia*, a present risk of harm to the child. *See* 23 Pa.C.S.A. § 5323(e)(1). In circumstances where the trial court has found such a present risk of harm to the child and has ordered supervised physical custody, such as in the present case, the court may impose safety conditions, restrictions, and safeguards to ensure the child's safety, including:

> **(e)** ***Safety conditions.***
>
> * * * *
>
> **(2)** supervised contact is ordered, there shall be a review of the risk of harm and need for continued supervision upon petition of the party. The safety conditions, restrictions or safeguards may include any of the following:
>
> **(i)** Nonprofessional supervised physical custody.
>
> **(ii)** Professional supervised physical custody.
>
> **(iii)** Limitations on the time of day that physical custody is permitted or on the number of hours of physical custody and the maximum number of hours of physical custody permitted per day or per week.
>
> **(iv)** The appointment of a qualified professional specializing in programming relating to the history of abuse or risk of harm to provide batterer's intervention and harm prevention programming. Batterer's intervention and harm prevention programming may include programming designed to rehabilitate the offending individual, including prioritizing a batterer's intervention and harm prevention program, if available, or the impacts of physical, sexual or domestic abuse on the victim. The court may order an evaluation by the appointed qualified professional under this paragraph to determine whether additional programming is necessary.
>
> **(v)** Limitations on legal custody.
>
> **(vi)** Any other safety condition, restriction or safeguard as necessary to ensure the safety of the child or to protect a household member.

23 Pa.C.S.A. § 5323(e)(2).

Importantly, as set forth above, section 5323(e)(2) expressly provides that, "upon petition of the party" over which "supervised contact is ordered," the trial court "shall ... review of the risk of harm and need for continued supervision." 23 Pa.C.S.A. § 5323(e)(2).

[11] Notably, Mother solely challenges the provisions of the custody order which provide for the future modification of Father's award of custody from limited periods ***824** of supervised physical custody to equally shared unsupervised physical custody upon Father's completion of the specified requirements. According to Mother, the custody order "allows for a drastic alteration of the physical custody schedule at some unspecified future date without any consideration of what the circumstances are surrounding the parties and the Child when the change occurs." Mother's Brief at 14 (unnecessary capitalization omitted). Mother asserts that, "no timeline was placed on when Father must complete his courses ... and obtain the approval of his ... therapist ... thus, it is entirely possible that by the time Father 'completes' the conditions outlined in the order, any number of other relevant circumstances could warrant a court's reevaluation of the custody factors," such as:

> What if it takes a year for Father to get the approval from his own therapist, and in that time, Father resumes his substance abuse and continues to leave glass marijuana pipes strewn about his house? What if, by the time Father completes the conditions in the order, his work schedule changes and it would not be feasible for him to have the Child (unsupervised) for multiple overnight periods? What if, by the time Father gets the approval from his therapist, his driver's license is suspended, and he cannot lawfully operate a motor vehicle? What if, by the time he satisfies the court's conditions, he has a falling out with his friends, who he claims are his support network, and then has no support network?

Id. at 14-15 (unnecessary capitalization omitted, some capitalization added). Mother submits that "the possibilities for changed circumstances in the time it takes Father to satisfy the court's conditions are innumerable." *Id.* at 15 (unnecessary capitalization omitted).

Based on our review, we conclude that the portions of the subject custody order which provide for a modification of custody at some point in the future — without any further involvement by the trial court — violate sections 5323(a), 5328(a), and 5338(a) of the Child Custody Act. As explained above, the trial court must consider and evaluate each of the section 5328(a) custody factors before changing or modifying any existing award of custody. ***See E.D. v. M.P.***, 33 A.3d at 80 (holding that when deciding a petition to modify custody, a court must conduct a thorough analysis of the best interests of the child based on the section 5328(a) factors); ***see also*** 23 Pa.C.S.A. §§ 5323(a), 5328(a). This mandatory requirement reflects the understanding that "child custody orders are temporary in nature and always subject to change if new circumstances affect the welfare of a child." ***Holler***, 928 A.2d at 331-32 (unnecessary capitalization omitted).

Here, the subject custody order includes provisions which permit modification of the existing award of custody without the trial court's involvement, let alone its determination of the best interest of Child based on a consideration of the section 5328(a) custody factors, giving substantial weighted consideration to the factors which affect the safety of the Child. Specifically, the order provides that "in order to enjoy unsupervised periods of custody with the Child" on "an equally shared custody schedule," Father need only "provide independent documentation" from "the course provider" and "the individual therapy provider." Order, 7/15/25, at 2. Thus, the order directs that custody will be modified at some point in the future, when Father completes his court-imposed requirements, without consideration by the trial court of any of the section 5328(a) factors custody factors or the best interest of the Child based on the circumstances in place at that point in time. Accordingly, we conclude that the subject custody order violates sections 5323(a), 5328(a), and 5338(a).

825** **[12]** **[13]** We additionally observe that before the trial court may modify Father's custody from supervised physical custody to some other form of custody, the Child Custody Act requires additional action by Father and the trial court. As explained above, section 5323(e)(2) provides that "[i]f supervised contact is ordered, there shall be a review of the risk of harm and need for continued supervision upon petition of the party.***" 23 Pa.C.S.A. § 5323(e)(2) (emphasis added). The language of section 5323(e)(2) unquestionably contemplates that whenever the trial court orders supervised contact with a child, such supervised contact shall continue until such time as the party over which such supervision has been imposed files a petition for a review of the risk of harm the party presents to the child and the need for continued supervision. ***See id.*** Necessarily, this language further contemplates that the trial court will thereafter undertake a review of the existing risk of harm that the party presents to the child and make a corresponding determination as to whether there is a need for continued supervision of that party's contact with the child. ***See id.*** [1]

Here, the trial court clearly determined that Father poses a present risk of harm to Child such that all of his contact with Child must be supervised. ***See*** 23 Pa.C.S.A. § 5323(e)(1). The trial court further elected to impose safety conditions, restrictions, and safeguards on Father's periods of supervised physical custody to ensure Child's safety, including nonprofessional supervised physical custody, limitations on the time of day and the number of hours of Father's physical custody permitted per week, and the requirements that Father participate in anger management classes and individual therapy. ***See*** 23 Pa.C.S.A. § 5323(e)(2)(i), (iii), (vi). Thus, before the trial court may terminate Father's supervised contact with Child, Father must file a petition for review, and the trial court must conduct a hearing to review the risk of harm posed to Child by Father and whether there is a need for his continued supervision, as required by section 5323(e)(2).

Accordingly, we affirm the July 15, 2025 custody order to the extent that it orders shared legal custody between the parties, primary physical custody to Mother, supervised physical custody to Father, and imposes requirements upon Father with which he must comply due to the risk of harm he presently presents to Child. However, we vacate all aspects of the order which provide for a future modification of the existing custody order upon Father's satisfaction of the requirements set forth in the order.

Order affirmed in part and vacated in part. Case remanded. Jurisdiction relinquished.

All Citations

353 A.3d 816, 2026 PA Super 42

Footnotes

1 Importantly, in a non-jury custody trial such as occurred herein, the role of the judge is to interpret the law, determine the facts, and apply the facts to the law for an eventual decision of the controversy. ***See C.W. v. K.A.W.***, 774 A.2d 745, 749 (Pa. Super. 2001). The trial court may not delegate its judicial powers. ***See id.*** Notably, in the subject custody order, the trial court attempted to delegate its judicial powers to an independent therapy provider, to be selected by Father, by permitting the unknown therapist with unspecified qualifications, to determine whether "the risk of harm to [C]hild is such that Father's periods of physical custody should be unsupervised." Trial Court Order, 7/15/25, at 2. As section 5323(e)(2) makes clear, it is for the trial court to determine, upon petition by the party over whom supervised contact has been ordered, the risk of harm posed to the child by the party, and to determine whether there is a need for continued supervised contact. ***See*** 23 Pa.C.S.A. § 5323(e)(2).

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353 A.3d 683
Supreme Court of Pennsylvania.

Nicole R. BREDBENNER
v.
Michael HALL, Sr.
Appeal of: Lebanon County Domestic Relations Office

No. 53 MAP 2024
|
Argued: May 14, 2025
|
Decided: March 26, 2026

Synopsis

Background: County domestic relations office (DRO) filed contempt petition against father due to his alleged willful failure to pay child support as ordered. The Court of Common Pleas, Lebanon County, Domestic Relations, Nos. 2015-5-0577 and PACSES 257115382, Bradford H. Charles, J., entered order finding father to be in civil contempt, imposing a 100-day term of imprisonment, and setting a purge condition of $2,000. Father appealed following denial of his motion for reconsideration. The Superior Court, No. 19 MDA 2023, 2023 WL 5237495, vacated and remanded. DRO petitioned for allowance of appeal.

[Holding:] The Supreme Court, No. 53 MAP 2024, Wecht, J., held that record did not support finding that father had the present ability to pay $2,000 as a purge condition.

Decision of Superior Court affirmed.

Todd, C.J., filed opinion concurring in the mandate, which opinion Dougherty and Mundy, JJ., joined.

Brobson, J., filed opinion concurring in the mandate.

Procedural Posture(s): On Appeal; Motion for Contempt.

