

Parenting coordination: the emancipation proclamation

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On the eve of the rollout of the new parenting coordinator rules (Probate & Family Court Standing Order 1-17, effective July 1), the recognition and sweep of the authority of a PC got a judicial boost recently from the Appeals Court in *Leon v. Cormier* (Lawyers Weekly No. 11-032-17).

Until now, the scope of agency and mandates of a PC were relegated to the same untamed landscape as alimony in Massachusetts once had been.

A past view

The long-awaited standing order picks up where other attempts to codify the role and scope of a PC's authority had left off.

Bower v. Bournay-Bower, 469 Mass. 690 (2014), was, in no small part, the catalyst for formalizing PC regulations. In that case, the Supreme Judicial Court was spot on in noting that, despite the increasing reliance on PCs, the specific functions, requisite qualifications, and parameters of authority had not been adjudicated by court rule or codified by statute.

Bower raised an issue of first impression in considering whether the court in a divorce or custody proceeding could appoint a PC over the objection of one of the parties, and also examined whether the court could confer on a PC the grant of decision-making authority without the consent of all parties.

The mother in that case argued that the judge's appointment of a PC infringed on her due process right of access to the courts.

Although the SJC held that the PC's order exceeded the bounds of the judge's inherent

authority and was so broad in scope as to amount to an unlawful delegation of judicial authority, the SJC paved the way for *Leon v. Cormier* by urging the Probate Court "to review and consider the promulgation of a rule governing the appointment of parent coordinators." *Bower* at 707.

A present view

The *Leon* case, hot off the presses, took up the *Bower* challenge of judicially delineating the PC's role and, not coincidentally, redistricting the boundaries of the PC landscape.

To set the backdrop, the separation agreement enabled the parties to modify the terms of their parenting plan, but also provided that, in the event of disagreement about the terms, they would retain a mutually agreeable PC. A key provision of the agreement stated that the PC's decisions would be binding on the parties unless or until they were changed by court order.

Over the course of a year and a half, the father filed numerous contempts for alleged violations of the PC's orders involv-

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ing "visitation" exchanges. The judge concluded there were 70 violations of the PC's order and held the mother in contempt.

The mother argued that the PC's decisions could not subject her to contempt because they did not rise to the level of court orders. The Appeals Court soundly disagreed and offered the following rationale:

(a) since the separation agreement was incorporated



into the judgment of divorce nisi, the agreement had the full force and effect of a court order;

(b) the pertinent provisions of the agreement unequivocally mandated that the parties were to abide by the PC's decisions unless the court ordered otherwise;

(c) unlike in *Bower*, in which the mother argued she was compelled to be an unwilling party to third-party non-judicial decision-making authority, Ms. Cormier could not rely on that assertion since the judge had no role in the PC's appointment, the parties clearly provided for — and even named — the PC, and they consented in advance to be bound by the PC's decisions (unless either party sought judicial review);

(d) the mere presence of the right to judicial review as part of the agreement "ensured an adequate safeguard of each party's constitutional right to free access to the court" (citing *Bower* at 704); and

(e) the PC's order did not affect the material terms of the judgment regarding the children's primary custody and a parent's right to visitation.

A future view

Due to the farsighted efforts of Probate Court Chief Justice Angela M. Ordoñez, a diligent task force of attorneys, mental health professionals, court staff and judges worked hard to shape policies and procedures relating to PC appointments made by agreement of the parties, as well as those

appointments ordered by the court — including qualifications, standards of practice and scope of authority. The result is the much heralded and most welcome comprehensive Standing Order 1-17, which is both retrospective (in part) and prospective in application.

That said, no one case or standing order will be the PC panacea. *Leon*, though welcome guidance for PCs and practitioners, still raises more than a few questions. And, while the standing order fills in many of the blanks, one can already envision future PC litigation.

Consider, for example, what constitutes a decision affecting the "material terms of the judgment regarding custody and visitation." The standing order is only partially instructive: It prohibits a PC from "facilitat[ing] an agreement by the parties that would change legal custody from one party to the other or that would change the physical custody or parenting plan in a way that may result in a change of child support."

The order at issue in *Leon* passed muster because it "merely altered the logistical coordination of visitation" But how might that mere alteration be interpreted under different circumstances?

And, while the standing order also fleshes out the contours of a PC's authority (with a list that includes "minor changes or clarifications of the existing parenting plan"; dates, times and places of exchange for the children; extracurricular activities; and children's travel

arrangements), can a PC suspend parenting time in the best interests of the children (e.g., due to parental drug or alcohol abuse)?

Can a PC order that a child see a therapist over the objection of a parent who has shared legal custody?

Can a PC order that the children go to a charter school, or a private school, over the objection of the other joint legal custodial parent?

Can a PC make educational determinations, since the standing order places "school choice" in the PC's purview, a prerogative implicating legal custody?

In none of those examples does a PC order per se strip a parent of his/her status as a legal custodian. While such PC decisions certainly infringe upon legal custody, whether they rise to the level of being considered "material terms of the judgment" contemplated by *Leon* is an open question.

Conclusion

Whereas until recently practitioners were making their way, even improvising, in an uncertain terrain, *Leon*, in conjunction with the new parenting coordinator order, has illuminated the landscape.

Although there is arguably less clarity even in this new topography, we can all look forward to future judicial guidance to keep the practice of PCs within bounds. **MLW**

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