

# PITTSBURGH LEGAL JOURNAL

## OPINIONS

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*Permanent legal custodianship*

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*Uniform Child Custody Jurisdiction and Enforcement Act*

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*Breach of contract, negligent misrepresentation, tortious interference with contractual relations, abuse of process, and wrongful use of civil proceedings*

*In December 2022, Plaintiffs Rice Drilling B, LLC, a Delaware LLC, and EQT Production Company, a Pennsylvania corporation filed suit against Douglas A. Scott and Linda Marie Scott (the Scotts) alleging breach of contract, negligent misrepresentation, tortious interference with contractual relations, abuse of process, and wrongful use of civil proceedings as well as requesting injunctive relief. Plaintiffs filed an Amended Complaint in February 2023. Defendants ultimately filed and this Court heard argument on Amended Preliminary Objections Raising Questions of Venue, and Plaintiffs filed Preliminary Objections in response, also heard by this Court. On July 13, 2023, the Court sustained Defendants' preliminary objections asserting improper venue, overruled three of Plaintiffs' four preliminary objections, and ordered that the case be transferred to the proper venue of the Court of Common Pleas of Greene County. Plaintiffs appeal this July 13, 2023 Order.*

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# PLJ

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## OPINIONS

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**IN THE INTEREST OF: K.C. APPEAL OF: G.C., FATHER**

Permanent legal custodianship

Father appeals the juvenile court's decision to change to goal of the dependency proceedings from reunification to permanent legal custodianship.

Case No.: CP-02-DP-1169-2019. 487 WDA 2023. In the Court of Common Pleas of Allegheny County, Pennsylvania. Family Division. Bush, J. June 27, 2023

**OPINION**

On March 28, 2023, after a hearing held in the above captioned matter this Court issued an order changing the permanency goal for child, K.C. (DOB: 10/21/2017) ("Child"), from reunification to permanent legal custodianship ("PLC") pursuant to 42 Pa.C.S. § 6351(f), (f.1), and (g).<sup>1</sup> Father filed a timely notice of appeal on April 26, 2023 challenging the goal change.<sup>2</sup> For the reasons set forth below, the Court's order should be affirmed.

**PROCEDURAL HISTORY**

On November 25, 2019, Allegheny County Office of Children Youth & Families ("CYF") sought an emergency custody authorization ("ECA") seeking to remove Child from Parents' care following her diagnosis of failure to thrive and recurring hospitalizations.<sup>3</sup> The Court placed Child in the foster home of R.H. and L.H. ("Foster Parents") following her discharge from Children's Hospital on November 29, 2019, and adjudicated Child dependent on January 15, 2020.<sup>4</sup> On January 26, 2022, CYF filed a Petition for Involuntary Termination of Parental Rights ("TPR") as to both Mother and Father. Following three days of testimony, the Court denied CYF's TPR petition on January 26, 2023.<sup>5</sup> No appeal was filed.

On March 3, 2023, CYF Filed a Motion for Goal Change to SPLC.<sup>6</sup> On March 28, 2023, the Court listed the case to consider CYF's Motion for Goal Change and ongoing visitation for Parents. Given that the Court had just concluded the TPR proceeding, little additional testimony was offered regarding the motion.<sup>7</sup> All parties agreed that the record consisted of the entirety of Child's dependency matter as well as the entire record from Child's TPR hearing.<sup>8</sup> Based on the Court's review of the record, the Court concluded that it served Child's best interests to change her permanency goal to PLC.<sup>9</sup> The Court maintained Child's visitation schedule and directed CYF to convene a meeting to provide Parents and Foster Parents the opportunity to develop an agreed upon visitation schedule prior to the entry of the PLC order and closure of Child's case.<sup>10</sup>

**FACTUAL BACKGROUND**

Child came to the Court's attention in November of 2019 following CYF's request for an ECA to remove her from Parents' care.<sup>11</sup> Child was placed with Foster Parents on November 29, 2019.<sup>12</sup> Child has remained in this foster home since her initial placement for a total of 40 months at the time of the goal change hearing.<sup>13</sup>

Child was adjudicated dependent on January 15, 2020.<sup>14</sup> At that time, the conditions requiring placement related to Parents' lack of stable housing, as well as Parents' inability to successfully care for Child and ensure she was eating properly and gaining weight while also caring for their other children.<sup>15</sup> The Court ordered Parents to obtain stable housing, participate in coached visitation and in-home services, and participate in Child's early intervention services.<sup>16</sup> At that time, the Court ordered that Parents' visits be supervised.<sup>17</sup> However, the Court permitted visits to progress to unsupervised upon agreement of the parties.<sup>18</sup> Further, the Court granted CYF permission to return Child to Parents prior to the first review hearing if all parties agreed.<sup>19</sup>

Over the first 15 months of Child's placement, Parents initially had a slow start with services but eventually obtained stable housing and began to make meaningful progress toward reunification.<sup>20</sup> By March of 2021, Parents had participated in coached visitation and attended multiple sessions with a feeding specialist.<sup>21</sup> Father demonstrated progress in implementing the strategies for feeding Child, though the Court remained unsure of Mother's ability.<sup>22</sup> Given Parents' progress, the Court ordered a transition to unsupervised visitation and found that reunification remained a viable permanency goal.<sup>23</sup>

Unfortunately, after approximately two months of unsupervised visits, CYF developed concerns regarding Parents' supervision of all the children in their care, resulting in the removal and placement of three more of Parents' children.<sup>24</sup> At the following permanency review hearing on July 14, 2021, the Court described the concerns as follows:

Both Parents being asleep into the morning hours leaving the [c]hildren awake, hungry, and unsupervised; leaving the youngest children alone for extended periods without checking on them; failures to supervise [Child] closely enough to prevent things such as cutting chunks of her own hair with scissors; failures to intervene/attend to other safety issues such as jumping off the furniture.<sup>25</sup>

At that time, Child had been in placement for approximately 19 months. Given this length of time and the new supervision concerns, CYF indicated its intention to initiate termination proceedings.<sup>26</sup>

To address the new supervision concerns and continue providing services to help Parents work toward reunification, the Court ordered Parents to participate in intensive family coaching ("IFC") or therapeutic supervised visitation through TRAC.<sup>27</sup> Implementation of these services was delayed, in part, due to Parents' failure to follow up on the programs' outreach.<sup>28</sup> Without these services in place, Parents made little progress toward reunification with Child.<sup>29</sup>

In March of 2022, with termination proceedings already pending, IFC services began working with the family.<sup>30</sup> By August of that year, Father mastered the skills in Phase I of the program and Mother showed progress.<sup>31</sup> The Court recognized Parents' progress by granting them up to four hours of unsupervised visitation with all children, provided that it occurred in maternal grandparents' home. Over the following months the Court continued to increase Parents' unsupervised time with Child in accordance with their progress.<sup>32</sup> By December of 2022, several months after the termination hearing had already begun, the Court ordered all visitation to be unsupervised.<sup>33</sup>

While Parents slowly made progress, Child made substantial progress in Foster Parents' care. When Child was first placed, she required one-on-one supervision and demonstrated many unsafe behaviors.<sup>34</sup> Though she has made much progress as she has grown, Child continues to require constant supervision to prevent accidents or injury.<sup>35</sup> Foster Parents have helped Child learn to

better regulate her emotions.<sup>36</sup> Child quickly overcame a speech delay and was discharged from services after only a few sessions.<sup>37</sup> Child has consistently gained weight in Foster Parents' care.<sup>38</sup> By March of 2021, Child was successfully discharged from all specialized services other than weight checks and the feeding specialist who was re-engaged to conduct sessions with Parents.<sup>39</sup> While she has made progress and has maintained a healthy weight, Child remains very difficult to feed and continues to require constant supervision.<sup>40</sup>

Over the life of the case, Dr. Terry O'Hara has evaluated Child, Parents, Foster Parents, and Child's siblings, both individually and together, numerous times. Over these evaluations he consistently observed Child's strong positive bond with Foster Parents and their children as well as Foster Parents' excellent parenting skills.<sup>41</sup> Dr. O'Hara also consistently recognized Child's strong bond with Parents and the benefit she derives from that bond.<sup>42</sup> Based on his evaluations, Dr. O'Hara initially believed reunification to be feasible.<sup>43</sup> By June of 2022, however, his recommendation changed based on the ongoing supervision concerns and length of time Child had been in care.<sup>44</sup> Overall, Dr. O'Hara observed that Father is generally positive and capable of parenting Child, though Mother generally lacks the capacity to be a full co-parent with Father.<sup>45</sup> While Dr. O'Hara noted positive parenting skills from both Parents, he continued to have concerns about Mother's ability to care for Child and Father's ability to fully compensate for the lack of an equally capable co-parent.<sup>46</sup> It was against this background that the Court determined to change Child's permanency goal from reunification to PLC.

