

## Pennsylvania Case Summaries

*Aetna Inc. v. Lexington Ins. Co.*, 2005 Phila. Ct. Com. Pl. LEXIS 465 (October 27, 2005) (holding that 42 Pa. C.S.A. § 5949 and the confidentiality terms of the agreement to mediate do not prevent the court from considering what was not discussed regarding a potential claim that “would accrue only after a settlement payment was made” in a post-mediation settlement dispute over whether the scope of settlement included a release of a claim involving a subsidiary of one of the parties);

*Bishop v. Piller*, 399 Pa. Super. 52, 581 A.2d 670, 1990 Pa. Super. LEXIS 3214 (1990), affirmed by 536 Pa. 41, 637 A.2d 976, 1994 Pa. LEXIS 39 (1994)(23 Pa. Cons. Stat. § 5311 et seq. provides three instances in which the court should consider visitation for grandparents: (1) when one parent has died; (2) when the parents are separated for six months or more; (3) when the child has lived with the grandparents for a year or more, and in each instance, the statute explicitly states that visits must be in the best interest of the child);

*Brower v. Brower*, 604 A.2d 726, 413 Pa. Super. 48 (1992)(settlement agreement between a husband and a wife is governed by contract law unless provided otherwise in the agreement);

*Brown v. Hall*, 495 Pa. 635, 435 A.2d 859 (1981)(arbitration does not bind courts in cases involving minors) (Chapter 14);

*CW v. LV and GV*, 788 A.2d 1002, 2001 Pa. Super. 332, 2001 Pa. Super. Lexis 3450 (2001), (noting “Generations is the Allegheny County education/mediation-orientation program which each party in a custody action must attend);

*Capecci v. Joseph Capecci, Inc.*, 392 Pa. 32, 139 A.2d 563 (1958)(“every reasonable intendment will be made in favor of agreement” to arbitration);

*Chamberlin v. Chamberlin*, 693 A.2d 970 (Pa. Super. 1997)(an alimony agreement arose out of settlement agreement, not by the court in a contested action, so contract law governed);

*Clark v. Cambria County Board of Assessment Appeals*, 747 A.2d 1242 (Pa Cmwlth. 1999) (unauthorized practice of law);

*Cole v. Price*, 566 Pa. 79, 778 A.2d 621 (2001) (unauthorized practice of law);

*Cook v. Liston*, 192 Pa. 19, 21, 43 A. 389, 390 (1899) (when there is mistake on one side and fraud on the other, relief is available);

*Dauphin County Bar Association v. Mazzacaro*, 351 A.2d 229 (Pa. 1976) (unauthorized practice of law; injunctive relief);

*Dudash v. Dudash*, 313 Pa. Super. 547, 460 A.2d 323, 327 (Pa. Super. 1983), citing *Hassler v. Mummert*, 242 Pa. Super. 536, 364 A.2d 402, 403 (Pa. Super. 1976) (“A corollary to the aforementioned principles is the rule that the mistake under scrutiny, as well as the actual intent of the parties, must be clearly proven”);

*Elizabeth Forward School District v. Pennsylvania Labor Relations Board*, 154 Pa. Cmwlth. 5, 624 A.2d 215 (1992) (excluding labor mediator testimony);

*Friedman v. Friedman*, 419 A.2d 1221, 277 Pa. Super. 428 (1980)(petitions to vacate, modify, and correct an arbitration award could only be at a final award and not an interlocutory court order):

*Gmerek v. State Ethics Commission*, 751 A.2d 1241 ( Pa. Cmwlth. 1999) (unauthorized practice of law);

*Goral v. Fox Ridge, Inc.*, 453 Pa. Super 316 (1996)(public policy favors settlement of disputes by arbitration);

*Guadagno v. Montie*, 646 A.2d 1257, 435 Pa. Super. 603 (1994)(custody “mediator” recommended that child’s best interest was with shared custody if mother moved to Ohio);

*Hannington v. Trustees of the University of Pennsylvania*, 809 A.2d 406 (finding that under the doctrine of apparent authority an oral settlement agreement can be enforced where a third party reasonably believes that the principal's lawyer, lacking express authority to settle, has the authority to settle the case) (Pa. Super. 2002);

