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Family Law

Parenting Coordination Eliminated in Pennsylvania

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Special to the Legal

Effective May 23, the Pennsylvania Supreme Court adopted Pennsylvania Rule of Civil Procedure 1915.11-1, titled "Elimination of Parent Coordination," which states:

"Only judges may make decisions in child custody cases. Masters and hearing officers may make recommendations to the court. Courts shall not appoint any other individual to make decisions or recommendations or alter a custody order in child custody cases. Any order appointing a parenting coordinator shall be deemed vacated on the date this rule becomes effective. Local rules and administrative orders authorizing the appointment of parenting coordinators also shall be deemed vacated on the date this rule becomes effective."

This rule prohibits judges from delegating their authority to make decisions in child custody cases. Custody masters and hearing officers may continue to make recommendations, but all custody decisions are ultimately subject to judicial approval. Thus, the parenting coordinator role in Pennsylvania has been eliminated.

PARENTING COORDINATION IN PENNSYLVANIA

Parenting coordination in Pennsylvania began approximately five years ago. The creation of the parenting coordination program was intended to allow the court to appoint a third party to decide custody disputes promptly and without judicial involvement. Parenting coordination was meant to be used in the context of custody conflicts between parents who were unable to resolve even minor custodial issues such as vacation planning, make-up parenting time, scheduling conflicts, a child's extracurricular involvement and other such issues that would become the subject of endless special relief petitions. Such issues, which often have more to do with the inability of parents to compromise and plan than a child's best interest and welfare, seemed to be a safe zone that could be appropriately delegated to individuals with some experience in family law. As parenting coordination developed, lawyers, psychologists, psychiatrists and other mental health professionals began to fill the parenting coordinator role.

In 2008, the Pennsylvania Superior Court decided the case of *Yates v. Yates*, 963 A.2d 535 (Pa. Super. 2008). Through the *Yates* opinion, parenting coordination was established in Pennsylvania. In this case, the father appealed a custody order from the Bucks County Court of Common Pleas that granted shared legal custody of the minor child to him and to the mother, awarded him primary physical custody and appointed a parenting coordinator to assist both parties in effectuating the custody order. The Superior Court first addressed the issue of parenting coordination as the trial court had "relied upon the appointment of the parenting coordinator to bolster its decision to grant mother shared legal custody."

The Superior Court recognized that parenting coordination was a novel concept in Pennsylvania and described parenting coordination as a method to "shield children from the effects of parenting conflicts and to help parents in contentious cases comply with custody orders and implement parenting plans." On appeal, the father argued that the trial court lacked authority to appoint a parenting coordinator because the appointment of a parenting coordinator was an improper delegation of judicial decision-making authority. The Superior Court disagreed and found that the trial court had limited the role of the parenting coordinator, had "empowered the parenting coordinator to resolve only ancillary custody disputes" and had specifically addressed the majority of the details surrounding physical and legal custody. The trial court also specifically provided for a de novo review of a parenting coordinator's decision by the trial court at the request of the dissatisfied party. Through this opinion, the legitimacy and scope of a parenting coordinator's role was formally established and *Yates* became the seminal case concerning parenting coordination.

In 2012, the Superior Court was again faced with a parenting coordination issue. In the case of *A.H. v C.M.*, 58 A.3d 823 (Pa. Super. 2012), the Superior Court reiterated a portion of its findings in *Yates*, upheld a dissatisfied party's right to a de novo review of a parenting coordinator's decisions and provided further guidance as to what such a de novo review required.

Despite the Superior Court's recent holdings in both *Yates* and *A.H.*, the Supreme Court overruled the parenting coordination findings reached in both cases by enacting Rule 1915.11-1.

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POSITIVES AND NEGATIVES

From the outset, parenting coordination in Pennsylvania was controversial. This controversy was recognized by the Pennsylvania Superior Court in both the *Yates* and *A.H.* opinions. While there were many benefits to the parenting coordination program, there were also negative aspects that weighed heavily against those benefits.

