Chapter Fifteen – 0250LO

Good Parents Gone Bad – Use of Self-Help in Custody Cases

Hosted by the Family Law Section

Course Summary

Custody litigation can take months and cause significant stress for the litigants while they await relief from the Court. While most parents address their disputes in the courtroom, sometimes parents utilize self-help to get immediate relief. The panel will explore when it is and is not appropriate to use self-help and the ramifications self-help can have in litigation and within the family.

Co-Planners:
Mark A. Momjian, Esq.
Momjian Anderer, LLC

Julia Swain, Esq.
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Moderator:
Mark A. Momjian, Esq.
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Panelists:
Honorable Holly J. Ford
Philadelphia Court of Common Pleas, Family Court Division

Jacqueline Vergara, Esq.
Custody Master,
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BIOGRAPHIES

Good Parents Gone Bad: Use of Self-Help in Custody Cases

COURSE PLANNERS:

Julia Swain, Esq.
Ms. Swain is a Partner in the law firm of Fox Rothschild, LLP in Philadelphia. She is a Fellow of the American Academy of Matrimonial Lawyers. Ms. Swain concentrates her practice in family law and she litigates family law cases in the five-county Philadelphia region. Her cases involving divorce, custody, support, equitable distribution and abuse range from basic complaints to complex trials and appeals. She also negotiates settlements and prenuptial agreements.

Ms. Swain served as the 2015 Chair of the Philadelphia Bench-Bar & Annual Conference, having served as Co-Chairperson in 2013. Ms. Swain was elected to the Philadelphia Bar Association's Board of Governors to serve a three year term from 2015 through 2017. Ms. Swain served as Chairperson of the Family Law Section (2011) and is a member of its Executive Committee and section CLE Coordinator. Ms. Swain served as a voting member of the Association's Judicial Selection and Retention Commission (2011) and she continues to serve as an investigator for the Commission.

Ms. Swain is a frequent writer and speaker on family law topics. Her recent speaking engagements have covered issues related to drafting marital settlement agreement, handling multi-jurisdictional custody disputes, and high net-worth divorce practice. She is an Associate Editor of the *Philadelphia Bar Reporter* and the *Matrimonial Strategist*, having published numerous family law related articles.

Ms. Swain was selected to Ten Leaders in Matrimonial & Divorce Law, Greater Philadelphia Age 45 & Under. She was selected for inclusion in "Women Leaders in the Law" by ALM (2015). Ms. Swain is the Recipient of the "Pro Bono Roll of Honor" Award from the First Judicial District of Pennsylvania, recognizing her pro bono work as exemplary (2009); recipient of the White Hat Award from the Legal Clinic for the Disabled (LCD) for her outstanding volunteer work (2009); selected as a 2008 "Lawyer on the Fast Track" by *The Legal Intelligencer* and *Pennsylvania Law Weekly*. Ms. Swain is one of only 35 Pennsylvania attorneys under the age of 40 selected as a future leader of the Commonwealth's legal community and for having made a significant commitment to the community-at-large. She was has also been selected as a "Super Lawyer" (2013, 2014, 2015–2016) and "Pennsylvania Rising Star" by *Philadelphia Magazine* and *Law & Politics Magazine* (2006 - 2008).

Mark A. Momjian, Esq. ***(Moderator)***
A graduate of Columbia College and the Columbia University School of Law, Mark Momjian's family law practice encompasses all aspects of divorce, support, child custody,

and appellate litigation. He writes and lectures frequently about trends in domestic relations, with a special emphasis on biotechnology's impact on family law. A member of the Board of Editors of The Matrimonial Strategist since 1994, Mr. Momjian has published dozens of articles on specialized aspects of family law, some of which have appeared in the *National Law Journal, the American Journal of Family Law*, and *Divorce Litigation*. His articles on family law have been cited in numerous law reviews and journals, including the Yale Law Journal, the Virginia Journal of Social Policy and the Law, Law and Psychology Review, Law and Inequality, and the American University Journal of Gender, Social Policy and the Law.