West Headnotes (19)

[1] **Contempt** ⇐ Criminal contempt
Contempt ⇐ Civil contempt

Civil contempt aims to coerce compliance with a court order; criminal contempt punishes violation of an order and vindicates the court's authority. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

1 Case that cites this headnote

[2] **Contempt** ⇐ Nature and form of remedy

In a criminal contempt proceeding, the obligor must be provided with the essential procedural safeguards of the criminal law. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

1 Case that cites this headnote

[3] **Contempt** ⇐ Weight and sufficiency

Party filing petition for contempt bears burden to show by preponderance of evidence that obligor violated court order. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

1 Case that cites this headnote

[4] **Child Support** ⇐ Contempt

To find an obligor in contempt for failure to comply with a child-support order, the failure to comply must be willful; if the alleged contemnor is unable to perform and has in good faith attempted to comply with the court order, contempt is not proven. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

1 Case that cites this headnote

[5] **Child Support** ⇐ Burden of proof
Child Support ⇐ Degree of proof

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As to contempt petition, once obligee or domestic relations office/section (DRO) proves noncompliance with child-support order by preponderance of evidence, burden shifts to obligor, who must demonstrate his lack of willfulness. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

[6] **Contempt** ⇐ Purging contempt after adjudication

Before a defendant may be committed for civil contempt, it is essential that it be clear what is required of him in order to purge himself of the contempt, and the commitment order should state the condition which when complied with will release him; in the absence thereof, a commitment for civil contempt is improper. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.) 23 Pa. Cons. Stat. Ann. § 4345.

[7] **Contempt** ⇐ Purging contempt after adjudication

As to a civil-contempt order, the purge condition, i.e., the condition that allows the obligor to be released from the sentence, must be within the obligor's power to perform. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

[8] **Contempt** ⇐ Purging contempt after adjudication

When a payment is a civil-contempt order's purge condition, the obligor must have the present ability to pay it, lest the coercive intent of the civil contempt transform into a punishment. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

2 Cases that cite this headnote

[9] **Child Support** ⇐ Purging contempt

Record did not support finding that father had the present ability to pay $2,000 as a purge condition of civil-contempt order for failure to pay child support, which order also imposed a 100-day term of imprisonment, and thus such a purge condition could not be imposed; despite argument that father was being supported by his brother, no record evidence showed that father had available funds or any assets that he could liquidate to pay the purge condition. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.) 23 Pa. Cons. Stat. Ann. § 4345.

3 Cases that cite this headnote
More cases on this issue

[10] **Child Support** ⇐ Mootness of appeal

Unless an exception to mootness applied, appeal concerning trial court's order finding father, in response to petition filed by county domestic relations office (DRO), to be in civil contempt for willful failure to pay child support became moot when father completed the contempt sentence. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.) 23 Pa. Cons. Stat. Ann. § 4345(a).

More cases on this issue

[11] **Child Support** ⇐ Mootness of appeal

Appeal concerning trial court's order finding father to be in civil contempt for willful failure to pay child support concerned an issue that was capable of repetition yet evading review, and thus Supreme Court would exercise its discretion and review the case, even though it became moot when father completed the 100-day contempt sentence; father remained subject to support orders, he could face future contempt proceedings, and since statute limited the term of imprisonment to six months, it was unlikely that an appeal could reach the Supreme Court before the sentence was completed. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.) 23 Pa. Cons. Stat. Ann. § 4345(a).

More cases on this issue

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[12] **Contempt** ⇐ Review

When considering an appeal from an order holding a party in contempt of court, the Supreme Court will reverse only upon a showing of an abuse of discretion. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

[13] **Appeal and Error** ⇐ Abuse of discretion

Appeal and Error ⇐ Construction, Interpretation, or Application of Law

Trial court abuses its discretion if it misapplies the law or exercises its discretion in a manner lacking reason. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

[14] **Contempt** ⇐ Weight and sufficiency

As relevant to rule that when a payment is a civil-contempt order's purge condition, the obligor must have the present ability to pay it, an ability to pay demonstrated beyond a reasonable doubt cannot be based upon a presumption; it must be based upon record evidence, and that evidence cannot be based solely upon disbelief of the obligor's testimony. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

2 Cases that cite this headnote

[15] **Contempt** ⇐ Purging contempt after adjudication

As relevant to rule that when a payment is a civil-contempt order's purge condition, the obligor must have the present ability to pay it, a history of making payments, either as purge payments or payments to avoid a contempt finding, does not prove a present ability to pay. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

2 Cases that cite this headnote

[16] **Contempt** ⇐ Purging contempt after adjudication

The means by which an obligor is supporting himself is relevant to determining present ability to pay a civil-contempt order's purge condition, as required for the order to contain the purge condition. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

3 Cases that cite this headnote

[17] **Child Support** ⇐ Presumptions

As relevant to rule that when a payment is a civil-contempt order's purge condition, the obligor must have the present ability to pay it, if support of an obligor is being provided by a third party who owes no duty of child support to the party or the children involved, the court cannot assume that, because the third party is supporting the obligor, the obligor can obtain funds from the third party to satisfy the purge condition. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

[18] **Contempt** ⇐ Purging contempt after adjudication

Purge conditions in civil-contempt orders need not only be monetary; trial courts may set other types of conditions, especially when the record does not support the obligor's present ability to pay. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

[19] **Child Support** ⇐ Purging contempt

Child Support ⇐ Burden of proof

In civil child-support contempt proceedings, a trial court must attach an attainable condition so that the obligor may purge himself of contempt; the record must support the obligor's ability to meet that condition, and the burden is on the petitioning party to develop that record. (Per Wecht, J., with two justices joining and four justices concurring in the mandate.)

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4 Cases that cite this headnote

Appeal from the Order of the Superior Court at No. 19 MDA 2023, entered on August 15, 2023, Vacating and Remanding the Order of the Lebanon County Court of Common Pleas, Domestic Relations, at Nos. 2015-5-0577 and PACSES 257115382, entered on December 2, 2022, Bradford H. Charles, Judge

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TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, McCAFFERY, JJ.

OPINION ANNOUNCING THE JUDGMENT OF THE COURT

JUSTICE WECHT

***686** This appeal concerns a child support contemnor's claim that he is unable to pay the purge condition set by the trial court.

Parents bear a statutory duty to support their unemancipated children.[1] The same statutory scheme authorizes establishment of a support obligation via court order, and specifies consequences that attend breach of that obligation.[2]

When a person who owes a duty of support ("the obligor") fails to comply with a support order, the person to whom support is owed ("the obligee") or the county domestic relations office/section ("DRO")[3] can seek enforcement by filing a petition for civil contempt.[4] That petition informs the obligor that he is subject to imprisonment or fine if he is found in violation of the support order. It also notifies him that he is subject to arrest if he fails to appear at the hearing on the petition. The petition explains that the obligor's ability to pay "is a critical issue," and that relevant documentation should be brought to the hearing.[5]

[1] **[2]** In any contempt proceeding, the species of contempt being pursued must be clear. "[E]ven where the same facts might give rise to criminal as well as civil contempt, each has its own distinct procedures and confers distinct procedural rights; the two may not be casually commingled."[6] Civil contempt aims to coerce compliance with a court order. Criminal contempt punishes violation of an order ***687** and vindicates the court's authority.[7] In a criminal contempt proceeding, the obligor must be provided with "the essential procedural safeguards of the criminal law."[8]

In support matters, the court has recourse to both civil and criminal contempt.[9] Most often, obligees and county DROs pursue civil contempt, because their priority is to coerce the obligor to comply with his support obligation.

[3] **[4]** **[5]** Contempt findings ensue when obligors fail to comply with support orders. The party filing the petition for contempt bears the burden to show (by a preponderance of the evidence) that the obligor violated the court order.[10] The failure to comply must be willful.[11] "If the alleged contemnor is unable to perform and has in *good faith* attempted to comply with the court order, contempt is not proven."[12] Once the obligee or DRO proves noncompliance by a preponderance of the evidence, the burden shifts to the obligor, who must demonstrate his lack of willfulness.[13]

Once a court[14] finds a party in civil contempt, it may impose a sentence of up to six months of imprisonment, a fine of up to $1,000, and/or up to one year of probation.[15] The court must "specify the condition the fulfillment of which will result in the release of the obligor."[16]

[6] **[7]** **[8]** As this Court stated years ago:

> Before a defendant may be committed for civil contempt, it is essential that it be clear what is required of him

> in order to purge himself of the contempt, and the commitment order should state the condition which when complied with will release him. In the absence thereof, a commitment for civil contempt is improper. An order committing a defendant to prison for a civil contempt until he does something which is apparently beyond his power to do is clearly an order which this Court cannot approve. [17]

The condition that allows the obligor to be released from the sentence is colloquially known as the "purge condition," as its ***688** performance purges the obligor's contempt. The purge condition must be within the obligor's power to perform. When that purge condition is a payment, the obligor must have the present ability to pay it, lest the coercive intent of the civil contempt transform into a punishment. [18] The question that we must resolve today concerns the inquiry into an obligor's present ability to pay, and how that ability to pay is proven. [19]

Nicole Bredbenner and Michael Hall have three children, born in 2004, 2009, and 2013. Hall has an additional child, born in 2000. On July 21, 2015, Bredbenner filed a petition seeking child support from Hall for the three children they share. On September 1, 2015, based upon a hearing officer's recommendation, the court ordered that Hall pay $297.75 (plus $29.78 on arrears) per month. This amount reflected a downward deviation from the support guideline amount, because Hall also had an obligation to support his older child.

On October 12, 2015, the DRO filed a contempt petition, alleging that Hall had failed to pay support as ordered. By order dated December 1, 2015, the trial court denied the petition. The court cited Hall's consistent record of paying support for his older child, his claim of physical injury, and his pending support modification petitions. The court ordered Hall to obtain medical documentation for his injury, to seek employment, and to report monthly to the DRO.

Following a January 14, 2016 hearing, the trial court suspended Hall's support obligation, as he had provided medical documentation demonstrating that he was unable to work. The court scheduled a review hearing, and ordered Hall to provide updated medical information and to disclose the status of his then-pending application for disability.

At the April 28, 2016 review hearing, Hall submitted the relevant medical documentation. His support obligation remained in suspended status. However, following an August 4, 2016 review, the trial court reinstated Hall's obligation after he failed to offer proof of a continuing disability. The court ordered Hall to pay $98.62, plus $9.86 in arrears, per month.

In the years that followed, the DRO filed a series of contempt petitions, alleging each time that Hall had failed to pay the ordered support. [20] On these occasions, the court declined to find Hall in contempt, either because he was about to start verified employment or because he made a payment on or before the hearing date.

