

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

<b>SF,</b>	:
<b>Appellant/Plaintiff</b>	: <b>NO. 11-20,452</b>
	:
<b>vs.</b>	: <b>CUSTODY</b>
	:
<b>AK,</b>	: <b>RULE 1925(a) OPINION</b>
<b>Appellee/Defendant,</b>	:

**DATE: August 10, 2011**

**OPINION IN SUPPORT OF THE ORDER OF JUNE 17, 2011 IN COMPLIANCE  
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

SF, (hereinafter “Father”) has appealed this Court’s June 17, 2011 Order. Father filed his appeal on July 12, 2011 and the appeal is docketed to 1223 MDA 2011. This Opinion is submitted in regard to the pending appeal.

Father’s appeal should be denied and the Order of June 17, 2011 affirmed. The Court relies on the reasoning explained on the record in court on June 17, 2011.

Father filed a Complaint for Custody on April 5, 2011. On April 15, 2011 a custody conference was held at which Mother participated by telephone. A subsequent custody conference was held on April 18, 2011 in which Mother was present. On April 25, 2011 a Counter-Affidavit Regarding Relocation was filed by Father in response to Mother expressing a desire to take her daughter and to move to North Carolina with her husband. On May 18, 2011 a Pre-Trial conference was held. At that time settlement could not be reached. On June 16, 2011, the issue of relocation came before this court. The facts as presented at trial follow.

On February 17, 2010 PF was born to Mother and Father. Mother and Father were never married but they lived together as an intact family. Mother was a stay at home mom for approximately the first 7 months of the child's life. She then took a job on 3<sup>rd</sup> shift with a plan that they would split the parenting responsibilities while each individual parent would sleep, Father works the 2<sup>nd</sup> shift. Father had difficulty waking up early in the morning to take care of PF which caused arguments and a strain in the relationship.

Mother visited her brother in North Carolina and sometime during the multiple visits there ended up reuniting with SK. Mother and SK had known each other from Pennsylvania and Mother at one time had stayed with him. On or about February 17, 2011 Mother moved out of the house she shared with Father. Mother went to North Carolina with the child causing Father to go three weeks without seeing his daughter. During the April 15, 2011 custody conference Mother was ordered to bring the child back to Lycoming County for the April 18, 2011 custody conference. Father then got his daughter for a little over one week's time. On March 21, 2011 Mother married SK unbeknownst to their family and friends; family and friends were later notified of the nuptials.

SK is in the Army and was previously stationed in North Carolina; he is being relocated to Florida. Mother and SK are expecting their first child together. Mother would like PF to live with her and SK in Florida. In addition, Mother would like to stay at home and raise her children together in Florida. At the time of trial Mother and SK were in the process of purchasing a new house in Florida. SK plans on transferring his

Army education money to Mother to enable her to get a higher education when the children are older.

Father does not want Mother to relocate to Florida. In his testimony he said the reason for not allowing the relocation was mainly because he did not want to miss out on seeing PF regularly.

Mother's bond with the child is very close. Father and PF have a bond and he has taken on a greater role in her care. However, Mother is still the primary care giver. Even during Father's time with his permission Mother was there to take care of PF and spend time with her. When PF was sick Mother brought the thermometer and medicine and then stayed overnight to care for her daughter.

When evaluating a relocation case the Court looks at the factors delineated in 23 Pa C.S. §5337:

(h) RELOCATION FACTORS.-- In determining whether to grant a proposed relocation, the court shall consider the following factors, giving weighted consideration to those factors which affect the safety of the child:

(1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.

(2) The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.

(3) The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.

(4) The child's preference, taking into consideration the age and

maturity of the child.

(5) Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.

(6) Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.

(7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.

(8) The reasons and motivation of each party for seeking or opposing the relocation.

(9) The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.

(10) Any other factor affecting the best interest of the child.

Acting in compliance with 23 Pa. C.S. § 5323 (d) which mandates the court to “delineate the reasons for its decision on the record in open court . . .” this Court addressed each factor and rationale on the record in the June 17, 2011 holding. The Court believes that most of the matters raised in Father’s Statement of Matters Complained of on Appeal have been fully addressed by this Court’s reasoning set forth on the record. (N.T. 6/17/11 pp. 3-10). The Court will address the remaining matters complained of.

**Concise Statement of Matters Complained on Appeal #5**

*“the trial court erred when it failed to consider Defendant’s lack of independent financial resources when granting the relocation and changing the custody schedule.”*

The Court did look at Mother's financial situation. Currently Mother is a stay at home mom in Florida; SK testified to the fact that he wants to provide for Mother and PF. Further SK is going to transfer his educational benefits to Mother to enable her to further her education in the future. Mother had been employed as a Nurse's Assistant while living in Pennsylvania however she has not worked since December 2010 and therefore she lacks independent resources in Pennsylvania as well and would be without the support of her husband.

**Concise Statement of Matters Complained on Appeal #6**

*“the trial court erred when it determined that Plaintiff should be responsible for one half of the cost of transportation.”*

It is Lycoming County practice for the Parents to split the transportation costs in custody proceedings. Generally, the party about to begin a period of custody shall be responsible for transportation unless otherwise stated in the court order or agreed to by the parties. In this case because the purchase of plane tickets was involved it is easier and more economically efficient to have the parties split the cost of transportation instead of each party being responsible for a one way airline ticket.

**Concise Statement of Matters Complained on Appeal #9**

*“the trial court erred when it failed to consider Defendant's failure to provide the requisite notice of Relocation as set forth in § 5337 (j).”*

The Court interprets the language of the statute which says “[t]he court *may* consider a failure to provide reasonable notice of a proposed relocation” as being a discretionary factor under the Court’s control. 23 Pa. C.S. 5337 (j) (emphasis added). However, the Court did consider in totality how Mother handled the relocation. And the Court did place on the record “I don’t condone the way that mom went about this whole marriage and relocation.” (N.T. 6/17/11 pp. 6).

**Concise Statement of Matters Complained on Appeal #10**

*“the trial court erred when it failed to consider the factors set forth in §5328 when the custody schedule.”*

The Court did take into account the factors set forth in 23 Pa. C.S. 5328. Many of the factors involved in relocation mirror or encompass the factors for custody. After completing the best interest analysis by utilizing all of the factors the Court found that allowing the relocation was in the best interest of the child.

**Concise Statement of Matters Complained on Appeal #11**

*“the trial court erred when it determined that permitting the relocation would be in the child’s best interest.”*

Mother has been a constant and devoted source of care for this child since birth. It has not been alleged and the Court does not find that Father is not a good father; Mother has more time to spend with the child and has consistently spent more time with the child. Mother and Father have open communication and the Court finds that Mother

will encourage and enable an ongoing relationship between Father and child. It is in the child's best interest to be in her mother's primary physical care and relocate with Mother to Florida.

BY THE COURT,

Joy Reynolds McCoy, Judge