Listed in *Best Lawyers in America, Who's Who in American Law*, and *Pennsylvania Super Lawyers*, Mr. Momjian has handled family law cases in over a third of Pennsylvania's judicial districts. Mr. Momjian is co-author with his father Albert Momjian of *Pennsylvania Family Law Annotated*, published by Thomson/West and currently in its tenth edition. Mr. Momjian has argued major appeals before the Pennsylvania appellate courts, and in 2006 he successfully defended the constitutionality of Pennsylvania's Grandparents' Visitation Act before the Pennsylvania Supreme Court. He also successfully argued the first appellate case in the country in which a non-biological parent was directed to pay child support to her former domestic partner. Mr. Momjian has been quoted on family law topics in newspapers across the United States, including the *New York Times*, the *Los Angeles Times*, and the *Wall Street Journal*, and he has been interviewed by Larry King on CNN's *Larry King Live*, as well as by Matt Lauer on NBC's *The Today Show*.

Mr. Momjian is a member of the Executive Committee of the Philadelphia Bar Association's Family Law Section, and he was the first co-chair of its Committee on the Legal Rights of Unmarried Cohabitants. Mr. Momjian has co-chaired the Program Committee of the Family Law Section's Bench-Bar since 2005. Mr. Momjian has lectured on family law and professional ethics at the University of Pennsylvania, Temple, Villanova, and Widener Law Schools, as well as on HIV-AIDS and the law at Rutgers-Camden Law School. Since 2001, he has served as an Adjunct Associate Professor of Psychology at the Drexel University College of Medicine. In 2005, Mr. Momjian co-chaired the Pennsylvania Bar Institute's Continuing Legal Education seminar marking the 25th anniversary of the Pennsylvania Divorce Code. His two articles, *Twenty-Five Years of No-Fault Divorce: Milestones and Trends in Pennsylvania Family Law*, and *Twenty-Five Years After Kramer v. Kramer: Is Pennsylvania Ready for Child Custody Reform?*, were published in the July and October 2005 issues of the *Pennsylvania Bar Quarterly*.

Mr. Momjian's public service work focuses on the unique challenges facing nontraditional families. He is a member of the Board of Directors of the Homeless Advocacy Project, and a former member of the Board of Directors at Philadelphia VIP. Among his awards and honors, Mr. Momjian was named Pro Bono Attorney of the Year by the Center for Lesbian and Gay Civil Rights in 2002, and he received the Cheryl Ingram Advocate for Justice Award presented by the Philadelphia Bar Association in 2004. In 2005, he was presented with the Earl G. Harrison Award in recognition of his pro bono service and commitment to mentoring young lawyers. In 2006, he received the Outstanding Advocate Award presented by SeniorLAW Center for protecting and promoting the rights of senior citizens in need.

In 2008, Mr. Momjian was appointed by the Pennsylvania Supreme Court's Domestic Relations Procedural Rules Committee to chair a subcommittee charged with creating and

standardizing family court forms for download and usage in every Pennsylvania judicial district.

PANELISTS:

Honorable Holly J. Ford

Judge Ford has served as a Philadelphia County Court of Common Pleas judge, assigned to Family Court, Domestic Relations Branch, since January 2004. Prior to serving as judge, she had a general litigation practice ranging from corporate law to family law and criminal law. Judge Ford has taught as an adjunct professor in the paralegal studies program at the Community College of Philadelphia for the past 21 years, and is a board member of the college's Center for Law and Society. She is the co-chair of the Family Law Division of the Judicial Education Committee. Judge Ford received her J.D. in 1982 from Rutgers School of Law, Camden, New Jersey.

Jacqueline Vergara, Esq.

Ms. Vergara is a master in custody in the Philadelphia County Court of Common Pleas, Domestic Relations Division. Prior to being appointed as a master in December of 2011, she served as a law clerk in the Philadelphia County Court of Common Pleas to the Honorable Edward R. Summers.

Ms. Vergara earned a B.A. from Temple University in 1999. In 2003, Ms. Vergara was awarded a J.D. from Temple University James E. Beasley School of Law, where she also received the Academy of Matrimonial Lawyers Eric D. Turner Award. Ms. Vergara has focused on family law since the beginning of her legal education. During law school, she participated in the Temple Legal Aid office's custody mediation clinic and also worked as an intern for the Honorable Edward R. Summers.

