

We conclude that the enabling legislation giving life to SEPTA clearly demonstrates that the legislature intended to create a purely local authority, dealing with purely local transit problems and entirely unrelated to statewide concerns or statewide departments or agencies.

When we compare the enabling legislation for intermediate units with the Metropolitan Transportation Authorities Act and the Municipality Authorities Act of 1945 (53 P.S. 301 et seq.), we conclude:

1. The legislature was addressing itself to the solution of a statewide problem by the establishment of the units throughout the Commonwealth.

2. The creation of the intermediate units was in direct compliance with the mandate of Art. III, Section 14 of the Constitution of Pennsylvania: "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth."

3. The limitations on the powers of the boards of directors of the intermediate units and the imposition of various oversight duties and controls on the State Board of Education or Superintendent of Public Instruction evidences a legislative intent to maintain statewide supervision of the units.

4. The omission of any taxing or borrowing authority in the individual intermediate units, coupled with the implied assurance of primary funding from the Commonwealth via the State Board of Education, demonstrates that the units have minimal autonomy and are responsible to the State Board of Education.

We conclude that the defendant, Lincoln Intermediate Unit No. 12 and the individual members of its Board of Directors in their capacity as the unit's governing body, are an agency of the State Board of Education. Consequently, we also conclude that the Commonwealth Court has original jurisdiction over this cause of action.

ORDER

NOW, this 19th day of February, 1976, pursuant to Section 503(b) of the Appellate Court Jurisdiction Act of 1970, P.L. 673, 17 P.S. 211.503(b), this case is hereby transferred to the Commonwealth Court. The Prothonotary shall certify to the Clerk of the Commonwealth Court a photocopy of the docket entries of the above action and transmit to him the entire record.

COMMONWEALTH OF PENNSYLVANIA, ex rel. NORTH v. NORTH, C.P. Franklin County Branch, A.D. 1978-82

Custody - Visitation Rights - Extra-marital Relationship

1. The right of a parent to visit with his child can be limited or denied only in cases where severe mental or moral deficiency of the parent constitutes a real and grave threat to the welfare of the child.

2. The fact that the father is living with another woman does not disqualify the father from exercising his visitation rights on the basis of being severely morally deficient.

3. Where exposure to extra-marital relationships could be damaging to children and the effects of such an experience far reaching, the court may order the visitation rights granted to the parent shall not be exercised in the presence of any person with whom the parent may be living out of wedlock.

Kenneth E. Hankins, Jr., Esq., Attorney for Petitioner

Thomas J. Finucane, Esq., Attorney for Respondent

OPINION AND ORDER

EPPINGER, P.J., May 26, 1978:

Curtis D. North (father) and Sally A. North (mother) are the parents of Christopher and Ryan North (children). The father brought this habeas corpus action against the mother, the current custodian of the children, for visitation rights.

The parents are separated, but no divorce action has been started. The father is currently living with another woman at his home in Coraopolis, Pennsylvania. The mother has no objection to the father having visitation rights. She objects, however, to these rights being exercised in the presence of the other woman as being detrimental to the best interests of the children. The inclusion of a restriction in the visitation order that any visitation should not be in the presence of the other woman is the subject of this dispute.

The relationship between parent and children is protected by public policy, *Commonwealth ex rel. Lotz v. Lotz*, 188 Pa. Super 241, 146 A.2d 362 (1958), and the right of a parent to visit with his child can be limited or denied only in cases where severe mental or moral deficiencies of the parent constitute a real and grave threat to the welfare of the child. *Lotz, supra; Commonwealth ex rel. Sorace v. Sorace*, 236 Pa. Super 42, 344

SHERIFF'S SALES, cont.

William A. Brindle Associates, dated April 10, 1975.

TOGETHER with an easement in common with Charles A. Bikle and S. Elizabeth Bikle, his wife, their successors and assigns, for ingress and egress of persons and vehicles to and from the above described real estate, over, across and upon an existing nine-foot concrete driveway and proposed addition thereto, which addition is bounded on the north by said existing nine-foot concrete driveway, on the south by the northerly property line of parcel A, on the east by Fifth Avenue North, and on the west by an existing carport.

BEING the same premises which Charles A. Bikle and S. Elizabeth Bikle, husband and wife, granted and conveyed unto Saad M. Hasan and Beatrice E. Hasan, husband and wife, by Deed dated April 23, 1975.

And having erected thereon a dwelling of Conventional design for Office space with a brick or stone foundation, full basement area. Exterior walls are of frame construction and drop siding. Interior walls are of plaster, roof of asphalt shingles.

Seized and taken in Execution as the real estate of Saad M. Hasan and Beatrice E. Hasan, his wife, under Judgement No. A.D. 1978-137.