### ISSUES

Father raises four issues on appeal:

1. Whether the trial court erred in changing the permanency goal to Permanent Legal Custodianship ("PLC");
2. Whether the trial court erred by not allowing Father to move toward reunification prior to the date of the hearing by failing to increase visits with the minor child, despite Father having consistently shown progress and met his goals set by Children Youth & Families;
3. Whether the trial court erred in entering such an order changing the goal so soon after it made findings supporting reunification in the termination proceedings;
4. Whether the trial court erred in changing the permanency goal without any guarantee that a visitation schedule would be able to be worked out between the parties.<sup>47</sup>

### STANDARD

The Juvenile Act requires the trial court to consider the appropriateness and feasibility of a child's placement goal at each permanency review hearing.<sup>48</sup> To reach a decision "the trial court must focus on the child and determine the goal in accordance with the child's best interests, not those of his or her parents."<sup>49</sup> The Pennsylvania Superior Court has explicitly stated that the statute

does not require [OCYF] to provide a compelling reason that reunification is not best suited to the child's safety, protection and physical, mental and moral welfare. Upon filing an SPLC petition, [OCYF] is required merely to prove that reunification or adoption is not best suited to the child's safety, protection and physical, mental and moral welfare.<sup>50</sup>

The Pennsylvania Superior Court reviews trial courts' decisions regarding goal changes for abuse of discretion.<sup>51</sup>

### DISCUSSION

#### **A. The Court Properly Decided that Changing Child's Permanency Goal from Reunification to Permanent Legal Custodianship Served the Child's Best Interests.**

Father challenges the Court's decision to change Child's permanency goal from reunification to PLC. By changing Child's permanency goal, the Court necessarily concluded that PLC served Child's best interests. The record fully supports the Court's conclusion.

At the time of the goal change hearing in March 2023, Child had been in placement for 40 months, approximately half of her life. During this time, Child has made great progress in her foster home, and her current and continued well-being depend on maintaining that security and stability while also maintaining the beneficial relationship she has with both Father and Mother. In Foster Parents' care, Child has been able to learn to better regulate her emotions, consistently gain weight, improve her feeding skills, and has successfully completed the specialized services required at the time she entered placement. Foster Parents' home has become the source of Child's stability with respect to all of her progress.

The Court recognizes that Father made substantial progress on his family service plan goals, including completing IFC and attending mental health treatment regularly, and had progressed to unsupervised visits with Child. However, the Court continues to have concerns regarding Father's ability to adequately care for and supervise Child full time while also providing care for his other children. While Father may have the capacity to parent Child independently of his other children, that is not the reality of Father's present situation. Indeed, during the termination hearing Dr. O'Hara commented that he did not have many concerns about Father's parenting ability other than his capacity to be distracted within a household where he is managing many children.<sup>52</sup>

Unfortunately, Father lacks an equal co-parent in Mother. The record reflects Mother's lack of engagement and general inability to manage the care of several children at a time. Mother's ability to parent is, regrettably, further compromised by her recent cancer diagnosis.<sup>53</sup> Though beyond her control, Mother's own circumstances necessarily impact Father's ability to provide appropriate care. Due to Child's ongoing needs regarding feeding and supervision, as well as her interest in stability and continuity, it does not serve her best interests to return full-time to Parents' care.

Child has maintained strong, beneficial, and important relationships with Parents, and her visits with Parents and siblings are a part of her routine. It certainly serves Child's interests to maintain these relationships. However, the Court's determination that Child should remain primarily cared for by Foster Parents reflects reality. While Parents have made recent progress with the implementation of services, there is no evidence that Parents, together, are capable of sustaining this progress. By changing Child's goal, the Court appropriately weighed her need for permanency and stability against the value and importance of maintaining her relationship with Parents.<sup>54</sup> The decision allows Child to maintain her beneficial relationships and does not preclude the

possibility for Child's time with Parents to increase in the future.

Further, the Court's decision in this matter comports with the Pennsylvania Superior Court's treatment of similar situations. For example, in *In Re B.S.*, the Superior Court reversed the trial court's denial of a goal change to PLC.<sup>55</sup> In *B.S.*, the child's mother complied with her service plan goals and was making progress toward improving her parenting skills, but her child had been in placement for a lengthy period. The Superior Court explained that "the trial court's primary focus on Mother's parenting skills and her efforts towards building a relationship with B.S. does not address adequately whether SPLC is in B.S.'s best interests."<sup>56</sup>

Similarly, in *In the Interest of K.C.*<sup>57</sup> the Superior Court affirmed the trial court's decision to continue the child's placement in foster care and change her permanency goal to independent living despite the fact that Father had fully complied with his service plan goals and had remedied the problems that led to the child's placement. The Superior Court emphasized that "[w]hen a child is adjudicated dependent, the child's proper placement turns on what is in the child's best interest, not on what the parent wants or which goals the parent has achieved."<sup>58</sup>

Here, as in both of these other cases, the Court considered Father's compliance and progress on his service plan goals, but weighed that progress in the context of all the evidence regarding Child's best interests. This constitutes exactly the sort of comprehensive consideration that the law requires. Accordingly, the Court's decision to change Child's permanency goal to PLC should be upheld.

#### **B. The Court Properly Matched Visitation Provisions to Parents' Progress.**

Father complains that the Court failed to increase Child's visitation when warranted by his progress, thereby hindering reunification. The record does not support Father's claim. Rather, the record demonstrates that from the outset the Court consistently approved additional and unsupervised visitation for Parents when they demonstrated progress that would permit it. Similarly, the Court limited Parents' visitation when they exhibited deficiencies.

Over the life of the case, the Court has provided for Parents' visitation as follows:

- December 2019: three supervised visits per week.
- January 2020: three supervised visits per week. Permission to increase in length and progress to unsupervised visits.
- March 2021: Parents to begin with two unsupervised visits with Child and increase to four unsupervised visits per CYF transition plan. Permission to increase visitation to overnights upon agreement of all parties.
- May 2021: two supervised visits per week. Permission to increase frequency of visits if appropriate.
- August 2022: two supervised visits per week plus up to four hours of unsupervised time at maternal grandparents' home.
- November 2022: once weekly unsupervised visits.
- December 2022: twice weekly unsupervised visits.

This timeline clearly demonstrates that the Court recognized both Parents' progress and their regression. Indeed, even while considering termination of parental rights, the Court increased Parents' visitation in December 2022 based on their progress with IFC services. The Court properly exercised its discretion in adjusting Parents' visitation as circumstances changed over time.

#### **C. The Court Properly Changed Child's Permanency Goal Shortly After Denying CYF's TPR Petition.**

Father alleges that the Court erred by changing Child's permanency goal "so soon after it made findings supporting reunification in the termination proceedings." Father's claim is misguided for two reasons. First, denying termination of parental rights does not amount to a decision that reunification best serves Child's interests. Rather it simply recognizes that CYF did not meet its burden of proof, as well-settled case law makes clear.<sup>59</sup>

Second, the Juvenile Act does not impose any time restrictions on courts as to when they may next consider a goal change following the denial of a TPR petition. Indeed, the opposite is true. The law required the Court to consider changing Child's permanency goal at the next review hearing. As a matter of course, the Juvenile Act mandates that the trial court consider the appropriateness of the permanency goal at each permanency review.<sup>60</sup> When parents are actively pursuing their service plan goals and making progress, trial courts frequently and appropriately maintain reunification as the goal at the early permanency reviews.

The law, however, recognizes that children cannot wait indefinitely while their parents work to fulfill their goals. Consequently, at the 15-month point, the law requires CYF to initiate termination of parental rights proceedings as the preferred path to achieve permanency, unless an enumerated exception applies.<sup>61</sup> Here, CYF did pursue termination of parental rights, though the petition was ultimately denied. Following that denial, CYF must continue permanency planning for Child and did so in petitioning for a goal change. The timing of the Court's decision in this matter comported with the provisions of the Juvenile Act and was the appropriate time to focus on and weigh heavily Child's need to achieve permanency.

#### **D. Consideration of Child's Final Visitation Schedule is Premature.**

In his fourth error complained of, Father asserts the Court erred by changing Child's permanency goal without guaranteeing that the parties could work out a visitation schedule. Father's claim merits no relief. The Court properly chose to give the parties an opportunity to develop and agree upon a visitation schedule. However, if they are unable to agree on a schedule, the Court is prepared to and anticipates imposing a visitation schedule that serves Child's best interests as the Court perceives them at the time it enters the PLC order. Since Child's dependency case remains open and the PLC order has not yet been entered, the time to impose a visitation schedule has not arrived.

### **CONCLUSION**

Based on the factors set out in Section 6351(f) and the above facts, the Court determined that permanent legal custodianship was the most appropriate permanency goal for Child. For the reasons set forth in this Opinion, the decision of this Court should be affirmed.

BY THE COURT:  
/s/The Hon. Eleanor L. Bush



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<sup>1</sup> The Court's Order was docketed on March 31, 2023.

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<sup>2</sup> Mother, M.G-T., did not challenge Child's goal change.

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<sup>3</sup> Shelter Care Order dated December 2, 2019; see also Tr. January 13, 2023 at 78-81.

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<sup>4</sup> Tr. July 14, 2022 at 25:13-16; See Order of Adjudication and Disposition dated January 15, 2020.

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<sup>5</sup> The termination hearing was conducted over three days beginning in July of 2022 and finally concluding in January 2023. The hearing was delayed due to Mother's unavailability as a result of her recent health problems as well as the Court's pre-existing schedule when attempting to find dates that worked for all parties.

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<sup>6</sup> "SPLC": Subsidized Permanent Legal Custodianship.

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<sup>7</sup> The Court also accepted a summary by Father's counsel of his proposed testimony regarding regular attendance at Child's medical appointments since the last review hearing in February.

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<sup>8</sup> During the three day TPR hearing, the Court heard testimony from the following witnesses: Dr. Kelsey Schweiberger, Child's pediatrician; R.H., Foster Mother; Juliana Means, Bethany Christian Services Foster Care Case Manager; Bethany Tintzman, Wesley Family Services Outpatient Therapist; Dr. Terry O'Hara, licensed psychologist; Patsy McMellon, Children's Institute Feeding Specialist; Amanda Wilbur, Bethany Christian Services Foster Care Case Manager and Visit Supervisor; Arianna Ordway, CYF Caseworker ; Kaitlin Joyce, CYF Casework Supervisor; John Jarzynka, Southwestern Human Services Outpatient Therapist; and Father.

