

JJS	,	: IN THE COURT OF COMMON PLEAS
Plaintiff		: OF LYCOMING COUNTY,
		: :
		: CASE NO. 07-21,082
		: :
vs.		: :
		: :
MPP		: CIVIL ACTION – LAW
Defendant		: CUSTODY

OPINION AND ORDER

This matter comes before the Court by virtue of a Petition for Special Relief that was filed on July 8, 2011 by JS, father, against MP, mother, requesting that the Court order that their minor child, NS, be enrolled in kindergarten at St. John Neumann Regional Academy for the 2011-2012 school year.

NS was born on February 17, 2006 and is presently five (5) years old. By prior Order of Court, both parties share legal custody of her. The parties must consult with each other and participate in making major decisions affecting their child. These decisions include, among other things, education, religious upbringing and extracurricular activities. Both parties have agreed to work together to promote the child's best interests.

Despite the parties agreeing to, and being obligated to, work together to promote their child's best interests, they have placed their child, at the tender age of five (5), squarely in the middle of a controversy that has most certainly raged in many, many households throughout the Commonwealth of Pennsylvania if not the entire United States. The decision by parents to send a child to a Catholic school or a public school is certainly not a decision to be taken lightly. Reaching a decision involves a thorough consideration of many, many factors the least of which is a thorough understanding of the child, his or her personality, his or her maturity, his or her educational strengths and weaknesses, his or her educational needs, his or her social development, his or her spiritual needs and his or her desires. Moreover, prior to making such a decision, parents

must essentially look into the future and speculate on what their child's needs may be, one (1) year, five (5) years and perhaps even ten (10) years later.

The hearing that was held in this matter, upon relatively short notice, resulted in approximately two and-a-half (2 ½) hours of testimony which involved the parties, representatives and teachers from one school and teachers from the other school. Based upon the limited testimony along with the brief arguments of counsel, the parties now request the Court to make a decision as to the future education of their child. To expect the Court to render a perfect decision under these circumstances is to expect the Court to perform a miracle. It is indeed a shame that the parents, who know their child best, could not arrive at a decision.

Nonetheless, the concept of shared legal custody simply allows both parent's input into the major decisions in their children's lives. Hill v. Hill, 619 A.2d 1086 (Pa. Super. 1993). When the parents cannot agree, the Court must and will settle disputes between them. In Re: Wesley J.K., 445 A.2d 1243, 1249 (Pa. Super. 1982).

Presenting testimony on behalf of the father were Frank Pelligrino, President of the Board of Governors of St. John Neumann Regional Academy, JS, father's sister, Beth Ecker, head teacher at the St. John Neumann Sheridan Street Early Childhood Center, Brenda Kremser, kindergarten teacher at the Early Childhood Center, Abby Brown, guidance counselor for St. John Neumann Regional Academy, and father.

NS had previously been enrolled for the past two (2) years at the Sheridan Street Early Childhood Center. Father wants her to continue with Catholic school for a variety of reasons. First, he sees St. John Neumann as an "extension of family." Next, he supports a faith-based education. He, as well, is a strong believer in small classrooms and is sure that NS will receive a "quality

education.” Finally, he is somewhat concerned that his prior political decisions may result in retaliation against NS by school officials.

Over the past two years, mother and father, for a variety of reasons decided to enroll NS in St. John Neumann’s Pre-K program. Now that NS is heading into kindergarten, however, mother intends on enrolling her at Cochran Elementary School.

St. John Neumann Regional Academy is a regional Catholic school system that is divided into four different campuses. The campuses include the junior/senior high school, the elementary campus and two early childhood care campuses (one in Muncy and one in Loyalsock Township). It is a school system that stresses spirituality, academics, student activities, a unique environment, cultural enrichment as well as athletics and physical education.

It is a faith-based educational environment in which the students are required to take a religion class on a daily basis, prayer is integrated throughout the school day, masses are held and the Catholic philosophy is incorporated in the curriculum.

From an academic standpoint, it is fully accredited by the Pennsylvania Department of Education, utilizes certified teachers, has small classrooms (it is anticipated that NS’s kindergarten class would have at least twelve (12) but no more than fifteen (15) pupils), has a low student/teacher ratio, utilizes computer technology, screens for early intervention, provides individual educational opportunities as necessary, has a multi-million dollar endowment and performs extremely well on standardized tests.

