Duquesne Law Review

Volume 38
Number 3 *The Pennsylvania Issue*

Article 8

2000

Recent Developments in Pennsylvania Domestic Relations Law

Elana Sbarro

Recent Developments in Pennsylvania Domestic Relations Law

*Elana Sbarro**

DOMESTIC RELATIONS — CUSTODY — PARENT AND CHILD — THIRD PARTY INTERVENTION — The Pennsylvania Supreme Court held that prospective adoptive parents do not stand in loco parentis when one parent contests the adoption.

B.A. v. E.E., 741 A.2d 1227 (Pa. 1999).

M was born on January 4, 1996.[1] Her parents, E, a sixteen year old girl, and A, an eighteen-year-old boy, were unmarried and living with their parents.[2] Late in her pregnancy, E resided at the Genesis House ("Genesis") in Pittsburgh, Pennsylvania.[3] The day after M was born, E granted custody of M to Genesis.[4] Immediately thereafter, Genesis sought D and C as adoptive parents of M.[5] E consented to the adoption.[6] A similar consent form was sent to A, who refused to sign it.[7]

Subsequently, D and C started an adoption proceeding.[8] On February 26, 1996, A and his mother filed a complaint for primary physical custody of M in the Court of Common Pleas, Cambria County, Civil Division.[9] On July 9, 1996, Honorable Judge Creany granted a motion to intervene filed by D and C "on the grounds that they stood in loco parentis to the child" and on November 13, 1996 the judge granted D and C primary physical custody of M.[10] A

---

* Research Editor, Volume 38, *Duquesne Law Review*; J.D. 2000, Duquesne University School of Law; B.A. 1996, University of Pittsburgh.

1. B.A. v. A.A., 741 A.2d 1227,1228 (Pa. 1999).

2. *B.A.*, 741 A.2d at 1228. Both parents were in school. *Id.*

3. *Id.* The Genesis House, operated by Genesis of Pittsburgh, is an organization that assists women with adoptions. *Id.* at 1228 and 1232.

4. *Id.* at 1228.

5. *Id.*

6. *Id.*

7. *B.A.*, 741 A.2d at 1228.

8. *Id.* At the time the opinion was written, the status of the adoption proceeding was uncertain. *Id.*

9. *Id.*

10. *Id.* In loco parentis means that a third party has "assumed obligations incident to the parental relationship." *Id.* at 1229.

and his mother appealed to the Pennsylvania Superior Court, which affirmed the decision of the trial court.[11]

The Pennsylvania Supreme Court, in an opinion by Chief Justice John P. Flaherty, Jr., addressed the issue of whether prospective adoptive parents, who have had the child in their care and custody for nine or ten months, may intervene in a custody proceeding brought by the child's natural father, who is seeking custody of the child, when the child's natural mother has placed the child with the adoptive parents and favors adoption.[12] "Generally, a third party may challenge custody only through dependency proceedings."[13] That third party must show that the natural parents are not properly caring for the child.[14] If the third party is able to show this, then the third party can intervene in the custody proceeding.[15]

An exception to this general rule arises when a party stands in loco parentis.[16] Although this status enables the third party to intervene in a custody proceeding, "a third party cannot place himself in loco parentis in defiance of the parents' wishes and the parent/child relationship."[17] In the instant case, the supreme court found that D and C retained custody of M in defiance of A's wishes, therefore, D and C did not attain in loco parentis status.[18]

Justice Russell M. Nigro filed a concurring opinion clarifying that

---

11. *Id.* at 1228. The Court held that A bestowed in loco parentis status upon D and C by surrendering custody to Genesis, who granted custody to D and C. *Id.* Furthermore, the court looked to M's physical, spiritual, moral and intellectual well being. *Id.*

12. *B.A.*, 741 A.2d at 1228. At the supreme court, A was represented by attorney Mary E. Schellhammer from Southern Allegheny Legal Aid from Johnstown, and D and C were represented by attorney Linda Rovder Fleming from Johnstown. *Id.*

The opinion of the court was delivered by Chief Justice John P. Flaherty, Jr., which was joined by Justices Ralph J. Cappy and Thomas G. Saylor, and concurred with by Justice Russell M. Nigro. *Id.* at 1228-29. Justice Nigro filed a separate concurring opinion, joined by Justice Saylor. *Id.* at 1229 (Nigro, J., concurring). Justice Stephen A. Zappala filed a dissenting opinion. *Id.* at 1230 (Zappala, J., dissenting). Justice Sandra Schultz Newman filed a separate dissent, joined by Justice Ronald D. Castille. *Id.* at 1231 (Newman, J., dissenting).