On December 22, 2020, Bredbenner filed a petition to modify support. The trial court increased Hall's monthly obligation to $340, plus $34 on arrears, each month. The modification resulted in part from the fact that Hall's oldest child aged out of her dependent status.

On April 20, 2021, the DRO filed another contempt petition. Hall again made a payment on the day of the hearing, thereby avoiding a contempt finding. This pattern repeated after the DRO filed another petition on October 14, 2021.

***689** On December 10, 2021, Hall filed a petition to modify his support obligation, claiming that an occupational injury precluded gainful employment. On March 1, 2022, the hearing on that petition was postponed in order to permit Hall to provide documentation showing that he was receiving workers' compensation benefits. On April 25, 2022, the court dismissed Hall's petition. The preexisting support order remained in effect. The court had learned that Hall had been released from workers' compensation to return to full duty, and that he had quit his job shortly thereafter.

On February 28, 2022, while the modification petition was pending, the DRO filed a contempt petition. Hall again made a payment on the hearing date, and the court declined to find him in contempt. Another petition followed on July 1, 2022, but the court again declined to find Hall in contempt because he was actively looking for work. The DRO petitioned for a contempt finding again on September 6, 2022, but the court again demurred, as Hall was scheduled to start a new job the following week. In its order, however, the court warned that Hall had "used up his indulgence with the [c]ourt." [21]

On October 18, 2022, the DRO filed yet another contempt petition. On November 17, 2022, the court ordered an evidentiary hearing. The court noted that, although Hall had avoided a contempt finding at the previous hearing because he was starting work, he had only remained at that job for a few hours before quitting. In light of Hall's claims that he was unable to perform the work due to physical limitations, the court reminded Hall to bring medical documentation to support his claims. The court appointed a public defender to represent Hall.

At the conclusion of the November 29, 2022 hearing, as documented in the court's December 2, 2022 order, the court found Hall to be in contempt. The court recited the history of the case and reviewed the testimony of a representative of Hall's recent, short-lived employer. That representative testified that Hall was hired as an inspector, that Hall arrived for work on his first day, that Hall asked to take a smoking break approximately two hours later, and that, when Hall was told that smoking was not permitted on company property, he left and did not return. The court reviewed Hall's medical documentation and determined that it was the same material that Hall submitted in 2016, when his support obligation was suspended. Given the lack of current proof of a disability, Hall's failure to make a payment in the prior year, and his apparent unwillingness to work, the court concluded that Hall had willfully failed to pay his support obligation. The court ordered Hall to be incarcerated for 100 days, and it set a purge condition of $2,000.

Hall sought reconsideration, alleging that he did not have the present ability to pay the $2,000 purge condition. The court denied the motion. In its opinion, the trial court focused upon the practical effect of Hall's argument. The court suggested that, if an obligor could defeat a contempt finding simply by stating that he did not have the ability to comply, "child support awards would become meaningless."[22] The court suggested that, if obligees were denied a meaningful ability to enforce support orders, obligors likely would spend their money on other priorities, and then claim poverty to dodge a contempt finding. The court highlighted the fact that a putative inability to pay often is self-serving ***690** and that, in the court's experience, obligors tend to make a payment once imprisonment is imminent, notwithstanding their alleged lack of funds. The trial court bemoaned the difficulty of determining the veracity of self-serving statements when corroborating evidence generally is lacking, especially when weighed against the needs of the children who have not received the support that a parent owes them. The trial court recognized that an obligor must have the present ability to pay the purge condition. Because the court did not deem Hall to be credible, it found insufficient evidence to demonstrate convincingly his inability to pay. The court based that determination upon Hall's history of making payments in order to avoid imprisonment, Hall's access to funds to support himself (evidenced by the fact that he was not homeless), his failure to provide evidence of a disability that precluded him from work, and the credible testimony from the employer's representative that Hall had walked off the job on his first day. The trial court believed, based on its experience with Hall, that Hall had the financial resources to pay the $2,000 purge condition.

[9] On appeal, a panel of the Superior Court vacated the trial court's order and remanded for further proceedings. Before the panel, Hall argued that the trial court erred by setting a purge condition without first determining whether he had the present ability to meet the purge condition. Citing our decision in *Barrett*, the panel noted that, before ordering incarceration, a trial court must be convinced beyond a reasonable doubt that the obligor has the present ability to comply with the purge condition. Otherwise, the sanction impermissibly converts from a coercive remedy into a punitive one.

The panel recounted Hall's testimony that he had not been employed since October 1, 2022, and that he was being supported by his brother. Thus, Hall had no monthly expenses. While Hall's counsel had objected to the $2,000 purge condition because it was assertedly beyond Hall's ability to pay, the trial court had disagreed because Hall had the ability to work and would have had the money had he chosen to work. Further, the trial court had stated: "I will go so far as to tell you that I believe he is going to pay that purge. I don't believe he is going to stay in jail for that entire period of time. And if I'm wrong, I'll buy you a soda."[23]

The panel discerned insufficient evidence for the finding that Hall had the ability to satisfy the purge condition. No record evidence showed that Hall had available funds or any assets that he could liquidate to pay the purge condition. Accordingly, the panel held that the trial court had abused its discretion, and the panel vacated the contempt order. The panel remanded the case to permit the trial court to take additional evidence and to determine an appropriate means of coercion.

[10] [11] The DRO filed a petition for allowance of appeal, which this Court granted. [24]

*691 Before this Court, the DRO recognizes that *Barrett* is "the seminal authority in this area." [25] The DRO stresses that, although *Barrett* instructs that a court must be convinced beyond a reasonable doubt from the totality of the evidence that a contemnor has the present ability to pay the purge condition, that precedent also holds that "present inability to comply is an affirmative defense which must be prove[n] by the alleged contemnor." [26] The DRO avers that, while *Barrett* does not specify which party bears the burden of production, this Court's use of the term "affirmative defense" suggests that the burden lies with the contemnor. The DRO notes that, in accordance with court rules, contempt petitions notify obligors that they are required to bring proofs of income and complete income and expense statements to hearings, and that this suggests that obligors bear the initial evidentiary burden. [27]

The DRO urges that ability to pay the purge condition should be treated as a true affirmative defense, such that the obligor bears the burden to provide initial evidence of an inability to pay the purge condition. The DRO suggests that any other rule will impede judicial enforcement of support orders. The DRO argues that obligors hold an incentive to claim indigence in order to avoid a high purge condition or imprisonment. It is often impossible to obtain corroborating evidence. The DRO maintains that the history of a case (including prior payments and the determination of an obligor's earning capacity or prior income) should be considered in evaluating the current ability to pay: "where there is no showing by the defendant of inability to pay, there has been no change of circumstances[,] [and] the court should not need to infer the same, regardless of the height of the burden of proof." [28] The DRO contends that the obligor must provide some evidence of his inability to pay, because the obligor is the one with access to the relevant evidence. [29]

Hall responds that the trial court here merged the two-part inquiry in civil contempt — "(1) [a] finding by a preponderance of the evidence that the defendant willfully failed to comply with the court order, ... and (2) [a] finding '*beyond a reasonable doubt*, from the totality of the evidence' that the defendant has the 'present ability to comply' with the purge condition" [30] — into one. Hall does not challenge the trial court's finding that he was in contempt. [31] He maintains that, in imposing a purge condition that no evidence proved he could satisfy, the trial court converted a *692 civil contempt purge condition into a punishment sounding in criminal contempt.

Hall contends that *Barrett* places the burden on the petitioning party to demonstrate, beyond a reasonable doubt, that the obligor has the present ability to satisfy the purge condition. He argues that disbelief of an obligor's testimony claiming inability to pay is not evidence of ability to pay. The *Barrett* Court agreed that unwillingness to accept an obligor's testimony was not record support of an ability to pay a purge condition. As to *Barrett*'s reference to inability to pay as an affirmative defense, Hall contends that the statement related to the Court's discussion of the initial finding of contempt and the obligor's related burden to show that the failure to comply was not willful. He claims that, when it referenced an affirmative defense, the *Barrett* Court was not speaking to an inability to pay the purge condition. Hall maintains that an earning capacity or ability to earn are not relevant to the legality of a purge condition, because both speculate as to earning capacity; they do not establish a present ability to pay the purge condition. As to the practical difficulties of obtaining evidence, Hall points out that trial courts have multiple options beyond civil contempt, including indirect criminal contempt, [32] probation, or requirements to apply for jobs or to meet regularly with the DRO for job search assistance.

[12] [13] As both parties agree that *Barrett* plays an important role in this area of law, we review that precedent. [33] Merle Barrett was the obligor on two support orders: one for the support of his ex-wife and their three children, and one for the support of a child born out of wedlock. Although Barrett was working, "he seldom if ever voluntarily complied with either order." [34] In March 1974, he quit his full-time job "because of what he termed 'harassment' by the mothers of his children and the Beaver County Domestic Relations office ... in attempting to collect the support that was due." [35] Shortly thereafter, Barrett and a girlfriend moved to Ohio. He neither informed the DRO of his new address nor paid support while in Ohio.

One year later, Barrett returned to Pennsylvania. He was taken into custody. On August 20, 1975, the trial court found Barrett to be in contempt, and ordered him to be imprisoned until he paid $500 toward his arrears and posted compliance bonds of $500. Barrett did not pay. He remained in jail. He appealed

to the Superior Court, which affirmed (with the exception of limiting the term of imprisonment to six months).