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Good Parents Gone Bad – Use of Self-Help in Custody Cases

NOTES

Good Parents Gone Bad – Use of Self-Help in Custody Cases

Child custody cases can not only take months to litigate, they can cause significant stress for the litigants while they await relief from the court. This is true for so-called "garden variety" child custody cases, but also in "high-conflict" litigation, where the stress on everyone—the parties, their lawyers, the judge, the judge's staff, the master, and most importantly, the parties' children—is compounded.

While most parents address their disputes amicably, without ever stepping into a courtroom, and while others settle their cases on the day of court, without the need for an evidentiary hearing, some parents use "self-help" to get immediate relief—relief they believe they are entitled to, or relief they argue is necessary in the best interest of their children.

This CLE program explores when it is, and when it isn't, appropriate to exercise self-help in child custody cases, along with the ramifications of self-help on both the litigation and within the family. The challenges of self-help are particularly profound in the First Judicial District, where 9,200 custody cases were filed in 2015. Of this number, an estimated 85-90% of these new filings in Philadelphia County were initiated by parties representing themselves.

The First Judicial District faces unique scenarios in which custody litigants file for relief based on a wide array of perceived injustices—everything ranging from late pick-ups and drop-offs, to blocking access to telephone calls and emails/texts. Some of the allegations are serious violations of legal and/or physical custody, but

others are part of a more routine custody landscape that more seasoned family lawyers can (and should) resolve without the need for court intervention.

The examples below are not exhaustive. Not by any stretch. But they represent the types of "violations" that are heard on a daily basis in Philadelphia County, and legitimate or not, they tap the resources of judges, masters, and court personnel. It is important to recognize that cases involving self-help are still very much fact-dependent. They must be contextualized, and it is impossible for judges or masters to give categorical black-and-white adjudications based on limited information. Instead, our panel participants will suggest ways at looking at these examples, and will offer advisory advice that will hopefully illuminate the special challenges of the First Judicial District.

One of the aims of this program is to explore ways to reduce litigants' use of self-help, especially among *pro se* litigants, and to free up judicial resources to address cases in which children are exposed to risk, physical or psychological, or those bona fide disputes that the parties cannot settle after good faith attempts at amicable resolution.

- Father returns child several hours late and/or takes an extra vacation day. Mom keeps the child for the time she lost. Father files a petition for contempt. What does the master/judge do in that circumstance? Consider the doctrine of "unclean hands." Sitting in equity, a judge or master can weigh equities when confronting the exercise of self-help. *See Librett v. Maran*, 854 A.2d 1278 (Pa. Super. 2004) (appeal quashed where mother was in

contempt of custody order and continued to defy said order by failing to transfer physical custody of child to father).

- Same scenario, except that instead of Mom exercising self-help, she files a petition for contempt over that isolated incident. Is that a better way to handle this situation, or is it a waste of the court's time? Keep in mind that neither a judge nor master has the adjudicatory power to modify a custody schedule in a purely contempt proceeding without a pending modification application. See *Langendorfer v. Spearman*, 797 A.2d 303 (Pa. Super. 2002) (trial court committed clear abuse of discretion in ordering change of custody in contempt proceeding without modification application filed by either party; father's due process rights violated by trial court; father had no notice that custody would be at issue in contempt proceeding). Also, keep in mind that in Philadelphia County parties are not charged a fee for filing a custody contempt action. Compare Chester County, where a custody contempt action costs $122. Or Berks County, where it costs $155.

- Parties disagree as to where their child should attend school. Father registers the child in public school in his neighborhood to reserve a spot. OK? How important is giving notice to the other party in satisfaction of a joint legal custody order?

    - Mother applies to several charter schools, but does not enroll the child. OK?

- Mother also takes child to private school visits and has the child submit to an IQ test administered by that school. OK?
- In cases where there is no legal custody order, does it matter whether Father or Mother give notice to the other party about their actions, even if they are not making final decisions?