13. *Id.*

14. *Id.* at 1229. The Juvenile Act, in pertinent part, defines a dependent child as "A child who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental or emotional health, or morals." 42 Pa. Cons. Stat. Ann. § 6302 (1982).

15. *B.A.*, 741 A.2d at 1229. In *Cardamone v. Elshoff*, the Pennsylvania Superior Court stated, "[U]nless the natural parents' prima facie right to custody is successfully overcome via the dependency proceedings, this court cannot confer standing upon third parties to interfere with the parent child relationship." 659 A.2d 575, 581 (Pa. Super. Ct. 1995).

16. *B.A.*, 741 A.2d at 1229.

17. *Id.* at 1228 (citing Gradwell v. Strausser, 610 A.2d 999, 1003 (Pa. Super. Ct. 1992)).

18. *Id.* The Pennsylvania Supreme Court noted that the record established that A attempted to seek custody of M from her birth until the present. *Id.* Furthermore, A countered the adoption of M and sought custody of M himself. *Id.*

the prospective adoptive parents failed to achieve in loco parentis status because the natural father contested the adoption.[19]

Justice Stephen A. Zappala filed a dissenting opinion expressing his belief that E's consent to D and C's adoption discharged the natural parents' parental duties and bestowed upon D and C assumed parental responsibility.[20]

Finally, Justice Sandra Schultz Newman filed a dissent opining that the prospective adoptive parents stood in loco parentis because they "assumed a parenting role towards the child, had a legitimate expectation the child was part of their family unit, and did not assume the status of 'in loco parentis' in defiance of A's wishes."[21]

The Pennsylvania Supreme Court's ruling is correct. Both A and Genesis denied the natural father's wishes in putting M up for adoption. The natural father not only contested the adoption, but also sought custody of M himself. Therefore, D and C had custody of M in defiance of the natural father's wishes.

DOMESTIC RELATIONS — CHILDREN OUT OF WEDLOCK — PRESUMPTION OF PATERNITY — The Pennsylvania Supreme Court held that: (1) the presumption of paternity is inapplicable when the presumptive father is divorced from the mother, and (2) the mother is estopped from seeking a determination of non-paternity against the presumptive father when the presumptive father has held the child out as his own during the marriage.

Fish v. Behers, 741 A.2d 721 (Pa. 1999).

On June 2, 1989 Ruth Fish ("Appellant") gave birth to Z.F.[22] At the time of Z.F.'s birth, Appellant was married to David Fish ("Husband").[23] When Z.F was conceived, Appellant was having an extramarital affair with Robert Behers ("Appellee") and was not involved in sexual relations with her Husband.[24]

Although the Husband doubted Z.F.'s paternity, Appellant told him he was Z.F.'s father.[25] For three years after Z.F.'s birth, the couple and their children lived as an intact family.[26] The Husband

19. *Id.* at 1229 (Nigro, J., concurring).

20. *Id.* at 1230 (Zappala, J., dissenting).

21. *Id.* at 1231 (Newman, J., dissenting).

22. Fish v. Behers, 741 A.2d 721, 722 (Pa. 1999).

23. *Fish*, 741 A.2d at 722. This was the couple's third child: *Id.*

24. *Id.* Appellee knew that he was the father. *Id.* Appellant also told him that she intended on having an abortion; but he convinced her not to terminate the pregnancy. *Id.*

25. *Id.* Husband was unaware that he was not Z.F.'s father. *Id.*

26. *Id.*

treated Z.F. as his son, giving him emotional and financial support and claiming the child as a dependent on the couple's joint income tax returns.[27] Furthermore, Appellant listed Husband's name as the father on Z.F.'s birth certificate.[28]

Husband discovered the truth about Z.F.'s paternity in June of 1992.[29] Subsequent blood tests revealed that the Husband was not Z.F.'s biological father.[30] The couple separated in August of 1992, and divorced in December of 1993.[31]

