

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

L H,

*Plaintiff*

v.

R L, JR.,

*Defendant*

NO. 15 – 20,658

CUSTODY

OPINION AND ORDER

Before the Court is petition for change of venue for custody proceedings filed by the child’s mother, L H (“Mother”) and opposed by the child’s father, R L, Jr., (“Father”). Upon review of the testimony, arguments of counsel, and pertinent legal factors, the court provides the following in support of its ruling.

BACKGROUND.

The parties are the parents of their four year old daughter, S L, born September 28, 2012. S was born in Lycoming County and lived here until she was about two and a half years old. On May 28, 2015, Mother commenced this custody action by filing a stipulation as to custody which permitted Mother to move with S to South Dakota. That stipulation provided Father with extensive physical custody (two months in 2015, and five months, February, March, June, July and December, in 2016).<sup>1</sup> S currently lives with her mother in Rapid City, South Dakota, for about eight months out of the year, and with her Father in Lycoming County for about four months out of the year. Mother lives in Rapid City, South Dakota with her parents. Mother has lived at the same residence for two years. S attends a full day daycare center in South Dakota with 2 hours of pre-school curriculum. She is scheduled to start nursery school next fall. Father lives in Williamsport. When in Williamsport, S attends the Children's Learning Center at Penn

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<sup>1</sup> Mother moved to Williamsport with Father and lived here for about 3 years before she moved. The physical custody scheduled was changed in December 2015.]

College. Both parents have limited finances at this time. Father is engage to be married in 2018 and intends to purchase a home and move to Harrisburg upon marriage. The parties meet half way (about a 12 hour drive) in Wisconsin to exchange custody of S.

#### DISCUSSION

This Court must determine whether it is “an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum” so as to decline to exercise jurisdiction pursuant to 23 Pa. C.S. § 5427.<sup>2</sup> To make this determination, this Court must consider whether another state is a more appropriate forum by considering all relevant factors including the following:

- (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) the length of time the child has resided outside this Commonwealth;
- (3) the distance between the court in this Commonwealth and the court in the state that would assume jurisdiction;
- (4) the relative financial circumstances of the parties;
- (5) any agreement of the parties as to which state should assume jurisdiction;
- (6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) the familiarity of the court of each state with the facts and issues in the pending litigation. 23 Pa. C.S. § 5427

In this case, the Court believes that the factors weigh in favor of this Court continuing jurisdiction at the present time. The strongest reasons in support of declining jurisdiction are that the child lives in South Dakota more months out of the year than she lives here, and has a doctor, family and teachers there. However, S also spends extensive time in Lycoming County. Trial may be scheduled during Fathers physical custody periods or at a time of exchange to avoid inconvenience to the child. While S’s doctor and daycare teachers are in South Dakota, the

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<sup>2</sup> Mother does not contest this Court’s continuing jurisdiction pursuant to 23 Pa. C.S. § 5422.

Court takes judicial notice that such testimony is often taken by telephone in custody matters in Lycoming County. S has family and teachers in Lycoming County as well. S's Mother and Mother's side of the family are available in South Dakota, but her Father and Father's side of the family are located here.

As to other factors, the Court notes that neither party presented evidence of domestic violence or a need to protect the child. The child lived a full half of her life in Williamsport and has divided half of her life with 8 months out of the year in South Dakota and 4 months out of the year in Williamsport. The geographical distance between jurisdictions is great, being about a twenty four hour drive. Both parties have limited finances to litigate a case in the other jurisdiction.

Factors seven and eight weigh in favor of retaining jurisdiction at this time. The Court believes this jurisdiction is able to decide the issue expeditiously, with a conference already scheduled for July 20, 2017. The procedures of this jurisdiction would typically allow teachers and doctors to present evidence by telephone. This Court is already familiar with the facts and issues in the pending litigation. Since the filing of this action, there have been about twenty two docket entries, and the parties have had multiple conferences at which they were able to reach agreements about the best interest of their daughter. If Father does move to Harrisburg in 2018 as planned, Mother may seek to change jurisdiction on any appropriate grounds at that time.

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this 14<sup>th</sup> day of July 2017, for the foregoing reasons, the petition for change of venue filed by Plaintiff, Lindsay H, on June 7, 2017 is DENIED.

BY THE COURT,

**July 14, 2017**

Date

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Richard A. Gray, J.

c: Christina L. Dinges, Esquire  
Andrea Pulizzi, Esquire  
Family Court