The Court admitted the following exhibits: Joint Exhibit 1: Stipulations; CYF Exhibit 1: Dr. O'Hara Report dated 5-18-20; CYF Exhibit 2 – Dr. O'Hara Report dated 1-12-21; CYF Exhibit 3: Dr. O'Hara Report dated 6-15-21; CYF Exhibit 4: Dr. O'Hara Report dated 6-16-22; CYF Exhibit 5: Dr. Schweiberger Report; CYF Exhibit 6: Children's Institute Feeding Instructions; CYF Exhibit 7: Visitation Breakdown; CYF Exhibit 8: Bethany Christian Services Visit Notes; CYF Exhibit 9: Combined Court Orders; CYF Exhibit 10: Family Service Plans; and Father's Exhibit A: Homebuilders Report. (These have all been entered on Child's dependency docket.)

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<sup>9</sup> See Status Review Order dated March 28, 2023.

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<sup>10</sup> Id.

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<sup>11</sup> See Order for Emergency Protective Custody dated November 25, 2019.

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<sup>12</sup> Tr. July 14, 2022 at 25:9-14.

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<sup>13</sup> Id.

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<sup>14</sup> See Order of Adjudication and Disposition dated January 15, 2020.

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<sup>15</sup> Id.; Mother and Father are the natural parents of three children together. Independently, Mother has one other child and Father has four, two of whom are in his care.

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<sup>16</sup> See Order of Adjudication and Disposition dated January 15, 2020.

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<sup>17</sup> Id.

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<sup>18</sup> Id.

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<sup>19</sup> Id.

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<sup>20</sup> See Permanency Review Order dated March 2, 2021; Tr. January 13, 2023 at 191:20-22.

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<sup>21</sup> See Permanency Review Order dated March 2, 2021.

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<sup>22</sup> Id.

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<sup>23</sup> Id.

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<sup>24</sup> See Permanency Review Order dated July 14, 2021. Removed from their care were Mother's eldest daughter, as well as Parents' two youngest children.

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<sup>25</sup> Id.

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<sup>26</sup> Id.

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<sup>27</sup> Three Rivers Adoption Council ("TRAC") Services for Families is a local provider of family-focused and trauma-focused services for children, adults, and families involved in dependency matters. TRAC About Page, <http://tracpgh.com/about-2/> (last visited June 26, 2023); See Permanency Review Orders dated July 14, 2021 and November 4, 2021.<sup>28</sup> See Permanency Review Order dated March 2, 2021.

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<sup>28</sup> See Permanency Review Order dated November 4, 2021.

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<sup>29</sup> Id.

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<sup>30</sup> See Permanency Review Order dated August 3, 2022.

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<sup>31</sup> Id.

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<sup>32</sup> Id.

<sup>33</sup>See Status Review Order dated December 6, 2022.

<sup>34</sup>Tr. July 14, 2022 at 26-28.

<sup>35</sup>Id.

<sup>36</sup>Tr. July 14, 2022 at 26-27.

<sup>37</sup>Id. at 31-32.

<sup>38</sup>Tr. July 14, 2022 at 29-30; See generally Permanency Review Orders.

<sup>39</sup>See Permanency Review Order dated March 2, 2021.

<sup>40</sup>Tr. July 14, 2022 at 39-47.

<sup>41</sup>See generally CYF Exhibits 1-4: Dr. O'Hara Reports; See also Permanency Review Order dated March 2, 2021.

<sup>42</sup>Id. at 156-157.

<sup>43</sup>See Permanency Review Order dated March 2, 2021.

<sup>44</sup>See CYF Exhibit 4: Dr. O'Hara Report dated June 16, 2022.

<sup>45</sup>Id.

<sup>46</sup>Id.

<sup>47</sup>See Father's Concise Statement of Errors Complained of on Appeal.

<sup>48</sup>42 Pa. C.S. §6351(f).

<sup>49</sup>In re A.K., 906 A.2d 596, 599 (Pa. Super. 2006) (quoting In re C.V., 882 A.2d 481, 484 (Pa. Super. 2005)).

<sup>50</sup>In re B.S., 861 A.2d 974, 977 (Pa. Super. 2004), emphasis in original.

<sup>51</sup>Id. (citing In re A.P., 728 A.2d 375, 378 (Pa. Super. 1999)).

<sup>52</sup>Tr. December 2, 2022 at 36-37.

<sup>53</sup>Tr. January 13, 2023 at 68.

<sup>54</sup>Tr. March 28, 2023 at 14: 10-17.

<sup>55</sup>In re B.S., 861 A.2d 974 (Pa. Super. 2004).

<sup>56</sup>Id. at 978.

<sup>57</sup>In the Interest of K.C., 903 A.2d 12 (Pa. Super. 2006).

<sup>58</sup>Id. at 14-15, relying on In re Sweeney, 574 A.2d 690, 691 (Pa. Super. 1990).

<sup>59</sup>“Even if a judgment against termination was made on the merits, however, the facts which led to such determination could well change and the judgment would not be res judicata with respect to another attempt to terminate parental rights. Consequently, [the child welfare agency] could be acting well within its discretion in maintaining as a goal adoption, notwithstanding temporary lack of success with that goal in Orphans' Court.” Conklin v. Department of Public Welfare, 522 A.2d 1207, 1211 n.6 (Pa. Commw. Ct. 1987) (emphasis in original).

<sup>60</sup>42 Pa. C.S. § 6351(f)(4).

<sup>61</sup>42 Pa. C.S. §6351(f)(9).

## **JERAMY THOMAS CRISSMAN, Defendant/Appellant, v. CHLOE LYNN CRISSMAN, and OBO, I.C., J.C., AX.C., and AF.C., minor children, Plaintiff/Appellee**

Uniform Child Custody Jurisdiction and Enforcement Act

Father appeals the entry of a final Protection From Abuse order, which Mother sought on behalf of herself and the parties' children. The family court also concluded that it had jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Case No.: FD-23-001429-007. Superior Court docket no. 1062 WDA 2023. In the Court of Common Pleas of Allegheny County, Pennsylvania. Family Division. Henry-Taylor, J. November 7, 2023.

### **OPINION**

Jeramy Crissman (“Father”) appeals from a Final Protection from Abuse Order (“PFA”) entered on August 8, 2023 in favor of Chloe Crissman (“Mother”) and on behalf of the parties' four (4) minor children –I.C. J.C., Ax. C., and Af. C. (collectively, the “Children”). The Final PFA was granted for a period of one and a half (1 ½) years. The August 8, 2023 Order of Court provided, among other things, that the parties would continue to share legal custody of the Children. Further, Mother would have primary physical custody subject to Father's supervised partial custody, which is to be exercised in a public area within the Commonwealth of Pennsylvania.

### FACTUAL BACKGROUND

The parties are a married couple originally from Western Pennsylvania who had been living together for four (4) years in Carteret County, North Carolina.<sup>1</sup> While in North Carolina, Mother was the family's caretaker<sup>2</sup> and Father worked at Crystal Coast Country Club doing lawn care.<sup>3</sup> The oldest child, I.C. (age 7) was homeschooled as Father did not want her to attend public school.<sup>4</sup> J.C. (age 5) was not yet enrolled in school at the time. The youngest two (2) children (Ax. C., age 4, and A.C., age 1) are not of school age.

In the last three (3) years, Mother noticed that Father's aggressive behavior started to increase.<sup>5</sup> Additionally, Father had become "obsessed" with guns since the COVID-19 pandemic.<sup>6</sup> Mother believed Father had joined a militia group in 2021 as Father invited a group she believed to be in the militia to the Crissmans' home, while Mother and the Children were present, for training and exercise.<sup>7</sup> These group members brought guns with them.<sup>8</sup> I.C. was taken to one of these group events outside of the home, where the participants were all wearing camouflage.<sup>9</sup> When Mother inquired about the group, Father responded that he could not tell her everything because he "needed to keep [her] safe."<sup>10</sup>

At some point in 2021, Father bought a 3-D printer which he used to print firearms in addition to the ones he already owned. In 2022, Father started researching "The Anarchist Cookbook"<sup>11</sup> and shortly after started creating explosive-tip arrows in the home backyard. Father took videos of the test runs on Mother's phone.<sup>12</sup>

Although Father claimed that all his firearms are locked in a closet<sup>13</sup> and were intended for safety, evidence at the hearing showed otherwise. In February 2023, Ax. C. picked up a loaded pistol from the kitchen counter, which had been left there by Father despite Mother requesting that the pistol be put away.<sup>14</sup> Also in February 2023, a rodent was caught in a trap in the house and Mother asked Father to remove it from the home. After some back and forth, Father got his hunting rifle and the trap, walked out the back door, and started shooting at the rodent in the cage. During this incident, I.C. woke up screaming.<sup>15</sup>

On May 19, 2023, Mother left North Carolina with the parties' four (4) young children to get some distance while Mother and Father attempted to work out their marital problems. Since the date Mother and Children left North Carolina, Father visited the children in Pittsburgh at least three (3) times.<sup>16</sup> There were text exchanges between the parties indicating their intent to sell the marital home in North Carolina and start anew in Pennsylvania.<sup>17</sup> After an unsupervised visit in Pennsylvania on June 20, 2023, where Children spent the day with Father, Mother found shell casings inside Ax.C.'s car seat but did not raise this issue to Father because she "knew it would ensue an argument."<sup>18</sup> Mother also saw Father's green backpack, which he uses to store his gun, in the car where the Children had been.<sup>19</sup>

On July 1, 2023, Mother returned to North Carolina to retrieve some personal belongings while Father was in Pittsburgh visiting with the Children. Upon her arrival to the Crissmans' North Carolina home, Mother found the dog alone in the household with dog urine and dog feces everywhere, the Children's room "destroyed," a pile of guns in the master bedroom, maggots on the kitchen countertops, rotten food with insects, rat and fly traps, and a pistol on the kitchen countertop.<sup>20</sup> She also found a letter from the Department of Motor Vehicles saying that Father's license was to be revoked due to speeding and reckless driving.<sup>21</sup> Mother took pictures of the guns in the bedroom and other areas of the house, including a gun hanging from a door.<sup>22</sup> Although she was not able to obtain an attorney at that time, Mother returned to Pittsburgh on July 3, 2023, and called the Carteret County Sheriff about her concerns.<sup>23</sup>

On July 5, 2023, after Father returned to North Carolina, he called Mother approximately eighteen (18) times around 9:00 p.m. because he had not spoken with the Children.<sup>24</sup> During that phone call, Father told Mother he would "use whatever force necessary to get [the Children] back."<sup>25</sup> Mother viewed this as a threat and was in fear for her safety and the Children's safety.