On April 29, 1994, Appellant filed a child support action against Appellee in the Court of Common Pleas, Allegheny County, Family Division.[32] Appellee filed preliminary objections claiming that: 1) Appellant could not order blood testing until she overcame the presumption of Z.F.'s paternity, and 2) Appellant was estopped from denying Husband's paternity because she held him out as the father of Z.F.[33] On May 9, 1995, after a review by a court-appointed hearing officer, the Honorable Lawrence W. Kaplan affirmed the findings of the hearing officer that Appellant was not estopped from filing a support action against Appellee.[34] The Pennsylvania Superior Court reversed the trial court's holding and held that Appellant was estopped from denying Husband's paternity.[35]

---

27. *Id.*

28. *Fish*, 741 A.2d at 722.

29. *Id.* Appellant told Husband that he was not the father of Z.F. *Id.*

30. *Id.* Husband asked for the blood testing. *Id.*

31. *Id.* The trial court dismissed an October 1992 support action filed by the Husband against Appellee on the grounds of estoppel. *Id.* Husband did not appeal. *Id.* at n.1.

32. *Fish*, 741 A.2d at 722.

33. *Id.* In *Freedman v. McCandless* the Pennsylvania Supreme Court stated:

> Estoppel in paternity actions is merely the legal determination that because of a person's conduct (e.g., holding out the child as his own, or supporting the child) that person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father. As the Superior Court has observed, the doctrine of estoppel in paternity actions is aimed at "achieving fairness as between the parents by holding them, both mother and father, to their prior conduct regarding the paternity of the child."

Freedman v. McCandless, 654 A.2d 529, 532-33 (Pa. 1995) (quoting Gulla v. Fitzpatrick, 596 A.2d 851 (Pa. 1991)).

34. *Fish*, 741 A.2d at 722. The trial court ordered the determination of the issue of estopple to a hearing officer on June 30, 1994. *Id.* On September 7, 1994 the hearing officer ruled in favor of the Appellant. *Id.*

35. *Id.* At the time the divorce was finalized, December of 1993, Appellant and Husband agreed that the Husband would support the two eldest children, but not Z.F. *Id* at 722 n.1. The superior court also held that the agreement of supported entered into between appellant and her husband in December of 1993 null because a parent cannot bargain away the rights of its child. Ruth F. v. Robert B., Jr., 690 A.2d 1171, 1172 (Pa. Super. Ct. 1997) (citing Hyde v. Hyde, 618 A.2d 406 (Pa. 1992)). The supreme court affirmed this holding in a

The Pennsylvania Supreme Court, in an opinion by Justice Ronald D. Castille, determined the paternity of a child conceived or born during a marriage by using a two-prong analysis: (1) does the presumption of paternity apply to the instant case, and if yes, has it been rebutted?; and (2) if this presumption is rebutted or inapplicable, then is Appellant estopped from asserting Appellee as the father?[36] The supreme court first determined that because the couple divorced in December of 1993, there is no longer an intact family or marriage to preserve and thus the presumption of paternity does not apply.[37]

Since the supreme court concluded that the presumption of paternity was inapplicable, the court next turned to whether Appellant is estopped from asserting Appellee's paternity.[38] In *John M. v. Paula T.*, the Pennsylvania Supreme Court held that a party may be estopped from denying a husband's paternity of a child born during the marriage if either the husband or the wife has held the child out as a child of the marriage.[39] Furthermore, the Court noted in *Jones v. Trojak* that the doctrine of estoppel is inapplicable when the husband failed to accept the child as his own and/or failed to support the child.[40]

In holding that the doctrine of estoppel applied to the instant case, the supreme court found that the evidence established that the Husband accepted Z.F. as his child and that there was no evidence, during the marriage, that Husband did not accept Z.F. as

---

footnote without explanation in its opinion. Fish v. Behers, 741 A.2d 722 (Pa. 1999).

36. *Fish*, 741 A.2d at 723. The presumption of paternity is that "a child born to a married woman is the child of the woman's husband." Strauser v. Stahr, 726 A.2d 1052, 1053 (Pa. 1999). In *Brinkley v. King*, the Pennsylvania Supreme Court, in a plurality opinion, set forth the test to determine the paternity of a child conceived or born during a marriage. 701 A.2d 176 (Pa. 1997).