This Court reviewed the following issue: "whether an indigent person who in the past willfully disobeyed support orders may now be imprisoned for civil contempt when he cannot purge himself of contempt due to his indigency."[36] Initially, the Court noted that the proceedings were for civil ***693** contempt, because the lower court sought to coerce compliance, not to punish Barrett. The Court found ample evidence that Barrett was in contempt; he had willfully failed to comply with the support orders. However, this Court held that the Superior Court had erred by concluding that the willful failure to comply justified the sentence of imprisonment; the intermediate court had "confused the coercive and prospective function of imprisonment in civil contempt with criminal punishment for past acts."[37] "[A] court may not convert a coercive sentence into a punitive one by imposing conditions that the contemnor cannot perform and thereby purge himself of the contempt."[38] The *Barrett* Court ruled that determination of whether Barrett's sentence was permissible must turn upon whether he had the present ability to pay the purge condition.

This Court examined the trial court's determination that Barrett had the ability to pay the purge condition based upon the trial court's disbelief of Barrett's claims of indigency. Like the DRO in this case, the party pursuing support argued to this Court that Barrett "ha[d] failed to meet his burden of proof as to his financial inability to comply."[39] Noting that there were no cases directly on point, this Court stated:

> [T]he general rule is that in civil contempt proceedings the burden is on the complaining party to prove noncompliance by a preponderance of the evidence, but that present inability to comply is an affirmative defense which must be proved by the alleged contemnor. We now hold, however, that where, as here, the court in civil proceedings finds there has been willful noncompliance with its earlier support orders constituting contempt but the contemnor presents evidence of his present inability to comply and make up the arrears, the court, in imposing coercive imprisonment for civil contempt, should set conditions for purging the contempt and effecting release from imprisonment with which it is convinced [b]eyond a reasonable doubt, from the totality of the evidence before it, the contemnor has the present ability to comply.[40]

This Court reasoned that the "beyond a reasonable doubt" standard was warranted because of the potential for the sentence to become punitive if the contemnor did not have the ability to pay, thus triggering "the safeguards of criminal procedure."[41] Because the purpose of the support laws was to obtain support for obligees, and because a contemnor who is unable to pay the purge would be unlikely to gain the ability to do so in prison, any coercive justification for imprisonment was undermined absent proof of a present ability to pay.

This Court recounted that Barrett provided uncontradicted (albeit uncorroborated) testimony that his girlfriend supported him, that he earned about $150 per month (which paid for personal expenses and contributed to food and rent), and that his assets consisted of a ten-year-old car and $70 in a bank account. The trial court did not find Barrett to be credible, and it cited the girlfriend's ability to post Barrett's $1,000 appearance bond. This Court noted, however, that Barrett's girlfriend had no duty to support him, so her ability to post bond was not relevant. The *Barrett* Court held that there was insufficient record ***694** evidence to demonstrate that Barrett had the present ability to comply with the purge condition. Thus, this Court held that Barrett's imprisonment was improper, and it reversed the lower court.

As in *Barrett*, there is ample evidence of Hall's willful non-compliance with the support order. Hall does not contend otherwise. The sole issue before this Court relates to his ability to pay the purge condition.

The goal of civil contempt is to coerce compliance. The method to reach that goal is the purge condition. In support cases, a sentence of incarceration can be necessary to coerce the obligor to pay the purge condition. An obligor's payment of the purge condition serves all parties. The obligee receives some of the support owed. The obligor avoids imprisonment and remains able to maintain or seek employment, which would be difficult, if not impossible, while in jail. For

this process to have the intended coercive effect, the purge condition must be within the obligor's ability to pay. If not, the condition cannot have the desired coercive effect and, instead, becomes punishment. Punishment transforms the remedy from civil to criminal contempt, a transformation that requires additional procedural safeguards. Whatever its merits, punishment in this context does not aid the obligee in receiving support, and it prevents the obligor from continuing or seeking employment for the period of confinement.

In setting an appropriate purge condition, the ability to pay is the crucial inquiry. Determining ability to pay is a difficult task. Based upon the *Barrett* Court's description of the present inability to pay as an affirmative defense, the DRO maintains that the obligor has the burden to prove his inability to pay. We disagree.

Barrett does not require inability to pay to be viewed as an affirmative defense. The passage in which the phrase appears (as quoted above) begins by identifying the "general rule ... that present inability to comply is an affirmative defense."[42] The *Barrett* Court continued that, "[w]e now hold, however, that where ... the contemnor present[s] evidence of his present inability to comply," the court must set a purge condition that it is convinced beyond a reasonable doubt that the contemnor can pay.[43] The use of the word "however," and the clarification that we "now hold," indicates a departure from the general rule that the present ability to comply is an affirmative defense.

The Court spoke of the affirmative defense of the present inability to comply as one that must be proven by the "alleged contemnor."[44] Later, when the Court held that a court must set a purge condition that can be complied with based upon the totality of the evidence and beyond a reasonable doubt, the Court used the term "contemnor."[45] The change in terminology is consistent with reading this passage as applying the affirmative defense language to the initial stage of a civil contempt proceeding — to the finding by the court that the obligor willfully failed to comply with the court order — rather than the second part, in which the purge condition is set. That is also consistent with the burden-shifting of the initial contempt finding: the petitioner has the burden to show, by a preponderance of the evidence, that the obligor violated a court order; then, the obligor has the burden to demonstrate an inability to comply such that the ***695** failure was not willful.[46] Once there is a determination that the failure to comply was willful, and that the obligor is in contempt, the "alleged contemnor" becomes the "contemnor."

Viewing the inability to pay as an affirmative defense is inconsistent with the outcome in *Barrett*. There, the trial court did not find Barrett's testimony to be credible. If the *Barrett* Court intended an inability to pay to be an affirmative defense, the trial court's credibility finding would have necessitated a conclusion that Barrett had not met his burden, and would have required affirmance of the lower courts' decisions. But the *Barrett* Court held the opposite, ruling that the court's disbelief of Barrett's testimony was insufficient and that the record did not provide other evidence of an ability to pay. *Barrett* does not support the proposition that the obligor has a burden to prove an inability to pay as an affirmative defense to the purge condition.

[14] The requirement that the ability to pay the purge condition must be determined beyond a reasonable doubt is inconsistent with placing the burden on the obligor to prove his inability to pay. Making the obligor prove an inability to pay presumes an ability to pay. An ability to pay demonstrated beyond a reasonable doubt cannot be based upon a presumption. It must be based upon record evidence.

[15] **[16]** **[17]** That evidence cannot be based solely upon disbelief of the obligor's testimony. Such disbelief, without more, reflects an absence of credible evidence. In any event, it is not evidence beyond a reasonable doubt. A history of making payments (either as purge payments or payments to avoid a contempt finding) does not prove a present ability to pay. The means by which an obligor is supporting himself is relevant. If that support is being provided by a third party (such as the girlfriend in *Barrett* or Hall's brother here) who owes no duty of support to the party or the children involved, the court cannot assume that, because the third party is supporting the obligor, the obligor can obtain funds from the third party to satisfy the purge condition. The obligor's ability (but refusal) to work is relevant to the willfulness of the contempt, but does not speak to the obligor's present ability to pay a purge condition. To support a monetary purge condition, the trial court must be able to cite record evidence of an obligor's present ability to pay the amount.

[18] We do not suggest that purge conditions can only be monetary. Trial courts may set other types of conditions, especially when the record does not support the obligor's present ability to pay. For example, the court could require an obligor to meet with an employment specialist within

the DRO, or to register with CareerLink,[47] or to make a certain number of applications for employment. The statute also authorizes a probationary sentence, which the court may use to require the obligor to report and meet regularly with the DRO during a search for employment. We do not tie the trial court's hands in contempt proceedings nor do we prevent the court from exploring creative solutions (within the bounds of the statute) to coerce compliance with support orders.

[19] We hold that, in civil support contempt proceedings, a trial court must attach ***696** an attainable condition so that the obligor may purge himself of contempt. The record must support the obligor's ability to meet that condition. The burden is on the petitioning party to develop that record.[48] The record is inadequate if it merely contains the discredited testimony of the obligor. This may make enforcement of support orders more difficult. Often, the only testimony is from the obligor. That testimony may be self-serving. Our decision may require the DRO to ask more questions on cross-examination regarding the obligor's assets or income. It may require that the obligee be called as a witness, because a co-parent may have relevant information about income or assets. It may require that the trial court ask the ***697** witnesses questions so that the record does not remain undeveloped. Regardless of the difficulties, the record must support any purge condition, because "[d]ifficulty of proof has never been allowed as an excuse for dispensing with it."[49]

Because the record here did not support Hall's ability to pay the purge condition, we affirm the Superior Court's decision.

Justices Donohue and McCaffery join the opinion announcing the judgment of the Court.

Chief Justice Todd files a concurring opinion in which Justices Dougherty and Mundy join.

Justice Brobson files a concurring opinion.

CHIEF JUSTICE TODD, concurring

This case involves the interplay between a child's right to the financial support of a parent and a parent's due process right not to be imprisoned for his or her inability to pay a purge condition in a child support civil contempt proceeding. Based upon this Court's decision in *Barrett v. Barrett*, 470 Pa. 253, 368 A.2d 616 (1977), the Opinion Announcing the Judgment of the Court ("OAJC") finds that the petitioning party seeking contempt here, the Lebanon County Domestic Relations Office ("DRO"), bears the burden of proving beyond a reasonable doubt that the parent, Michael Hall, has the present ability to satisfy the purge condition of paying $2,000 in support arrearages. Finding that the DRO failed to satisfy this burden, the OAJC affirms the Superior Court's decision, which vacated the trial court's imposition of a 100-day term of imprisonment. I concur in the OAJC's mandate, as I agree that there was insufficient evidence to establish that Hall had the present ability to satisfy the purge condition, thereby rendering unlawful the trial court's imposition of a term of imprisonment. I write separately, however, as I conceptualize the process and burdens in determining whether the contemnor has the present ability to pay the purge condition somewhat differently than the OAJC.