The positive aspects of a parenting coordination program include, but are not limited to:

- Promoting judicial economy by reducing the special relief petitions filed and litigated on ancillary custody issues.
- Providing a mechanism for the prompt resolution of time-sensitive custodial issues that may not rise to such an egregious level so as to trigger emergency intervention by the courts but nevertheless require timely resolution.
- Providing ongoing and consistent services to parents and providing those parents with a framework for dealing with future disputes.
- Insulating minor children from the litigation process.
- Allowing parties to avoid the costs of custody evaluations, attorney fees and other costs associated with the preparation for a custody trial.

The negative aspects of a parenting coordination program include, but are not limited to:

- The general confusion as to who is qualified to be a parenting coordinator and the resulting inconsistency with which individuals with varied backgrounds carry out the role.
- The general confusion as to the issues a parenting coordinator may decide and the limits on a parenting coordinator's authority (and/or the improper delegation of judicial authority).
- The general confusion as to the appropriate manner in which to review parenting coordinator decisions.
- The lack of finality of parenting coordinator decisions.

POSSIBLE MODIFICATIONS

Many members of the Pennsylvania domestic relations bar were surprised to learn of the Pennsylvania Supreme Court's decision to eliminate parenting coordination altogether. While most Pennsylvania family law practitioners recognized the multitude of flaws in the parenting coordination program, few expected the Supreme Court to eliminate it entirely.

Several domestic relations bar members believe that the Supreme Court's decision to eliminate the parenting coordination program was prompted by the Luzerne County "kids-for-cash" scandal (involving payoffs to two Luzerne County judges of approximately $2.8 million), as the Supreme Court's rules committee submitted the proposed Rule 1915.11-1 for public comment while this scandal was very much in the news. By eliminating the program, it is possible that the Supreme Court hoped to create "transparency by the judiciary and to hold the judges directly accountable for decisions," thereby addressing some of the concerns the Luzerne County scandal had brought to the public's attention, as Ben Present wrote in a May 7 article in *Pennsylvania Law Weekly* titled "Concern Over Judicial Authority Drove Parent Coordinator Elimination."

Regardless of the Pennsylvania Supreme Court's motivation for propounding Rule 1915.11-1, Pennsylvania should now look to other jurisdictions, as well as the guidelines promulgated by the Association of Family and Conciliation Courts, for direction regarding how to rework the parenting coordination program to eliminate, or at least minimize, the negative aspects and areas of concerns, including the concern over the inappropriate delegation of judicial authority.

For example, the parenting coordination program could, and should, be revamped in the following ways:

- The Supreme Court should specify the minimum qualifications of a parenting coordinator. For example, parenting coordinators could be limited to those who are licensed attorneys with a specific amount of family law experience. Alternatively, parenting coordinators could be mediation professionals with certain degrees, certificates or licenses. Pennsylvania's Erie County had local rules containing such provisions.
- The Supreme Court should require parenting coordinators to acquire and maintain a certain level of competence in the parenting coordination process. For example, a parenting coordinator could be required to attend specific continuing legal education seminars to remain eligible for appointment as a parenting coordinator.
- The Supreme Court should provide a form parenting coordinator order. The form order should specify the manner of appointment, scope of authority and responsibilities of the parenting coordinator and delineate clearly the method of de novo review of a parenting coordinator's decision. The form order should also provide for the method of payment to the parenting coordinator and the apportionment of the parenting coordinator costs between the parties.

Modifications to the parenting coordination program in the above manner would dispel much of the confusion surrounding it.

HIGH-CONFLICT CUSTODY CASES

Although modifications to parenting coordination could have been made, the Pennsylvania Supreme Court chose to eliminate it entirely. There is no indication that the program will be reinstated in the near future.

Therefore, parenting coordinators throughout the state have notified their clients of the change and practitioners and judges may see an influx of special relief petitions, emergency and otherwise, to deal with the types of issues formerly handled by parenting coordinators. Now, family law judges and practitioners must examine other options for dealing with high-conflict custody cases. Perhaps, family law practitioners may continue to use the same individuals who formerly served as parenting coordinators to assist high-conflict families in the dispute resolution process as mediators or arbitrators should the parties so agree. Another option may be to use software such as Our Family Wizard to assist families in reducing scheduling conflicts and planning ahead. Co-parent therapy and parenting classes may be other ways in which to assist clients in obtaining the assistance they need to resolve ancillary custody issues previously decided by a parenting coordinator. Family law practitioners and judges statewide will have to be creative in looking for alternatives to parenting coordination without resorting to increased litigation. •