TERMS: The successful bidder shall pay 20% of the purchase price immediately after the property is struck down, and shall pay the balance within ten days following the sale. If the bidder fails to do so, the real estate shall be re-sold at the next Sheriff's sale and the defaulting bidder shall be liable for any deficiency including additional costs. Any deposit made by the bidder shall be applied to the same. In addition the bidder shall pay \$20.00 for preparation, acknowledgement and recording of the deed. A Return of Sale and Proposed Schedule of Distribution shall be filed in the Sheriff's Office on August 16, 1978, and when a lien creditor's receipt is given, the same shall be read in open court at 9:30 A.M. on said date. Unless objections be filed to such return and schedule on or before August 28, 1978, distribution will be made in accord therewith. June 27, 978

FRANK H. BENDER, Sheriff of Franklin County, Pennsylvania

(7-7, 7-14, 7-21)

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA) Plaintiff,)
vs.)
ROBERT LEE GREGORY SR.)
LINDA M. GREGORY)
Defendants)

CIVIL NO. 77-862

Public notice is hereby given, that by virtue of a Writ of Execution (Mortgage Foreclosure) issued out of the United States District Court for the Middle District of Pennsylvania, to me directed, I will expose and offer for sale at public vendue to the

SHERIFF'S SALES, cont.

highest bidder, terms of sale 20% down at the time of sale, balance due in thirty (30) days, on the premises of the real estate situate in the Borough of Mont Alto, Franklin County, Pennsylvania, on the 5th day of July, 1978 at 2:00 P.M., all the right, title and interest of Robert Lee Gregory, Sr. and Linda M. Gregory, Defendant(s) and Mortgager(s), in and to the following described real estate and property, including improvements thereon.

DESCRIPTION OF PROPERTY TO BE SOLD

ALL THAT CERTAIN message, tenement and lot of ground situate in the Borough of Mont Alto, Franklin County, Pennsylvania, bounded and limited as follows:

BEGINNING at a corner common to Lots Nos. 1 and 2 in Section B on a certain plan of lots made for Sunny Hill Development Corp. by William L. Arrowood, R. E., dated July 13, 1965, recorded in the Office of the Recorder of Deeds of Franklin County, Pennsylvania, in Plan Drawer No. 7, and the said point being in the property line of the northern side of a 50-foot side street or road known as University Drive; thence from said beginning point and in the property line on the northern side of University Drive, South 75 degrees 17 minutes 47 seconds East, 75 feet to a point; thence on a curve to the left having a chord length of 35.36 feet, chord bearing of South 59 degrees 42 minutes 13 seconds West, and a radius of 25 feet, an arc distance of 39.27 feet to another point on the western side of another 50-foot wide street or road known as Willow Street; thence along the western side of Willow Street, North 14 degrees 42 minutes 13 seconds East, 141.65 feet to a point; thence North 79 degrees 28 minutes 46 seconds West, 100.27 feet to an iron pin at a corner common to Lots Nos. 1 and 2 in Section B on the aforesaid plan of lots; thence along the said Lot No. 2 in Section B, South 14 degrees 42 minutes 13 seconds West, 159.34 feet to the point in the property line on the northern side of University Drive at the place of beginning. BEING all of Lot No. 1 in Section B on said plan of lots.

BEING the same real estate which Sunny Hill Development Corp., a corporation, by deed dated January 13, 1975, and intended to be recorded in the Office of the Recorder of Deeds of Franklin County, Pennsylvania, immediately prior to the recording of this mortgage, conveyed to Robert Lee Gregory, Sr. and Linda M. Gregory, his wife, mortgagors herein.

S. JOHN COTTONE
United States Attorney
By PAUL J. KILLION
Assistant U. S. Attorney

Date: December 2, 1977

To all parties in interest and claimants: A Schedule of Distribution of Sale will be filed by the U. S. Marshal on August 21, 1978, with the Clerk of the Court, Scranton, PA. Distribution will be made in accordance with said Schedule unless exceptions are filed thereto within ten (10) days thereafter with the Clerk.

JOHN L. BUCK
United States Marshal
Middle District of Pennsylvania
Scranton, Pennsylvania

(7-7, 7-14, 7-21)

A.2d 553 (1975). The real basis for a decision in this kind of a case is the best interest and welfare of the child. Commonwealth ex rel. *Children's Aid Society v. Gard*, 362 Pa. 85, 66 A. 2d 300 (1949).

"... [t]he "prime consideration" must always be the best interests of the child, which the court must decide by considering all the facts, including what effect the non-marital relationship has on the child." (Emphasis in original) *Gunter v. Gunter*, 240 Pa. Super 382, 393, 361 A. 2d 307 (1976)

In *Sorace*, supra, a separated husband was living with a divorced woman he intended to marry. He petitioned the court for visitation rights during the pendency of a divorce proceeding. The *Sorace* court stated:

While we do not condone the relationship in which the appellee (husband) is living, we are unable to hold that this relationship alone amounts to "severe moral deficiencies" so as to deny or limit appellee's visitation rights. Supra at 554.

