

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

D.G.(H.)D’ A., : NO. 01-20,805  
Plaintiff :  
 :  
vs. :  
 :  
 : CIVIL ACTION - LAW  
B.A.H., : CUSTODY  
Defendant :

**OPINION AND ORDER**

Before the Court is a custody relocation petition filed December 14, 2006, by D.G.(H.)D’ A., in which she requests primary custody of the parties’ two youngest children and approval of the relocation of the children to Englewood, Florida. A hearing was held on February 26, 2007, and June 26, 2007.

**BACKGROUND**

D.G.(H.)D’ A., hereinafter referred to as “mother”, and B.A.H., hereinafter referred to as “father”, were married August 28, 1984, shortly after both graduated from college. From the point of their marriage, the Hs. dedicated themselves to career and family, settling in Lycoming County after purchasing a farm with 120 acres that includes livestock and an assortment of rabbits, goats, dogs and cats. The parties produced five children, namely B.R.H., born March 24, 1986, J.T.H., born February 5, 1988, N.J.H., born February 23, 1991, L.R.H., born November 30, 1992, and A.M.H., born June 19, 1995. Both parties also pursued careers in teaching; father has been employed in the Montoursville Area School District and mother was employed in the East Lycoming School District. Father has also been a varsity wrestling coach for the Loyalsock Township School District for nearly his entire tenure as a teacher. Testimony established that father and mother were very hard working individuals and the Court, after hearing from all five children, gives them high marks for their parenting skills.

Regrettably, the parties separated on or about June 4, 2001. A divorce decree and

property settlement was finalized on April 18, 2002. Under the terms of the property settlement agreement, the parties share legal custody of the children and also share physical custody on an equal basis. Since the signing of that agreement, the two oldest boys have gone on to college and are not the subject of any present court order. B. is presently 21 years old and is enrolled at Penn State University as a senior; J. is presently 19 years old and is enrolled at Lock Haven University as a sophomore. The parties' third son, N., is 16 years old and is a junior at the Loyalsock Township High School. He is presently in the primary custody of his father and it is the understanding of the Court that visitations with his mother are as agreed upon between N. and her. N. is also not a subject of these proceedings. The instant petition deals with the custody of L. who is presently 14 years old, and A., who just turned 12 years old. Until December 2006, when mother moved to Florida, both children were the subject of a shared physical custody arrangement which provided that they spend one week with mother and the alternating week with father.

Approximately one year ago, mother took a trip to Englewood, Florida, with the two youngest children to visit her parents who are residents there. Mother's parents had suffered significant damage to their principal home from a hurricane. Fortunately, they have a second home, hereinafter referred to as "the beach house", in which they are now residing and it was the intention of mother to assist her parents with the clean-up activities which were necessary to their primary residence. Apparently, there was significant damage as mother's parents are still living in the beach house and are still working on renovations to their primary home.

While it remains unclear to the Court as to exactly when mother made the decision to move to Florida, she proceeded to the action stage approximately at the time that she was in Florida assisting her parents.<sup>1</sup> On September 12, 2006, mother sent a letter to the superintendent and school board of the East Lycoming School District tendering her resignation and providing them with 60 days to hire a replacement for her. Her resignation was accepted at a board meeting on that same date. During the ensuing few months, mother

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<sup>1</sup> There is a dispute between the parties as to mother's notification to father. Mother indicated that she sent a proposal to father in July 2006 and produced a written copy of that proposal. Father denied receiving the proposal and indicated that while there was some talk of relocation, he did not become aware of the actual intent to relocate until November 2006.

actively searched for a teaching job in Florida and was able to secure employment in the school district of Lee County, commencing the second half of that academic year.

Based on her desire to move to Florida and her having secured employment, mother left the East Lycoming School District on December 18, 2006, and relocated to Florida.<sup>2</sup> It is the Court's understanding that mother did take the children to Florida over the Christmas holiday. In the interim, a hearing was scheduled for February 26, 2007. Regrettably, the hearing could not be completed on that date and was continued to March 23. At mother's request, as a result of her changing counsel, a continuance was granted until early June. Father then asked for a continuance because it was his last week of school and he could not take time off. The matter was then concluded on June 26, 2007.

### **ARGUMENT**

Mother has advanced five reasons why her petition should be granted:

- 1) The best interests of the children lie in moving to Florida so they can become acquainted with mother's side of the family, including grandparents and a number of aunts, uncles and cousins.
- 2) Mother's economic conditions will be improved because she has acquired a teaching job in Florida and her expenses are reduced as a result of being able to reside in an improved home rent free. (The "beach house" owned by mother's parents.)
- 3) Mother has been suffering from some physical difficulties due to a circulatory problem which is exacerbated by cold weather.
- 4) Mother emphasized the climate in Florida is one that is beneficial for the children in that the winters are mild, the school district which the children would attend is advanced and there are opportunities and activities that exist year round as opposed to such in Pennsylvania.
- 5) Both L. and A. have expressed a desire to move to Florida.

