

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

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|-----|-----------|----------------------|
| GK | | : No. 09-20,083 |
| | Plaintiff | : |
| | | : |
| vs. | | : CIVIL ACTION - LAW |
| | | : |
| TL | | : |
| | Defendant | : CUSTODY |

OPINION AND ORDER

AND NOW, this 9th day of **March, 2010**, after a Hearing held on March 8th, 2010, on Father's request to relocate the minor child to Chatham, New York, filed on February 2, 2010. TL, Mother, appeared with Joel McDermott, Esquire, and GK, Father, appeared with Rebecca Reinhardt, Esquire.

The parties are the parents of one minor child, LK, born April 26, 2002. The parties separated when the child was 5 or 6 years old. Pursuant to a Custody Agreement signed by the parties on August 14, 2008, and made an Order of Court on February 5, 2009, Father has primary physical custody of the minor child with the Mother having periods of partial custody as the parties are able to agree. The parties' Custody Agreement does not spell out any specific periods of partial custody for Mother. The parties entered into the Custody Agreement immediately prior to Mother relocating to the State of Florida. Prior to that time, Mother had had primary physical custody of the minor child for several months. Mother resided in the State of Florida from the end of August, 2008, through February, 2009. Mother had no physical contact with the child during this time. Upon Mother's return to

Pennsylvania, she had partial physical custody of the child at least every other weekend and at times on an every weekend basis.

Father wishes to relocate to Chatham, New York primarily to be with his girlfriend, CW. Father testified that he and CW have been together for approximately one year. He indicated that he was looking for work in Chatham, New York, and she was looking for work in Lycoming County, Pennsylvania, to enable the parties to reside together. Father was employed in Lycoming County by C.H. Waltz & Sons earning approximately \$11.00 per hour and working Monday through Friday, 8:00 a.m. to 5:00 p.m. and 8:00 a.m. to Noon on Saturday. Father's employment search centered solely in the Chatham, New York area. Father accepted employment with Sunoco Crawling as an Industrial Forklift Operator earning \$15.80 per hour working Monday through Friday from 7:00 a.m. to 3:30 p.m. Father was offered and accepted the position with Sunoco Crawling on approximately February 1, 2010. Father testified that he had terminated his employment with C.H. Waltz four weeks prior to the hearing date. Father did not seek any employment in the Lycoming County area as he indicated that he was gainfully employed at C.H. Waltz. CW testified that though she had looked for work in Lycoming County, she could not leave the Chatham, New York, area because she has "way too many ties" to that area.

The controlling case in a relocation matter is **Gruber v. Gruber, 583 A.2d 434 (Pa. Super. 1990)**. The analysis the Court must follow in a relocation case is as follows:

"In order to decide whether a custodial parent and children should be permitted to relocate at a geographical distance from a non-custodial parent, a trial court must consider the following factors. First, the court must assess the potential advantages of the proposed move and the likelihood that the move would substantially improve 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. In considering the perspective advantages to the move, the court shall not limit itself

solely to enhance economic opportunities for the custodial parent, but must also assess other possible benefits of the relocation. For instance, relocation may be motivated by a desire to return to a network of family or friends, or to pursue educational opportunities, or to seek an improved physical environment in which to live and raise children. Clearly, these examples are not intended to be exhaustive, nor will each be applicable in every case. We emphasize, however, that courts are not free to ignore or discount non-economic factors which are likely to contribute to the well-being and general happiness of the custodial parent and the children. Ordinarily, when the move will significantly improve the general quality of life for the custodial parent, indirect benefits flow to the children with whom they reside.

Next, the court must establish the integrity of the motives of both the custodial and non-custodial parent in either seeking the move or seeking to prevent it. The Court must assure itself that the move is not motivated simply by desire to frustrate the visitation rights to the non-custodial parent or to impede the development of a healthy, loving relationship between the child and the non-custodial parent. An aspect of this determination is the degree to which the court can be confident that the custodial spouse will comply cooperatively with alternative visitation arrangements which the move may necessitate. Likewise, the court must consider the motives of the non-custodial parent in resisting relocation and decide whether the resistance is inspired by motives other than the legitimate desire to continue in deep in the parent child relationship.

Finally, the court must consider the availability of realistic, substitute visitation arrangements which will adequately foster an on-going relationship between the child and the non-custodial parent. We recognize that, in many cases, former weekly visitation may have to give way to an altered schedule which allows for less frequent, but more extended contact between parent and child. However, the necessity of shifting visitation arrangements to account for geographical distances will not defeat a move which has been shown to offer real advantages to the custodial parent and the children. We agree with the court in D'Onofrio which stressed:

The court should not insist that the advantage of the move be sacrificed and the opportunity for a better and more comfortable lifestyle for the [custodial parent] and that the children be forfeited solely to maintain weekly visitation by the [non-custodial parent] where reasonable alternative visitation is available and where the advantages of the move are

substantial. **D’Onofrio, 144 N.J. Super. At 207, 365 A.2d at 30.** See also **DeCamp v. Hein, 541 So.2d 708, 712 (Fla. App. 4 Dist. 1989); Auge v. Auge, 334 NW.2d 393, 398 (NYNN.1983)** (relocation should not be disallowed solely to maintain the existing visitation patterns).

