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|------------|---|---------------------------------|
| MR,        | : | IN THE COURT OF COMMON PLEAS OF |
| Plaintiff  | : | LYCOMING COUNTY, PENNSYLVANIA   |
|            | : |                                 |
| vs.        | : | NO. 09-21, 543                  |
|            | : |                                 |
|            | : |                                 |
| CE, and    | : | CIVIL ACTION - CUSTODY          |
| E and KE   | : |                                 |
| Defendants | : |                                 |

**ORDER**

AND NOW, this 10<sup>th</sup> day of February, 2010, this order is entered after an argument held on February 7, 2011 regarding Mother, MR’s, Petition for Change in Venue. Mother is requesting that the above-captioned matter be transferred to Crawford County where she and AR, the subject minor child, reside. Mother was represented by Melody Protasio, Esquire. CE, Father, and E and KE, Grandparents, were collectively represented by Meghan Young, Esquire. Although a hearing and argument were scheduled in this matter, the attorneys chose to proceed in this matter by having argument off the record before the undersigned in chambers indicating that the facts were not in dispute.

We 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.

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, because Mother’s home is in Crawford County, the Crawford County Court is in a better position to monitor Mother’s home conditions including potential issues involving domestic violence using Crawford County agencies and other resources.

Two, the child has resided with Mother in Crawford County as his primary place of residence for over 6 months. This Court’s order of June 30, 2010, entered after a custody trial before the undersigned, granted Mother primary physical custody. Formerly, Grandparents exercised primary physical custody and the child principally lived with Grandparents in Lycoming County.

Three, the distance between the Courts is not so great that the matter cannot be litigated in Crawford at least as easily as it could be litigated in this Court. Undoubtedly, there will be numerous witnesses testifying in this matter from Crawford County. The child has issues requiring specialized attention. Currently, the child's specialists and other resources are in Crawford County. Formerly, the child received this specialized attention in this county. As time goes by, the probative value of anything that the child's specialists and other resources in Lycoming County have to present will diminish.

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 child has special needs requiring specialized resources which are currently located in Crawford County. The child has family and friends in and around both counties. Significantly, the child resides in Crawford County with the exception of weekends, some holidays, and week of vacation time in the summer. The least amount of disturbance to the child would occur if the hearing were held in Crawford County.

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 December 29, 2010, 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. Upon the transferring of this matter from

this Court to the Crawford County court, the process can commence there. Thus, minimal delay, if any, will result from transferring this case to Crawford County at the present time.

Eight, Crawford 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 June 30, 2010 after a custody trial. The attorney for Father and Grandparents did not present any testimony, nor did she detail any facts, that tended to prove that the child's primary residence would revert back to this county anytime in the near future. There wasn't any concrete evidence that Father would be getting out of prison soon, and this Court questions the viability of Father obtaining partial physical custody at this time. Even if Father were released from prison tomorrow, he would have almost an insurmountable hill to climb in obtaining primary physical custody after a custody conference, pre-trial conference, or custody trial scheduled pursuant to his current pending Petition for Modification of Custody. According to the current order, upon release from prison Father can only exercise unsupervised physical custody at the discretion of the Grandparents. Father's presumptive supervised physical custody is based in part on his seizure disorder.

This Court does not foresee that the child's residence will be changed by Father's pending Petition for Modification of Custody. No evidence was presented for why the child's principal place of residence would be changed any time soon. Transfer of this case to Crawford County will allow the Crawford County Court to begin garnering its own familiarity of the facts and issues in this matter which involve a child that currently resides, and in all likelihood will continue to reside for some time, in Crawford County.

Thus, for the reasons set forth above it is appropriate for Crawford County to exercise jurisdiction in this matter, this Court is an inconvenient forum under the circumstances, and the Crawford County Court is a more appropriate forum. Pursuant to 23 Pa.C.S. § 5427(a) and (b), this matter is hereby TRANSFERRED to the Crawford County Court of Common Pleas.

**The Lycoming County Prothonotary is hereby DIRECTED to forward to the Crawford County Prothonotary certified copies of the docket entries, process, pleadings and any other papers filed in the above-captioned action.** The costs and fees associated with the removal of the record shall be paid by MR. Pursuant to 23 Pa.C.S. § 5427(c), the custody conference scheduled for February 11, 2011 regarding EE's pending Petition for Modification of Custody is hereby STAYED pending its appropriate scheduling by the Crawford County Court to be heard in that county.

BY THE COURT,

Joy Reynolds McCoy, Judge