As well, the students are given numerous opportunities to become involved in extracurricular activities including athletics all in an environment that stresses caring for the students, growing as a family and preparing for the future.

If NS were to attend St. John Neumann, she would be on the same schedule as the past two (2) years. Either her mother or father would take her to school and then following school, NS would be picked up by her babysitter. On the days that her mother has physical custody, NS would be picked up by her mother anywhere between 3:30 and 4:00. On days that her father has physical custody, NS would be picked up anywhere between 5:00 and 7:00.

Testifying on behalf of the mother were Corey Cotner of BLaST Intermediate Unit No.17, MP, NS's aunt and a teacher in the Williamsport Area School District, Brandy Woodside, NS's babysitter, and mother.

Cochran Elementary School is one of six elementary schools within the Williamsport Area School District. It houses students from kindergarten through fifth grade. Like St. John Neumann Regional Academy, it is member school of BLaST Intermediate Unit 17.

Intermediate Unit 17 (IU) is an education service agency that seeks to improve its member's schools. Among the services that the IU provides to member districts is training in curriculum development and ongoing consultation. It also provides professional development services.

As a public school within the State of Pennsylvania, Cochran is required to meet the Pennsylvania System of School Assessment Standards (PSSA). The PSSA is a standard based, criterion-referenced assessment used to measure a school's attainment of the academic standards and their students' proficiency of the standards. Students in different grades are assessed in reading and math. Students in differing grades are assessed in writing while other students are assessed in science. These assessments are mandated by law and State Regulation.

Unlike Cochran, St. John Neumann utilizes an assessment known as Terranova. Generally speaking, this assessment produces norm referenced

achievement scores. The subject areas include reading, math, language, science and social studies while the grade range covers one (1) through twelve (12).

A norm referenced test such as the Terranova compares a person's score against the scores of a group of people who have already taken the same exam called the "norm group." The test ranks students against each other but may not determine whether students have learned standardized material.

Mother has a variety of reasons for wanting NS to attend the Williamsport School District. Mother, who is a teacher in the District, believes that the Williamsport Area School District has a better and more diverse curriculum, has better supports in place to address learning needs and/or learning proficiencies, provides courses in music, agriculture, technology, computers and other areas that "do not even compare", provides for programming, strategies and a curriculum that are researched based, provides much greater curricular support, provides far greater extracurricular opportunities and exposes the students to the cultural and demographic diversity that exists in the community in which they live.

Mother also questions father's motives in wanting NS to remain at St. John Neumann. More specifically, she places no merit in his retaliation theory and notes that he plays no role in NS's catholic faith development. She opines that father simply is fearful of mother having "control" over NS because mother teaches in the District.

Moreover, mother while acknowledging the importance of faith in NS's life, is of the opinion that she can provide an appropriate Catholic education to her child through Sunday CCD classes, regularly attending church and praying with her child on a daily basis.

NS's aunt, MP, who has spent a significant amount of time with NS, has some "observations and/or concerns" with respect to NS's learning

development which she believes can be better handled in the Williamsport Area School District. She opined that based on her experience in the school district in several capacities including as a parent and teacher, the district has done an excellent job in assessing student's needs and properly addressing them. Among other things, she praised the principal at Cochran, the curriculum, the "highly structured" learning environment, the formative and substantive assessments, the individualized education plans, the involvement of family, the community investment, the use of technology, the cooperative learning, the larger variety of academic possibilities and the opportunity to learn in both small and large groups.

Among the documents that the Court reviewed were kindergarten report cards from the respective schools as well as a PSSA report for Cochran with respect to the 2010 school year. The report cards are relatively similar although Williamsport's is somewhat more detailed. The PSSA report illustrates that Cochran met its annual yearly progress standards except with respect to its IEP – Special Education students.

While father testified to varying reasons for wanting NS to attend St. John Neumann, the babysitter credibly testified that father informed her that he wanted his daughter to continue at St. John Neumann because if she went to Williamsport, enemies that the father made in connection with some of his past political decisions, might take it out on the daughter. This reasoning was confirmed by the mother and conceded in part by the father.

Cochran starts at 8:45 a.m. and ends at 3:30. While it would be assumed that the father would be able to provide transportation during his periods of physical custody, the mother would need to rely on her mother to take NS to school in the morning. Following school, the child would be picked up by the mother's 16 year-old son who would then watch the child until the mother returned

home. There was no testimony about what the father would do during his periods of partial custody.

