

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION**

ERICA BENNETT VANDUNK,	:	
	:	
Plaintiff	:	
	:	
v.	:	No. 18-1363
	:	
ANDREW FARLEY,	:	
	:	
Defendant	:	

JUDY VANDUNK,	:	
	:	
Plaintiff	:	
	:	
v.	:	No. 18-3512
	:	
ERICA BENNETT VANDUNK and	:	
ANDREW FARLEY,	:	
	:	
Defendants	:	

Nicholas J. Masington, III, Esquire	Counsel for Judy VanDunk
Joseph V. Sebelin, Jr., Esquire	Counsel for Erica Bennett VanDunk
Michael S. Greek, Esquire and Bernard G. Conaway, Esquire	Counsel for Andrew Farley

MEMORANDUM OPINION

Serfass, J. - July 8, 2019

Andrew Farley, (hereinafter "Father"), has taken this appeal from our final custody order of May 9, 2019, which was entered upon agreement of the parties and counsel following a conciliation conference before the custody master, Eileen M. Diehl, Esquire

(hereinafter "Master"). We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that the aforesaid order be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL HISTORY

On May 18, 2018, Erica VanDunk (hereinafter "Mother") initiated a custody action at Case No. 18-1363 in the Court of Common Pleas of Carbon County against Father seeking partial physical custody of their child, J.V. On June 29, 2018, this Court entered an interim custody order following a conciliation conference and upon recommendation of the Master. The interim order also scheduled a hearing on Mother's custody claim to commence before the undersigned on October 17, 2018. On that date, upon request of the parties, this Court remanded the matter to the Master for a hearing on the issue of partial physical custody.

On December 27, 2018, Judy VanDunk (hereinafter "Grandmother") initiated a second custody action in this Court concerning J.V. at Case No. 18-3512. Both Mother and Father are named as defendants in the second action. This case was transferred from the Court of Common Pleas of Monroe County via an opinion and order of the Honorable Stephen M. Higgins dated June 22, 2017.¹

¹ We note that Judge Higgins transferred this action from Monroe County to Carbon County in response to Father's motion to transfer venue. The court also directed that Father pay the costs and fees of the transfer. Father failed to comply with Judge Higgins' order and the case was not transferred to and filed in Carbon County until Grandmother paid the associated costs and fees on December 27, 2018.

Grandmother filed a petition to modify the Monroe County custody order and a petition to consolidate the two (2) pending custody cases. On January 4, 2019, Father filed an answer to Grandmother's modification and consolidation petitions.

On January 8, 2019, upon recommendation of the Master, this Court entered an interim custody order in Case No. 18-3512 following the January 4, 2019, custody conciliation conference which Mother, Father, and Grandmother attended. On April 2, 2019, this Court entered an amended interim custody order to include the caption for both cases.

On April 22, 2019, following oral argument on that same date regarding the petition to consolidate, this Court issued an order granting that petition and consolidating these two (2) cases under Case No. 18-1363. Also on that same date, Father filed a supplemental answer to Grandmother's petition to modify custody and a motion to dismiss for lack of standing on the part of Grandmother.

On April 30, 2019, this matter was called for a partial physical custody hearing before the Master. All parties appeared on that date along with their respective counsel. Rather than proceed with a master's hearing, the parties engaged in a lengthy conciliation conference and the case settled. On May 9, 2019, this Court entered a final custody order **upon agreement of the parties and counsel** and upon the recommendation of the Master. This final

custody order memorialized the parties' agreement reached at the conciliation conference.

On May 29, 2019, Father filed a notice of appeal with the Superior Court. Father did not serve this Court with notice of the appeal and did not provide a concise statement of errors complained of on appeal. On June 7, 2019, Father filed a supplemental notice of appeal. Again, Father did not provide this Court with notice of the appeal nor with a concise statement. As a result, this Court did not become aware of either appellate filing until June 11, 2019, when the Carbon County Prothonotary forwarded to our chambers a copy of the supplemental notice of appeal.

DISCUSSION

Father failed to serve notice of his appeal upon this Court pursuant to Pa. R.A.P. 906(a)(2). Father failed to include a statement advising the appellate court that this appeal is a children's fast track appeal pursuant to Pa. R.A.P. 904(f). Father failed to include a concise statement of errors complained of on appeal pursuant to Pa. R.A.P. 905(a)(2) and 1925(a)(2)(i), which require that a concise statement be filed simultaneously with the notice of appeal in all children's fast track appeals.

The Pennsylvania Superior Court has declined to find waiver of the issues raised upon appeal in children's fast track cases where the appellant fails to file a concise statement of errors complained of on appeal along with his notice of appeal. Mudge v.

Mudge, 6 A.3d 1031, 1031-32 (Pa.Super. 2010). In Mudge v. Mudge, upon receipt of a children's fast track appeal without a statement of errors complained of on appeal, the Superior Court directed the appellant to file a such a statement with the trial court pursuant to Pa. R.A.P. 1925(b).

CONCLUSION

In this case, as we are without Father's reasons for appeal from a final custody order that Father agreed upon at a master's conciliation conference for which there is no record, we request either that the Superior Court affirm the agreed upon final custody order or direct Father to file a concise statement of errors complained of on appeal with this Court so that we may properly address the issues raised therein.

BY THE COURT:

Steven R. Serfass, J.