- The custody order is either silent or very basic regarding the children's participation in extracurricular activities. Mother has the child enrolled in multiple activities per week, including a travel baseball team that consumes entire weekends throughout the year. Father simply refuses to take the child to practices/games/activities on his time. OK, or does Father need to file a petition for special relief asking the court to determine the reasonableness of the extracurricular activities?

- The custody order provides that Father has alternating weekends through Monday morning, but on a de facto basis for the last six months, Father has been returning the child on Sundays before dinner. Mother and Father get into a dispute about a vacation issue, and Father unilaterally begins keeping the child through Monday morning. Can he do that? What if Mother files petition to enforce the de facto agreement, notwithstanding the terms of the custody order? She could file a petition for modification, but it will take substantially longer to get through the system. How important is it to get

the altered custody arrangement in writing, as opposed to simply demonstrating that the schedule has not been followed?

- Can a custody litigant take the position that on his or her weekends, he or she can enroll the children in whatever activities that parent deems appropriate? After all, said enrollment will have no impact on the other parent's physical custody schedule? But what if the activity involves a contact sport, like football or ice hockey (or soccer!), doesn't the other parent have a right to weigh in on the decision, even if physical custody is not impacted? Are orders ever entered requiring litigants to consult with one another on a specific legal custody decision, but one parent gets the ultimate decision-making authority if they cannot agree? Is there such a creature as "primary legal custody"?

- (Non-custody) – Mother is leaving the marital home. She takes half of the furniture. OK? Would the court direct that she returns everything pending ED? What do we advise clients as a practical matter, since it they don't remove the personal property when they leave, because the odds are that they will receive a disproportionately small amount of the personal property and/or not really be compensated for the value of the personal property retained by the party who keeps the house?

- (Non-custody) – There is $10k in a bank account. Mother takes $5k. OK? Does it matter what the value of the entire estate is? What if the

account contains $100k and Mother takes $50k? Do you advise your client to take the money? What does the court do in these situations?

797 A.2d 303 (2002)

Tammy LANGENDORFER, Appellee,
v.
Caro SPEARMAN, Appellant (Two Cases).

Superior Court of Pennsylvania.

Argued February 27, 2002.
Filed April 3, 2002.

304 *304 Alan M. Lerner, and Mark A. Momjian, Philadelphia, for appellant.

Brian S. Chacker, Philadelphia, for appellee.

Before: McEWEN, P.J.E., LALLY-GREEN and BENDER, JJ.

BENDER, J.

¶ 1 Caro Spearman (Father) appeals from two orders of the Court of Common Pleas of Philadelphia County that granted Tammy
305 Langendorfer's (Mother) petition for contempt and ordered a change in legal *305 and primary physical custody of the parties' child from Father to Mother.[1] We vacate the orders and reinstate the May 5, 1998 final custody order.

¶ 2 The parties are the parents of Sidney Patrick Spearman, born December 19, 1988. Father, who resides in Philadelphia, Pennsylvania, and Mother, who lives in Alaska, are not and have never been married. The initial custody litigation began in 1993. The court issued a number of custody orders over the years, namely, in 1994 when Mother was awarded primary physical custody[2] and then again in 1998 when Father was awarded primary physical custody.

¶ 3 In addition to the provisions granting primary physical custody to Father, the 1998 order granted partial physical custody to Mother each year for a period of eight weeks in the summer, beginning three days after the school year ended. The parties were to share the costs of transportation and were directed to allow unrestricted telephone and written communication between the child and the non-custodial parent. The order also required that each parent apprise the other of the whereabouts of the child, including residential address and phone number; a 48-hour advance notice of any change in residence had to be communicated.[3]

¶ 4 On January 26, 2001, Father filed a petition to temporarily modify custody, seeking an order to prevent contact by all family members with the child. Father made this request as a result of the child's enrollment in a therapeutic foster care program called "Mentor." The child has had a history of emotional problems, dating back to at least 1994, when Father arranged for counseling for Sidney at a mental health facility in Philadelphia. Mother also sought treatment for the child in 1995, when she admitted Sidney to a mental health hospital following his threats to kill himself.