Under my interpretation of *Barrett* and subsequently enacted Pennsylvania Rule of Civil Procedure 1910.25(b), discussed in detail *infra*, the burden does not lie exclusively on the petitioning party to prove beyond a reasonable doubt that the contemnor has the present ability to pay the purge condition. Distinct from a criminal trial — where the Commonwealth must prove each element of the crime beyond a reasonable doubt and the defendant bears no evidentiary burden — in my view, the contemnor in a child support civil contempt proceeding has the initial burden of production[1] to present some evidence of their inability to pay the purge condition.[2] ***698** In the event a recalcitrant contemnor refuses to present such evidence or fails to adequately respond to inquiries regarding the same, the trial court may, and should, in my opinion, compel disclosure of the contemnor's financial records by employing its power of contempt. The petitioning party thereafter bears the burden of persuasion to rebut the contemnor's evidence and may present its own evidence demonstrating that the contemnor indeed has the present ability to pay the purge condition. Critically, however, *Barrett* makes clear that, to impose coercive imprisonment for civil contempt, the trial court must be convinced beyond a reasonable doubt, based upon a totality of the evidence presented by both the contemnor and the petitioning party, that the contemnor has the present ability to pay the purge condition; otherwise, the punishment imposed by the trial court ceases to be coercive, and becomes punitive, without affording the contemnor the requisite criminal safeguards.

This paradigm, supported by our case law and civil procedural rules, diminishes the contemnor's ability to manipulate the contempt process by ensuring the insufficiency of the evidence establishing their present ability to pay the purge condition, guarantees the contemnor's due process right not to

face imprisonment based upon their indigency, and serves to protect the children who rely upon the contemnor's financial support to provide their daily needs.

In reaching this conclusion, I agree with the OAJC that the pivotal case on the issue is our prior decision in *Barrett*, which examined "whether an indigent person who in the past willfully disobeyed support orders may now be imprisoned for civil contempt when he cannot purge himself of contempt due to his indigency." *Barrett*, 368 A.2d at 619. Preliminarily, the Court emphasized that, "in determining whether Barrett was properly imprisoned for civil contempt, the crucial question is not whether he willfully and contemptuously violated the original orders, but whether he had the present ability to comply with the conditions set by the court for purging himself of his contempt." *Id.* at 620.

Pertinently, in determining whether "the conditions imposed by the trial court to coerce Barrett into compliance were warranted," the court explained:

> [T]he general rule is that in civil contempt proceedings the burden is on the complaining party to prove noncompliance by a preponderance of the evidence, but that present inability to comply is an affirmative defense which must be proved by the alleged contemnor. We now hold, however, that where, as here, the court in civil proceedings finds there has been willful noncompliance with its earlier support orders constituting contempt but the contemnor presents evidence of his present inability to comply and make up the arrears, the court, in imposing coercive imprisonment for civil contempt, should set conditions for purging the contempt and effecting release from imprisonment with which it is convinced [b]eyond a reasonable doubt, from the totality of the evidence before it, the contemnor has the present ability to comply.

Id. at 621 (internal citations omitted).

Consistent with the OAJC, I interpret the first sentence in the above passage as holding that the party seeking contempt has the burden of proving by a preponderance ***699** of the evidence that the alleged contemnor failed to comply with the support order, and that such alleged contemnor may assert, as an affirmative defense, evidence of a present inability to comply with the support order to avoid a contempt adjudication. As the OAJC explains, by referring to the "alleged contemnor," *Barrett's* directive in this regard refers to the first stage of the bifurcated contempt proceeding — wherein the court determines whether there was a willful violation of the support order — and does not govern the inquiry, relevant here, regarding which party bears the burden of proving the contemnor's present ability to pay the subsequently-imposed purge condition. Thus, the OAJC properly concludes that "*Barrett* does not support the proposition that the obligor [(contemnor)] has a burden to prove an inability to pay as an affirmative defense to the purge condition." OAJC at 695.[3]

That is not to say, however, that the contemnor bears no burden at all in demonstrating an inability to pay the purge condition. In my view, the next sentence of the above-quoted passage governs this appeal, as it pertains directly to the second stage of the bifurcated contempt proceeding, during which the trial court fashions the condition for purging the contempt and determines the contemnor's ability to satisfy that condition. As noted, *Barrett* directs that, after the party is found in contempt for violating the support order and where "the contemnor [(as opposed to the "alleged contemnor")] presents evidence of his present inability to comply and make up the arrears," the trial court "should set conditions for purging the contempt and effecting release from imprisonment with which it is convinced [b]eyond a reasonable doubt, from the totality of the evidence before it, the contemnor has the present ability to comply." *Barrett*, 368 A.2d at 621.

While this language is admittedly not a model of clarity, it unmistakably contemplates the contemnor's presentation of some evidence of their financial circumstances to assist the trial court in determining a purge condition with which the contemnor has a present ability to comply.[4] ***700** Simply put, requiring the contemnor to present some evidence of an inability to pay a purge condition is inconsistent with placing a burden solely on the petitioning party to establish, beyond a reasonable doubt, that the contemnor has the present ability to pay.[5]

Further, unlike the OAJC, I do not view *Barrett's* adoption of the heightened criminal evidentiary standard of proof beyond a reasonable doubt for determining a present ability to pay a purge condition as "inconsistent with placing the burden [of proof] on the obligor to prove his inability to pay," *id.* at 17, as standards and burdens of proof are discrete legal concepts. *See In re Navarra*, 185 A.3d 342, 354 n.5 (Pa. Super. 2018) (explaining that a "burden of proof" delineates which party "must come forward with evidence" and "convince a judge that a fact has been established;" a standard of proof "refers to the degree or level of proof demanded in a specific case"). Moreover, *Barrett* elucidated that its adoption of the beyond-a-reasonable-doubt standard was intended to prevent courts from conditioning the release of a contemnor from prison based on the "perform[ance of] acts beyond [the contemnor's] power to perform," thereby "convert[ing] a coercive sentence into a penal one without the safeguards of criminal procedure." *Barrett*, 368 A.2d at 621. While *Barrett* definitively holds that a determination of an ability to pay a purge condition must be grounded in record evidence and must be established beyond a reasonable doubt, the decision, as I interpret it, does not create a presumption of an inability to pay, or place upon the petitioning party the *exclusive* burden to demonstrate the contemnor's present ability to pay the purge condition.

Indeed, in that case, Barrett presented evidence of his inability to comply with the purge condition, establishing that he had earned nearly $150 per month to cover his living expenses; that he received no public assistance; that his girlfriend financially supported him; and that his assets included an old car with negligible value and $70 in an unspecified account. Notably, the petitioning party did not meaningfully refute such evidence, which remained "essentially uncontradicted." *Id.* at 622. Deeming Barrett an unreliable witness, the trial court determined that he, in fact, possessed a present ability to pay the total purge amount of $1,000. This Court repudiated such ruling, concluding that "there was insufficient evidence that Barrett had the present financial ability to comply with the contempt orders and avoid imprisonment," *id.*, thereby rejecting the trial court's finding of a present ability to pay based on its mere discrediting of Barrett's evidence of indigency. Thus, the Court remanded for further proceedings to determine an appropriate purge amount.

Our decision in *Muraco v. Pitulski*, 470 Pa. 269, 368 A.2d 624 (1997), decided the same day as *Barrett*, similarly suggests that the contemnor bears a burden of providing some evidence of an inability to pay the purge condition. There, the contemnor, who was sentenced to imprisonment with a purge amount, presented evidence that he was unemployed; that his income derived exclusively from a modest, monthly ***701** amount of public assistance; that he owned no property; and that he had no bank accounts — which evidence the petitioning party did not contradict. This Court interpreted *Barrett's* holding as, "where in a civil contempt proceeding the contemnor presents evidence of his present inability to comply with the order in question, the court in imposing coercive imprisonment should set conditions for purging the contempt with which it is convinced beyond a reasonable doubt, from the totality of the evidence before it, the contemnor has the present ability to comply." *Id.* at 626. We ultimately concluded in *Muraco* that the trial court abused its discretion by imposing a term of imprisonment where the evidence submitted by the contemnor, which remained uncontradicted by the petitioning party, was insufficient to demonstrate beyond a reasonable doubt that the contemnor had the present ability to pay the purge amount and, as in *Barrett*, we remanded for further proceedings to determine an appropriate purge condition.

While this Court has not revisited the issue since our rulings in *Barrett* and *Muraco*, we have adopted rules of civil procedure directly addressing an obligor's obligation to present evidence of their financial circumstances at a contempt hearing in a support matter. Specifically, Pennsylvania Rule of Civil Procedure 1910.25(b) provides a form order of the court which the petitioning party shall provide to an obligor in a civil contempt proceeding, informing the obligor, *inter alia*, that: "[a] critical issue in the contempt proceeding is your ability to pay and comply with the terms of the support order;" "[i]f the court finds that you have willfully failed to comply with its order for support, you may be found to be in contempt of court and committed to jail, fined or both;" "[y]ou will have the opportunity to disclose income, other financial information and any relevant personal information at the conference/hearing so that the court can determine if you have the ability to pay," and "may fill out the enclosed Income Statement and Expense Statement forms and submit them to the court." Pa.R.Civ.P. 1910.25(b).

Germane here, the form order states:

> At the conference/hearing, the contempt petition may be dismissed, new and/or modified purge conditions may be imposed, or the judge may order you to jail. If the obligee fails to appear, the court will proceed with the case and enter an appropriate order.

YOU ARE REQUIRED TO BRING:

Your most recent pay stub for any and all employers Payroll address, phone number, fax number and contact person

Proof of medical coverage

Any other documentation relevant to your case and the issue of contempt as stated in the petition, including the completed Income Statement and Expense Statement forms. For example, other documentation that may be relevant includes documents related to claims for unemployment compensation, workers' compensation and Social Security benefits.

Id. (emphasis original); *see also* Pa.R.Civ.P. 1910.25(f) (reiterating the requisite information to be given an obligor in a civil contempt proceeding). [6]

***702** These rules require not only the disclosure of the contemnor's critical financial information relating to their ability to pay, but the production by the contemnor of such evidence at the contempt hearing. As noted, such mandated evidentiary production is inconsistent with the OAJC's placement of the exclusive burden of proof upon the petitioning party to prove the contemnor's present ability to pay the purge condition beyond a reasonable doubt.