At the supreme court, Appellant was represented by attorneys Carol L. Hanna and Scott W. Spadafore. *Fish*, 741 A.2d at 722. Appellee was represented by attorneys Richard F. Welch and Michael E. Fiffik. *Id.*

Justice Ronald D. Castille wrote for the majority, including Chief Justice John P. Flaherty, Jr. and Justices Stephen A. Zappala and Ralph J. Cappy. *Id.* at 722. Justice Russell M. Nigro filed a dissenting opinion joined by Justice Sandra Schultz Newman. *Id.* at 724-25 (Nigro, J., dissenting). Justice Newman filed a separate dissent. *Id.* at 725 (Newman, J., dissenting). Justice Thomas G. Saylor did not participate in the consideration or decision of this matter. *Id.* at 724.

37. *Id.* at 723. "The underlying policy in presuming paternity is the preservation of marriage." *Id.*

38. *Id.*

39. John T. v. Paula T., 571 A.2d 1380 (Pa. 1990).

40. *See* Jones v. Trojak, 634 A.2d 201, 206 (Pa. 1993) (citing Christianson v. Ely, 568 A.2d 966 (Pa. 1990)).

his child.[41] Appellant assured Husband that he was the father, gave the child his surname, named Husband as the father on the birth certificate, and listed the child as a dependant on their income tax returns.[42] Moreover, the child was and is still treated as a child of the marriage.[43]

Justice Russell M. Nigro filed a dissenting opinion calling for the end of the estoppel doctrine, to allow the trial courts to use evidence of blood tests when considering the best interest of the child.[44] Justice Nigro reasoned that by allowing courts the discretion to order blood tests, biological fathers would be unable to shun parental responsibilities by claiming estoppel.[45] Furthermore, blood tests would eliminate situations in which a man is tricked into believing that a child is his and then made, through the doctrine of estoppel, to accept legal responsibility of the child.[46]

Justice Sandra Schultz Newman joined Justice Nigro's dissent but wrote separately to emphasize that the presumption of paternity is a rebuttable presumption which does not bar the court from ordering Appellee's blood testing.[47] Furthermore, the doctrine of estoppel also does not bar the court from ordering Appellee to submit to blood testing.[48]

Justices Nigro and Newman filed dissenting opinions in both this case and in *Strauser*. Justice Nigro argued in both dissenting opinions that a trial court should have the discretion to order blood testing of parties contesting paternity. Justice Newman argued that the presumption of paternity and the estoppel doctrine are irrebuttable concepts that can be rebutted by reliable scientific evidence.

The consummation of societal changes with the advancement of scientific evidence has restructured the "traditional" family unit. This union has antiquated the concept of estoppel. Hopefully Justices Nigro and Newman can lead the way for the court to one day mirror societal norms.

---

41. *Fish*, 741 A.2d at. 724.

42. *Id.* at 723-24.

43. *Id.* at 724. The court further observed that Z.F. believes that the Husband is his father, Husband formed a father-son relationship with Z.F., and until Z.F. was approximately five, Husband treated all three children equally. *Id.*

44. *Id.* (Nigro, J., dissenting). Justice Newman joined in the dissenting opinion. *Id.*

45. *Id.* at 725 (Nigro, J., dissenting).

46. *Fish*, 741 A.2d at 725 (Nigro, J., dissenting).

47. *Id.* (Newman, J., dissenting).

48. *Id.* (Newman, J., dissenting).

DOMESTIC RELATIONS — CHILDREN OUT-OF-WEDLOCK — PRESUMPTION OF PATERNITY — The Pennsylvania Supreme Court held that the presumption of paternity is applicable and irrebuttable when the marriage that the child was born into is intact.

Strauser v. Stahr, 726 A.2d 1052 (Pa. 1999).