¶ 5 In the fall of 2000, Father admitted the child to the Eastern Pennsylvania Psychiatric Institute (EPPI), following several attempts by Sidney to run away after he was disciplined at school. At EPPI's suggestion, Father enrolled Sidney in the Mentor program and Father's petition for temporary modification ensued.[4]

¶ 6 On February 2, 2001, Mother filed the contempt petition presently at issue before this Court. The petition alleges that Father willfully violated the 1998 custody order and requests that the court find that:

(a) Father is in Contempt of Court for failure to comply with the Custody Order dated May 5, 1998; and

(b) Father is ordered to timely comply with all aspects of the Court's May 5, 1998 Order, including the following[:]

(1) Father is ordered to apprise Mother of the whereabouts of Sidney;

(2) Father is ordered to provide Mother with an address and phone number at which Sidney may be reached;

306 *306 (3) Father is ordered to refrain from interfering with Mother's and Mother's family members' attempts to contact Sidney;

(4) Father is ordered to refrain from interfering with Mother's right to partial physical custody of Sidney; and

(5) Father is ordered to split the cost of Sidney's travel in order to effectuate Mother's partial physical custody rights.

Mother's Petition for Contempt, 2/2/01, at 3-4.

¶ 7 The facts underlying Mother's allegations concern the failure of the parties to coordinate travel arrangements for the summer of 1999 and 2000. There is no dispute that Father purchased a return ticket from Alaska to Philadelphia for Sidney for the end of the 1999 summer vacation period. There is also no dispute that Mother did *not* purchase a ticket for Sidney to make the trip from Philadelphia to Alaska at the beginning of the summer. At the contempt hearing the parties disputed who in fact tried to contact the other, how many times and who failed to return calls after messages were left. The record also reveals that Father attempted to introduce correspondence from his attorney to Mother's attorney showing his attempts to arrange transportation, but the court held that the letters were inadmissible hearsay.

¶ 8 Another area of contention between the parties concerns Mother's alleged inability to contact Sidney by telephone. As part of his response, Father attempted to place in evidence recordings of telephone calls between Mother and Sidney to disprove Mother's allegation that she was denied telephone access. These recordings were not admitted by the court on the basis that they were cumulative. Father did admit that he has no long distance phone service at home and uses a cell phone or phone cards instead. Also Mother refuses to supply a direct phone number to Father. Rather Father calls Mother's mother and leaves messages to be relayed to Mother.

¶ 9 The parties also are at odds over whether or when Father advised or attempted to advise Mother about Sidney's admission to EPPI and his subsequent placement into the Mentor program. Father acknowledges that he informed Mother six weeks after Sidney's initial admission to EPPI, but Mother contends that she only found out about Sidney's placement into the Mentor program one week prior to the contempt hearing and only learned of the admission to EPPI at the hearing.

¶ 10 Following the March 5, 2001 hearing, the court issued its order granting sole legal and physical custody to Mother and restricting Father's visitation. No other "sanction" was imposed. The court's order, dated March 5, 2001, states in its entirety:

> AFTER HEARING MOTHER'S PETITION FOR CONTEMPT OF CUSTODY AND FATHER'S RESPONSE THERE TO [sic] IT IS HEREBY ORDERED AND DECREED AS FOLLOWS: MOTHER'S PETITION FOR CONTEMPT IS GRANTED; MOTHER, TAMMY W. LANGENDORFER SHALL, AS OF THIS DATE, HAVE SOLE LEGAL AND PRIMARY PHYSICAL CUSTODY OF THE CHILD, SIDNEY SPEARMAN. ALL DECISIONS REGARDING SIDNEY SPEARMAN SHALL BE IN THE SOLE DISCRETION OF MOTHER. FOR THE BEST INTEREST OF THE CHILD, THIS COURT FURTHER ORDERS THAT FATHER MAY HAVE SUPERVISED
> 307 VISITS WITH THE CHILD AT THE MENTOR *307 AGENCY OR ANOTHER SUITABLE PLACE AS AGREED TO BY MOTHER.