The Court will address these issues as well as the relevant factors under Gruber v. Gruber, 583 A.2d 434 (Pa. Super. 1990).

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<sup>2</sup> Interestingly, the petition before the Court was not filed until December 14, 2006, and was labeled a "petition for *emergency* relief/removal from the jurisdiction".

In deciding a parent's petition to relocate the children outside the jurisdiction, the Court is to consider the following:

- 1) The potential advantages of the proposed move, economic or otherwise, and the likelihood the move would improve substantially the quality of life for the custodial parent and the children and is not the result of a momentary whim on the part of the custodial parent;
- 2) The integrity of the motive of both the custodial and non-custodial parent in either seeking the move or seeking to prevent it; and
- 3) The availability of realistic, substitute arrangements which will adequately foster an ongoing relationship between the child and the non-custodial parent.

Thomas v. Thomas, 739 A.2d 206 (Pa. Super. 1999), citing Gruber, *supra*. Further, these factors must be applied "with the backdrop of the . . . objective of determining the best interests of the child." Speck v. Spadafore, 895 A.2d 606, 610 (Pa. Super 2006), quoting Burkholder v. Burkholder, 790 A.2d 1053, 1058 (Pa. Super. 2002). Finally, it is noted that since in this case we are dealing with a shared custody situation, in considering the first factor, the focus is not simply on the advantages to the "custodial" family, but, rather, the effect the move will have on both families must be scrutinized similarly. Thomas v. Thomas, *supra*.

## **DISCUSSION**

There is no question mother has significant family in Florida. Further, the Court does not quarrel with mother's assertion that relocating to the state of Florida will give the two youngest children an opportunity to become better acquainted with her side of the family. The Court must also consider the impact on the family remaining in Pennsylvania, however.

The Court had an opportunity to hear from L.'s and A.'s three older brothers. All testified without benefit of hearing each other's testimony. The Court was very impressed with these boys. Each indicated, and the Court accepts, that this is a very close-knit family. The college-age boys testified as to their frequent trips back home to not only see their parents but to work the farm and participate in family activities as well. All three boys testified that they would miss their two younger siblings greatly if the petition was granted. The potential impact appeared to be most profound with respect to N., who became visibly upset on the witness

stand as he recounted his relationship, particularly with A.. N. views himself as A.'s mentor and closest sibling and it is the conclusion of the Court that N. would suffer from the removal of L. and A. to Florida. Further, A. and L. have a regular and close relationship with their paternal grandparents who live nearby in Lycoming County and the move would negatively affect that relationship as well.

With respect to the impact on father, mother indicated she would be willing to provide liberal visitation back to Pennsylvania, which would include most of the summer and some time at Christmas. Father has calculated that at the most, this would be a total of seven or eight week's visitation. Under the current arrangement, father has custody 26 weeks of the year and thus the move would significantly curtail his ability to participate in the children's upbringing.

With respect to mother's assertion her economic condition will be improved by the relocation, the Court cannot find that mother's economic situation will be enhanced by the move to Florida. While mother may have free rent and might be supported in part by her parents, the economics just don't make sense. First, mother has thirteen years in the East Lycoming School District. She suffered a pay cut in order to relocate to Florida. While this pay cut may be modest (somewhere in the neighborhood of \$3,000), the true impact lies in the forfeiture of pension benefits. Mother retired from the East Lycoming School District after 12 or 13 years of service. The Court takes judicial notice that Pennsylvania provides teachers with a defined benefit retirement program. Under the present Pennsylvania teacher's retirement program, mother would receive  $2\frac{1}{2}$  years of service x highest salary x  $2\frac{1}{2}$  percent. The forfeiture of further pension accumulation under this plan cannot be offset by a new teaching position in Florida. The Court was not presented with the Florida teacher's pension plan but would guess that that information was not imparted to the Court because it does not favor mother's position. Even assuming that Florida has a retirement plan identical to that in Pennsylvania, mother would start at the beginning of such a plan and would never be able to accumulate the benefits in Florida that would have been available to her in Pennsylvania.

With respect to mother's physical difficulties, a physical condition which is characterized by a pain in her hands during cold weather, mother simply testified to this; there was no medical documentation and there is no claim for disability or any other type of compensation. While it may be that mother is suffering discomfort from the condition, it

would appear that this is not a disabling disease.

