

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

D.K.,	:	
Plaintiff	:	
	:	
v.	:	No. 04-20,864
	:	
S.K.,	:	
Defendant	:	

OPINION and ORDER

The issue before the court is custody of the parties' boys, ages twelve and ten, in light of Mother's wish to relocate to Texas. As the parties have no custody order in effect, the court must conduct a best interest analysis, considering all of the factors that legitimately affect the child's physical, intellectual, moral, and spiritual well-being. In doing so, the court must scrutinize both custodial environments, without favoring one over the other. The relocation factors set forth in Gruber v. Gruber, 583 A.2d 434 (Pa. Super. 1990), must be considered as a part of an overall best interest analysis. *See* Kirkendall v. Kirkendall, 844 A.2d 1261, 1265-66 (Pa. Super. 2004), Marshall v. Marshall, 814 A.2d 1226 (Pa. Super. 2002) and cases cited therein.

Factual Background

The parties separated in April 2004. The children have lived primarily with Mother, as Father is residing temporarily in a hotel. Father has continued to be involved with the children, seeing them regularly but not exercising overnights due to his housing. Mother has been the children's primary caretaker since the children's birth. Father has been an involved, caring parent, admittedly to a lesser extent than Mother, given his responsibility of financially supporting the family. The children are emotionally bonded with both parents. The children do not wish to move to Texas.

Cody was mature, and his opinion could not be discounted. Jackson cried in response to questions about moving. The children are doing well at their current school, and are involved in many extracurricular activities. Father's sister, along with her husband and children, live in the Williamsport area, and his parents live in Lebanon, Pennsylvania. Mother's family lives in the El Paso, Texas area.

Discussion

The court finds that both parents are extremely fit and capable of meeting the children's needs. The children have a loving relationship with both parents. The children have continued to do well in Mother's care since the parties' separation, and the parties have been working out Father's partial custody to their mutual satisfaction. Father has not requested primary physical custody, so long as Mother remains in the area. For these reasons, the court will award Mother primary physical custody, contingent upon her remaining in the Williamsport area.

The court will not, however, permit Mother to relocate the children to Texas. In considering the Gruber factors, the court does not doubt the integrity of Mother's motive in moving, nor Father's motive in opposing the move. However, the court simply does not believe that the move would substantially improve the quality of life for Mother and, derivatively, the children.

Mother's reason for the desired move is to be close to her immediate family. Her parents would be able to provide her with financial assistance, due to the wealth they enjoy. Her father would provide her with a good job at his business, if she chooses to work, along with a luxurious home and automobile. Additionally, her family could provide emotional support through this difficult time of separation from her husband. Mother generally prefers Texas to Pennsylvania.

However, the evidence at the hearing showed that Mother has been able to maintain a close relationship with her family despite the distance, and the court believes

her family will continue to support her even if she does not relocate. Moreover, the geographical distance is not as great a burden as it is in most instances, given the wealth enjoyed by Mother's parents, which can facilitate a great deal of personal contact between Mother and her family. Mother's father often visits when he travels to Philadelphia for business. The court also notes that Father's employment has ensured the family a comfortable lifestyle, and Mother and the children have remained financially comfortable even after the separation. Moreover, Mother has a degree in fashion marketing, and it appears she could obtain a job, should she decide to do so.

Although it is true that some benefits would result from the move, those benefits would be experienced primarily by Mother, rather than the children. The benefits experienced by the children would be minimal, at best, and pale in comparison with the detriment of removing the children a great distance from their father. Ironically, the emotional support Mother seeks from her parents during this difficult time is precisely the type she would be denying her own children from receiving from their father during what must be an equally difficult time for them. In addition, the children would be uprooted from their school and the activities they are involved in. They would have to leave their friends, and although would be close to Mother's family, they would be further from Father's family.

The final Gruber factor to be considered is the availability of realistic substitute partial custody time with Father. In light of the distance between Pennsylvania and Texas, there is no substitute partial custody schedule which will foster the kind of ongoing relationship Father and his sons have enjoyed.

This case is remarkably similar to Marshall v. Marshall, supra, which involved a primary caretaker mother who wished to relocate the children to Hilton Head, South Carolina, to be closer to her family. The Superior Court found that the move would not substantially improve Mother's life or derivatively, the children's lives. The court finds that to be so in the instant case.

ORDER

AND NOW, this _____ day of July, 2004, after a hearing, Father's Petition for Emergency Relief/Removal from Jurisdiction is granted and it is ordered that:

1. The parties shall share legal custody of their children: C.K., born on July 16, 1992 and J.K., born on April 21, 1994. Both parties shall consult with each other and participate in making major decisions affecting the children, including decisions on health, education, religious upbringing, and extracurricular activities. Both parties shall have access to the children's educational and medical records. Both parties shall work together to promote the children's best interest.
2. Mother shall have primary physical custody.
3. Father shall have partial physical custody as the parties can agree.
4. If the parties cannot agree on a partial physical custody schedule, either party may obtain a custody conference by writing a letter to the Custody Conference Officer at 48 W. Third Street, Williamsport, PA 17701. The letter shall include a copy of this order and the addresses of all parties or their counsel.
5. Mother shall not relocate the children from Lycoming County.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
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