*Harvey v. Hindman*, 33 Phila. 554, 1997 Phila. Cty. Rptr. LEXIS 38 (Pa. C.P. 1997)(Husband's request for bifurcation pursuant to the Divorce Code, specifically, 23 Pa.C.S. § 3323, and Pa. R. Civ. P. 1920.52, in divorce action seeking an immediate divorce and later resolution of economic issues and custody, was granted because the advantages of bifurcation outweighed the disadvantages);

*Hertz v. Hertz*, 48 Pa. D. & C.4th 424 (Chester County 2000)(Memorandum of Understanding that was reached through mediation and drafted by the mediator was held to be enforceable as a bar to an alimony claim);

*Hill v. Divecchio*, 625 A.2d 642, 425 Pa. Super. 355 (1993)(grandparents custody & visitation);

*Himes v. Himes*, 833 A.2d 1124, 2003 Pa Super. LEXIS 3228 (Pa. Super. 2003) (failure of divorce attorney to appear on behalf of client at child custody mediation resulted in criminal contempt conviction);

*Hyde v. Hyde*, 618 A.2d 406, 421 Pa. Super. 415 (1992) citing with approval a New Jersey leading case, *Matter of Baby M.*, 537 A.2d 1227, 109 N.J. 396 (1988)(surrogacy contract invalid against law and public policy; payment of money to a surrogate mother is illegal);

*In re Foltz*, 538 Pa. 189, 647 A.2d 504 (1994) (unauthorized practice of law);

*In the Interest of G.C.*, 735 A.2d 1226, 558 Pa. 116 (1999)(grandparents custody & visitation);

*Kazanjian v. New England Petroleum Corp.*, 332 Pa. Super. 1, 7, 480 A.2d 1153 (Pa. Super. Ct. 1984) (holding that despite the fact that the parties intended to create a writing to record their oral agreement, the original oral agreement was still binding);

*Kline v. Kline*, 708 A.2d 503 (Pa. Super. 1998)(refusal to attend educational and counseling orientation upheld; no pending action nor custody dispute, and spouse had attended equivalent counseling);

*Knorr v. Knorr*, 588 A.2d 503, 527 Pa. 83 (1991) (the court did not follow the terms of the separation agreement and ordered more than the agreed upon support, but the suit was not brought to enforce the agreement but for redress in a family court);

*Kohlman v. Western Pennsylvania Hospital*, 438 Pa. Super. 352, 652 A.2d 849 (1994) (unauthorized practice of law);

*K.B. v. C.B.F.*, 2003 PA Super 364, 833 A.2d 767, 2003 Pa. Super. LEXIS 3219 (Pa. Super. Ct. 2003)(grandparents custody & visitation);

*K.W.B v. E.A.B.*, 698 A.2d 609, 1997 Pa. Super. Lexis 2183 (1997)(father appealed an order awarding primary physical custody of the children to the mother);

*Kramer v. Schaeffer*, 2000 Pa. Super. 127, 751 A.2d 241 (2000) (upheld a post-verdict offer by carrier for \$ 3,500 accepted by plaintiff based upon unilateral mistake by adjuster);

*Langille v. Genie Co.*, 72 Pa. D. & C.4th 277 (Pa. Com. Pl. 2005) (summary jury trial used in personal injury case);

*Marmon Philadelphia Co. v. Blocksom*, 103 Pa. Super. 542, 157 A. 510 (Pa. Super. 1931) (finding that a written agreement cannot be reformed when there is mistake by one party due to that party's negligence);

*Mazzella v. Koken*, 559 Pa. 216, 739 A.2d 531 (1999) (there must be an agreement before it can be enforced);

*McDonnell v. Ford Motor Co.*, 434 Pa. Super. 439, 643 A.2d 1102, 1105 (Pa. Super. 1994) (court determined it necessary to hold an evidentiary hearing to determine if a settlement reached at mediation should be set aside);

*McFadden v. American Oil Company*, 215 Pa. Super. 44, 257 A.2d 283, 288-89 (Pa. Super. 1969) (“A corollary to the aforementioned principles is the rule that the mistake under scrutiny, as well as the actual intent of the parties, must be clearly proven.”);

*Midomo Co. v. Presbyterian Hous. Dev. Co.*, 739 A.2d 180 (Pa. Super. Ct. 1999)(limited judicial inquiry to determine existence and scope of valid agreement to arbitrate);