Next, mother indicates that the quality of education and the general atmosphere in Florida is more conducive to the children's happiness and their social growth than are the facilities here in Pennsylvania. It has been a long standing policy of this Court to not undertake an analysis of the respective strengths of various school districts. The fact of the matter is, while the Lycoming County school districts produce graduates who fail, it also produces those who succeed on a high level. This is in no way meant to denigrate the Florida school districts. The Court must mention, however, that at the February hearing, mother regaled the Court with the benefits of the Lee County School District in Florida, but at the June hearing, she indicated she had accepted alternate employment in the Charlotte County school district because it is closer to her home, and the children would be attending school in that district rather than the Lee County school district. The particular school district is apparently not as significant as mother would have the Court believe.

Finally, and perhaps most importantly, mother points out that both children have indicated they would like to relocate to Florida. An in-camera interview of the children was convened on February 26, 2007. There is no doubt that L. was enthusiastic about relocating to Englewood, Florida. It was obvious that L. was impressed with the area when she visited last summer and the Court notes that she also appears to have a special relationship with her mother which provides further incentive for her relocation wishes. A., on the other hand, seemed less convinced. He did acknowledge the area was new and exciting. He was a little conflicted, however, about leaving some of his friends, the farm and the Williamsport area. His basic attitude was that he would "give it a try".

This Court gives considerable weight to the wishes of a child who is 14 ½ years old and expresses mature and well-thought-out reasons for a relocation of this nature. The Court was provided with photographs of the beach and the house in which L. and A. would be living if the relocation were allowed. There is no question that this is a very attractive living situation. The Court certainly understands the allure of a beach front property, year round sunshine and the activities which would be attendant to living in a favorable climate such as Florida. L.'s and A.'s desires represent by far and away mother's most compelling argument in favor of the relocation. When the Court undertakes a careful consideration of the Gruber factors, however,

it cannot find that the stated desires of these children override the balance of the analysis.

Considering the high quality of life the children have been provided by their parents in Lycoming County, the Court cannot find that the move would result in a substantial improvement and, as noted above, there seems to be no economic advantage. While the Court cannot classify mother's decision as a "momentary whim", it does occur to the Court that such is not well-thought out, or made with the children's best interests at the forefront. Indeed, the Court finds itself somewhat confounded by the decision of mother in this case. Mother presented well; she is an educated woman, a teacher and a mother of five children; she attended college, raised a family, and pursued a career over a period of most of her adult life in this area. She has deep roots here, she has friends, she has support and she had stable and enduring employment. She will leave behind her three oldest children and will separate her children from each other. The Court can thus conclude only that mother's decision to relocate to Florida was made to advance her own interests over those of her children.<sup>3</sup> This factor thus weighs against the move.

With respect to the integrity of the motive of both the custodial and non-custodial parent in either seeking the move or seeking to prevent it, the Court finds both parents' motives to be sincere, and does not believe this factor tips the scale in either direction.

Finally, as noted above, realistic, substitute arrangements which will adequately foster an ongoing relationship between the children and father are not available. Father has been just as involved in these children's upbringing as has mother, continuing after separation through a shared, week-to-week schedule, and the proposed move would have a tremendous detrimental effect on his relationship with the children. Summer visits and a week at Christmas could never adequately substitute for the on-going, consistent relationship the children have enjoyed with father. This factor thus weighs against the move.

Considering all of the circumstances, the Court believes the children's best interests lie in remaining in Lycoming County. The significant family (sibling as well as extended)

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<sup>3</sup> Counsel for father has referred the Court to the case of Speck v. Spadafore, 895 A.2d 606 (Pa. Super 2006), and indeed there are many similarities. There the Court found it clear that the only improvement to be made by the proposed move would be in Mother's personal relationship. Noting that the personal happiness of the relocating parent cannot be the only or the predominant factor, the Court determined that there was no economic advantage, no educational advantage, and no improvement in the quality of life, and that the detriments were numerous and

relationships which they currently enjoy, the positive quality of life they lead both at home and at school, and the substantial, meaningful contact they have with father all dictate against relocation, and do not outweigh those factors which would support it.

**CONCLUSION**

Mother's petition to relocate the children to Florida must be denied.

**ORDER**

AND NOW, this 6<sup>th</sup> day of July 2007, for the foregoing reasons, the Petition for Emergency Relief/Removal from the Jurisdiction is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: James Best, Esq.  
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Hon. Dudley N. Anderson

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significant. The Court therefore denied the request of the mother to relocate the child.