When a custodial parent seeks to relocate a geographical distance and the non-custodial parent challenges the move, the custodial parent has the initial burden of showing that the move is likely to significantly improve the quality of life for that parent and the children. In addition, each parent has the burden of establishing the integrity of his or her motives and either desiring to move or seeking to prevent it. The custodial parent must convince the court that the move is not sought for whimsical or vindictive reasons. Likewise, the non-custodial parent must show that resistance to the move stands from concern for the children and his or her relationship to them. The court must then consider the third factor discussed above, namely the feasibility of creating substitute visitation arrangements to ensure a continuing, meaningful relationship between the children and the non-custodial parent. Once again, we reiterate that a move sought to secure substantial advantages for the custodial parent and the children will not be disallowed simply because visitation cannot continue to the existing pattern. Sensitive case by case balance is required to ensure that all interests are treated as equitably as possible. **Gruber, supra, at 439-440.**

It is clear from the testimony given by Father that the primary motivation of his move to Chatham, New York, is due to his desire to reside with his girlfriend, who he referred to as his fiancé. Based upon Father’s testimony, it did not matter to him whether that occurred in Lycoming County or Chatham, New York, as he was pursuing both options. Similarly, Father’s reason in seeking new employment was motivated solely by his desire to reside with his “fiancé”. Father was clearly satisfied with his employment with C.H. Waltz & Sons as he had taken no steps to seek other employment in the Lycoming County area. While Father’s new employment will offer him a higher hourly rate, the Court will not, under these circumstances, consider just the economic advantages to the relocation.

The Court is significantly concerned about the status of the relationship between Father and CW. While Father insisted that the parties were engaged and that she was his fiancé, CW denied that the parties were engaged. The fact that the couple does not share the same understanding as to the current status of their relationship calls into question the stability of the parties' relationship.

As was testified to, the minor child has significant family contacts in Lycoming County and is close with her paternal grandmother who provides care for her at times, as well as her Aunt, NS. Additionally, Mother has had regular on-going contact with the minor child since her return from Florida over one year ago. While it can be argued that the move to New York would substantially improve Father's personal life as he would now be residing in the same location as his "fiancé", this does not, in turn, translate that it would significantly improve the quality of life for the child who would be removed from the family network she has grown to be accustomed to and rely upon.

The Court finds very compelling the fact that when Mother was relocating to Florida, Father opposed the move as he believed the minor child needed to remain in Pennsylvania with her family. Mother's own sister, NS, testified that she took a position against Mother, at that time, and believed that the child should remain in Pennsylvania with her family. Father now proposes to do exactly what he opposed Mother doing previously by her request to relocate the child out of Pennsylvania.

Another aspect of the Court's determination in the relocation is the degree to which the Court can be confident that the custodial parent will comply cooperatively with alternative visitation arrangements which the move may necessitate. The Court is significantly concerned, based upon Father's actions to date, that Father will not comply

cooperatively with alternative visitation arrangements or take the necessary steps to ensure the child's on-going relationship with her Mother despite the distance. The testimony presented to the Court revealed that Father has failed to keep Mother informed regarding the child's schooling and has failed to even list Mother as a contact on emergency contact forms with the school.

The Court also believes it is very telling that Father waited until approximately the same time he accepted his new position in Chatham, New York, to seek permission from the Court to relocate. The Court concludes from the testimony that Mother was not aware of Father's intent to relocate the minor child until she received notice of Father's Petition seeking the relocation. The Court also finds credible Mother's testimony that up until recently, she was permitted to have contact with the child on an almost every weekend basis, but that over the past several months, it had changed to an every other weekend basis. The argument was made that this was done on Father's part due to the pending relocation. The Court believes this to be the case.

Based upon the foregoing, the Court does not believe that Father has met the burden of the first prong of the **Gruber** analysis. Though there may be an economic advantage to Father's relocation to Chatham, New York, this advantage is significantly outweighed by the disadvantage of the instability in Father's relationship with his "fiancé", as well as the potential harm that could arise to the child as a result of removing her from the family support network that she is used to simply to place her in a location to satisfy Father's personal, and perhaps temporary, happiness. The Court does not believe that Father has clearly thought through the affects on his child if he were to relocate her to New York. In light of the fact that Father was as willing to relocate to Chatham, New York, as he was

willing for his “fiancé” to move to Lycoming County, Pennsylvania, without consideration of the affects on the child, the Court considers Father’s desire to relocate to Chatham, New York, a whim. The Court further finds Father to be motivated solely by the need to immediately satisfy his own personal desires, rather than any consideration to the best interest of his daughter.

With respect to the second and third prongs of the **Gruber** analysis, the Court finds it unnecessary to address these issues in light of its determination that the move would not secure a substantial advantage for the child.

Therefore, it is hereby ORDERED and DIRECTED that Father’s Petition for Relocation filed on February 2, 2010, is DENIED. The Custody Agreement entered as an Order of Court on February 5, 2009, shall remain in full force and effect.

By The Court,

Joy Reynolds McCoy, Judge

JRM/jrr

cc: Family Court
Rebecca L. Reinhardt, Esquire
Joel McDermott, Esquire
Gary Weber, Esquire
Terra Koernig, Esquire
Jerri Rook, Executive Secretary to Judge McCoy