*Miller v. Miller*, 423 Pa. Super. 162, 620 A.2d 1161 (1993)(arbitration does not bind courts in cases involving minors);

*Mongeluzzi v. Pansini & Lessin*, 61 Pa. D. & C.4<sup>th</sup> 52, 2001 Pa. D. & C. LEXIS 282 (Dec. 10, 2001) (“court ruled that the mediation privilege precludes evidence of communications made during and related to mediations”);

*O’Callaghan v. O’Callaghan*, 567 A.2d 308, 389 Pa. Super. 319 (1989)(under 23 Pa. Cons. Stat. § 3301(e) party is not allowed to proceed with a fault-based divorce if in fact a no fault divorce can be obtained);

*Office of Disciplinary Counsel v. Jackson*, 536 Pa. 26, 637 A.2d 615 (1992) (unauthorized practice of law);

*Pennsylvania v. Ritchie*, 480 U.S. 39, 94 L. Ed. 2d 40, 107 S. Ct. 989 (1987) (criminal defendant’s constitutional rights may require disclosure during discovery of a complaining child’s interview records from the juvenile agency);

*Rochester Machine Corp. v. Mulach Steel Corp.*, 498 Pa. 545, 449 A.2d 1366 (1982) (statements of fact made during settlement negotiations are admissible unless used in a hypothetical or integrated with an offer or acceptance);

*Seaboard Radio Broad. Corp. v. Yassky*, 176 Pa. Super. 453, 107 A.2d 618 (Pa. Super. 1954) (finding that a written agreement cannot be reformed when there is mistake by one party due to that party's negligence);

*Sinha v. Sinha*, 515 Pa. 14, 526 A.2d 765 (1987)(the intent of one spouse to dissolve the marriage must be clearly communicated to the other spouse for the statutory clock to begin);

*Smith v. Thomas Jefferson University Hosp.*, 424 Pa. Super. 41, 621 A.2d 1030, 1032 (Pa. Super. 1993) (citing *McFadden*, supra) ("A corollary to the aforementioned principles is the rule that the mistake under scrutiny, as well as the actual intent of the parties, must be clearly proven.");

*Sohmer v. Sohmer*, 465 A.2d 665, 318 Pa. Super. 500 (1983)(economic issues adjudicated de nova where the foreign court does not have *in personam* jurisdiction over a Pennsylvania resident);

*Spirit of the Avenger Ministries v. Commonwealth*, 767 A.2d 1130 (Pa. Cmwlth. 2000) (unauthorized practice of law);

*Swartz v. Swartz*, 689 A.2d 302, 456 Pa. Super. 16 (1997)(a wife did not waive her contractual rights in a child support agreement by filing a complaint for child support independent of the agreement because the child support agreement was not merged into the divorce decree);

*Twitty v. Minnesota Mining and Manufacturing Co.*, 16 Pa. D. & C. 4th 458 (C.P. of Philadelphia County 1993) (the court has the inherent power to order parties to participate in a non-binding SJT process);

*United Coal v. Hawley Fuel Coal, Inc.*, 363 Pa. Super. 106, 525 A.2d 741, 742 (Pa. Super. 1987) (finding that what was said, done, and intended by the parties are questions of fact in an oral contract dispute);

*Wilson v. Braun*, 461 A.2d 1253, 315 Pa. Super. 225 (1983)(grandparents custody & visitation);

*Wojdak v. Greater Pittsburgh Cablevision, Inc.*, 550 Pa. 474, 707 A.2d 214 (1998)(claims resolved in "a specialized forum more likely to be conversant with the needs of the parties and the customs and usages of a specific industry than a court of general legal or equitable jurisdiction");

*Wolk v. Wolk*, 464 A.2d 1359, 318 Pa. Super. 311 (1983)(bifurcation will only be permitted when the benefits outweigh the disadvantages);

*Woodbridge v. Hall*, 366 Pa. 46, 76 A.2d 205 (1950) (holding that despite the fact that the parties could not reduce their agreement to writing after several attempts, the parties were still bound by the oral settlement agreement);

*Wright v. Chandler*, Court of Common Pleas, Allegheny County, GD 96-18270 (Verdict 9/7/00, Judge Farino)(private contract molding public verdict);