On May 20, 1996, Timothy Strauser ("Appellant") filed a custody complaint against April R. Stahr ("Appellee") in the Court of Common Pleas, Juniata County, Civil Division.[49] Appellant contended that Amanda Stahr, the youngest child born to the marriage of Appellee and Steven Stahr ("Husband"), is Appellant's daughter.[50] Appellant further asserted that Appellee acknowledged paternity, allowed visitation, and entrusted Amanda to his care.[51] The results from a blood test of Appellant, Appellee and Amanda revealed a 99.99% probability that Amanda was Appellant's daughter.[52] Appellant further asserted that, given the bond between him and Amanda, it would be in the best interest of the child if he were granted partial custody of Amanda.[53]

Appellee responded with preliminary objections seeking the dismissal of the custody action on the basis that because Amanda was the child of the Stahr's marriage, the presumption that Amanda is the child of the Husband applied.[54] The Husband filed a petition to intervene (which was granted) and then filed preliminary objections on the same ground as the Appellee.[55] Husband further asserted that Appellant was equitably estopped from asserting paternity because Appellant "had not financially or emotionally supported the child."[56] On November 25, 1996, after a hearing on preliminary objections, the Honorable Joseph Rehkamp admitted the blood tests results and ordered a hearing on the issue of the best interests of the child.[57]

---

49. Strauser v. Stahr, 726 A.2d 1052, 1053 (Pa. 1999).

50. *Strauser*, 726 A.2d at 1053.

51. *Id.*

52. *Id.* Since then, Appellant asserted that Appellee had frustrated his bond with Amanda. *Id.*

53. *Id.*

54. *Id.* The presumption of paternity is that a child born to a married woman is the child of the woman's husband. *Id.*

55. *Strauser*, 726 A.2d at 1052.

56. *Id.*

57. *Id.* The trial court recognized that the case would be dismissed if it relied upon the case law submitted by the Appellee and Husband because Appellant failed to overcome the presumption of paternity by establishing non-access or impotency on the part of the Husband. *Id.* at 1053. However, the trial court concluded that Appellee was equitably

The Pennsylvania Superior Court consolidated Appellee and Husband's separate appeals.[58] The superior court reversed the trial court's order and dismissed Appellant's complaint with prejudice on the basis that the presumption of paternity was irrebuttable.[59] Appellant petitioned the Pennsylvania Supreme Court, which granted allocatur on the issue of whether the presumption of paternity applies when the marriage the child is born into is intact at the time paternity is challenged.[60]

The Pennsylvania Supreme Court, in an opinion by Justice Thomas G. Saylor, first addressed the issue of whether the presumption of paternity applied in the instant case; where the marriage into which Amanda was born into is intact at the time paternity is contested.[61] The supreme court concluded that the presumption of paternity applied and is irrebuttable where the marriage that the child is born into is intact at the time paternity is contested.[62] Next, the supreme court looked to whether Appellee and Husband were estopped from invoking the presumption of paternity.[63] The issue of estoppel does not arise unless "the presumption (of paternity) has been rebutted or is inapplicable."[64] In the instant case, the presumption of paternity is applicable and

---

estopped from contesting Amanda's paternity because she held out Amanda as Appellant's daughter and voluntarily submitted to blood tests. *Id.* On the basis of the blood test results, the trial court concluded that the presumption of paternity had been overcome. *Id.*

58. *Id.*

59. *Id.* The superior court based its findings on the fact the Stahrs remained married and the Husband had assumed parental responsibility for Amanda. *Id.*

60. *Strauser*, 726 A.2d at 1053. At the supreme court, appellant was represented by attorney Vincent R. Mazeski, and appellee was represented by attorney Donald Zagurski. *Id.* Counsel for Intervenor (Husband) was Michael H. Sholley. *Id.*

Justice Thomas G. Saylor wrote the opinion of the court, joined by Chief Justice John P. Flaherty, Jr., and Justices Stephen A. Zappala and Ralph J. Cappy. *Id.* at 1052. Justice Russell M. Nigro authored a dissent. *Id.* at 1056 (Nigro, J., dissenting). Justice Sandra Schultz Newman also filed a dissent, joined by Justice Ronald D. Castille. *Id.* at 1057 (Newman, J., dissenting).

61. *Id.* at 1054.

62. *Id.* at 1055. The court relied on its plurality opinion of *Brinkley v. King*, 701 A.2d 176 (Pa. 1997), which asserted "the presumption is irrebuttable when a third party seeks to assert his own paternity as against the husband in an intact marriage." *Id.* at 1054 (citing Brinkley, 701 A.2d at 179).

