NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

T.R.

v.

J.L., R.C.R. AND S.A.R.

APPEAL OF: R.C.R. AND S.A.R.

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 798 MDA 2013

Appeal from the Order April 16, 2013
in the Court of Common Pleas of Lebanon County
Civil Division at No.: 2010-20550

BEFORE: DONOHUE, J., OTT, J., and PLATT, J.[*]

MEMORANDUM BY PLATT, J. **FILED FEBRUARY 04, 2014**

R.C.R. and S.A.R. (Maternal Grandparents)[1], appeal, *pro se*, from the final custody order entered April 16, 2013, which awarded T.R. (Mother) "primary physical and legal custody"[2] of her daughter, L.R. (Child), who was born in July of 2010, and J.L. (Father) partial physical custody. The trial court denied Maternal Grandparents' counterclaim for primary physical

---

[*] Retired Senior Judge assigned to the Superior Court.

[1] J.L., the other named plaintiff in the original action, is Child's father. He is not participating in this appeal. Mother and Father never married.

[2] This is the phrase the trial court used in its order. (***See*** Order, 4/16/13, at 1 ¶ 1).

custody but awarded them a schedule of partial physical custody. Mother has filed a motion to quash or dismiss the appeal for Maternal Grandparents' failure to designate the contents of the reproduced record and their failure to serve her with a "brief statement of the issues which [they] intend[] to present for review." Pa.R.A.P. 2154(c)(1). We deny that motion, and we affirm the trial court's order.

The record supports the trial court's brief summary of the facts and procedure of this case in its opinion entered July 18, 2013:

> On April 23, 2012, Mother filed a Complaint for Custody seeking custody of her daughter (hereinafter "the child"). A custody conciliation conference was held on May 31, 2012. The custody conciliator recommended that the matter be referred to the [trial court]. Further, the conciliator recommended that Mother, Father, and the Maternal Grandparents share legal custody of the child, while the Maternal Grandparents have primary physical custody of the child with Mother and Father having rights to partial custody as the parties may agree.
>
> On June 6, 2012, the Maternal Grandparents filed a counterclaim seeking custody of the child. Mother filed preliminary objections arguing that the Maternal Grandparents did not have standing to seek custody of the child. A hearing was ultimately held on August 24, 2012 on the issue. At the conclusion, the [trial court] overruled the preliminary objections.
>
> A custody hearing was held on November 26, 2012. Testimony was taken, but the hearing was subsequently continued on the motion of the Maternal Grandparents to obtain legal counsel. In the interim, Mother and Father were to share joint legal custody of the child, and Mother was to have primary physical custody of the child with Father to have periods of partial custody as the parties may agree. Further, the Maternal Grandparents were afforded periods of partial visitation.
>
> Another hearing was held on January 31, 2013[,] but was continued because there appeared to be a misunderstanding among the parties. The custody hearing continued on March 11,

> 2013. During this hearing, the Maternal Grandparents indicated that they wanted to obtain certain witnesses. A final custody hearing was held on April 4, 2013. At the conclusion of the hearing, Mother was awarded primary legal and physical custody of the child. Father was awarded periods of partial custody/visitation. The [trial court] also denied the Maternal Grandparents['] counterclaim for custody, but they were awarded periods of visitation.
>
> On April 26, 2013, the Maternal Grandparents filed a notice of appeal of the April 4, 2013 Order; however, they did not contemporaneously file a concise statement with the notice of appeal as required by Pa.R.A.P. 905(a)(2). Accordingly, upon a review of case law, this [c]ourt found that the Maternal Grandparents perfected a defective notice of appeal, and we awaited further instruction from the Superior Court of Pennsylvania as disposition of the defective notice of appeal is determined by the Superior Court. On April 30, 2013, this [c]ourt directed this case's file to be sent to the Superior Court for review.
>
> Thereafter[,] on May 2, 2013, the Maternal Grandparents filed their Concise Statement; however, they did not serve it upon [the court]. The Maternal Grandparents raised 7 alleged errors in the Concise Statement.
>
> On May 29, 2013, Mother filed an Application to Quash in the Superior Court. On July 1, 2013, the Superior Court filed an Order denying the motion to dismiss or quash the appeal without prejudice. The record was remanded to this [c]ourt for preparation of a Supplemental Opinion pursuant to Pa.R.A.P. 1925(a) in light of the Concise Statement filed on May 2, 2013. The certified record was also required to be returned to the Superior Court within 21 days. . . .