In my view, trial courts should enforce these existing civil procedural rules to ensure that a contemnor complies with their initial burden of producing pay stubs, proof of medical coverage, records of the receipt of any benefits, the completed Income Statement and Expense Statement forms referred to in Rule 1910.25(b), and any other documentation relevant to both the contempt adjudication and the determination of a present ability to pay a purge condition. Indeed, when faced with a recalcitrant contemnor, trial courts should order the contemnor to produce the financial evidence enumerated in Rule 1910.25(b). If the contemnor refuses to either comply with such order or demonstrate why such documentation does not exist, the trial court may find the contemnor in contempt for violating the production order and, possibly, impose a conditional term of imprisonment — an action for which the contemnor would "hold the keys" to his imprisonment, as the contemnor could avoid the penalty by presenting the requested documentation or demonstrating why they are unable to do so.

Once the contemnor produces the pertinent documentation, the petitioning party would then bear the burden of persuading the trial court that the contemnor has the present ability to pay the purge condition and may offer its own evidence refuting the evidence presented by the contemnor. Consistent with our mandate in *Barrett*, the trial court would then proceed to "set conditions for purging the contempt and effecting release from imprisonment with which it is convinced [b]eyond a reasonable doubt, *from the totality of the evidence before it*, the contemnor has the present ability to comply." *Barrett*, 368 A.2d at 621 (emphasis added).

Admittedly, compelling a contemnor to present such information is not a simple task, as many individuals who fail to fulfill their child support obligation lack financial records to prove their indigency. Nevertheless, placing the exclusive burden on the petitioning party to prove the contemnor's present ability to pay the purge condition allows the contemnor to profit from their failure to disclose existing financial information and incentivizes the refusal to follow the civil procedural rules, thereby enabling the contemnor to ensure the insufficiency of the evidence establishing their present ability to pay the purge condition. Manipulation of the child support system cannot be countenanced, as parents must be held to the fundamental requirement of providing support for their children, who rely upon such financial contributions to fulfill their daily needs.

This appeal illustrates the obstacles trial courts face when dealing with a parent who repeatedly fails to comply with serial orders directing the parent to provide financial support for his own children. The trial court exercised great restraint in ***703** dealing with Hall, providing him the "proverbial benefit of the doubt" multiple times, considering that Hall avoided contempt on twelve separate occasions over a period of eight years. Trial Court Opinion, 1/26/23, at 13, 14-15. Regarding the instant contempt proceeding, the trial court ultimately declared, "Enough is enough," *id.* at 15, and concluded that Hall's pattern of providing child support payments at the last minute when faced with a potential sentence of imprisonment in the past indicated that he must also presently possess funds to satisfy the purge condition which required payment of $2,000 in support arrearages.

I am compelled to agree with the OAJC that this ruling fails to comport with our legal standard set forth in *Barrett*. Hall testified that he was unemployed and that his brother provided his exclusive financial support. Critically, the DRO did not refute such evidence, and the trial court did not compel Hall

to provide documentation of his financial status in accordance with Rule 1910.25(b) to assist the court in calculating a purge condition with which Hall could presently comply. As such, I concur with the OAJC that the Superior Court properly reversed the trial court's order and remanded for further proceedings to determine an appropriate purge condition.

In closing, I stress that trial courts conducting child support civil contempt proceedings must vigorously protect against any threat of an erroneous deprivation of a contemnor's liberty interest by ensuring that the evidence of record establishes, beyond a reasonable doubt, that the contemnor has the present ability to comply with the purge condition. Equally significant, trial courts must strive to compel the contemnor to assist in such determination by presenting the requisite financial information required under our civil procedural rules to guarantee that the children of this Commonwealth receive the support to which they are entitled.

Justices Dougherty and Mundy join this concurring opinion.

JUSTICE BROBSON, concurring

I agree with the Opinion Announcing the Judgment of the Court (OAJC), as well as Chief Justice Todd, that there is a lack of record evidence to support a finding that Michael Hall, Sr., had the ability to satisfy the trial court's order for the immediate payment of $2,000 in child support arrearages as a purge condition in this civil contempt proceeding. For that reason, and that reason alone, I agree with the OAJC's mandate to affirm the Superior Court's disposition below. I write separately, as I believe the OAJC and the Chief Justice incorrectly impose evidentiary burdens on the parties.

We accepted review in this case to consider the issue of:

> Where a contemnor, after a finding of contempt, posits that he is unable to pay a purge, does the contemnor waive the issue if he fails to proffer affirmative proof of his financial circumstances?

Bredbenner v. Hall, 322 A.3d 1287 (Pa. 2024) (per curiam). In my opinion, this question must be answered in the negative because the contemnor does not have a burden to prove that he has the present ability to pay the purge condition; unlike the OAJC, however, I also do not believe that the burden to demonstrate such a present ability to pay belongs to the party petitioning for contempt—*i.e.*, the obligee or the county domestic relations office/section. While the positions of the parties relative to the purge condition may be insightful, the responsibility to ensure that it is legally valid lies with the court because, ultimately, courts, not parties, are the ones that have the power to enforce ***704** their orders. *See Commonwealth v. Bowden*, 576 Pa. 151, 838 A.2d 740, 760 (2003) ("Courts possess an inherent power to enforce their orders by way of the power of contempt.")

As the OAJC points out, contempt can be civil in nature, so as to coerce compliance, or criminal in nature, so as to punish and vindicate the court's authority. (*See* OAJC at 686-87 (citing *Barrett v. Barrett*, 470 Pa. 253, 368 A.2d 616, 619-20 (1977); and *Cnty. of Fulton v. Sec'y of Commonwealth*, --- Pa. ——, 292 A.3d 974, 1004 (2023)).) When a court chooses the civil form of contempt to enforce its orders and decides to impose a period of incarceration on the contemnor to coerce compliance, the court must set a purge condition to allow the contemnor to avoid jail. *See Knaus v. Knaus*, 387 Pa. 370, 127 A.2d 669, 674 (1956) (explaining courts must clearly set forth what contemnor must do to satisfy purge condition and determine that it is within contemnor's power to complete). This purge condition can, but need not, involve the payment of money. *See, e.g.*, *Muraco v. Pitulski*, 470 Pa. 269, 368 A.2d 624 (1977) (involving monetary purge condition); and *In re Martorano*, 464 Pa. 66, 346 A.2d 22 (1975) (involving non-monetary purge condition —*i.e.*, requirement that contemnor testify before grand jury). Regardless, in setting the purge condition, *the court* must be "convinced [b]eyond a reasonable doubt, from the totality of the evidence before it," that the purge condition is one that the contemnor has the ability to satisfy, be it the payment of money, the production of documents, or something else. *Barrett*, 368 A.2d at 621.

The court is free, of course, to seek the insight of the parties through an evidentiary proceeding. Indeed, as stated above, *Barrett* mandates that the court's purge condition be supported by "the totality of the evidence before it." *Id.* Additionally, as the Chief Justice points out, Pennsylvania Rule of Civil Procedure (Rule) 1910.25(b) provides a form order that a petitioning party is required to provide to the court when petitioning for civil contempt in a support action. That order, when issued by the court, requires an obligor to bring various documents to the contempt hearing, including recent pay stubs, payroll addresses, and "[a]ny other documentation

relevant to [the] case and the issue of contempt as stated in the petition." Pa.R.Civ.P. 1910.25(b). I agree with the Chief Justice that courts should utilize this rule, and other rules of civil procedure, to ensure that there is sufficient evidence in the record to establish that a contemnor has a present ability to satisfy a court-imposed purge condition. I disagree, however, with the Chief Justice's view that this rule, and the overall procedure for civil contempt hearings in the context of support matters, justifies an understanding that the contemnor has an initial burden of production. A contemnor that fails to bring the documentation required by the order proscribed in Rule 1910.25(b) to the contempt hearing does not fail to satisfy an initial burden of production but, rather, simply disobeys a court order. The court, based on that disobedience, would be permitted to use civil contempt to coerce the contemnor to produce such documents.

In my view, it is unnecessary, and improper, to assign to any party a burden of proof, production, and/or persuasion under *Barrett* when a trial court sets a purge condition to avoid incarceration. Placing an evidentiary burden on either the petitioning party or the respondent would ignore that it is the responsibility of the court to ensure that a contemnor is capable of complying with a purge condition; that burden rests solely on the court that is utilizing its discretionary power. To the extent any party wishes the court to reach a certain conclusion with respect to the purge condition, ***705** the party should place supporting evidence into the record. If the court finds the record supplied by the parties inadequate to establish a purge condition that complies with *Barrett*, it simply has two choices—(a) take incarceration off the table, or (b) compel the parties to present additional evidence to aid the court in satisfying *Barrett*.

For these reasons, I concur in the OAJC's result only.

All Citations

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Footnotes

1 23 Pa.C.S. § 4321.

2 *See id.* §§ 4341, 4345.

3 The county DRO is authorized by Pa.R.Civ.P. 1910.25(a) to file a petition for contempt. The DRO's counsel often acts as the "Title IV-D" attorney who is required to "aid in the enforcement of the duty of child support and child and spousal support and shall cooperate with the domestic relations section in the presentation of complaints or in any proceeding designed to obtain compliance with any order of the court." 23 Pa.C.S. § 4306(a). "Title IV-D" refers to Part D ("Child Support and Establishment of Paternity") of Subchapter IV of the Social Security section of the federal Public Health and Welfare Code. *See* 42 U.S.C. §§ 651-669b. Here, the Lebanon County DRO avers that it "is the petitioner in the vast majority of contempt petitions." DRO's Brief at 44.