¶ 11 In its opinion supporting the order, the court stated that the hearing was held on Mother's contempt petition and that it "took this action to remedy Father's contemptuous conduct towards Mother's legal and physical custody right to the child." Trial Court opinion (T.C.O.), 5/22/01, at 1. Notably, the "NOTICE AND ORDER TO APPEAR PETITION FOR CONTEMPT" issued by the court made no mention that custody of Sidney was at issue. Rather it required attendance at the scheduled hearing, only referencing that legal proceedings would take place concerning the allegations of willful disobedience of a custody order. Moreover, the court's notice to Father stated that "if the court finds that you have wilfully [sic] failed to comply with its order of custody, you may be found to be in contempt of court and committed to jail, fined or both." Notice and Order to Appear, 2/6/01.

¶ 12 Father appealed to this Court from the March 5, 2001 order. He also filed a petition for contempt against Mother. Mother then filed a petition to modify custody. After a brief hearing on June 11, 2001, the court dismissed the petitions filed by each parent, indicating that the court had already ruled on the matter of custody in its March 5th order and that the March 5th order "superseded any and all other orders issued in this matter."[5] T.C.O., 10/23/01, at 2.

¶ 13 Father raises the following issues for our review:

1. Did the lower court commit legal error and exceed its judicial authority in a civil contempt proceeding by ordering as punishment a transfer of sole legal and physical custody to Mother, thereby modifying permanently an existing custody order, without having before it a formal petition to modify?

2. Did the lower court violate Father's fundamental right to due process by unilaterally transferring sole legal and physical custody to Mother, without any notice to the parties or their counsel?

3. Did the lower court abuse its discretion by interpreting the 1998 custody order as requiring Father to pay the cost of the child's transportation from Pennsylvania to Alaska?

4. Did the lower court abuse its discretion by excluding from evidence specific correspondence between counsel that bear[s] on the issue of Father's intent regarding the transportation of the child between Pennsylvania and Alaska, as well as electronic recordings of telephone conversations between the parties?

Father's Brief at 5.

¶ 14 In reviewing contempt orders, we must consider that:

Each court is the exclusive judge of contempts against its process. The contempt power is essential to the preservation of the court's authority and prevents the administration of justice from falling into disrepute. When reviewing an appeal from a contempt order, the appellant court must place great reliance upon the discretion of the trial judge. On appeal from a court' order holding a
308 *308 party in contempt of court, our scope of review is very narrow. We are limited to determining whether the trial court committed a clear abuse of discretion.

Garr v. Peters, 773 A.2d 183, 189 (Pa.Super.2001) (citations and quotation marks omitted).

¶ 15 We begin our discussion by addressing Father's first two issues. However, because of our disposition of these issues, we will not reach the other two he presents for our review.

¶ 16 Father recognizes that pursuant to the Domestic Relations Code[6] a party may be held in contempt for willfully failing to comply with a visitation or partial custody order, so long as the procedures outlined in *Crislip v. Harshman,* 243 Pa.Super. 349, 365 A.2d 1260 (1976),[7] are followed. However, with reliance on *Choplosky v. Choplosky,* 400 Pa.Super. 590, 584 A.2d 340 (1990), and *Seger v. Seger,* 377 Pa.Super. 391, 547 A.2d 424 (1988), Father contends that the court may not permanently modify a custody order without having a petition for modification before it. We agree. *See also Rosenberg v. Rosenberg,* 350 Pa.Super. 268, 504 A.2d 350, 353 (1986) ("Willful interference with court ordered visitations, no matter how deplorable, cannot be made the basis for an `automatic' change of custody.").