63. *Id.* at 1056 (citing Brinkley, 701 A.2d at 180).

> Estoppel in paternity actions is merely the legal definition that, because of a person's conduct (e.g., holding out the child as his own, or supporting the child), that person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father.

Id.

64. *Id.* (citing Brinkley, 701 A.2d at 180).

irrebuttable, therefore, the doctrine of estoppel does not apply.[65]

Justice Russell M. Nigro filed a dissenting opinion expressing his belief that the trial court properly admitted the blood test results.[66] He believed that the better approach to paternity matters is to allow the trial courts to use their own discretion in ordering blood testing of the parties.[67]

Justice Sandra Schultz Newman also filed a dissenting opinion.[68] Although she agreed that the presumption of paternity applied to the case, she disagreed that this presumption is irrebuttable.[69] Rather, Justice Newman would follow the majority of states that accept reliable blood tests as evidence to rebut the presumption of paternity.[70] She further advanced her argument on the basis that the majority opinion is inconsistent with the Uniform Act on Blood Tests to Determine Paternity.[71] This act grants a trial court the authority to order the parties to blood testing when paternity is relevant in a matter.[72] A trial court then can rebut the presumption of paternity based upon the results of the blood tests.[73]

As we are rapidly approaching a new millennium, one can't help but wonder in which millennium the majority opinion lives. The rise of divorce, single parenting, and the age of same-sex partners have redefined the dynamics of a "family" in today's society.

---

65. *Strauser*, 726 A.2d at 1056.

66. *Id.* (Nigro, J. dissenting).

67. *Id.* (Nigro, J. dissenting).

68. *Id.* at 1057 (Newman, J. dissenting). Justice Castille joined in the dissenting opinion. *Id.* at 1058.

69. *Id.* at 1057 (Newman, J. dissenting).

70. *Strauser*, 726 A.2d at 1058 (Newman, J. dissenting).

71. *Id.* (Newman, J. dissenting).

72. *Id.* The Uniform Act on Blood Tests to Determine Paternity states in pertinent part:

> (c) Authority for test. — In any matter subject to this section in which paternity, parentage, or identity of a child is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved, may or, upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child and alleged father to submit to blood tests. If any party refuses to submit to the test, the court may resolve the question of paternity, parentage or identity of a child against the party or enforce its order if the rights of others and the interests of justice.

PA. STAT. ANN. tit. 23, § 5104 (c) (West 1994).

73. *Strauser*, 726 A.2d at 1058 (Newman, J. dissenting). The Uniform Act of Blood Tests to Determine Paternity states in pertinent part,

> (g) Effect on presumption of legitimacy. — The presumption of legitimacy of a child born during wedlock is overcome if the court finds that the conclusions of all the experts as disclosed by the evidence based upon the tests show that the husband is not the father of the child.

PA. STAT. ANN. tit. 23, § 5104 (g) (West 1994).

Moreover, reliable scientific evidence is now being used in other facets of the law. The union of social realities and scientific evidence has antiquated the concept of the presumption of paternity. It may be the case that the majority, cognitive of social times, is desperately trying to preserve the notion of the "traditional" family. However, the law reaches its greatest achievement when it reflects societal changes. It is time for the majority to reflect upon these changes.

DOMESTIC RELATIONS — CONDITIONAL GIFT — ENGAGEMENT RING — The Pennsylvania Supreme Court held that the donor of an engagement ring is entitled to its return, or its equivalent value, even though the donor terminated the engagement.

Lindh v. Surman, 742 A.2d 643 (Pa. 1999).