NS has a handful of cousins and friends who will be attending Cochran. Those friends of the child with whom she has socialized during the summer will be going to public school. Her first cousin, as well, will be in first grade and her two neighborhood friends will be going to Cochran. With respect to St. John Neumann, approximately 50% of NS's last year's class will be returning.

The fundamental issue in all custody cases is the best interest of the child. Tripathi v. Tripathi, 787 A.2d 436 (Pa. Super. 2001). What school is better for NS? Is it even possible to compare the two schools in determining what is best for NS? In deciding this issue, the Court must consider all factors that would legitimately impact on the child's physical, intellectual, moral and spiritual well being. Zumo v. Zumo, 574 A.2d 1130 (Pa. Super. 1990).

The Court finds that there are pros and cons to each school. For example, while Cochran must follow State Guidelines with respect to specific standards and assessment procedures, St. John Neumann can use whatever curriculum and assessment procedures they wish. This can be good or bad. While smaller classes appear to be preferable along with low student/teacher ratios, State mandated teacher certification and training required by law also appears to be preferable. While public schools have special education programs and teachers who are trained to work with special needs students, private schools have more flexibility with respect to individualized education. Candidly, this is like comparing apples and oranges. Each are good for you but whether or not you prefer one over the other is a highly personal decision. In the educational setting, this decision should be based on family, values and perhaps most importantly, the needs and interests of the child. The decision is for the child and not the parents.

Unfortunately, the Court heard very little about the child. The Court did not see her grades, hear about her interests, learn about her hobbies or activities, be informed about her curricular or extracurricular interests or even have a chance to see, observe or talk with her. This lack of information makes this decision even more difficult.

While the Court cannot determine that one school is “better” than the other school, the Court will conclude that the minor child’s interests will be better served if she attends Cochran. This decision is based on a few very important factors. First, the child’s peer group, family members and friends will be attending Cochran. They will be able to attend school activities together and will be on the same schedule. They will be able to create a bond which would not otherwise exist. Cochran is also a neighborhood school. The child will be able to develop new friendships with individuals who reside in the geographic area near her home thus making it easier to socialize. The mother, aunt and at least one other family member teach in the Williamsport School District and are intimately familiar with its curriculum, programming and servicing of students. Should any issues at all develop in the future, the mother will have first-hand knowledge and in all likelihood more direct and easier access to address those issues and provide accordingly for her daughter. The child’s spiritual needs are being met by the mother and will continue to be met. Even the father acknowledged that the mother’s spiritual education of NS has been “well-rounded”. Finally, the mother’s reasoning with respect to the choice of an educational institution is based more soundly on the needs, interests and welfare of the child. The father’s reasoning is based not so much on the present needs of his child but rather on unsubstantiated future concerns. For example, the Court finds no basis in believing that the minor child may be retaliated against in the future because of father’s prior political decisions. Moreover, the Court finds that the father’s

expressed desire to provide his daughter with a family environment is based more on his own feelings of inadequacies versus an objective assessment of his daughter's needs. Finally, the father's claim that he wants NS to experience a faith based education is belied by the fact that when NS is with him they do not attend mass nor do they pray or practice any religion.

In reaching this decision, however, there is little doubt in the Court's mind that the parties can and should re-visit this issue in the future depending, of course, on how NS grows, matures and develops. Despite this decision, the Court is concerned over who will supervise the child following school and despite mother's assurances, the Court does not believe that the supervision of NS by her 16 year-old half-brother every school day is appropriate. This is too much of a burden on the 16 year old. The Court directs that the parties provide adult babysitting services for the child following school until a parent returns to the home.

ORDER

AND NOW, this ____ day of August 2011 following a hearing and argument and for the reasons set forth in the aforesaid Opinion, the Court **DENIES** father's Petition for Special Relief. The Court directs that the minor child be enrolled in the Williamsport Area School District at Cochran School unless the parents otherwise agree. The Court further directs that that parties arrange for an adult babysitter to supervise the child from after school until the parent that is exercising physical custody of the child returns home or takes physical custody of the child.

BY THE COURT

Marc F. Lovecchio, Judge

cc: Janice R. Yaw, Esquire
Andrea Pulizzi, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File