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|-----------|---|---------------------------------|
| J. P.,    | : | IN THE COURT OF COMMON PLEAS OF |
| Plaintiff | : | LYCOMING COUNTY, PENNSYLVANIA   |
|           | : |                                 |
| vs.       | : | NO. 03-20,485                   |
|           | : |                                 |
|           | : |                                 |
| M. U.,    | : | CIVIL ACTION - CUSTODY          |
| Defendant | : |                                 |
|           | : |                                 |

**ORDER**

AND NOW, this 15<sup>th</sup> day of July, 2011, this order is entered after a hearing regarding Mother, J. P.'s, Petition for Change in Venue. Mother is requesting that the above-captioned matter be transferred to York County where she and S. U., the subject minor child, reside. Mother was represented by Rebecca Reinhardt, Esquire. M. U., Father, was represented by Christina Dinges.

The facts presented were as follows. Mother and child live in Manchester, PA which is in York County and have lived there for approximately three years. The household consists of Mother, S., S.'s 6-yr old sister, and Mother's boyfriend. The child attends school in York County and has made friends there. Mother and child have no other family in York County; Mother's family live in Winfield, PA in Snyder County. Mother also has a 19-yr. old daughter who lives in Lycoming County. Father lives in Montoursville, PA in Lycoming County. All of Father's family lives in Lycoming County. While child does not live with father, during the school year the child visits every other weekend and during the summer there is a week to week custody schedule. The child's primary care provider is located in Lycoming County however the child also has a doctor in York County that she would see when in York County. Father

petitioned the court for Modification of Custody and a hearing is set for the matter. At the hearing Mother testified that the majority of her witnesses for the custody trial would be from York County while Father testified that the majority of his witnesses would be from Lycoming County.

The Court must first determine where jurisdiction lies. *Pennsylvania Rules of Civil Procedure* 1915.2 Venue states:

(a) An action may be brought in any county

(1)(i) which is the home county of the child at the time of commencement of the proceeding, or

(ii) which had been the child's home county within six months before commencement of the proceeding and the child is absent from the county but a parent or person acting as parent continues to live in the county; or

(2) when the court of another county does not have venue under subdivision (1), and the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with the county other than mere physical presence and there is available within the county substantial evidence concerning the child's, protection, training and personal relationships; or

(3) when all counties in which venue is proper pursuant to subdivisions (1) and (2) have found that the court before which the action is pending is the more appropriate forum to determine the custody of the child; or

(4) when it appears that venue would not be proper in any other county under prerequisites substantially in accordance with paragraphs (1), (2) or (3); or

(5) when the child is present in the county and has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse. . . .

This case fits scenario a(1)(i) of Pa. R.C.P. 1915.2 York County is the home county of the child. Therefore, “[a]n action *may* be brought . . .” *Id.* (emphasis added). The Court finds that York County has jurisdiction over the aforementioned matter.

Turning to Lycoming County, the Court will initially note that the uniform child custody act “clearly applies to intrastate disputes as well as interstate conflicts.” *T.T. v. N.A.*, Lycoming County No. 98-21, 489, Opinion and Order of May 17, 2001 by the Honorable Judge Clinton W. Smith *citing* 23 Pa. C.S. § 5364(a), now codified at 23 Pa. C.S. § 5471. In the present case, the initial and existing child custody order was from Lycoming County Court of Common Pleas. 23 Pa. C.S. § 5422 Exclusive continuing jurisdiction states:

(a) GENERAL RULE.-- Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth which has made a child custody determination consistent with section 5421 (relating to initial child custody jurisdiction) or 5423 (relating to jurisdiction to modify determination) has exclusive, continuing jurisdiction over the determination until:

(1) a court of this Commonwealth determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this Commonwealth and that substantial evidence is no longer available in this Commonwealth concerning the child's care, protection, training and personal relationships; or

(2) a court of this Commonwealth or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this Commonwealth.