On July 6, 2023, Mother filed a PFA Petition against Father in Pennsylvania, which was later amended on July 25, 2023, to include more detailed information and to amend the caption to include the Children.<sup>26</sup> In the Petition, Mother alleged that when she returned to the marital home in North Carolina on July 1, 2023, she found the marital home in complete disarray and a pile of guns in the master bedroom. This, in addition to Father's escalating aggressive behavior, gave Mother reasons to fear for her own safety and that of the four (4) minor Children.<sup>27</sup>

### PROCEDURAL HISTORY

Mother filed a Petition for Protection from Abuse ("PFA Petition") with a Custody and Weapon Supplement on July 6, 2023. A Temporary PFA Order ("TPFA") was granted by Judge Woodruff and a Final FPA ("FPFA") hearing was scheduled with this court for July 20, 2023. Mother alleged in her petition that upon her visit to the marital home in North Carolina on July 1, 2023, she found the home in complete disarray and a pile of guns in the master bedroom. Mother feared for her safety and that of the Children.

Father was served with the TPFA on July 7, 2023. At the July 20, 2023 FPFA hearing, the trial court issued an order granting Mother a continuance due to Mother's request for additional time to amend her PFA petition with the assistance of counsel. The FPFA hearing was rescheduled for August 22, 2023. The July 20, 2023 Order<sup>28</sup> granted Father unsupervised visits in Pennsylvania, prohibited the presence of firearms during said visitations, instructed parents to register for Our Family Wizard (OWF) for communication,<sup>29</sup> modified paragraph five (5) of the TPFA to allow Father to call the Children on I.C.'s phone during scheduled time, and retained all other provisions from the TPFA.

In addition to the PFA matter pending in Pennsylvania, on July 20, 2023, Father filed a Custody Complaint in North Carolina at docket number No. 23 CVD 239. In his Complaint, Father argued that North Carolina is the home state of the Children and should have jurisdiction over the Children. Father requested an order to return the Children to their home state of North Carolina. In addition to the Complaint, Father filed a Motion for Calendar Request for Emergency Custody, Jurisdictional Conference, Interim Distribution, and Attorney Fees. Mother was served with the Notice of the Calendar Request the same day. Father amended said Motion for Calendar request on July 24, 2023, and Mother was served notice of said request.

On July 25, 2023, Mother filed a Praecipe to Proceed In Forma Pauperis in Pennsylvania and her counsel, Meghan Tighe, filed her entry of Appearance. Additionally, Mother filed a Custody Complaint in Pennsylvania at FD-23-001429- 007, a Criminal Record/Abuse History Verification, and an Amended PFA Petition. Accordingly, the caption was amended to reflect that the petition was also on behalf of the four (4) minor children. Mother's Custody Complaint alleged that "Father's deteriorating mental health issues and his escalating erratic behavior pose a risk to...Children...[who] are safe and cared for in Mother's care." Mother requested primary physical and sole legal custody. An Order of Court entered on July 27, 2023, required Mother to serve Father with a copy the Custody Complaint and file a Certificate of Service within thirty (30) days of the date of this Order.

On August 2, 2023, the undersigned judge held a UCCJEA<sup>30</sup> Conference with North Carolina Judge J. Alex Pully via Microsoft Teams to discuss jurisdiction. All counsel from Pennsylvania and North Carolina were informed and given permission to



attend the on-the-record conference. At the end of the conference, the undersigned stated that she intended to proceed with the FPFA hearing, and Judge Pully was in agreement. Following this conference, the FPFA hearing was rescheduled for August 7, 2023. At the August 7, 2023 FPFA hearing, both parties and counsel were present. A final PFA Order was entered the next day on August 8, 2023. The Order was set to expire on February 8, 2025. The Order of Court provided that, on an interim basis, the parties shall share legal and physical custody with Mother having primary custody and Father having supervised visits. Furthermore, the Children shall not be removed from Pennsylvania without leave of Court, all weapons and look-alike weapons must be kept in a lockbox or approved gun safe and stored out of reach of the Children, and Father shall undergo a mental health evaluation and follow the evaluator's recommendations.

On the custody side of the case, the Court simultaneously issued a Memorandum and Interim and Interlocutory Order of Court. The Interim Order reiterated the same custody provisions listed in the August 8, 2023 FPFA, and also stated that this court would exercise temporary, emergency jurisdiction over the Children pursuant to 23 Pa.C.S.A. §5424. A mediation session was scheduled for August 29, 2023, for which Mother filed a Request for Waiver of Mediation Because of Domestic Violence or Child Abuse on August 16, 2023. The court approved Mother's waiver, the mediation was cancelled, and a custody conciliation was scheduled before Hearing Officer Biasca for October 23, 2023. On August 28, 2023, Father filed two (2) motions for Calendar Request in North Carolina requesting a UCCJEA Conference and Temporary Custody Hearing; one of the motions identified the session beginning September 18, 2023, while the other identified the date as September 12, 2023.

On September 7, 2023, Father filed a timely Notice of Appeal of the August 8, 2023 FPFA Order to the Pennsylvania Superior Court, which was later amended on September 11, 2023. On September 12, 2023, this court issued an order to Father to file his Concise Statement pursuant to Pennsylvania Rules of Appellate Procedure 1925(b). On September 21, 2023, the trial court received Father's Concise Statement of Errors Complaint of on Appeal of the Order of Court dated August 8, 2023.

### ISSUES ON APPEAL

On appeal, Father's Concise Statement of Errors contained a voluminous number of issues, many of which appear to be complaints but are indecipherable as errors complained on appeal. Father's Concise Statement of Errors is neither coherent nor concise and is an attempt to overwhelm this court by raising a multitude of issues which cannot be raised in his brief or appropriately argued in the Superior Court.<sup>31</sup> The Superior Court has held:

Our law makes it clear that Pa.R.A.P. 1925(b) is not satisfied by simply filing any statement. Rather, the statement must be "concise" and coherent as to permit the trial court to understand the specific issues being raised on appeal. Specifically, this Court has held that when appellants raise an "outrageous" number of issues in their 1925(b) statement, the appellants have 'deliberately circumvented the meaning and purpose of Rule 1925(b) and have thereby effectively precluded appellate review of the issues they now seek to raise . . . We have further noted that such "voluminous" statements do not identify the issues that appellants actually intent to raise on appeal because the briefing limitations contained in Pa.R.A.P. 2116(a) makes the raising of so many issues impossible.<sup>32</sup>

Upon a review of the pleading submitted, this Court will address the Concise Statement of Errors as a list of six (6) issues complained on appeal, which are set forth as follows:

1. The court erred by misapplying the "temporary, emergency jurisdiction" provision of the Uniform Child Custody and Judicial Enforcement Act (UCCJEA), pursuant to 23 Pa.C.S.A. §5424.
2. The court abused its discretion when concluding that Father committed actions that placed Mother in a reasonable fear of imminent serious bodily injury.
3. The Court erred by indicating that the custody provision of the Final PFA Order would lapse on February 8, 2025.
4. The court abused its discretion when requiring supervised visitations to occur between Father and Children.
5. The court committed an abuse of discretion by failing to permit Father to present a full defense and present all witnesses available due to the Court's desire to finish the August 7, 2023, final PFA hearing by the close of the business day.
6. The court manifested unreasonable, prejudice, bias, or ill will when it precluded all of Father's witnesses from testifying and limited the hearing to a single day.

### STANDARD OF REVIEW

A trial court's order of protection from abuse is entered pursuant to the Protection from Abuse Act ("PFA Act"). Abuse is defined in the PFA Act as the "occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood: . . . [p]lacing another in reasonable fear of imminent serious bodily injury."<sup>33</sup> The primary goal of the PFA Act is to prevent physical or sexual abuse.<sup>34</sup> For this reason, past acts are relevant to determine the reasonableness of the petitioner's concern.<sup>35</sup>

When reviewing a trial court's decision in a PFA matter, the Superior Court applies the following standard of review:

When a claim is present on appeal that the evidence was not sufficient to support an order of protection of abuse, we review the evidence in the light most favorable to the petitioner and granted her the benefit of all reasonable inference, determine whether the evidence was sufficient to sustain the trial court's conclusion by a preponderance of evidence.<sup>36</sup>

### DISCUSSION

1. The August 8, 2023 Interim and Interlocutory Custody Order was not properly raised on appeal, therefore it is waived; or, if the issue was not waived, this Court was permitted to take temporary emergency jurisdiction under 23 Pa.C.S.A. §5424.