¶ 17 Citing the same case law, Mother does not dispute that a court may not permanently alter custody in the context of a contempt proceeding if a formal petition to modify has not been filed by one of the parties. However, she contends that Father's petition for temporary modification was before the court and, therefore, the court could order the change in custody, as the court did in *Flannery v. Iberti,* 763 A.2d 927 (Pa.Super.2000).[8]

¶ 18 Mother's reliance on *Flannery* is misplaced. In that case both a contempt petition and a modification petition were before the court. Upon finding that the mother repeatedly violated custody orders, the *Flannery* court determined that the best interests of the child were served by a change in custody. We conclude that the situation in *Flannery* is distinguishable from the circumstances presented here. In the instant case, Mother's petition for contempt in no way implicates custody, i.e., she did not request any change in custody. Furthermore, the order to appear received by the parties from the court that scheduled the
309 contempt hearing did not notify *309 the parties that custody was at issue. Also the record and more particularly the docket do not indicate that Mother's contempt petition and Father's petition for temporary modification were consolidated for any purpose. Moreover, the transcript of the hearing reveals that only the contempt petition was before the court.[9] Finally, the court's order, quoted above and delivered from the bench at the conclusion of the hearing, references only Mother's contempt petition and Father's response thereto. Accordingly, we conclude that only Mother's contempt petition was before the court on March 5, 2001.

¶ 19 In addition to the foregoing, we emphasize that Father's due process rights were violated by the actions taken by the court, because Father had no notice that custody would be at issue in the proceedings. "Notice, in our adversarial process, ensures that each party is provided adequate opportunity to prepare and thereafter properly advocate its position, ultimately exposing all relevant factors from which the finder of fact may make an informed judgment." *Choplosky,* 584 A.2d at 342. Without notice to the parties that custody was at issue, the trial court could not "assume that the parties ha[d] either sufficiently exposed the relevant facts or properly argued their significance. Consequently neither we nor the trial court can make an informed, yet

quintessentially crucial judgment as to whether it was in the best interests of the [child] involved to give sole legal [and physical] custody to the mother." *Id.* at 343.

¶ 20 Having concluded that a modification petition was not before the court at the time of the hearing on Mother's contempt petition and that Father did not have notice that custody would be an issue, we conclude that the court committed a clear abuse of discretion in ordering a change in custody. For these reasons, we vacate the court's orders and reinstate the 1998 custody order.[10]

¶ 21 Orders VACATED.

[1] On August 6, 2001, this Court directed that the appeals be consolidated.

[2] The 1994 order, which awarded Mother primary physical custody, also directed shared legal custody and provided that Father would have partial custody for one month in the summer. Costs of transportation were to be shared.

[3] Mother appealed the 1998 custody order, but this Court affirmed that order on June 22, 1999.

[4] No hearing on this petition has ever been scheduled.

[5] The child's paternal grandmother also filed a custody petition, which the court in its June 11, 2001 order re-listed for hearing at another time. We also note that pursuant to *Flannery v. Iberti,* 763 A.2d 927 (Pa.Super.2000), and *Basham v. Basham,* 713 A.2d 673 (Pa.Super.1998), the June 11, 2001 order refusing to adjudicate a party in contempt of a prior order of court is immediately appealable.

[6] 23 Pa.C.S. § 4346 provides:

(a) General rule.—A party who willfully fails to comply with any visitation or partial custody order may, as prescribed by general rule, be adjudged in contempt. Contempt shall be punishable by any one or more of the following:

(1) Imprisonment for a period not to exceed six months.

(2) A fine not to exceed $500.

(3) Probation for a period not to exceed six months.

(4) An order for nonrenewal, suspension or denial of operating privilege pursuant to section 4355 (relating to denial or suspension of licenses).

(b) Condition for release.—An order committing a person to jail under this section shall specify the condition which, when fulfilled, will result in the release of the obligor.

[7] The five elements deemed essential to a civil contempt adjudication are: "(1) a rule to show cause why attachment should issue; (2) an answer and hearing; (3) a rule absolute; (4) a hearing on the contempt citation; and (5) an adjudication." *Cahalin v. Goodman,* 280 Pa.Super. 228, 421 A.2d 696, 698 (1980).

[8] Notably, Father's temporary modification petition only requested that the court order that all family contact including contact with Father be prohibited for the period of time suggested by Mentor. The petition did not request changes involving physical or legal custody.