Based on 23 Pa. C.S. 5422 due to the fact that Lycoming County is where the initial custody determination originated Lycoming County has exclusive, continuing jurisdiction provided continuing significant connections with the area. “[A] ‘significant connection’ will be found where one parent resides and exercises parenting time in the state and maintains a meaningful

relationship with the child.” *Rennie v. Rosenthol*, 995 A.2d 1217, 1222 (Pa. Super 2010). Primary custody is not needed to form significant connections. *Id.* In determining significant connections the Court must look at the nature and quality of the child’s contacts. *Id.* at 1221. *See also Billhime v. Billhime*, 952 A.2d 1174, 1177 (Pa. Super 2008).

In *Rennie*, where the child visited the Commonwealth for 2-3 consecutive weeks during summer vacation; visited for holidays; and had friends and family in the Commonwealth, in addition to her father the court held that there were significant connections. *Id.* at 1222. In the present case the child visits Lycoming County every other weekend during the school year and is on a visitation schedule of week to week during the summer. In addition to her father, the child’s sister resides in Lycoming County as well as her father’s side of the family. The child also has friends in the area. The child’s primary care physician is in Lycoming County. The Court finds that the child has significant connections to Lycoming County. Based on the facts that Lycoming County initiated the original and current custody order and that the child has significant connections to Lycoming County this Court holds that Lycoming County has exclusive, continuing jurisdiction as outlined in 23 Pa. C.S. 5422.

Mother argued that even if Lycoming County has jurisdiction over the case it is still an inconvenient forum. 23 Pa.C.S. § 5427(a) states, in relevant part, “A Court... which has jurisdiction under this chapter... may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another [county] is a more appropriate forum.” 23 Pa.C.S. § 5427(b) states that prior to making a determining that the Court is an inconvenient forum, it must first address whether it is

appropriate for the court of another county to exercise jurisdiction. In doing, the Court must consider all relevant factors including the following enumerated factors:

- (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) the length of time the child has resided outside this [county];
- (3) the distance between the court in this [county] and the court in the [county] that would assume jurisdiction;
- (4) the relative financial circumstances of the parties;
- (5) any agreement of the parties as to which state should assume jurisdiction;
- (6) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;
- (7) the ability of the court of each [county] to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) the familiarity of the court of each [county] with the facts and issues in the pending litigation.

23 Pa.C.S. § 5427(b)(1)-(8).

The Court will briefly address each of the factors in order. One, there was no testimony or evidence of domestic violence. When questioned, Mother stated that domestic violence had never occurred. Two, the child has resided with Mother in York County as her primary place of residence for approximately three years. Three, the distance between the Courts is not so great that the matter cannot be litigated in York at least as easily as it could be litigated in this Court. Undoubtedly, there will be numerous witnesses testifying in this matter from York County as well as Lycoming County. The child has doctors in both counties with the primary care provider being located in Lycoming County. Four, all parties involved have enough financial wherewithal to be represented by private counsel and the Court has not inquired further into their financial circumstance. Five, the parties have no agreement regarding a transfer of jurisdiction, and have instead turned to this Court for that determination. Six, as discussed above, the majority of the child's family is in Lycoming County, her sister and

extended family all of which will be asked to testify. In addition, friends from Lycoming County will be asked to testify. As for York County, any teachers that would be asked to testify would generally do so via telephonic testimony in either location that leaves Mother and friends from York County who would need to be present. Seven, both courts have procedures for mediation and/or conciliatory conferencing which are utilized prior to scheduling a custody trial. This Court scheduled a custody conference regarding Father's Petition for Modification of Custody filed June 24, 2011, but that conference has yet to take place. In this county, custody conferences are the first court event scheduled pursuant to a petition for custody. During the hearing no evidence was presented for why the child's principal place of residence would be changed however Father did mention that he was worried about the delay of a transfer due to the fact that he wants the custody issue decided before the start of the school year. Eight, York County is not as familiar with the underlying facts and issues involved in the pending litigation, Father's Petition for Modification of Custody. This Court entered the current custody order of December 12, 2007 after a custody conference was held.

Thus, for the reasons set forth above this Court has found no overriding factors that point to Lycoming County being an inconvenient forum. While parties from York County will have to travel to Lycoming County for purposes of litigation the same is said if venue were to be changed.

This Court has exclusive continuing jurisdiction and will retain such. Wife's Petition for Change of Venue is hereby DENIED.

BY THE COURT,

Joy Reynolds McCoy, Judge