Father's Notice of Appeal was only in regards to the August 8, 2023 Final PFA Order. In his Notice of Appeal, Father did not refer to the Interim and Interlocutory Custody Order taking emergency jurisdiction; however, Father's Concise Statement alleges that the trial court erred by misapplying 23 Pa.C.S.A. §5424 for Temporary Emergency Jurisdiction.

It is unclear whether the Father actually intends to appeal the Interim Custody Order taking Emergency Jurisdiction. If Father intends to appeal that order, the issue is deemed waived as he did not properly include this Custody Order in his Notice of Appeal, nor was it properly raised in the Concise Statement of Errors<sup>37</sup>.

If this Honorable Court finds that this issue has not been waived, the trial court offers the following:

23 Pa.C.S.A. §5424, which provides for temporary, emergency jurisdiction under the UCCJEA, states as follows:

(a) General rule.--A court of this Commonwealth has temporary emergency jurisdiction if the child is present in this Commonwealth and the child has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.<sup>38</sup>

The court found that the Children were present in the Commonwealth of Pennsylvania since May 19, 2023, when Mother and children left their home in North Carolina. Additionally, the court found that the facts discussed above make it necessary to protect the Children because Mother and the Children were subject to or threatened with mistreatment or abuse. Furthermore, to the trial court's knowledge at the time temporary jurisdiction was awarded, there was no previous child custody determination made, nor a child custody proceeding commenced in Pennsylvania, North Carolina, or any other state prior to the Final PFA Hearing that would have rendered this Court's decision temporary until an order was entered by the state having jurisdiction under §§5421-5423 in accordance with §5424(b). As such, the court issued the Interim and Interlocutory Order on August 8, 2023, stating that the court would exercise "temporary, emergency jurisdiction" pursuant to §5424. Therefore, this Order is not a final order that is appealable.

Under Pennsylvania law, an appeal may be taken from (1) a final order; or an order certified as a final order; (2) an interlocutory order as of right; (3) an interlocutory order by permission; or (4) a collateral order.<sup>39</sup> A custody order is final and appealable after the trial court has concluded its hearing on the matter and the resultant order resolves the pending custody claims between the parties.<sup>40</sup>

An appeal can be taken from an interlocutory order that is certified under 42 Pa.C.S. §702(b).<sup>41</sup> 42 Pa.C.S. §702 states as follows:

When a court . . . shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order. The appellate court may thereupon, in its discretion, permit an appeal to be taken from such interlocutory order.<sup>42</sup>

In addition, "a petition for permission to appeal does not stay the proceedings of the lower court . . . unless the lower court or other government unit or the appellate court or a judge thereof shall so order."<sup>43</sup> Here, the August 8, 2023 Interim and Interlocutory Order does not state any of the requirements expressed in §702(b).

The custody claim in and of itself is not irreparably lost if an appeal were to be postponed until final judgment. Regardless of whether the trial court determines that Allegheny County, Pennsylvania, or Carteret County, North Carolina has jurisdiction over the custody claim, the custody claim will be adjudicated. Therefore, the August 8, 2023 Interim and Interlocutory Order is not a collateral order under Pa.R.A.P. 313.

This Order of Court is not a final order, nor certified as such. It is an interlocutory order because it did not dispose of any new or old claims that were raised. This interlocutory order is not one that is appealable as of right under Pa.R.A.P. 311 or appealable by permission under Pa.R.A.P. 312, 1311 or 42 Pa.C.S. § 702(b). Therefore, the August 8, 2023, is an interlocutory order which is not appealable under the Pennsylvania Rules of Appellate Procedure. It is the trial court's position that the appeal is premature, interlocutory and not an appealable interlocutory order and should be quashed.

2. The record provided sufficient basis for a finding that Mother was in reasonable fear of imminent bodily injury as defined in 23 Pa.C.S.A. §61029(a).

Father's second issue alleges that the trial court abused its discretion when concluding that Father had committed any actions that placed Mother in a reasonable fear of imminent serious bodily injury. The Protection from Abuse Act defines abuse as:

- (1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.
- (2) Placing another in reasonable fear of imminent serious bodily injury.
- (3) The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment).
- (4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).
- (5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. The definition of this paragraph applies only to proceedings commenced under this title and is inapplicable to any criminal prosecutions commenced under Title 18 (relating to crimes and offenses).<sup>44</sup>

Because the purpose of the Protection from Abuse Act is to protect victims of domestic violence from their abusers, the Superior Court has noted that physical contact is not a pre-requisite for finding abuse.<sup>45</sup>

In the instant matter, when Mother testified as to Father's verbally aggressive behavior that led her to decide to remove herself and the Children from the family home, Mother was asked the following:

Q. Has the defendant always spoken to you in this way?

A. Not always. It has gotten worse in the last two, three years.<sup>46</sup>

Mother also testified that Father had become obsessed with guns over the COVID- 19 Pandemic to the point of buying a 3-D printer in 2021 which Father uses to print firearms.<sup>47</sup>

Additionally, Mother testified as to Father's possession of other weapons such as machetes and knives.<sup>48</sup> Consequently, Mother's testimony and the evidence of the numerous firearms she found in the marital property on July 1, 2023 and the threat that Father made, in conjunction with the testimony of the Father's course of conduct in past three (3) years, gave Mother reason to be in reasonable fear of imminent serious bodily injury. In reviewing a hearing on a Petition for an Order for Protection from Abuse, the Superior Court is to defer credibility determinations of the trial court as to witnesses who appeared before it.<sup>49</sup> Based on the above, this court found Mother's testimony to be credible.

3. The trial court issued the PFA for a length that was reasonable considering the evidence presented.

On Father's third issue, Father contends that the court abused its discretion in granting Mother a Final PFA Order which is valid until February 8, 2025. Under 23 Pa.C.S.A. §6108(d), a PFA order must be set for a fixed time period not exceeding three (3) years.<sup>50</sup> This order can be amended by the court at any time upon either party filing a petition.<sup>51</sup>

At the August 7, 2023 hearing, Mother was asked whether she feared for her and the Children's safety, and if she was asking for a PFA order.<sup>52</sup> Mother answered in the affirmative to these questions and stated that she would like the order to be effective until "[Father] is mentally stable to be around the Children."<sup>53</sup> The court asked Mother to put a time frame for this, to which she responded with three (3) years. The record reflects that it was not Mother's intention to remove contact between Father and Children, but rather that Father obtain mental health treatment.<sup>54</sup> Furthermore, Mother's testimony showed that she was amenable to amending the petition as Father made progress with any treatment ordered by the court.<sup>55</sup> Based on this request, along with the testimony and evidence presented, this court granted Mother a final PFA order to last for one and a half (1 ½) years.

As the PFA statute provides, either the plaintiff or defendant may seek modification of the order.<sup>56</sup> Considering the testimony and the evidence August 7, 2023, hearing, the court found that it was appropriate to grant Mother and Children a PFA order for the length permissible by statute, while being mindful of possible subsequent modification that parties would be amenable to as Father's mental health treatment progressed. Thus, the court did what was appropriate and beneficial for the safety of the Children by setting an order effective until February 8, 2025 that would address any safety concerns presented before the court.

4. The court appropriately found that supervised visits with Father would be in the best interest for the safety of the Children.

Father's fourth issue on appeal contends that the trial abused its discretion in issuing an order requiring Father to have supervised partial physical custody. The purpose of the PFA Act is to protect victims of domestic violence from the perpetrators of that type of abuse and to prevent domestic violence from occurring.<sup>57</sup> The intent of the remedies under the PFA Act is to allow persons to reside peaceably and without injury within their families and/or residences.<sup>58</sup>

The PFA Act also permits courts to award custody of or establish temporary visitation rights regarding minor children due to risks posed by the defendant to the children and plaintiff.<sup>59</sup> "A defendant shall not be granted custody, partial custody, or unsupervised visitation where it is alleged in the petition, and the court finds after a hearing . . . that the defendant abused the minor children of the parties or poses a risk of abuse towards the minor children of the parties."<sup>60</sup> In addition, "where a court findings after a hearing . . . that the defendant has inflicted abuse upon the plaintiff or a child, the court may require supervised custodial access by a third party."<sup>61</sup>

Paragraph 5(A) of the August 8, 2023 Final PFA Order granted Father supervised partial custody of the Children. Specifically, Father would have partial custody from 12:00 p.m. to 6:00 p.m. every Saturday. Father's custodial time would be supervised by Happy Child Supervision, an agency that provides visitation supervision for custodial time, and would take place in a hotel, public lodging, or other public area within the Commonwealth of Pennsylvania, such as a restaurant, park, or shopping center.