In August of 1993, Rodger Lindh ("Donor") proposed marriage to Janis Surman ("Donee").[74] The Donee accepted the marriage proposal along with a diamond engagement ring.[75] For approximately the next year and a half the couple had a turbulent relationship, finally ending in March of 1994, when the Donor called off the engagement for the last time and asked for the return of the engagement ring.[76] The Donee refused to return the engagement ring.[77]

The Donor filed a two-count complaint in the Court of Common Pleas, Allegheny County, Civil Division against the Donee seeking the return of the ring, or a judgment for its equivalent value.[78] The matter was submitted to arbitration, which resulted in favor of the Donee.[79] The Donor appealed to the Court of Common Pleas, Allegheny County, where the Honorable Mazur awarded the Donor $21,200 for the engagement ring.[80] The Donee then appealed to the Pennsylvania Superior Court, which upheld the trial court decision.[81] Losing the last two battles, but determined to win the

74. Lindh v. Surman, 742 A.2d 643 (Pa. 1999). This was the first marriage for the Donee. *Id.* The Donor had been previously married. *Id.*

75. *Lindh*, 742 A.2d at 643. The Donor purchased the engagement ring for $17,400, a price that was below market value. *Id.*

76. *Id.* In October of 1993, the Donor broke the engagement and asked for the return of the engagement ring. *Id.* The Donee returned the ring. *Id.* However, the couple reconciled and again the Donor proposed marriage, and the ring, which the Donee once again accepted. *Id.* at 643-44.

77. *Id.* at 644.

78. *Id.*

79. *Id.*

80. *Lindh*, 742 A.2d at 644.

81. *Id.* The superior court affirmed the trial court's decision 2-1. *Id.* The majority held

war, the Donee petitioned the Pennsylvania Supreme Court. The Pennsylvania Supreme Court granted allocatur on the unique issue of whether a donor is entitled to the return of an engagement ring when the donor terminates the engagement.[82]

To begin its analysis, the Pennsylvania Supreme Court, by Justice Sandra Schultz Newman, first answered the following two questions: (1) was the condition of the gift the acceptance of the marriage proposal or the marriage itself; and (2) whether fault determines the return of the ring.[83] The court rationalized that Pennsylvania case law clearly recognized that an implied condition to an engagement gift is the condition that the marriage must occur.[84] Therefore, a donee does not vest title in the gift until the marriage itself occurs.[85]

The supreme court next turned to whether to apply a fault-based or no-fault based theory when determining whether a donor is entitled to the return of an engagement ring.[86] The supreme court noted that under a fault-based analysis, a trial court would have to assess not only who terminated the engagement, but also the

---

that a no-fault analysis applied *Id.* Judge Schiller wrote a dissenting opinion expressing his belief in examining the motives behind a donor's termination of an engagement. *Id.*

82. *Id.* At the supreme court, Janis Surman was represented by attorney Frank E. Reily from Pittsburgh, and Roger Lindh was represented by attorney Joanne Ross Wilder from Pittsburgh. *Id.* at 643.

Justice Sandra Schultz Newman wrote the opinion of the court, joined by Chief Justice John P. Flaherty, Jr. and Justices Stephen A. Zappala and Russell M. Nigro. *Id.* at 643. Justice Ralph J. Cappy filed a dissenting opinion, joined by Justices Ronald D. Castille and Thomas G. Saylor. *Id.* at 647 (Cappy, J., dissenting). Justice Castille also authored a dissent, joined by Justices Cappy and Saylor. *Id.* at 648 (Castille, J., dissenting).

83. *Id.* at 644. The parties agreed that Pennsylvania law treats the giving of an engagement ring as a conditional gift. *Id.* The Donee argued that the acceptance of the marriage proposal vests the donee absolute title in the engagement ring. *Id.* If the court recognized the condition of the gift as the occurrence of a marriage ceremony, then it would reward a donor who, solely through his own actions, frustrates the condition of the gift. *Id.*

84. *Id.* at 645. The Pennsylvania Superior Court analyzed that:

> It does not appear whether the engagement was broken by the plaintiff or whether it was dissolved by mutual consent. It follows that in order to permit a recovery by plaintiff, it would be necessary to hold that the gifts were subject to the implied condition that they would be returned by the donee to the donor whenever the engagement was dissolved. Under such a rule the marriage would be a necessary prerequisite to the passing of an absolute title to a Christmas gift made in such circumstances. We are unwilling to go that far, except as to the engagement ring.

Id. at 644-45 (citing Ruehling v. Hornung, 98 Pa. Super. Ct. 535, 540 (1930)).

Later, the Pennsylvania Supreme Court explained, "[T]he promise to return an antenuptial gift made in contemplation of marriage if the marriage does not take place is a fictitious promise implied in law." *Id.* at 645. (citing Semenza v. Alfano, 279 A.2d 29, 31 (Pa. 1971)).