4 Pa.R.Civ.P. 1910.25(a).

5 Pa.R.Civ.P. 1910.25(b), (f).

6 *Barrett v. Barrett*, 470 Pa. 253, 368 A.2d 616, 619 (1977) (citing *Phila. Marine Trade Ass'n v. Int'l Longshoremen's Ass'n*, 392 Pa. 500, 140 A.2d 814, 820-21 (1958)).

7 *Id.* at 619-20; *see also Cnty. of Fulton v. Sec'y of Commonwealth*, — Pa. ——, 292 A.3d 974, 1004 (2023) (stating that "the distinction depends upon whether the sanctions' dominant purpose is to punish for the violation of a court order [criminal contempt] or to coerce into compliance with the order [civil contempt]") (quoting *Barrett*, 368 A.2d at 619) (brackets in original; internal quotation marks omitted).

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8 *Barrett*, 368 A.2d at 619.

9 *See* Pa.R.Civ.P. 1910.25-5, 1910.25-7.

10 *Sinaiko v. Sinaiko*, 445 Pa.Super. 56, 664 A.2d 1005, 1009 (1995).

11 *See Cnty. of Fulton*, 292 A.3d at 1004 (citing *Waggle v. Woodland Hills Ass'n*, 213 A.3d 397, 403 (Pa. Cmwlth. 2019)) (stating that a finding of contempt requires proof that the party had notice of the order alleged to have been violated, that the violation was volitional, and that the party acted with wrongful intent).

12 *Sinaiko*, 664 A.2d at 1009 (emphasis in original) (quoting *Wetzel v. Suchanek*, 373 Pa.Super. 458, 541 A.2d 761, 762 (1988)).

13 *Id.*

14 The Rules afford various options for the conduct of the contempt proceeding, including use of hearing or conference officers. *See* Pa.R.Civ.P. 1910.25-1 to 1910.25-4. However, if "the hearing officer or conference officer determines that the failure to comply with the support order is willful and there is present ability to comply, the petition for contempt shall be heard by the court for consideration of incarceration and other appropriate sanctions." Pa.R.Civ.P. 1910.25-1(b).

15 23 Pa.C.S. § 4345(a).

16 *Id.* § 4345(b).

17 *Knaus v. Knaus*, 387 Pa. 370, 127 A.2d 669, 674 (1956).

18 *Barrett*, 368 A.2d at 620.

19 The issue granted by the Court is:

> Where a contemnor, after a finding of contempt, posits that he is unable to pay a purge, does the contemnor waive the issue if he fails to proffer affirmative proof of his financial circumstances?

Bredbenner v. Hall, 322 A.3d 1287, 1288 (Pa. 2024) (*per curiam*).

20 The DRO filed these petitions on October 17, 2016, August 17, 2017, January 10, 2018, April 25, 2018, August 15, 2018, January 11, 2019, and July 27, 2019.

21 Trial Ct. Order, 9/29/2022, at 2.

22 Trial Ct. Op., 1/26/2023, at 8.

23 *Bredbenner v. Hall*, 19 MDA 2023, 2023 WL 5237495 at *3, 304 A.3d 756 (Pa. Super. Aug. 15, 2023) (quoting Notes of Testimony, 11/29/2022, at 23-24). Hall served the entirety of the 100-day sentence. Hall's Brief at 5.

24 Technically, this case became moot when Hall completed his contempt sentence. "Although courts generally will not decide a moot case because the law requires the existence of an actual controversy, this Court has recognized two 'well-organized exceptions to the mootness doctrine.' We have reviewed moot matters, in our discretion, when the issue presented is one of great public importance or is one that is capable of repetition yet evading review." *Ass'n of Pa. State Coll. & Univ. Facs. v. Pa. Lab. Rels. Bd.*, 607 Pa. 461, 8 A.3d 300, 305 (2010) (cleaned up). Hall remains subject to support orders, and may face future contempt proceedings. Because the term of imprisonment is limited to six months by statute, it is unlikely that an appeal could

reach this Court before the sentence is completed. Therefore, the "capable of repetition yet evading review" exception to mootness is satisfied.

25 DRO's Brief at 21.

26 *Id.* at 22 (quoting *Barrett*, 368 A.2d at 621) (alteration in original, emphasis removed).

27 *Id.* at 25-26 (citing Pa.R.Civ.P. 1910.25(b)).

28 *Id.* at 41.

29 *Id.* at 48-49 ("[I]f there is going to be a rule that a Defendant can show up at contempt and expect the DRO to be required to prove the Defendant's ability to pay, it essentially takes contempt off the table for us. We are simply rarely or never going to be able to prove up [*sic*] an adequate purge amount *without the [D]efendant's cooperation*.") (emphasis in original).

30 Hall's Brief at 16 (quoting *Barrett*, 368 A.2d at 621) (emphasis in original).

31 *Id.* at 10.

32 The DRO responds that it prefers that courts not impose criminal contempt, because it does not want obligors in jail, where they cannot pay their support obligations; instead, the DRO prefers the threat of jail as a means to coerce payment via the purge conditions of civil contempt. *See* DRO's Reply Brief at 12-13.

33 The "standard of review when considering an appeal from an order holding a party in contempt of court is narrow: We will reverse only upon a showing of an abuse of discretion. The court abuses its discretion if it misapplies the law or exercises its discretion in a manner lacking reason." *Godfrey v. Godfrey*, 894 A.2d 776, 780 (Pa. Super. 2006).

34 *Barrett*, 368 A.2d at 618.

35 *Id.*

36 *Id.* at 619.

37 *Id.* at 620.

38 *Id.*

39 *Id.* at 621.

40 *Id.*

41 *Id.*

42 *Barrett*, 368 A.2d at 621.

43 *Id.*

44 *Id.*

45 *Id.*

46 *Sinaiko*, 664 A.2d at 1009.

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47 CareerLink is a service provided by the Pennsylvania Department of Human Services that provides information on employment and training opportunities. *See* PA CAREERLINK, www.pacareerlink.pa.gov/jponline (last visited July 23, 2025).

48 In her concurrence, the Chief Justice argues that the obligor has an initial burden to demonstrate an inability to pay, which can then by rebutted by the petitioning party. *See* Conc. Op. at 697-98 (Todd, CJ., concurring). For support, the Chief Justice cites to prior precedent in which the obligor testified to his finances and to forms that require an obligor to provide certain documentation. Regardless, placing an initial burden on the obligor is not consistent with *Barrett*'s requirement that the ability to pay must be demonstrated beyond a reasonable doubt and with record evidence. An example illustrates the point. Suppose that an obligor refuses to testify or provide evidence. That obligor would not have met the initial burden of production that the Chief Justice would assign to him. *See id.* at 697-98, 664 A.2d 1005, 1009. Nonetheless, absent other proof, the trial court would have no record evidence upon which it could base a finding of a present ability to pay beyond a reasonable doubt. It could not identify a monetary purge condition, and hence could not incarcerate the obligor to coerce payment.

The Chief Justice suggests that the procedural rules which include the form order summoning the obligor to bring certain proof to the contempt hearing demonstrate that there is an initial burden on the obligor to demonstrate his inability to pay. *See id.* at 701–02, 664 A.2d 1005, 1009. Forms aside, it remains true that, should the obligor choose not to produce that evidence, there would still be no record evidence upon which a monetary purge condition could be set. The requirement that there be an evidentiary record supporting the imposition of a monetary purge condition is not consistent with a burden being placed upon the obligor. Otherwise, a purge condition could be imposed solely because the obligor did not meet such an initial burden.

The Chief Justice is correct that the trial court may (provided proper notice, procedural safeguards, and the requisite level of proof) find the obligor in contempt for failing to comply with an order to bring required documentation and, if the obligor has the present ability to comply, set as the purge condition the provision of that documentation. *See id.* at 701–02, 664 A.2d 1005, 1009. Fair enough. Purge conditions need not be monetary. But this misses the point. Ability to pay on one hand and contempt for failure to bring documents on the other are not the same thing.

Justice Brobson suggests that neither party should bear the burden, but that, instead, "that burden rests solely on the court that is utilizing its discretionary power" to set a purge condition. Conc. Op. at 704 (Brobson, J., concurring). Justice Brobson concludes that, if the record is inadequate to support a purge condition that the contemnor has the present ability to pay, the court must "(a) take incarceration off the table, or (b) compel the parties to present additional evidence." *Id.* at 705, 664 A.2d 1005, 1009.

However, Justice Brobson acknowledges that the court sets the purge condition based upon "the totality of the evidence before it." *Id.* at 704, 664 A.2d 1005, 1009 (quoting *Barrett*, 368 A.2d at 621). That evidence must come from somewhere. In our system of justice, the court relies upon the parties to provide evidence, rather than investigating on its own. Of course, a trial court can enforce its orders for parties to produce documents, and can ask additional questions of witnesses, but it is still limited to weighing the evidence that the parties provide. The burden is not on the court to conduct an investigation or exert other efforts in order to obtain that evidence.

It is true that, if the record does not support the contemnor's ability to pay a purge condition, then the court cannot incarcerate the contemnor. But that does not place the burden of proof on the trial court. It simply states the law that the trial court must follow.

49 *Ault v. Unemployment Comp. Bd. of Rev.*, 398 Pa. 250, 157 A.2d 375, 378 (1960).

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1 The term "burden of proof" consists of two separate burdens: (1) "the burden of production or going forward," which is "the burden of *producing* satisfactory evidence of a particular fact in issue;" and (2) the "burden of persuasion," which entails "*persuading* the trier of fact that the fact alleged is indeed true." *Commonwealth v. Enimpah*, 62 A.3d 1028, 1032 (Pa. Super. 2013) (emphasis original) (citations omitted).

2 As referenced *infra*, such evidence of financial circumstances may be relevant to the trial court's initial determination of whether the party is in civil contempt for willfully violating the support order, *see* 23 Pa.C.S. § 4345(a) (setting forth the general rule that a person who willfully fails to comply with a support order may be adjudicated in contempt, which is punishable by either imprisonment not to exceed six months, a fine not to exceed $1,000, or probation not to exceed one year), and, if the party is found in contempt, the evidence is vital to the trial court's subsequent determination, relevant here, of whether the contemnor has the present ability to satisfy the condition set by the trial court to purge the contempt, *see id.* § 4345(b) (providing that an order committing a person to jail "shall specify the condition the fulfillment of which will result in the release of the obligor").