Several findings made at the August 7, 2023 hearing were considered in the court's decision to grant the August 8, 2023 Final PFA Order. Mother testified that Father's behavior had "progressively gotten worse over the last two, three years."<sup>62</sup> Although Mother filed a PFA Petition, her testimony indicated that she was amenable to modifying the final PFA Order so long as Father made progress to address her safety concerns.<sup>63</sup> Mother testified that Father had threatened to "use whatever force necessary to get [their] kids back" and to "beat [her] up if [he] had to."<sup>64</sup>

Father bought a 3-D printer which he uses to print firearms.<sup>65</sup> Father is in the possession of machetes, knives, and automatic weapons.<sup>66</sup> Father created explosive arrows and conducted test runs in the parties' backyard, which were recorded using Mother's phone.<sup>67</sup> Mother testified that when father dropped off the Children with her on June 20, 2023, she saw shotgun shell casings in Ax.C.'s car seat. Photographs of said casings were admitted during the hearing in Exhibit 4.<sup>68</sup> Mother testified that Father keeps a green bag in his vehicle that "always had a firearm in it."<sup>69</sup> Mother further testified that Ax.C. once picked up Father's loaded pistol, which had been left on the kitchen counter.<sup>70</sup>

Mother avers that Father is part of a militia group, but Father alleges that it is a survivalist group.<sup>71</sup> Due to Father's preference, I.C. was homeschooled prior to moving to Pittsburgh. I.C. is now being held back one (1) year at school.<sup>72</sup> Mother testified that during an unsupervised visit with Father, the Children came back covered in dirt, had not eaten dinner, and later broke out in hives.<sup>73</sup> When Mother returned to the marital home in North Carolina on July 1, 2023, she found a letter from the Department of Motor Vehicles stating that Father was to lose his license on July 2, 2023, due to speeding and reckless driving.<sup>74</sup> During the July 1, 2023 visit to the marital home, Mother also found numerous guns and a bottle of unprescribed Adderall.<sup>75</sup> Mother called the police on July 4, 6, and 28, 2023, because she had reason to believe Father was driving without a license.<sup>76</sup>

Having considered the above facts, this court found that Mother and the Children had been, and would be, subject to or threatened with mistreatment or abuse if a Final PFA Order was not granted.

5. The court allowed Father to present the witnesses whose testimony would be relevant to the matter at hand.

Father's fifth issue contends that the trial court precluded him from presenting all witnesses and a full defense. According to Pa.R.C.P. 223, the court may make and enforce rules and orders in limiting the number of witnesses whose testimony is similar or cumulative.<sup>77</sup> In this case, the court questioned Father's attorney regarding the nature of the testimony of each witness, and made a determination regarding the cumulative nature of the testimony based on the proffer given by Father's counsel.

In *Commonwealth v. Johnson*, 139 A.3d 1257 (Pa. 2016), a number of fact witnesses were excluded from testifying during trial.<sup>78</sup> The Court noted that most of the information the fact witnesses would have presented if called would have been cumulative of the testimony already in the record.<sup>79</sup> Therefore, no prejudice arose by virtue of the witnesses' absence.<sup>80</sup> None of the proposed witnesses, had they testified, would have altered the outcome of the trial or undermined the verdict in any way.<sup>81</sup>

In the matter at hand, Father had two (2) witnesses testify. The first witness, Luke Buracker, provided testimony of an alleged survival course being taught by Father in 2020 and denied being part of any militia group.<sup>82</sup> Furthermore, Mr. Buracker testified to visiting the Crissmans' North Carolina property, but his testimony as to the dates of those visits appeared inconsistent and not credible.<sup>83</sup>

Father's second witness was his cousin, Ashlie Michelle Carlson, who was present during the July 28, 2023 custody exchange.<sup>84</sup> Ms. Carlson testified as to the Crissmans' argument during that exchange and that the police came to assist Mother.

Father's remaining three (3) witnesses did not testify because their testimony was cumulative.<sup>85</sup> As such, the testimony of these witnesses would not have affected the outcomes of the trial court. Thus, any error would have been harmless.

6. The record shows that the court did not show any prejudice, bias, or ill will towards the Father, and that this issue is waived.

In his sixth issue, Father contends that the trial court's finding is manifestly unreasonable or the product of partiality, prejudice, bias, or ill will. In *Bellas v. Gaughan*, No. 172, 2016 WL 2990939 (Pa. Super. May 24, 2016), Appellant contended that he was entitled to a new hearing alleging that the court had predetermined that abuse had occurred before he was able to present his defense.<sup>86</sup> The Superior Court noted that those issues not raised in the lower court are waived and cannot be raised for the first time on appeal.<sup>87</sup> The court also noted that an issue of judicial prejudice or bias may not be raised for the first time in a post-trial proceeding.<sup>88</sup> Furthermore, even if the issue had not been waived, "a mere recitation of unfavorable rulings against an attorney does not satisfy the burden of proving judicial bias, prejudice or unfairness."<sup>89</sup>

In the matter at hand, the record does not reflect an instance in which Father brought an issue of prejudice to the trial court's attention. Father's Statement of Errors merely recites an unfavorable ruling which he alleges were "the product of partiality, prejudice, bias, or ill will, based on the record."<sup>90</sup> Additionally, Father did not provide sufficient evidence to show that the trial court was biased. On the contrary, having heard the relevant and credible testimony in this matter, the trial court determined that the issuance of a PFA Order was appropriate.

### CONCLUSION

Based on the above facts and applicable law, Father's appeal should be dismissed, and the Final PFA Order dated August 8, 2023, should be affirmed.

BY THE COURT:

/s/The Hon. Nicola Henry-Taylor

<sup>1</sup>See Transcript of PFA Hearing, dated August 7, 2023, at 10 (hereinafter, "Transcript").

<sup>2</sup>Transcript at 50.

<sup>3</sup>Id. at 56.

<sup>4</sup>Id. at 50.

<sup>5</sup>Id. at 31-32.

<sup>6</sup>Id. at 32, 41, 76, 210.

<sup>7</sup>Id. at 104.

<sup>8</sup>Id. at 105.

<sup>9</sup>Id. at 158-59.

<sup>10</sup>Transcript at 32.

<sup>11</sup>The Anarchist Cookbook "is a book containing instructions for the manufacture of explosives, rudimentary telecommunications phreaking devices, and related weapons, as well as instructions for the home manufacture of illicit drugs." Wikipedia, [https://en.wikipedia.org/wiki/The\\_Anarchist\\_Cookbook](https://en.wikipedia.org/wiki/The_Anarchist_Cookbook) (last modified October 8, 2023, 9:24 AM).

<sup>12</sup>Transcript at 46.

<sup>13</sup>Id. at 175.

<sup>14</sup>Id. at 26.

<sup>15</sup>Id. at 47-48.

<sup>16</sup>Transcript at 20-21.

<sup>17</sup>Id. 15-16

<sup>18</sup>Id. 33, 37-39, 212

<sup>19</sup>Id. 39-41.

<sup>20</sup>Id. at 21-22.

<sup>21</sup>Id. at 49.

<sup>22</sup>Transcript at 22-27, 176. See Exhibits 2, 3, and A.

<sup>23</sup>Transcript at 29-30.

<sup>24</sup>Id. at 30.

<sup>25</sup>Id. at 31

<sup>26</sup>See also Transcript at 33-36.

<sup>27</sup>The children are I.C., J.C., Ax.C. and Af.C. (ages 7, 5, 4, and 1, respectively). Due to their young ages, the court did not hold an in-camera interview with the children.

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<sup>28</sup>The initial temporary PFA petitions are completed on a computer in the PFA department. While a domestic violence advocate may assist the plaintiff, no attorneys are involved at this juncture. Counsel was obtained from Neighborhood Legal Services after the Temporary Hearing and before the Final PFA Hearing scheduled for July 20, 2023.

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<sup>29</sup>Our Family Wizard is a digital co-parenting platform.

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<sup>30</sup>The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is a law that governs state courts' jurisdiction to make and modify child custody determinations. The Act requires state courts to enforce valid child custody and visitation determinations made by sister state courts.

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<sup>31</sup>O.B. v. C.W.B., 281 A.3d 1078 at \*6 (Pa. Super. 2022).

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<sup>32</sup>O.B. at \*6 (citing Tucker v. R.M. Tours, 939 A.2d 343, 346 (Pa. Super. 2007)).

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<sup>33</sup>23 Pa.C.S. §6102(a)(2).

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<sup>34</sup>E.K. v. J.R.A., 237 A.3d 509, 519 (Pa. Super. 2020) (citing Buchhalter v. Buchhalter, 959 A.2d 1260, 1262 (Pa. Super. 2008)).

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<sup>35</sup>E.K. v. J.R.A., 237 A.3d 509, 519 (Pa. Super. 2020) (citing Raker v. Raker, 847 A.2d 720, 724 (Pa. Super. 2004)).

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<sup>36</sup>Fonner v. Fonner, 731 A.2d 160, 161 (Pa. Super. 1999) (citing Alfred v. Braxton, 659 A.2d 1040, 1043 (Pa. Super. 1995)).

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<sup>37</sup>The Order of the Court dated September 12, 2023, instructed Father that any issues not properly raised are waived pursuant to 1925(b)(3)(iv).

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<sup>38</sup>23 Pa.C.S.A. §5424(a).

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<sup>39</sup>See Pa.R.A.P. 341, Pa.R.A.P. 311, Pa.R.A.P. 312, 1311, 42 Pa.C.S. § 702(b), Pa.R.A.P. 313.

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<sup>40</sup>Pa.R.A.P. 341(b)(1)-(3).

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<sup>41</sup>Pa.R.A.P. 1311(a)(1).

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<sup>42</sup>42 Pa.C.S. §702(b).

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<sup>43</sup>42 Pa.C.S. §702(c).

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<sup>44</sup>23 Pa.C.S.A. § 6102(a)(1)-(5)

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<sup>45</sup>See Fonner at 163.

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<sup>46</sup>Transcript at 31-32.

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<sup>47</sup>Transcript at 43-44.

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<sup>48</sup>Id. at 32.

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<sup>49</sup>Custer v. Cochran, 933 A.2d 1050, 1058 (Pa. Super. 2007).

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<sup>50</sup>23 Pa.C.S.A. §6108(d).

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<sup>51</sup>Id.

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<sup>52</sup>Transcript at 52-53.

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<sup>53</sup>Id. at 53

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<sup>54</sup>Id. at 53-55.

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<sup>55</sup>Id

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<sup>56</sup>23 Pa.C.S.A. §6108(d).