[9] The transcript contains the following discussion between Mother's counsel and the court: THE COURT: THIS IS A CONTEMPT PETITION? MR. CHACKER: YES, YOUR HONOR. THE COURT: AND THERE IS NO OTHER PETITION HERE IN FRONT OF ME? MR. CHACKER: NO, YOUR HONOR.

N.T., 3/5/01, at 7-8.

[10] We recognize that in granting Mother's petition, the court found Father in contempt. However, because no other sanctions were imposed that would require oversight

854 A.2d 1278 (2004)

Claudia LIBRETT, Appellant,
v.
Michael MARRAN, Appellee

Superior Court of Pennsylvania.

Submitted May 3, 2004.
Filed July 9, 2004.

1279 *1279 R. Nicholas Gimbel, Philadelphia, for appellant.

Colleen F. Consolo, Norristown, for appellee.

Before: DEL SOLE, P.J., and PANELLA and TODD, JJ.

OPINION BY PANELLA, J.:

¶ 1 This is an appeal by Claudia Librett ("Mother") from an order entered on December 17, 2003 by the Honorable Rhonda Lee Daniele of the Court of Common Pleas of Montgomery County. After careful review, we quash the appeal.

¶ 2 Judge Daniele found Mother, the Appellant herein, to be in contempt of the Court's prior order of April 29, 2003. On May 8, 2003, a felony warrant for Mother was issued by the Montgomery County District Attorney's office; the warrant was issued because Mother allegedly abducted R.M., the minor child of the parties. R.M. was last seen on January 10, 2003, the day after the trial court entered an order awarding joint legal custody of the child to both Mother and Michael Marran, the natural father, primary physical custody to Mother, and partial physical custody to Father. *C.L. v. M.M.,* No. 99-22716, mem.op. dated 01/09/2003 (C.C.P.Montgomery) (Daniele, J.), *aff'd, C.L. v. M.M.,* 3013 EDA 2002, 3036 EDA 2002, 140 EDA 2003, mem.op. dated 06/02/2003 (Pa.Super.2003), Petition for Allowance of Appeal filed July 2, 2003, 488 MAL 2003 (Pa.2003).

¶ 3 As of the date this appeal was presented to this Court for review, Mother is still defying the order herein disputed by failing to present the minor child to Father for his period of partial custody and remains a fugitive.[1]

¶ 4 It is within the discretion of the reviewing court to dismiss a pending appeal *sua sponte.* Commonwealth v. Passaro, 504 Pa. 611, 476 A.2d 346 (1984); *see* Pa.R.A.P., Rule 1972(6), 42 PA. CONS. STAT. ANN. When a parent has been found to have violated a custody order and the contempt is flagrant, an appeal may be denied. *Fatemi v. Fatemi,* 371 Pa.Super. 101, 537 A.2d 840, 843 (1988).

> [W]here court orders are disobeyed with impunity and respect for the law and the courts thereby weakened ... it is the duty of the appellate courts to see to it that every assistance is extended to the courts of the Commonwealth so that orders are meticulously carried out as otherwise the dignity of the judiciary, the majesty of the law and its enforcement are clearly undermined.

Beemer v. Beemer, 200 Pa.Super. 103, 188 A.2d 475, 476 (1962).

¶ 5 The modern view is to deny appeal in custody cases where court orders have been disobeyed. *Id.* at 477 (citations omitted). "The rationale of decisions dismissing an appeal from the appellant's disobedience of a trial court's order seems to be that it is contrary to the principles of justice to permit one who has flaunted the orders of the courts to seek judicial assistance." *Id.*

¶ 6 While quashing the appeal may not accomplish enforcement of the trial court's order, it will assuredly not grace this appeal
1280 *1280 with validity. *Id.* at 478. Under the above circumstances, we therefore quash the appeal. *Id.; Regli v. Regli,* 288 Pa.Super. 534, 432 A.2d 1000 (1981).

¶ 7 The appeal is quashed. Petition for Post-Submission Communication to Supplement the Record filed on May 24, 2004, rendered moot.[2]

[1] The felony warrant remains outstanding.

[2] We note with interest that the Superior Court's non-precedential Memorandum Opinion filed on May 19, 2004 is what the Appellant is seeking