

# SUPERIOR COURT OF PENNSYLVANIA

## Huss v. Weaver

2014 PA Super 238 · No. No. 1703 WDA 2013 · Decided October 21, 2014

### SUMMARY

The Pennsylvania Superior Court reviewed the dismissal of Amy Huss’s claims against James P. Weaver arising from an agreement concerning child custody, visitation, and a \$10,000 payment for each custody or visitation modification filing. The court held that the payment provision was not shown to violate dominant public policy and that the trial court improperly dismissed the breach of contract, negligent misrepresentation, and fraud claims at the preliminary-objections stage. The order was reversed and the case was remanded.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                             |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Superior Court of Pennsylvania                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Donohue, J.; Allen, J.; Musmanno, J.                                                                                                                                                                                                        |
| JURISDICTION          | Pennsylvania                                                                                                                                                                                                                                |
| DECIDED               | October 21, 2014                                                                                                                                                                                                                            |
| DOCKET                | No. 1703 WDA 2013                                                                                                                                                                                                                           |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Appeal from an order granting preliminary objections in the nature of demurrers and dismissing an amended complaint with prejudice.                                                                                                         |
| STANDARD OF REVIEW    | Review of an order sustaining preliminary objections in the nature of demurrers is de novo and plenary. The court derives salient facts solely from the complaint and treats well-pleaded material facts and reasonable inferences as true. |
| PRECEDENTIAL VALUE    | Published Pennsylvania Superior Court opinion; precedential unless otherwise limited by Pennsylvania law.                                                                                                                                   |
| PARTIES               | Amy Huss v. James P. Weaver                                                                                                                                                                                                                 |

### TOPICS

[child custody](#) [visitation](#) [contracts](#) [motions to dismiss](#) [appellate procedure](#)

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the agreement's \$10,000 payment provision for each custody or visitation modification filing is unenforceable as against public policy.
2. Whether dismissal of Huss's negligent-misrepresentation and fraud claims on demurrer was proper on the ground that she could not establish damages.
3. Whether Weaver should be estopped from asserting unenforceability because he drafted the agreement and advised Huss that it was legal and enforceable.

## HOLDINGS

1. The \$10,000 clause is not unenforceable as against public policy on the basis that custody and visitation agreements remain subject to court modification in the child's best interests.
2. Dismissal of the negligent-misrepresentation and fraud claims was error because, if the \$10,000 clause is enforceable, damages for Weaver's alleged breach may be available.
3. The parol evidence rule does not bar testimony explaining, clarifying, or resolving an ambiguity concerning whether the payment provision was intended to provide a defense fund.

## KEY QUOTATIONS

*“Public policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest.” (-7)*

*“In no sense, however, do custody and visitation agreements involve the bargaining away of the rights of the children, and hence they are not unenforceable as against public policy on the same basis as are agreements regarding child support.” (-9)*

## FACTUAL BACKGROUND

In October 2008, Huss and Weaver entered into an agreement concerning custody, visitation, support, and modification of those provisions if their relationship ended and they had a child. The agreement provided that Weaver would pay Huss \$10,000 for each complaint, motion, petition, or similar pleading he filed seeking to modify custody or visitation. After the parties' son was born, Weaver filed custody litigation, allegedly made numerous modification filings, and refused to make the required payments. Huss sued for breach of contract and later added negligent-misrepresentation and fraud claims, alleging that Weaver, who had provided her legal advice and helped draft the agreement, misrepresented its legality.

## PROCEDURAL HISTORY

Huss filed a breach-of-contract complaint alleging that Weaver failed to make \$10,000 payments required for each attempt to modify custody or visitation terms in their agreement. She later amended the complaint to add negligent-misrepresentation and fraud claims. The Washington County Court of Common Pleas sustained Weaver's preliminary objections and dismissed the amended complaint with prejudice, ruling that the payment

provision violated public policy and that Huss could not establish damages for the tort claims. The Superior Court reversed and remanded.

#### DISPOSITION

reversed\_and\_remanded

#### REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including consideration of Huss's claims after rejecting the public-policy basis for dismissal. Jurisdiction was relinquished.

#### CASES CITED

- Knorr v. Knorr, 588 A.2d 503, 505 (Pa. 1991)
- Mumma v. Mumma, 550 A.2d 1341, 1343 (Pa. Super. 1988)
- Yates v. Yates, 963 A.2d 535, 539 (Pa. Super. 2008)
- Ferguson v. McKiernan, 940 A.2d 1236, 1245 n.16 (Pa. 2007)
- Hall v. Amica Mut. Ins. Co., 538 Pa. 337, 347-48, 648 A.2d 755, 760 (1994)
- Eichelman v. Nationwide Ins. Co., 711 A.2d 1006, 1008 (Pa. 1998)
- Mamlin v. Genoe, 340 Pa. 320, 325, 17 A.2d 407, 409 (1941)
- Sams v. Sams, 808 A.2d 206, 211, 213 (Pa. Super. 2002)
- Ruth F. v. Robert B., 690 A.2d 1171, 1172 (Pa. Super. 1997)
- Hyde v. Hyde, 618 A.2d 406, 408 (Pa. Super. 1992)
- Kesler v. Weniger, 744 A.2d 794, 796 (Pa. Super. 2000)
- Com. ex rel. Veihdeffer v. Veihdeffer, 344 A.2d 613, 614 (Pa. Super. 1975)
- Lee v. Child Care Service Delaware County, 337 A.2d 586, 590 (Pa. 1975)
- Kraisinger v. Kraisinger, 928 A.2d 197, 337, 345 (Pa. Super. 2007)
- Martin v. Rite Aid of Pennsylvania, Inc., 80 A.3d 813, 814 (Pa. Super. 2013)
- Steuart v. McChesney, 444 A.2d 659, 663 (Pa. 1982)
- Insurance Adjustment Bureau, Inc. v. Allstate Ins. Co., 905 A.2d 462, 468 (Pa. 2006)