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<sup>57</sup>N.C.F. v. S.H.F., 2023 WL 5542796 at \*4 (Pa. Super. 2023) (citing Scott v. Shay, 928 A.2d 312, 314 (Pa. Super. 2007)).

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<sup>58</sup>Id.

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<sup>59</sup>Id. at \*5.

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<sup>60</sup>23 Pa.C.S.A. 6108(4)(i)(A).

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<sup>61</sup>23 Pa.C.S.A. 6108(4)(ii).

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<sup>62</sup>Transcript at 31.

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<sup>63</sup>Id. at 53-54.

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<sup>64</sup>Id. at 31.

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<sup>65</sup>Transcript at 43.

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<sup>66</sup>Id. at 32.

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<sup>67</sup>Id. at 45-46.

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<sup>68</sup>Id. at 33.

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<sup>69</sup>Transcript at 39-40.

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<sup>70</sup>Transcript at 25-26.



<sup>71</sup>Id. at 32.

<sup>72</sup>Id. at 50.

<sup>73</sup>Id. at 57.

<sup>74</sup>Id. at 49.

<sup>75</sup>Transcript at 49.

<sup>76</sup>Id. at 38-39, 70.

<sup>77</sup>Pa.R.C.P. 223.

<sup>78</sup>Johnson at 1283.

<sup>79</sup>Johnson at 1283.

<sup>80</sup>Id.

<sup>81</sup>Id.

<sup>82</sup>Transcript at 112.

<sup>83</sup>Id. at 117-20.

<sup>84</sup>Id. at 121-22.

<sup>85</sup>Transcript at 87-91. The other two proposed witnesses were Todd Barnes, who would have testified to two previous visits to the home, and Todd Brady, Appellant's stepfather who lived next door to the Crissmans for six months.

<sup>86</sup>Bellas at \*4.

<sup>87</sup>Id. (citing Pa.R.A.P. 302(a)).

<sup>88</sup>Bellas at \*4 (citing Ware v. U.S. Fid. & Guar. Co., 577 A.2d 902, 905 (Pa.Super.1990)).

<sup>89</sup>Id.

<sup>90</sup>Appellant's Concise Statement of Errors, ¶ 36.

## **RICE DRILLING B LLC, and EQT PRODUCTION COMPANY, Plaintiffs, v. DOUGLAS SCOTT, and LINDA MARIE SCOTT, Defendants**

Breach of contract, negligent misrepresentation, tortious interference with contractual relations, abuse of process, and wrongful use of civil proceedings

In December 2022, Plaintiffs Rice Drilling B, LLC, a Delaware LLC, and EQT Production Company, a Pennsylvania corporation filed suit against Douglas A. Scott and Linda Marie Scott (the Scotts) alleging breach of contract, negligent misrepresentation, tortious interference with contractual relations, abuse of process, and wrongful use of civil proceedings as well as requesting injunctive relief. Plaintiffs filed an Amended Complaint in February 2023. Defendants ultimately filed and this Court heard argument on Amended Preliminary Objections Raising Questions of Venue, and Plaintiffs filed Preliminary Objections in response, also heard by this Court. On July 13, 2023, the Court sustained Defendants' preliminary objections asserting improper venue, overruled three of Plaintiffs' four preliminary objections, and ordered that the case be transferred to the proper venue of the Court of Common Pleas of Greene County. Plaintiffs appeal this July 13, 2023 Order.

Case No.: GD-22-014905. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. Ward, J.

### **OPINION**

#### **INTRODUCTION**

In December 2022, Plaintiffs Rice Drilling B, LLC, a Delaware LLC ("Rice"), and EQT Production Company, a Pennsylvania corporation ("EQT") filed suit against Douglas A. Scott and Linda Marie Scott (the Scotts) alleging breach of contract, negligent misrepresentation, tortious interference with contractual relations, abuse of process, and wrongful use of civil proceedings (also known as a "Dragonetti Act claim") as well as requesting injunctive relief. Plaintiffs filed an Amended Complaint in February 2023. Defendants ultimately filed and this Court heard argument on Amended Preliminary Objections Raising Questions of Venue, and Plaintiffs filed Preliminary Objections in response, also heard by this Court.

On July 13, 2023, this Court sustained Defendants' preliminary objections asserting improper venue, overruled three of Plaintiffs' four preliminary objections, and ordered that the case be transferred to the proper venue of the Court of Common Pleas of Greene County. Plaintiffs appeal this July 13, 2023 Order.

#### **FACTUAL BACKGROUND**

EQT and Rice bring suit to enforce their rights under a settlement agreement into which they entered with the Scotts on May 23, 2019 ("Settlement Agreement"). Under the Settlement Agreement, Defendants consented to permit Plaintiffs to enter their property in Greene County and construct a well pad on which to drill oil and gas wells. On May 23, 2019, the date the Scotts executed the Settlement Agreement, an EQT representative personally delivered a check to the Scotts in Greene County. The check was issued in Allegheny County. The day the Settlement Agreement was executed by the Scotts, Plaintiffs also began accessing the Scotts' Greene County property. As proper venue is at issue in the present instance, it should be noted that Rice shares its

principal place of business with EQT, which is located in Pittsburgh, Pennsylvania (Allegheny County), and the Scotts reside in Uniontown, Pennsylvania (Fayette County).

In 2021, the Scotts filed suit against Rice and EQT in Greene County, alleging Rice and EQT failed to properly calculate royalties due to Defendants pursuant to the Settlement Agreement (“2021 Complaint”). The Scotts failed to effect service on the 2021 Complaint. They amended the 2021 Complaint twice, both times in 2022. The Scotts’ action was then administratively closed, and the time to appeal the administrative closure has passed. The Scotts’ 2021 Greene County action is the underlying basis for the Plaintiffs’ Dragonetti Act claim in this Allegheny County suit.

In 2022, Rice and EQT submitted applications to the Pennsylvania Department of Environmental Protection (“DEP”) for permits to drill on Defendants’ Greene County property. These wells were identified and consented to by Defendants. Defendants nevertheless objected to these well permit applications and requested the DEP deny the applications. After modifications to the applications, the DEP issued the requested permits to EQT and Rice. Defendants appealed the DEP’s permit issuance to the Pennsylvania Environmental Hearing Board (“EHB”). Rice and EQT then filed this lawsuit against the Scotts.

### STATEMENT OF ERRORS

On appeal, the Plaintiffs assert the following errors in the Court’s July 13, 2023 Order:

1. Whether this Court erred in sustaining Defendants’ preliminary objections pursuant to Pa. R. Civ. P. 1028(a)(1) asserting improper venue under Pa. R. Civ. P. 1006(a).
2. Whether this Court erred in overruling Plaintiffs’ preliminary objections to Defendants’ preliminary objections on the ground of improper venue, pendency of prior action, and failure to exercise or exhaust a statutory remedy.
3. Whether this Court erred in ordering that the case be transferred to the Court of Common Pleas of Greene County pursuant to Pa. R. Civ. P. 1006(e).

### DISCUSSION

#### **A. Whether this Court erred in sustaining Defendants’ preliminary objections pursuant to Pa. R. Civ. P. 1028(a)(1) asserting improper venue under Pa. R. Civ. P. 1006(a)**

There is legal basis to sustain Defendants’ venue challenges, as (1) the contract at issue was formed in Greene County, and not Allegheny County; (2) the transactions and occurrences giving rise to Plaintiffs’ causes of action occurred in Greene County; and (3) the underlying civil proceedings giving rise to Plaintiffs’ Dragonetti Act claims were filed in Greene County.

- i. Venue is improper in Allegheny County on Count I (Injunctive Relief), Count II (Declaratory Judgment), and Count III (Breach of Contract), as the contract at issue was formed in Greene County.

Venue is proper in a case involving a contract where the contract is accepted, not where it is formed. *Craig v. W. J. Thiele & Sons, Inc.*, 149 A.2d 35, 37 (Pa. 1959). Where a contract does not specify means of acceptance, it can be accepted in any way. *Schott v. Westinghouse Elec. Corp.*, 259 A.2d 443, 447 (Pa. 1969); see also Restatement (Second) of Contracts, § 55. This includes acceptance by performance. *Schott*, 259 A.2d at 447.

Defendants argue the case should be transferred because most of the negotiation leading to the Settlement Agreement occurred in Greene County. This is irrelevant, both because the test for venue is not where the contract was negotiated but where it was accepted, and because the Settlement Agreement contains an incorporation clause. Plaintiffs argue venue is proper in Allegheny County because Plaintiffs counter-signed the agreement in Allegheny County. Specifically, Plaintiffs cite to *Afflerbach v. Vulcan Iron Works, Inc.*, to support their proposition that venue is proper where a contract is signed, not where it was negotiated. 2000 WL 35730886, at \*4. Yet *Afflerbach* is limited by the fact that “[p]rior to signing either [plaintiff or defendant] could have backed out of the arrangement.” *Id.*

Here, Plaintiffs began performance in Greene County by personally delivering payment in Greene County and by accessing the Scotts’ property in Greene County, all on the same day the Scotts executed the agreement in Greene County. Neither party could have backed out of the arrangement after Plaintiffs took these actions. Thus, because Plaintiffs accepted the Settlement Agreement by performance in Greene County, and not by return promise in Allegheny County, the transaction or occurrence out of which the causes of action arose for Counts II and III occurred in Greene County.

- ii. Venue is improper in Allegheny County on Count IV (Negligent Misrepresentation) and Count V (Tortious Interference), because those causes of action relate to actions in Greene County.