85. *Lindh*, 742 A.2d at 645.

86. *Id.*

reasons behind that person's decision to terminate the engagement.[87] This inquiry, the supreme court stated, "would invite the parties to stage the most bitter and unpleasant accusations against those whom they nearly made their spouse, and a court would have no clear guidance with regard to how to ascertain who was 'at fault.' "[88] However, a no-fault approach would alleviate the situations described above because a trial court would not investigate the circumstances behind the termination of the engagement.[89] If the marriage does not occur, a no-fault system dictates the return of the engagement ring, plain and simply.[90] Furthermore, the supreme court looked to jurisdictions that had adopted no-fault principles to engagement ring cases by borrowing from their legislatures the no fault system of divorce.[91]

The supreme court, persuaded by the jurisdictions which have adopted a no-fault system and leery of the inherent weaknesses of a fault-based system, adopted a no-fault approach to engagement ring cases.[92] Furthermore the supreme court declined to adopt a "modified" no-fault rule that would deny the donor of the engagement ring when the donor ends the engagement.[93]

Justice Ralph J. Cappy filed a dissenting opinion expressing his view that the determination of engagement ring cases should be solved under conditional gift law analysis.[94] He chided the majority for their unwillingness to allow trial courts to dirty their hands on an issue of law which is no more "sordid" than issues that are litigated daily.[95]

Justice Ronald D. Castille also filed a dissenting opinion.[96] He believed that a better approach to resolving the issue is to follow the *Restatement of Restitution*, Section 58 comment (c).[97] The

---

87. *Id.*

88. *Id.*

89. *Id.*

90. *Lindh*, 742 A.2d at 645.

91. *Id.* at 646. *See* Aronow v. Silver, 538 A.2d 851 (N.J. Super. Ct., Ch. Div. 1987); and Vigil v. Haber, 888 P.2d 455 (N.M. 1994).

92. *Lindh*, 742 A.2d 646.

93. *Id.* The Donee argued that this would be consistent with a no-fault approach because a court would not look into the motives behind terminating the engagement, but only at the proof that the donor ended the engagement. *Id.*

94. *Id.* at 646-48 (Cappy, J. dissenting). Justices Castille and Saylor joined in the dissenting opinion. *Id.* at 646.

95. *Id.* at 647-648 (Cappy, J. dissenting).

96. *Id.* at 648 (Castille, J. dissenting). Justices Cappy and Saylor joined in the dissenting opinion. *Id.*

97. *Lindh*, 742 A.2d at 648 (Castille, J. dissenting). The *Restatement of Restitution* states:

restatement explains that engagement gifts are generally not conditional and absent fraud or purposes only obtainable by marriage, the donee retains the gift if the marriage fails to occur by no fault of the donee.[98]

Scholars and practitioners alike have long awaited the Pennsylvania Supreme Court to rule on the issue of whether fault is relevant in determining the return of an engagement ring. The decision should come as no shock to those who have closely followed this issue. First, Pennsylvania decisional law pointed in the direction of a no-fault approach. Second, a majority of states follow a no-fault approach. The majority opinion clearly emphasized the Pennsylvania Supreme Court's unwillingness to create excess litigation in our already backlogged trial court system by requiring trial courts to assess fault in determining which party retains possession of an engagement ring.

Gifts made in the hope that a marriage or contract of marriage will result are not recoverable, in the absence of fraud. Gifts made in anticipation of marriage are not ordinarily expressed to be conditional and, although there is an engagement to marry, if the marriage fails to occur without the fault of the donee, normally the gift cannot be recovered. If, however, the donee obtained the gift fraudulently or if the gift was made for a purpose which could be obtained only by the marriage, a donor who is not himself at fault is entitled to restitution if the marriage does not take place, even if the gift was money. If there is an engagement to marry and the donee, having received the gift without fraud, later wrongfully breaks the promise of marriage, the donor is entitled to restitution if the gift is an engagement ring, a family heirloom or other similar thing intimately connected with the marriage, but not if the gift is one of money intended to be used by the donee before the marriage.

RESTATEMENT OF RESTITUTION § 58, cmt. c (1976).

98. *Lindh*, 742 A.2d at 648 (Castille, J. dissenting).