

PA Superior Court Thorough Analysis of PFA Expungements and “Expungement Continuum”

Graham v. Flippen, __ A.3d __ (Pa. Super. 2018)

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Summary

Husband filed a “Petition for Expungement” of Protection from Abuse (PFA) Records in four separate cases. The Trial Court denied expungement petitions of each of the four cases. Husband timely appealed to the Superior Court of Pennsylvania (Bender, P.J.E., Shogen, J., and Musmanno, J.), which reversed the Trial Court’s decision.

Factual and Procedural History

This case involves four separate PFA petitions filed between Husband and Wife, now deceased. These actions demonstrate a horrendous history of domestic violence between the parties, which culminated in the murder of Wife by Husband. Husband was convicted of first-degree murder, abuse of a corpse, and tampering with evidence, and is currently serving two life sentences.

Three of the PFA petitions were filed by Wife against Husband and one was filed by Husband against Wife. The court granted Wife a temporary PFA in connection with each of the three petitions she filed. Each of Wife’s petitions was dismissed before a final PFA order was entered. Husband’s PFA petition against Wife resulted in a final order denying Husband’s petition.

Approximately five years after the murder trial, Husband filed a Petition for Expungement of PFA Records on all four PFA dockets. The Trial Court entered an order denying the expungement of these PFA records, from which Husband appealed.

Husband raised three issues in appeal:

- 1) Whether the PFA Court erred by failing to address whether Husband’s PFA records met the expungement criteria set forth by the Pennsylvania Supreme Court.
- 2) Whether the PFA Court abused its discretion by denying expungement, which is contrary

to the expungement standard set by the Pennsylvania Supreme Court.

- 3) Whether the PFA Court erred in denying Husband a hearing in which he could have presented facts and evidence to support expungement as the proper remedy.

Superior Court Analysis

President Judge Emeritus, John T. Bender, writing for the Superior Court found that Husband was entitled to expungement as a matter of law under *Carlacci v. Mazaleski* 798 A.2d 186 (Pa. 2002), and *Commonwealth v. Charnik* 921 A.2d 1214 (Pa. Super. 2007).

In the case of *Carlacci*, a temporary PFA order was entered and ultimately dismissed by stipulation of the parties. Subsequently, the Plaintiff sought to expunge the record. Because no permanent order was issued, there were no findings of facts on the record that the allegations of abuse had occurred. The record contained merely “bald allegation of prior alleged acts of abuse that were contained in [the plaintiff’s] petition, nothing more.” *Carlacci*, 798 A.2d at 191, and thus the court held that the Plaintiff was entitled to expungement of that record.

In the case of *Charnik*, the court granted a final PFA order. However, the Plaintiff was later granted leave to withdraw the final PFA order and filed a Petition to Expunge the Record. The court held that “when a PFA petition filed against a PFA defendant has been dismissed by Court Order... or the PFA proceedings never evolved beyond the temporary order stage...expungement is proper as a **matter of law.**” *Charnik*, 921 A.2d at 1219–20 [emphasis added].

The court in *Charnik* outlined the “expungement continuum.” This continuum ranges from: “(a) illegal or void civil commitments, acquittals in

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criminal cases, and PFA matters that have not been proven and brought to final order...where expungement is proper as a matter of law, to (b) non-conviction or arrest records, as *in nol pros* or ARD, where expungement is a matter of judicial decision...and to (c) conviction records, where there is no right of expungement except by statutory authorization in limited circumstances.” *Id.* at 1220. The *Charnik* Court found that expungement was not warranted because there was no statutory authorization of a PFA record and *Charnik* did not meet the requirements for expungement for records of a convicted person.

In applying both *Carlacci* and *Charnik* to the present case, the Superior Court found with respect to each of Wife’s three PFA petitions against Husband, expungement was proper as a matter of law because the court had entered only temporary PFA orders against Husband. In the PFA brought by Husband against Wife, a final order was entered. However, the PFA allegations were never proven because the PFA was denied. The court held that Husband was entitled to expungement of all four PFA dockets as a matter of law.

The Superior Court briefly addressed the “Wexler Balancing Test.” In the case of *Commonwealth v. Wexler* 431 A.2d 877 (Pa. 1981), the court held that when a

petitioner seeks to expunge the record, the court must “balance the individual’s right to be free from harm attendant to the maintenance of the arrest record against the Commonwealth’s interest in preserving such records.” *Wexler*, 431 A.2d 879 (Pa. 1981). The Superior Court found the Trial Court’s application of the Wexler Test to be in error in this instance, as the Husband was entitled to expungement as a matter of law. The Superior Court notes that the evidentiary record of the murder trial will be preserved despite the expungement of the PFA records.

The Superior Court reversed the Trial Court’s orders and remanded the case to the Trial Court to enter an order expunging the record for with respect to each of the PFA petitions.

Case Note Author’s Editorial Comments

The “expungement continuum” provides a roadmap to determine whether a party will succeed in expunging a record. Courts will consider whether a final PFA order was entered or whether a hearing was held in which a party was required to prove whether allegations of abuse had occurred beyond a reasonable doubt. Practitioners and pro se litigants should first determine where a matter falls on the expungement continuum before filing a Petition for Expungement.

If the court grants a Petition for Expungement, the evidentiary record in a contemporaneous criminal case will be preserved.