Venue is proper where, as relevant here, “the cause of action arose,” or where “a transaction or occurrence took place out of which the cause of action arose.” Pa. R. Civ. P. 1006(a)(2)–(3). “[W]e have no comprehensive definition for the phrase ‘cause of action.’” *Peters v. Sidorov*, 855 A.2d 894, 896 (Pa. Super. Ct. 2004).

In negligence claims, the “cause of action” “mean[s] the negligent act or omission, as opposed to the injury which flows from the tortious conduct.” *Sunderland v. R. A. Barlow Homebuilders*, 791 A.2d 384, 390 (Pa. Super. Ct. 2002) (citing *Kusis v. Baldwin-Lima-Hamilton Corp.*, 319 A.2d 914, 918, 918 n.7 (Pa. 1974)). Negligent misrepresentation is a claim based on negligence that results in economic loss. See *Gongloff Cont., LLC v. L. Robert Kimball & Assocs.*, 119 A.3d 1070, 1076 (Pa. Super. Ct. 2015) (“Pennsylvania law generally bars claims brought in negligence that result solely in economic loss. . . . However, a narrow exception is found in” negligent misrepresentation.).

Because Plaintiffs’ Negligent Misrepresentation claim relies on a negligent act or omission that occurred in Greene County, there is no independent basis for venue in Allegheny County. The only concrete examples of Defendants’ misrepresentations which Plaintiffs plead are the filing of various civil actions in Greene County. Otherwise, Plaintiffs allege the Scotts “reiterated” the contents of those actions “in . . . communications to Plaintiffs and others.” There is no reasonable inference to be drawn from Plaintiffs’ well-pleaded facts that the Scotts made any such representation in Allegheny County. Indeed, Plaintiffs attempt to claim venue is proper not because of any action by the Scotts in Allegheny County, but rather because the Scotts made statements “to individuals working and/or residing in Allegheny County” and because “the harm caused by Plaintiffs’ actions occurred” in Allegheny County. Thus, because Plaintiffs’ well-pleaded facts and reasonable inferences therefrom do not indicate

any of Defendants' alleged negligent acts or omissions occurred in Allegheny County, there is no independent basis for venue.

In intentional tort claims, courts look to the elements of the claims pleaded to determine where a cause of action arose, or where transactions or occurrences took place out of which it arose. See *Werner ex rel. Werner v. Werner*, 781 A.2d 188, 191 (Pa. Super. Ct. 2001). In *Werner*, for example, the court found that while one element of civil conspiracy is that the defendant must undertake "an overt act . . . in furtherance of the common purpose" of the conspiracy, two preliminary meetings in Allegheny County at which relevant documents were drafted "can hardly constitute more than a mere 'facet of the complex transactions,'" which is insufficient to support venue. *Id.* The elements of Tortious Interference are:

- (1) the existence of a contractual relationship between the complainant and a third party; (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual damage as a result of defendant's conduct.

*Walnut St. Assocs., Inc. v. Brokerage Concepts, Inc.*, 982 A.2d 94, 98 (Pa. Super. Ct. 2009) (citing *Phillips v. Selig*, 959 A.2d 420, 429 (Pa. Super. Ct. 2008)).

As Plaintiffs' Tortious Interference claim relies on complex transactions in or relating to Greene County, and only a mere facet of it involves Allegheny County, there is no independent basis for venue in Allegheny County. First, Plaintiffs allege merely that "EQT . . . entered into contracts with four companies to drill and complete" the wells on the Scotts' property, and that "[m]ultiple other contracts were also entered into . . . in support of the drilling and completion" of the wells. This factual pleading does not state, nor permit the reasonable inference of, contractual obligations that existed in Allegheny County; in fact, they permit the inference that these obligations relate to performance in Greene County.

Second, Defendants' alleged intent to harm Plaintiffs must have occurred outside of Allegheny County, as they live in Fayette County, the property at issue is in Greene County, and Plaintiffs do not allege any facts that this occurred in Allegheny County. Moreover, Defendants' alleged interference, from the face of the complaint, occurred in Greene County. Plaintiffs specify Exhibit I, a letter from Defendants' then-counsel in Waynesburg, Greene County, as the means by which Defendants tortiously interfered.

Third, for Defendants to have a "privilege or justification," such privilege or justification would exist in Greene County, not Allegheny County. Defendants alleged in their complaint to the DEP that Plaintiffs had failed to fulfill their obligations under the Settlement Agreement, which was formed and accepted in Greene County.

Fourth, the actual damage suffered by Plaintiffs would relate to their profits from drilling in Greene County, their contractual obligations related to Defendants' property in Greene County, and contracts formed with third parties, again in relation to the Greene County property. The only basis on which Plaintiffs claim venue exists here for Tortious Interference is, in essence, that Plaintiffs are headquartered in Allegheny County. But this is—at most—a mere facet of the complex transactions giving rise to Plaintiffs' claim, and thus cannot serve as a basis for venue.

- iii. Venue is improper in Allegheny County for Count VI (Abuse of Process) and Count VII (Wrongful Use of Civil Proceedings), as the underlying civil proceedings occurred in Greene County.

"[T]he appropriate consideration when determining venue in a claim of wrongful use of civil proceedings is the location of the underlying litigation." *Harris v. Brill*, 844 A.2d 567, 570 (Pa. Super. Ct. 2004) (citing *Kring v. U. Pittsburgh*, 829 A.2d 673, 678 (Pa. Super. Ct. 2003)). Defendants argue the only proper venue for Counts VI and VII lies in Greene County, as the underlying civil matter was filed in Greene. Plaintiffs, on the other hand, cite to *Baylson v. Genetics & IVF Inst.* to claim that a Dragonetti Act claim can be filed seemingly anywhere.

Plaintiffs' argument misreads *Baylson*. In *Baylson*, the Superior Court held that a Dragonetti Act claim arising from a Montgomery County proceeding was proper in Philadelphia County because the defendant "had an office in Philadelphia and regularly conducted business there." 110 A.3d 187, 190 (Pa. Super. Ct. 2015) (citing Pa. R. Civ. P. 2179). Plaintiffs do not allege that venue is proper in Allegheny County for their Dragonetti Act claims on any similar grounds—nor can they, as that specific provision applies only to corporate defendants, not individual defendants. Because the cause of action for Plaintiffs' Dragonetti Act claims arose out of Greene County, venue is improper in Allegheny County.

For the reasons stated above, this Court did not err in sustaining Defendants' preliminary objections on the ground of improper venue for any Count in this action.

#### **B. Whether this Court erred in overruling Plaintiffs' preliminary objections to Defendants' preliminary objections on the ground of improper venue, pendency of prior action, and failure to exercise or exhaust a statutory remedy**

In Plaintiffs' Preliminary Objections to Defendants' Amended Preliminary Objections to the First Amended Complaint, regarding the Court's decision on Defendants' preliminary objections on the ground of improper venue, pendency of prior action, and failure to exercise or exhaust a statutory remedy, Defendants only argue that this Court may not consider the Site Use Agreement, the Confidential Addendum, Communications, or Notice, citing irrelevance.

The Pennsylvania Rules of Evidence state that evidence is relevant if "it has the tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action." Pa. R. E. 401.

The Surface Use Agreement and Confidential Addendum contain a choice of venue provision, which Plaintiffs argue is irrelevant to the question of proper venue in this matter. As noted above, this Court did not rely on either document in determining proper venue for the purpose of this action.

This Court neither sustained nor overruled any of the Defendants' other preliminary objections, as the Court first found Allegheny County was not the proper venue to consider any of the Counts filed in this action. Regarding the preliminary objections on the ground of pendency of prior action and failure to exercise or exhaust a statutory remedy, Plaintiffs argue that the Court cannot consider "Communications" or "Notice" cited by the Defendants in their Preliminary Objections on the grounds of relevancy. The Exhibits referred to as "Communications" filed by the Defendants come directly from the docket of the Defendants' prior Greene County action. The "Notice" refers to the Pennsylvania Department of Environmental Protection Notice to the Scotts of Plaintiffs' Well Drilling Operation.

Though the Court did not rule on those preliminary objections filed by the Defendants, this Court found that these documents would be relevant because they are the basis for multiple Counts in this action. If the Plaintiffs are going to allege wrongful use of civil proceedings and abuse of process, they should expect that documents from those underlying proceedings may be used to defend against those allegations.

As such, this Court did not err in overruling Plaintiffs' preliminary objections on the ground of improper venue, pendency of prior action, and failure to exercise or exhaust a statutory remedy.

**c. Whether this Court erred in ordering that the case be transferred to the Court of Common Pleas of Greene County pursuant to Pa. R. Civ. P. 1006(e)**

As explained above, the Allegheny County Court of Common Pleas is an improper venue for each of the Counts alleged in this lawsuit. Pa. R. Civ. P. 1006(e) states, "If a preliminary objection to venue is sustained, and there is a county of proper venue within the State, the action shall not be dismissed but shall be transferred to the appropriate court of that county." The proper venue for every Count in this lawsuit is Greene County. Therefore, this Court did not err in ordering that the case be transferred to the Court of Common Pleas of Greene County.

**CONCLUSION**

For the reasons set forth in this opinion, this Court did not err in sustaining Defendants' preliminary objections pursuant to Pa. R. Civ. P. 1028(a)(1) asserting improper venue under Pa. R. Civ. P. 1006(a); nor did it err in overruling Plaintiffs' preliminary objections to Defendants' preliminary objections on the ground of improper venue, pendency of prior action, and failure to exercise or exhaust a statutory remedy; nor did it err in ordering that the case be transferred to the Court of Common Pleas of Greene County pursuant to Pa. R. Civ. P. 1006(e).

**BY THE COURT:**

/s/The Hon. Christine A. Ward

