

ALFREDO F. DANIELE,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Petitioner	:	
	:	
vs.	:	NO. 00-20,729
	:	
MARY WOODRING (KOHLER) and	:	
BYRON M. STROUD	:	
	:	
Respondents	:	1925(a) OPINION

Date: November 6, 2003

OPINION IN SUPPORT OF THE ORDER OF AUGUST 13, 2003 IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Respondents have filed an appeal of this Court's August 13, 2003 Order denying their Petition to Modify Custody. The Court denied the Petition because the Court determined it was not in the best interests of the children to modify the custody order by allowing Respondent Mary Woodring (Kohler) to move to Glenside Pennsylvania and retain physical custody. The Court reached this conclusion by applying the considerations enunciated in *Gruber v. Gruber*, 583 A.2d 434 (Pa. Super. 1990).

Respondents filed a Notice of Appeal on September 10, 2003. On September 25, 2003, Respondents filed a Statement of Matters Complained of on Appeal. It was filed in response to a Pa.R.A.P. 1925(b) order issued by this Court on September 12, 2003. Upon reviewing the Statement of Matters and the Record, the Court believes that all the matters raised have been addressed by this Court's reasoning set forth on the Record, Notes of Testimony 255-269. The Court also explained its position in the Order of August 28, 2003, which states that custody on an interim basis should be with Father.

The only matter raised in the Statement of Matters that may not have been referenced by the Court's comments or in its prior written Orders would relate to error #7 - that

the Court changed primary physical custody after Respondent filed her Notice of Intent to Remain in Lycoming County. The Court believed that Respondent's notice of intent was a devious means of attempting to maintain custody through an artificial and deceptive statement as to her maintaining a residence in Lycoming County. The notice of intent indicates that she will maintain "a primary residence in Lycoming County. . .with maternal grandmother. Mother intends to communicate daily to graduate school, except during Plaintiff's periods of partial custody. Children will attend Loyalsock School District."

First of all, the Court notes that it is virtually physically impossible for Respondent to commute daily between Lycoming County and the Montgomery County graduate school. It is a drive of approximately three hours under good traffic conditions. Secondly, it is clear that Respondent intends to be attending graduate school, which in future years will include her doing an internship at places like New York City or Washington, D.C. Respondent does not really intend to have a residence in Lycoming County but rather to let her mother, the maternal grandmother, baby sit and provide child care while she is away at graduate school.

This would defeat Father's obvious rights to custody. Also, it is not possible for the children to be living in Williamsport having the grandmother's as the primary residence and still attend Loyalsock School where Father has his primary residence. The schools would not permit this.

In addition, this Court's Order of August 28, 2003 makes it clear that if Mother does desire to maintain physical custody of the children and effect a semi-permanent location to Montgomery County she has a right to follow the procedures that would apply to a regular custody proceeding.

Therefore, Respondents' appeal should be dismissed and the Court's Order of August 13, 2003 affirmed.

BY THE COURT,

William S. Kieser, Judge

cc: Mary C. Welby, Esquire
Scott T. Williams, Esquire
Judges
Christian Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)