It is important to distinguish between the relationship the father has with another woman and the children's participation in that relationship. Thus the fact that the father is living with another woman does not disqualify the father as being severely morally deficient. It is quite another thing to put this child in the middle of this relationship.

In *Sorace* the wife sought to deny the father any visitation rights at all because he was living with another woman. The trial court permitted the visits only during the daytime and required the father to consider the wishes of the children as to where he takes them and with whom they visit. The mother appealed. The lower court was affirmed.

Referring to *Commonwealth ex re. Staunton v. Austin*, 209 Pa. Super 187, 233 A.2d 892 (1966), the *Sorace* court found unusual circumstances to exist. In *Staunton* the illicit relationship between Mr. and Mrs. Staunton was found to be durable and the child in question was a child of this illicit relationship. The trial court felt it would be well for her to be with her brothers and sisters as opposed to being in the home of benefactors who had looked after the child in the "only home she ever knew".¹ There the contest was between natural parents of the child asking for custody and the benefactors who were apparently not related. Weighing heavily in the court's decision was the fact that the child was being returned to her natural parents, brothers and sisters. Thus the life into which

¹ See dissenting opinion by Wright, J.

she was being placed (an illicit relationship which was not condoned by the court) was nevertheless found to be preferable to a non-family situation.

In our opinion, no such unusual circumstances exist here. The choice is not between denying the father visitation rights or granting them. The question is whether it would be in the best interest of the children to protect them from the influence of the father's illicit relationship to the extent that is possible. We conclude that it would and that this can be done by limiting his visitation rights to situations where the paramour is not present. If at some future time the relationship matures into a marriage as the father indicated it would, then the order can be changed.

We think this is consistent with the *Sorace* case. The effect of the illicit relationship is most present at bedtime. In *Sorace*, there were no overnight visitation rights. On its face we cannot find that the *Sorace* court approved an exposure to extra-marital relationships. We find that such exposure could be damaging to the children and the effects of such an experience could be far reaching.

The court has a heavy responsibility in protecting the interests of the children who are brought before it. It is not too much to ask the father to accept the limitations on his visitation rights as we propose to do. He may be slightly inconvenienced, but the children's interests will be protected, and that is what is required of us.

ORDER OF COURT

NOW, May 26th, 1978, visitation rights are granted to Curtis D. North, father of Christopher and Ryan North, every second week-end beginning Friday, May 26, 1978, at 6:00 p.m. through Sunday, May 28, 1978, at 7:00 p.m. prevailing time in Chambersburg, Pennsylvania. In addition, the father shall have the right to visit with the children every second holiday beginning with Independence Day, July 4, 1978, from 6:00 p.m. on the day preceding the holiday until 7:00 p.m. on the holiday. The other holidays contemplated by this Order include Labor Day, Veterans' Day, Thanksgiving Day and Memorial Day.

In addition, the father shall have the right to visit with the children five days during the Christmas-New Years period. For convenience of calculating the time, the five days shall be at the beginning of the school vacation in the district where the children reside or at the close. In 1978, the father's visitation shall be the last five days and alternately thereafter.

In addition, the father shall have the right to visit with the children for two weeks during the summer at the time of his vacation, from 6:00 p.m. on the Friday preceding the two-week period until 7:00 p.m. on the Sunday concluding the period. In order to exercise these rights, the father shall give the mother at least three weeks prior notice of his intention to do so.

These visitation rights granted to the father shall not be exercised in the presence of any person with whom the father may be living out of wedlock.

Each party shall pay his and her own costs.

Editor's Note: This case appealed to Pa. Superior Court on June 13, 1978.

KING v. EBERLY (NO. 2), C.P. Franklin County Branch, A.D. 1977-346

Exceptions - Warranty of habitability - Builder-Vendor - Defective Home

1. The term "builder-vendor" includes any builder who places a new house on any tract of land and then offers it for sale, as contrasted with the builder who constructs a house on ground owned by the person who intends to occupy it.

2. The test of whether a house is defective for the purpose of the implied warranty of habitability is one of reasonableness in the construction of the house.

George E. Wenger, Jr., Esq., Attorney for Plaintiffs

David S. Dickey, Esq., Attorney for Defendants

OPINION AND ORDER

Heard before Eppinger, P.J., Keller, J.; Opinion by

EPPINGER, P.J., May 26, 1978:

This action was heard by the Court without a jury. Following the trial, the Court issued Findings of Fact, Conclusions of Law and a verdict finding for Robert D. King and Gail I. King, husband and wife (Kings) plaintiffs and against Ronald E. Eberly and Nancy L. Eberly, husband and wife (Eberlys) defendants in the amount of \$5,523.00.