

BRIAN KLOBCHAR,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Petitioner	:	
	:	
vs.	:	NO. 96-20,718
	:	
JOY KLOBCHAR,	:	
	:	
Respondent	:	1925(a) OPINION

Date: June 28, 2002

OPINION IN SUPPORT OF THE ORDER OF MARCH 5, 2002, IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

On April 4, 2002, Defendant/Mother appealed this Court’s Order of March 5, 2002 (dictated and dated February 20, 2002), which granted Father’s Petition to Modify Custody of the parties’ two sons, Justin, age 12 and Jordan, age 10. Father’s Petition sought permission for him to relocate his primary place of residence from Lycoming County to Allegheny County while retaining the primary physical custody of the children that he had enjoyed since shortly after the parties’ separation in 1997. That Order was entered after testimony was heard on February 15, 2002 and February 20, 2002.

In the Concise Statement of the Matters Complained of on Appeal Mother asserts this Court committed error by refusing to allow testimony from a psychologist, Dr. Dan Egli, and from the parties’ two older children, April Klobchar and Brian Klobchar, Jr. Mother also asserts that error was committed because this Court did not appropriately consider the best interests of the children and otherwise apply appropriate legal standards in determining the issues relating to the entry of its Order.

At the commencement of the trial Mother proposed to call as a witness, Dr. Dan Egli, a psychologist. The offer concerning Dr. Egli’s testimony and the objection thereto and

the reasons the Court sustained the objections were fully set forth in the record of the transcript of February 15, 2002, commencing at page 11 and ending at page 14. The Court relies on the reasoning for sustaining the objection to his testimony as set forth on the record and further noting at this time that the Court accepted the basis for the objection as argued by Father's counsel on those pages. Essentially, Mother wanted to establish from the testimony of Dr. Egli the factors that should be considered from a psychological viewpoint when children are relocated. This Court believed that it was in a position to determine whether or not there were psychological factors in existence that needed to be evaluated and whether it was important in making its decision to have the benefit of a psychological evaluation. The Court felt that the offer was inappropriate as Dr. Egli could not offer a recommendation as to any specific matters to be evaluated as would relate to these two children but wanted to express generally why psychological evaluations are important. This Court is well aware as to why they are important. However, the Court held an extensive interview with the children, following testimony of the parents and other witnesses. Following that the Court determined that psychological evaluations were not necessary given the statements of the children and determined that other testimony beyond that which had already been received would not be helpful or relevant. *See* Court's Comments at page 101 of the Transcript of Proceedings held February 20, 2002.

Mother's offer for calling as witnesses, the two older children of the parties, and the objections thereto and the Court's reasons for sustaining the objections are set forth in the Transcript of Proceedings of February 20, 2002, beginning at page 43 and ending at page 58. The Court again relies on its reasoning as set forth in the record as the basis for its ruling that

the testimony was not relevant. Essentially the Court concluded that this testimony would not be relevant since it related to issues as to how Father may have interfered with Mother's relationship with the two older children several years earlier. Mother asserted that this indicated that Father's move to Pittsburgh was not legitimate and was designed to interrupt her relationship with the two children involved in this custody dispute. This Court, based upon the offer, felt that such evidence would not amount to circumstantial evidence of Father's integrity in desiring to make a move, particularly absent any showing that Father had interfered in any way with Mother's relationship with the two children who are the subject of this dispute, during the extended period of time they had been in his physical custody. Furthermore, the Court noted that at no time had Mother filed a contempt proceeding against Father as would relate to the custody arrangements between Father and Mother for the two older children. To accept this testimony would have involved a separate contempt-type trial. After conducting interviews of the children involved in this dispute the Court again determined the testimony of the older children was not relevant. *See* Transcript of Proceedings of February 20, 2002 at page 101.

As to Mother's contentions that the appropriate legal standards were not applied to the evidence received in this case in determining the children's best interests on whether or not the relocation should be permitted with Father retaining primary physical custody, this Court believe that its reasons as stated on the record at the conclusion of the trial sufficiently identifies and states its reasons underlying the Order appealed from. This Court also believes that the Court's statements to the parties at the conclusion of the trial clearly show that it properly considered the relevant factors relating to the relocation that would apply to the testimony in this case. This statement by the Court is found in the Transcript of Proceedings of

February 20, 2002, beginning at page 117 and concluding at page 135. Essentially this Court found that there were appropriate reasons for Father to make the move and that the family's well being would be enhanced. Father's basis for making the move was legitimate as would relate to his need to maintain appropriate employment. The Court also found that from the interviews of the children they favored and/or were not in any way opposed to the move. It also became apparent there were no underlying issues relating to their schooling, happiness, contentment or other interests, suggesting the move would adversely affect their personal life. It was clear the children had other relatives in the Pittsburgh area as well as several friends there. It was also clear that suitable alternative partial custody times for Mother could be arranged. The Court also wishes to note at this time that it also found there was a clear preference for the children to remain in Father's primary physical custody, whether that is at Pittsburgh or Lycoming County. This preference was given great weight by the Court.

Accordingly, this Court believes that the appeal should be denied and the Order affirmed.

BY THE COURT,

William S. Kieser, Judge

cc: Kathleen O. Raker, Esquire
William J. Miele, Esquire
Judges
Paul J. Petcavage, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)