(Trial Court Opinion, 7/18/13, at 1-3) (footnote omitted).

The trial court entered the order complained of on April 16, 2013. Maternal Grandparents filed their notice of appeal on April 26, 2013, and their statement of errors complained of on appeal on May 2, 2013.[3]

We address Mother's motion to dismiss or quash first. Mother filed a motion to quash this appeal for Maternal Grandparents' failure "to timely file and serve a designation of the contents of the reproduced record and the requisite brief statement of issues to be presented."[4] (Motion to Dismiss or Quash Appeal, 5/29/13, at 2 ¶ 5). Mother asks that we quash or dismiss the appeal and award such other relief as we deem appropriate. We deny Mother's motion.

Pa.R.A.P. 2154 requires:

> the appellant shall not later than 30 days before the date fixed by or pursuant to Rule 2185 (service and filing of briefs) for the filing of his or her brief, serve and file a designation of the parts

---

[3] Maternal Grandparents failed to file their concise statement of errors complained of with their notice of appeal as required by Pennsylvania Rule of Appellate Procedure 905(a)(2). ***See*** Pa.R.A.P. 905(a)(2); ***see also*** Pa.R.A.P. 1925(a)(2)(i). However, because there was no claim of prejudice from Appellee, we have accepted the late filing in reliance on our decision in ***In re K.T.E.L.***, 983 A.2d 745, 747 (Pa. Super. 2009).

[4] On its face, Mother's motion to dismiss or quash appears to be untimely because Maternal Grandparents filed their Rule 1925(b) statement on May 2, 2013 and Mother filed the dispositive motion more than twenty days later, on May 29, 2013. ***See*** Pa.R.A.P. 1972(b) (requiring filing of dispositive motion within ten days of appellant's Rule 1925(b) statement or court's Rule 1925(a) opinion, unless ground for seeking to quash appears on the record later). However, because "the basis for seeking to quash the appeal appears on the record subsequent to the time limit provided" by Rule 1972(b), we conclude that Mother's motion was timely filed. ***See id.***

> of the record which he or she intends to reproduce and a brief statement of issues which he or she intends to present for review.

Pa.R.A.P. 2154(a).

Pa.R.A.P. 2188 provides, in pertinent part, "If an appellant fails to file his designation of reproduced record, brief or any required reproduced record within the time prescribed by these rules, or within the time as extended, an appellee may move for dismissal of the matter." Pa.R.A.P. 2188.

This rule does not contemplate that an appellant will designate the "entire record" because it specifies that an appellant "shall . . . file a designation of the parts of the record which he or she intends to reproduce . . . ." Pa.R.A.P. 2154(a). Maternal Grandparents failed to comply with this provision.

In their answer to Mother's motion, Maternal Grandparents deny that they are not in compliance because they "requested that the entire record be sent, and filed a concise statement of errors complained of on appeal[.]" (Answer to Motion to Dismiss or Quash Appeal, 6/07/13, at unnumbered page 1 ¶ 4). Maternal Grandparents claim further that this Court "is in no way precluded from a meaningful review of the issues raised in Appellants' concise statement of errors complained of on appeal." (***Id.*** at unnumbered page 1 ¶ 7).

Initially, we note that the designation of the record and the brief

statement of the issues is directed to Appellee, not this Court. ***See*** Pa.R.A.P. 2154(a). By designating parts of the record in advance and stating the issues he or she will present for review, an appellant narrows the number and scope of the issues that appellant and appellee must deal with and, ultimately, the number and scope of issues that this Court must address. By failing to file their designation of the reproduced record and brief statement of issues for Appellee, Maternal Grandparents have, at the very least, hampered Appellee's ability to respond.

