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## AFFIRMATION OF REVIEW OF PARENT COORDINATOR DECISION BY AARON D. WEEMS, ESQ.

Pennsylvania formalized the use of parent coordinators in custody cases several years ago when the Superior Court rendered its 2008 opinion in the case of *Yates v. Yates*. As part of the *Yates* decision, the Superior Court held that the appointment of a parent coordinator in a high-conflict custody case was a reasonable exercise of discretion and did not constitute the delegation of judicial authority to a quasi-judicial body *(i.e.,* the parent coordinator). The Superior Court also established the parties' due process rights to a *de novo* review of the parent coordinator's decision by the trial court. A *de novo* review means that the court is taking a completely fresh look at the issue and is not obligated to make or accept the same conclusions, interpretations or issue the same order as the prior level did (in this case, the parent coordinator); its job is to look at all of the information as though it is brand new to everyone and reach a decision based on the evidence presented.

The issue of a party's right to a *de novo* review and what that review ought to look like was considered once again in the Superior Court's Dec. 18, 2012 opinion in the mailer of ***A.H. v. C.M.***, 2012 WL 6586356 (Pa. Super.). In this case, the mother appealed the trial court's decision not to conduct a *de novo* review of a decision of the parent coordinator and, instead, affirmed the decision without taking testimony or otherwise conducting a hearing on the record; basically the trial court rubber-stamped the parent coordinator's decision.

The first step in looking at what happened in the ***A.H.*** case is to consider how the parties are able to get their issues before the trial court. The basic procedure for appealing parent coordinator orders was written in the order appointing the parent coordinator to the case and allowed a party who disputed the parent coordinator's decision 20 days to file a motion for review with the trial court. Upon filing for a review of the decision, the trial court would then make an independent determination as to whether the decision represented an abuse of the parent coordinator's discretion or was contrary to fact or the law.

In the *A.H.* case, the mother made the appropriate appeal to the trial court but found a less than receptive audience when she had her day in court; she was given only four minutes by the trial court to make her argument. The trial court relied upon a summation by the attorneys of the parent coordinator's decision in affirming the coordinator's order. Interestingly, the court recognized that *Yates* applied to this process; however, they essentially found that the *de novo* hearing was not needed in this instance. The Superior Court, in reviewing the appeal, determined that the trial court's decision not to conduct a *de novo* review was wrong and that *Yates* firmly establishes that parent coordination has its own procedure, is subject to due process, and that the trial court may not deny mother a hearing *de novo*. The Superior Court found that by the trial court not giving her the opportunity to present her case in its entirety, she was denied due process rights.

As a result, the Superior Court reversed the trial court's decision with respect to mother's appeal of the parent coordinator's order and directed that a *de novo* review be held by the trial court within 30 days, and that the trial court outline the parent coordinator's decision in a manner consistent with the Superior Court's holding in *Yates*. Worth noting is that the trial court might reach the exact same decision as they did the first time, but at least the mother would have had the opportunity to offer evidence into the record.

An interesting side note to this case is that it gives a glimpse into the level of frustration courts can reach when dealing with "frequent flyer" parties who are always bringing each other back to court. The Superior Court points out the reference to the trial court not wanting to see the parties back over "some talent show communication." I suspect these individuals were very familiar to the trial court judge and likely had litigated similarly inane issues that unnecessarily took up the court's time - which is exactly

*(continued on page 6)*

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why a parent coordinator was appointed in the first place. Access to the courts, however, is a fundamental right and the Superior Court cites the Pennsylvania Code of Judicial Conduct when addressing the comments from the trial court; such comments from the bench could have a chilling effect on people and discourage them from bringing important issues to the attention the court.

Parent coordination can be a useful tool to address "talent show communications" but it is the procedure for being able to appeal those issues that allows for the overall process to effectively operate fairly for both parties. The opinion of A.H. *v.* C ***M.*** affirms the court's decision in *Yates* (which, coincidentally, featured my colleague Natalie Famous as the parent coordinator) and definitively establishes the due process procedure for addressing appeals of the coordinator's decision.

Referenced cases can be found at: *Yates v. Yates*, 963 A.2d 535 (Pa. Super. 2008); ***A. H vs. CM.,*** 2012 WL 6586356 (Pa. Super.)

# APPLICATION OF RELOCATION STATUTE
# BY JAMES W. CUSHING, ESQ.

In January 2011, the Pennsylvania Legislature passed a new custody statute. 23 Pa.C.S.A., Section 5337, which included reforming the procedures regarding custody relocation. Unfortunately for practitioners and litigants, although the new statute is long on specifics on the factors to consider when pursuing relocation, it is short on what is considered a "significant impairment" of custody due to the relocation and whether filing for relocation is a tacit admission that one's matter is, in fact, a relocation matter. Fortunately the recent case ***ofC.M.K. v. K.E.M.,*** 45 A.3d 417 (Pa.Super.2012), helps clarify these gray areas.

Under the new custody statute, a parent must petition the court for permission to relocate before doing so or sutler the risk of being sanctioned and being recalled from his/her new location if maintaining custody in the new location is denied by the court. What precisely defines "relocation" is unclear from the language of the statute. The statute vaguely defines "relocation" as something that "significantly impairs the ability of the non-relocating party to exercise custodial rights." but what exactly is a significant impairment? Is a move 30 miles away a significant impairment? What if the 30 miles take an hour to drive? What if the moving parent does not believe the move is a relocation? [I' the parent moves presuming the situation is not a relocation but is wrong in that presumption, the parent may be sanctioned for making the move. Yet if the parent's presumption is correct, that the situation is not a relocation, but plays it safe and petitions to relocate anyway, is filing for the relocation a tacit concession that the attempt to move is a relocation?

In ***CM.K.*** the child was 6 years old and in the second grade. He enjoyed his school, had many friends and was involved in multiple sports. In fact, the child was potentially a candidate for the gifted program at his school. The child's father enjoyed a thriving relationship with his son, having partial custody of him every other weekend and every Wednesday night. In addition, father would attend many of the child's sporting events, school activities, teacher/school meetings and medical appointments. Furthermore, father's family, especially his parents, also had regular contact with the child. Father's parents would have dinner with the child each week during father's Wednesday custodial time. Interestingly, the child's mother also had dinner with the chiId and father's parents every Monday night, and she used them for her babysitting needs.

In petitioning for relocation, mother argued that her proposed residence was only 68 miles away, a distance not prohibitively far to drive. She further argued that the child's new school was smaller than his present, with potentially more individual focus. Mother was also moving closer to her own family, which she believed would benefit the child. Mother had selected a three-bedroom mobile home on 2.5 acres of land to move to. Finally, as a way to help mitigate father's inconvenience, she offered him approximately 20 additional hours of custody time with the child, which would enable father not to lose any total custody hours due to her relocation.

In deciding this case, the court made two significant rulings. The first was simply to clarify whether there is a procedural vulnerability for someone who elects to "play it safe" and petition for relocation, even if the petitioner did not believe his or her case to be a relocation matter. The court made it abundantly clear that

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