

TCS, : IN THE COURT OF COMMON PLEAS
Plaintiff : OF LYCOMING COUNTY,
 :
 : CASE NO. 07-21,107
 :
 vs. :
 :
 CGR, :
Defendant : CUSTODY

OPINION AND ORDER

The parties are the parents of JS born on August 28, 2006. Per Order of Court dated October 30, 2007, the parties were granted shared legal custody of JS. The parties must consult with each other and participate in making major decisions affecting JS. These decisions include, among other things, education. Both parties have also agreed to work together to promote JS's best interests.

Unfortunately, the parties did very little consulting regarding JS's future education and instead resorted to litigating what has become a very common parental concern. More specifically, father filed a Petition for Special Relief requesting the Court to determine that it is not in JS's best interest to begin kindergarten in the 2011-2012 school year.

While this type of decision should rest solely with the parents of the minor child who know the minor child best and who certainly should have the minor child's best interest and welfare as their number one priority, JS's parents have inexplicably placed the decision in the Court's hands expecting that the Court make the best decision. This expectation by the parties, to a large extent begs logic, given the fact that less than one hour of testimony was presented and the Court had no opportunity to meet, let alone hear any testimony, from JS.

Unfortunately, the concept of shared legal custody only allows both parent's input into the major decisions in their child's life; it does not require it. Hill v. Hill, 619 A.2d 1086 (Pa. Super. 1993). When the parents cannot agree, such as

in this case, the Court must and will settle disputes between them. In Re: Wesley J.K., 445 A.2d 1243, 1249 (Pa. Super. 1982).

Father testified at the hearing in this matter. JS will be five (5) on August 28 of this year. In May of this year, mother informed father that JS would be enrolled in kindergarten. Father had no knowledge of the decision, was not involved in the decision making process and obviously had no input.

Father is concerned that placing JS in kindergarten this year would not be in his best interest. He described JS as being physically mature for his age, but lacking concentration skills, focused attention and the ability to sit still.

In opposing kindergarten, father argues that there is really no good reason in favor of sending JS this year. If he were to go to kindergarten, he would most assuredly be the youngest in the class. He noted that the future disadvantages to JS because of his young age could span emotional, social and academic spectrums. From what the father has read, the research demonstrates that children typically do better and it is more helpful than detrimental, for them to start school at a later age. He wants to give JS the best chance to develop socially, emotionally and academically.

JS was administered a Pre-Literacy Skills Screening (PLSS) which, in the father's opinion, is indicative only of the fact that he is ready for kindergarten not that it would be best for him under all of the circumstances.

He would prefer that JS be in a structured learning environment/day care program where he could improve his reading, writing and other academic skills as well as his social skills. He is prepared to pay the out-of-pocket costs associated with such a "preschool."

Kathy Furman testified on behalf of the mother. She is the elementary principal for the South Williamsport School District. She previously worked in the school district as a teacher. She offered expert opinion in the areas of early childhood education and a child's readiness for kindergarten.

She interpreted the PLSS and concluded that JS is both developmentally and emotionally ready for kindergarten. While she never met or spoke with JS, she opined that JS should do “just fine” in kindergarten although she did note that there were many variables that go into a child’s future success.

Mother testified as well. Over the last twelve (12) months, JS has been with his father approximately six (6) weeks. JS primarily resides with his mother. She is employed as a surgical technologist and is on call from approximately 3:30 in the afternoon to 6:30 in the morning. She usually works approximately ten (10) to twelve (12) hours per week.

JS interacts very well with other children. He demonstrates no abnormal behavioral issues. He is very tall for his age (in the 98th percentile). JS spends time with his mother almost every night, reading and working on activity books. She wishes to enroll JS in kindergarten this year because he has met the age cut-off, he is “mentally able to go” and he needs the social interaction that comes with being around other children. She noted as well that some of JS’s friends are going to kindergarten this year.

On cross-examination, she conceded that there is a preschool/daycare near her residence and that if JS were to attend preschool, he would get the social interaction that mother believes he needs.

The fundamental issue in all custody cases is in the best interest of the child. Tripathi v. Tripathi, 787 A.2d 436, 439 (Pa. Super. 2001). In deciding whether to send JS to kindergarten this year, the Court must consider all factors that would legitimately impact on his physical, intellectual, and moral well being. Zumo v. Zumo, 574 A.2d 1130 (Pa. Super. 1990).

While JS comes within the age cut-off and is academically and socially capable of going to kindergarten, the Court finds that JS’s best interests would be suited by delaying such for at least one (1) year. While mother knows JS

better than anyone, the issue is not whether he is ready, but what would be best for his future.

Indeed, the Court finds the father's argument that the Court should assess the risks, as compelling. There appears to be no reason whatsoever why any risk should be taken with respect to JS's future. There is no doubt that if he attends preschool this next year, in light of his progress to this point, he will further develop socially, emotionally, physically and academically. This development can only give him an advantage when he enters kindergarten and as he progresses through school.

There was no testimony presented whatsoever that pointed to any detriment to JS should he not go to kindergarten this year. More importantly, however, JS will be better prepared next year, should excel and will benefit throughout his elementary and secondary school years from his advanced age.

In the simplest of terms, the Court asks itself why not? Why not give JS the best chance to excel in every facet of his educational experience including socially, emotionally, academically and extracurricularly?

ORDER

AND NOW, this _____ day of August 2011 following a hearing and argument, the Court **GRANTS** father's Petition for Special Relief. Mother shall be precluded from entering JS in kindergarten for the 2011-2012 school year. Mother is directed to enroll JS in a preschool program of her choice that will best provide for JS's academic, emotional and social development. Father shall be responsible for all costs associated with JS's attendance at the selected preschool.

BY THE COURT

Marc F. Lovecchio, Judge