In ***Rosselli v. Rosselli***, 750 A.2d 355 (Pa. Super. 2000), *appeal denied*, 764 A.2d 50 (Pa. 2000), this Court considered a case in which the appellee moved to quash an appeal where the appellant failed to designate the contents of the reproduced record, filed a reproduced record that did not include items relevant to this Court's review, and included items not of record. ***See Rosselli***, ***supra*** at 359. We quashed the appeal because of appellant's "disregard for many of the Rules of Appellate Procedure, coupled with attempts to misdirect this Court's review to documents not of record[.]" ***Id.*** at 359-60.

In the case before us, Maternal Grandparents failed to provide Appellee with a brief statement of their issues and a designation of the reproduced record. ***See*** Pa.R.A.P. 2154(a). However, Maternal Grandparents are proceeding under *in forma pauperis* status and, therefore, are not required to file a reproduced record. ***See*** Pa.R.A.P. 2151(b); (Order,

6/17/13). Additionally, Mother has not alleged any prejudice, nor does it appear that any occurred, since she filed a twenty-one page brief addressing Maternal Grandparents' appeal. (***See*** Motion to Dismiss or Quash Appeal, 5/29/13, at 1-2; Mother's Brief, at 1-21). Therefore, we decline to quash this appeal and Mother's motion to dismiss or quash is denied. ***See Williamson v. Williamson***, 586 A.2d 967, 973 (Pa. Super. 1991) (declining to dismiss appeal for failure to comply with appellate rules).

We now turn to Maternal Grandparents' challenge to the custody order filed on April 16, 2013.[5]

In custody cases, our standard of review is as follows:

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

C.R.F. v. S.E.F., 45 A.3d 441, 443 (Pa. Super. 2012) (citation omitted).

---

[5] Maternal Grandparents failed to include a statement of questions involved in their brief. ***See*** Pa.R.A.P. 2111(a)(4); ***id.*** at 2116(a); (Maternal Grandparents' Brief, at unnumbered pages 1-3). We discuss the brief's omissions below.

We have stated:

> [t]he discretion that a trial court employs in custody matters should be accorded the utmost respect, given the special nature of the proceeding and the lasting impact the result will have on the lives of the parties concerned. Indeed, the knowledge gained by a trial court in observing witnesses in a custody proceeding cannot adequately be imparted to an appellate court by a printed record.

Ketterer v. Seifert, 902 A.2d 533, 540 (Pa. Super. 2006) (citation omitted).

Therefore, must accept the trial court's findings that are supported by competent evidence of record, and we defer to the trial court on issues of credibility and weight of the evidence. If competent evidence supports the trial court's findings we will affirm even if the record could also support the opposite result. ***See In re Adoption of T.B.B.***, 835 A.2d 387, 394 (Pa. Super. 2003).

> The parties cannot dictate the amount of weight the trial court places on evidence. Rather, the paramount concern of the trial court is the best interest of the child. Appellate interference is unwarranted if the trial court's consideration of the best interest of the child was careful and thorough, and we are unable to find any abuse of discretion.

S.M. v. J.M., 811 A.2d 621, 623 (Pa. Super. 2002) (citation omitted).

Rule 2111 of our Rules of Appellate Procedure dictates the required contents of an appellant's brief:

> **(a) General rule.**—The brief of the appellant, except as otherwise prescribed by these rules, **shall** consist of the following matters, separately and distinctly entitled and in the following order:

> (1) Statement of jurisdiction.
>
> (2) Order or other determination in question.
>
> (3) Statement of both the scope of review and the standard of review.
>
> (4) Statement of the questions involved.
>
> (5) Statement of the case.
>
> (6) Summary of argument.
>
> (7) Statement of the reasons to allow an appeal to challenge the discretionary aspects of a sentence, if applicable.
>
> (8) Argument for appellant.
>
> (9) A short conclusion stating the precise relief sought.
>
> (10) The opinions and pleadings specified in Subdivisions (b) and (c) of this rule.
>
> (11) In the Superior Court, a copy of the statement of errors complained of on appeal, filed with the trial court pursuant to Rule 1925(b), or an averment that no order requiring a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) was entered.
>
> **(b) Opinions below.**—There shall be appended to the brief a copy of any opinions delivered by any court or other government unit below relating to the order or other determination under review, if pertinent to the questions involved. If an opinion has been reported, that fact and the appropriate citation shall also be set forth.