3 The Superior Court's published decisions have likewise attributed *Barrett's* "affirmative defense" language as applicable to the trial court's contempt determination — and not to the determination of whether a contemnor has the present ability to comply with the purge condition — as demonstrated by that court's consistent vacating of illegal purge conditions on grounds of insufficient evidence of the contemnor's present ability to comply therewith, and remanding for further factual development on that issue, rather than treating an alleged inability to comply with a purge condition as an affirmative defense which must be established by the contemnor. *See, e.g., Godfrey v. Godfrey*, 894 A.2d 776, 784 (Pa. Super. 2006); *Hyle v. Hyle*, 868 A.2d 601, 606 (Pa. Super. 2005); *Wetzel v. Suchanek*, 373 Pa.Super. 458, 541 A.2d 761, 764 (1988); *Travitzky v. Travitzky*, 369 Pa.Super. 65, 534 A.2d 1081, 1086 (1987); *Durant v. Durant*, 339 Pa.Super. 488, 489 A.2d 266, 268-69 (1985); *Commonwealth ex rel. Heimbrook v. Heimbrook*, 295 Pa.Super. 300, 441 A.2d 1242, 1244 (1982); *but see R.S. v. R.E.W.*, 2017 WL 657743, *13 (Pa. Super. 2017) (unpublished memorandum) (interpreting *Barrett* as placing the burden on the contemnor to demonstrate his inability to comply with a purge condition). Further, as the OAJC cogently notes, "[v]iewing the inability to pay as an affirmative defense is inconsistent with the outcome in *Barrett*," OAJC at 695, which vacated the illegal purge condition and remanded for further proceedings.

4 As the OAJC relied upon *Barrett's* use of the term "alleged contemnor" in the first sentence of the quoted passage, *see* OAJC at 694, I likewise find equal significance in *Barrett's* utilization of the term "contemnor," without the modifier "alleged," in the second sentence of the excerpt when discussing the later stage of the contempt proceeding, during which the trial court determines the contemnor's ability to pay the purge condition.

5 *Barrett* likewise acknowledged that the petitioning party also bears a burden in the determination of an appropriate purge condition. *See Barrett*, 368 A.2d at 621 n.3 ("Since a proceeding in civil contempt remains essentially civil, despite the quasi-criminal element of possible imprisonment, our rules of civil discovery are applicable and should be freely employed to aid the complaining party in attempting to prove the alleged contemnor's present ability beyond a reasonable doubt."). In my view, the petitioning party's burden in this regard is one of persuasion.

6 This Court adopted subsections (b) and (f) of Rule 1910.25 in 2012, in response to the high Court's decision in *Turner v. Rogers*, 564 U.S. 431, 131 S.Ct. 2507, 180 L.Ed.2d 452 (2011). Recognizing that child support contempt proceedings may threaten an erroneous deprivation of a contemnor's liberty interest, the high Court in *Turner* held that the Due Process Clause of the Fourteenth Amendment to the United States Constitution does not require the appointment of counsel in child support civil contempt proceedings where the state provides alternative procedural safeguards, such as adequate notice of the importance of the ability-to-pay determination, a fair opportunity to present and dispute relevant information, and an express finding

by the court that the obligor has an ability to pay. *Id.* at 2519. While Rule 1910.25 certainly guarantees these procedural safeguards, it likewise imposes upon an obligor an express duty to present at the contempt proceeding the specified financial evidence.

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Civil Procedure (Refs & Annos)
Actions for Support (Refs & Annos)

Pa.R.C.P. 1910.29

Rule 1910.29. Evidence in Support Matters

Effective: January 1, 2026
Currentness

(a) Record Hearing. Except as provided in this rule, the court shall follow the Pennsylvania Rules of Evidence in a record hearing conducted in an action for support.

(b) Documentary Evidence.

(1) The court shall admit into evidence statements contained in a verified petition, affidavit, document, or a document incorporated by reference that would not be excluded under the hearsay rule if the declarant testified in person, when:

(i) the proponent has provided the other party written notice at least 20 days prior to the hearing of the intention to offer the document into evidence, together with the document to be offered;

(ii) the other party does not object to the document's admission into evidence; and

(iii) the proponent offers the evidence under oath.

(2) A party objecting pursuant to subdivision (b)(1)(ii) shall serve the proponent with the written objection within 10 days of the date of service of the notice of intention to offer the evidence.

(3) If a party properly objects, the Pennsylvania Rules of Evidence shall apply to determine the document's admissibility.

(c) Medical Evidence.

(1) *Definition.* For the purpose of this rule, an "advanced practice provider" shall mean a licensed physician, physician's assistant, nurse practitioner, psychiatrist, or psychologist.

(2) *Conference.*

(i) A conference officer may consider a party's medical condition if:

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(A) an advanced practice provider has determined the medical condition affects a party's ability to earn income;

(B) the party's advanced practice provider has completed an Advanced Practice Provider's Statement Form, which shall substantially be the same as subdivision (d); and

(C) the party submits the completed form at the conference.

(ii) If a party is receiving Social Security disability or Workers' Compensation benefits, the party shall submit the disability or Workers' Compensation determination in lieu of the Advanced Practice Provider's Form.

(3) *Record Hearing.*

(i) Prior to the record hearing, if a party intends to offer a completed Advanced Practice Provider's Statement Form into evidence, the party shall serve the completed form on the other party no later than 20 days after the conference.

(ii) The other party may file and serve a written objection to the completed form's introduction within 10 days of the date of service.

(iii) If a party properly objects, the Pennsylvania Rules of Evidence shall apply to determine the document's admissibility. If the advanced practice provider is required to testify, the trier-of-fact shall have the discretion to allocate the cost of the advanced practice provider's testimony between the parties.

(iv) If there is no objection, the trier-of-fact may admit the completed form into evidence without the advanced practice provider's testimony.

(v) If the record hearing is held sooner than 30 days after the conference, the trier-of-fact may provide appropriate relief, including granting a continuance to the objecting party.

(d) Advanced Practice Provider's Statement Form. The Advanced Practice Provider's Statement Form shall be substantially in the following form:

IN THE COURT OF COMMON PLEAS OF _____ COUNTY

Member Name:

Docket Number:

PACSES Case Number:

Other State ID Number:

TO BE COMPLETED BY AN ADVANCED PRACTICE PROVIDER

Provider's name: .....

Provider's license number:

Provider's title (MD, DO, etc.) .....

Nature of patient's sickness or injury: .....

Date of first treatment: .....

Date of most recent treatment: .....

Frequency of treatments: .....

Medications:

Due to the patient's medical condition, the patient can engage in the following types of work-related activity (mark all that apply):

___ Very heavy activity involving lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more, and the ability to perform heavy, medium, light, and sedentary activity.

___ Heavy activity involving lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds, and the ability to perform medium, light, and sedentary activity.

___ Medium activity involving lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pound do sedentary, [1] and the ability to perform light and sedentary activity.

___ Light activity involving lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds, a good deal of walking or standing, or sitting with some pushing and pulling of arm or leg controls.

___ Sedentary activity involving lifting no more than 10 pounds at a time, occasionally lifting or carrying articles like docket files, ledgers, and small tools, sitting, and occasionally walking and standing.

___ None. Based on my assessment, I found that the patient's condition is such that he or she cannot engage in any type of work-related activity.

Please mark whether the patient's condition is ___ temporary or ___ permanent.

If the patient cannot engage in any type of work-related activity and the patient's condition is temporary, when should the patient be able to engage in any type of work-related activity _____

Will there be limitations? .....

Additional Remarks: .....

Signature of Treating Provider: _____ Date: .....

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Provider's address: .....

Provider's telephone number: .....

I authorize my provider to release the above information to the _____ County Domestic Relations Section.

Patient's signature: _____ Date: .....

Comment: This rule is based on 23 Pa.C.S. § 4342(f). The rule is not intended to affect 23 Pa.C.S. § 4342(g) - (h), relating to the admissibility of payment records, billing statements, and bills for genetic testing and prenatal and postnatal health care of the mother and child. Those documents are admissible into evidence without advance notice for the limited purposes set forth in the statute.

Credits

Adopted May 31, 2000, effective July 1, 2000. Amended Nov. 30, 2012, effective Dec. 30, 2012; Aug. 11, 2025, effective Jan. 1, 2026.

Editors' Notes

HISTORICAL COMMENTARY

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

EXPLANATORY COMMENT--2000

23 Pa.C.S. § 4342(f) creates a hearsay exception in support actions to permit a verified petition, affidavit or document and a document incorporated by reference in any of them to be admitted into evidence if it would not otherwise be excluded as hearsay if given in person and it is admitted under oath by a party or witness to the support action. Rule 1910.29 requires that notice of the documents to be admitted be given to the other party prior to the hearing. It also sets forth the procedures for raising an objection to the admission of those documents.

If the requisite 20-day notice is given and there is no objection, the document must be admitted into evidence under this rule and 23 Pa.C.S. § 4342(f). In the event an objection is timely made, the rules of evidence apply to determine the document's ultimate admissibility.

Rule 1910.29 is not intended to affect 23 Pa.C.S. § 4342(g) and (h) relating to admissibility of payment records, billing statements and bills for genetic testing and prenatal and postnatal health care of the mother and child. Those documents are admissible into evidence without advance notice for the limited purposes which are expressly set forth in those statutory provisions.

Footnotes

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1 So in original.

Rules Civ. Proc., Rule 1910.29, 42 Pa.C.S.A., PA ST RCP Rule 1910.29
Current with amendments received through September 15, 2026. Some rules may be more current; see credits for details.

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