Pa.R.A.P. 2111(a), (b) (emphasis added).

In this case, Maternal Grandparents are *pro se* appellants and therefore, we are willing to construe materials filed by them liberally.

However, they are not entitled to any particular advantage because of their lack of legal training. As our Supreme Court has explained, "any layperson choosing to represent [him]self in a legal proceeding must, to some reasonable extent, assume the risk that [his] lack of expertise and legal training will prove [his] undoing." ***O'Neill v. Checker Motors Corp.***, 567 A.2d 680, 682 (Pa. Super. 1989) (citations omitted).

Rule 2111(a) states that a brief "**shall** consist of the following matters," and is thus mandatory, not permissive. Pa.R.A.P. 2111(a) (emphasis added). Maternal Grandparents' brief contains merely a Summary of the Argument, an Argument, and a conclusion that they title a Summary. (***See*** Maternal Grandparents' Brief, at unnumbered pages 1-3). Every other section mandated in Rule 2111(a) and (b) is missing from Maternal Grandparents' brief. (***See id.***).

In addition, Maternal Grandparents' so-called "argument" is no more than a general accusation of wrongdoing on the part of the trial court in which they cite certain statements by the trial court and what they term "other evidence," to support their claims. (Maternal Grandparents' Brief, at unnumbered page 2). They then ask us to examine this "evidence" and reach a different conclusion than that reached by the trial court. (***Id.***). This we may not do. We must accept the trial court's findings that are supported by competent evidence of record, and we defer to the trial court on issues of credibility and weight of the evidence. If competent evidence supports the

trial court's findings, we will affirm even if the record could also support the opposite result. ***See In re Adoption of T.B.B.***, ***supra*** at 394; ***S.M.***, ***supra*** at 623.

Also, although Maternal Grandparents' "argument" contains two general citations to our law governing custody, they make no effort whatsoever to link the facts of this case to that law to develop a coherent legal argument. (***See*** Maternal Grandparents' Brief, at unnumbered pages 2-3).

"The failure to develop an adequate argument in an appellate brief may [] result in waiver of the claim under Pa.R.A.P. 2119." ***Commonwealth v. Beshore***, 916 A.2d 1128, 1140 (Pa. Super. 2007), *appeal denied*, 982 A.2d 509 (Pa. 2007) (citation omitted). "[A]rguments which are not appropriately developed are waived. Arguments not appropriately developed include those where the party has failed to cite any authority in support of a contention." ***Lackner v. Glosser***, 892 A.2d 21, 29-30 (Pa. Super. 2006) (citations omitted); ***see also Chapman-Rolle v. Rolle***, 893 A.2d 770, 774 (Pa. Super. 2006) (stating, "[i]t is well settled that a failure to argue and to cite any authority supporting an argument constitutes a waiver of issues on appeal") (citation omitted).

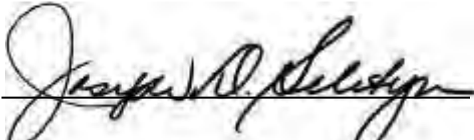
Upon consideration of the above defects in Maternal Grandparents' brief, we find that they have waived any issue that they might have raised on review. ***See*** Pa.R.A.P. 2101; ***Beshore***, ***supra*** at 1140.

Moreover, we have read the trial court's thorough analysis of the statutory custody factors contained in its opinion entered July 18, 2013, in light of the record and conclude that the record fully supports the trial court's conclusions regarding custody. (***See*** Trial Ct. Op., at 5-14).

Accordingly, for the reasons stated, we affirm the order of the Court of Common Pleas of Lebanon County entered April 16, 2013.

Order affirmed. Motion to dismiss or quash denied.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/4/2014