

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

BA,		: No. 10-21,497
	Plaintiff	:
		:
vs.		: CIVIL ACTION - LAW
		:
JJ,		:
	Defendant	: CUSTODY

OPINION AND ORDER

AND NOW, this 8th day of **February, 2012**, this Order is entered after a hearing held on January 25, 2012, regarding Mother, JJ's Petition to Transfer Venue filed on November 18, 2011. Mother is requesting that the above-captioned matter be transferred from Lycoming County, Pennsylvania, to Howard County, Maryland, where she resides. Mother was represented by Meghan Young, Esquire, and Father, BA, was represented by Michael Morrone, Esquire.

The facts presented were as follows:

From November, 2006, through the December, 2008, the parties resided together in Lycoming County with their children. From January, 2009, through March, 2010, the parties resided together in Arizona with their children. From March 10, 2010, through November, 2010, the parties resided together in Lycoming County with their children. In November, 2010, the parties separated. For the first three weeks after the parties' separation, Mother resided in Maryland with all of the children. During this time, Father resided in Lycoming County. From Thanksgiving, 2010, through June, 2011, Father resided in Lycoming County with the minor child, MA, and Mother resided in Maryland with LA and NA. From June, 2011, to the present, the current Custody Order was entered after a Pre-

Trial Conference. During this time period, Mother has resided in Maryland and Father has resided in Lycoming County. The parties share physical custody of their children, MA and NA, on a two-week alternating schedule. Mother has primary physical custody of LA during the school year. Father has primary physical custody during the Summer.

Mother currently resides in Howard County, Maryland, and has done so since November, 2010. Mother testified that the relationship between her and Father immediately prior to their separation was very emotionally heated and she felt things were becoming aggressive between them. It was at this time that the parties separated. Mother believes it is approximately a three-hour drive between her residence in Maryland and Father's residence in Lycoming County. Father believes that the travel time is closer to four hours.

Mother is currently unemployed and indicates that she struggles financially. Mother indicated that she receives a lot of help from family and friends to help her make ends meet. Mother is currently interviewing for a position which she hopes to receive. If Mother obtains this position, she will be making approximately \$40,000 per year. Father is employed full-time by American Customer Care making \$9.50 per hour. Father resides with his parents.

Mother has filed the pending Petition to Transfer Venue in this matter as she anticipates filing a petition for modification of custody in the near future as the parties' son, MA, will be attending school this fall and therefore, the parties can no longer continue to share custody on a two-week rotating basis. Mother testified that a majority of her witnesses for the custody trial would be from Howard County, Maryland, while Father testified that a majority of his witnesses would be from Lycoming County. The minor child, LA, attends school in Howard County, Maryland, and also attends before and after care. When in

Mother's custody, both boys attend child care in Howard County, Maryland. During Father's two weeks of custody, the boys attend Bostley's Day Care in Lycoming County. LA's and NA's primary doctor is located in Howard County, Maryland. MA's primary doctor is located in Lycoming County. Once a petition to modify is filed, both parties will be seeking primary custody of all three children.

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. Rosenthal*, 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, two of the children live in Lycoming County on a shared custody basis. The third child visits Father in Lycoming County every other weekend during the school year and is in Lycoming County primarily during the Summer months. Two of the children attend day care in Lycoming County. One of the children’s primary doctor is in Lycoming County. The Court finds that the children have 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.

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 state 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 so, 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 state;
- (3) the distance between the court in this state and the court in the state 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 state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) the familiarity of the court of each state with the facts and issues in the pending litigation.

23 Pa.C.S. § 5427(b)(1)-(8).

The Court will address each of the factors in order. Though Mother testified that the relationship between her and Father had become aggressive immediately prior to the separation, the Court does not find that there was domestic violence between the parties. Further, it is clear from the testimony of Mother that once the parties physically separated, they had no further issues of aggression. The parties' daughter has resided primarily in Howard County, Maryland, since November, 2010. The parties' two sons resided primarily in Lycoming County from March, 2010, through November, 2010, after which they spent three weeks exclusively in Howard County, Maryland. From November, 2010, until June, 2011, MA resided primarily in Lycoming County, Pennsylvania, while NA resided primarily in Howard County, Maryland. From June, 2011 to the present, MA and NA have spent equal time in Howard County, Maryland, and Lycoming County, Pennsylvania, on a two-week rotating schedule.

Mother believes it is approximately a three-hour drive from the Court in Howard County, Maryland to the Court in Lycoming County, Pennsylvania. Father believes it is closer to a four-hour drive. This matter can be litigated in Howard County, Maryland, at least as easily as it could be litigated in Lycoming County, Pennsylvania. Mother is currently in a financial situation where she is unemployed and relies upon family and friends to help her make ends meet. Though Mother has prospect of a good-paying position, she had not been hired in the position at the time of the hearing in this matter. Father is employed full-time, though his income is not significant. In fact, Father testified that the amount he makes per month is less than the \$1,700.00 rent per month that the Mother testified to she pays in Howard County, Maryland. It will clearly be a financial burden on either party to have to travel from their home county and state to litigate this matter.

The parties have no agreement regarding a transfer of jurisdiction and have, instead, turned to this Court for that determination. All of Father's witnesses are located in Lycoming County, Pennsylvania, while almost all of Mother's witnesses are located in Howard County, Maryland. Mother did testify that she may utilize her sons' day care provider in Lycoming County as a potential witness. Mother indicated that she anticipated calling her daughter's school teacher who is located in Howard County, Maryland, to testify. The Court notes that if this matter is heard in Lycoming County, Pennsylvania, any school teacher, whether located in Lycoming County, Pennsylvania, or Howard County, Maryland, pursuant to Court policy would be permitted to testify by telephone. Father's father, with whom he resides, is confined to a wheel chair. Father

indicated that he may call his father as a witness and that it would be extremely difficult to get his father transported to Howard County, Maryland.

There was no evidence presented as to the ability of the Howard County, Maryland, Court to decide the issues expeditiously and the procedures necessary to present the evidence. Once a petition to modify the existing custody order is filed in Lycoming County, the matter will immediately be set for a custody conference after which a pre-trial will be scheduled if the parties cannot reach an agreement. Thereafter, a custody trial will be held if the parties are still unable to reach an agreement. Thus, the Lycoming County Court has the ability to decide the issues expeditiously. Further, it is the procedure of Lycoming County Courts to allow school teachers and other professionals to testify by telephone despite their whereabouts. There is also the ability for either party to request telephone testimony from additional witnesses from the Court if the parties cannot reach an agreement in regard to telephonic testimony. This Court is lenient with telephone testimony of non-parties.

As there has never been any proceedings before the Howard County, Maryland, Courts, that Court has no familiarity with this matter. Though there have been several Orders entered in Lycoming County, Pennsylvania, it appears as if most of those Orders have been entered after agreement by the parties. Therefore, the Lycoming County Courts familiarity is limited.

Thus, for the reasons set forth above, this Court has found no overriding factors that would point to Lycoming County being an inconvenient forum in this matter. While witnesses from Howard County, Maryland, will need to travel to Lycoming County for purposes of litigation, the same is said if jurisdiction were to be changed to Howard

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

By the Court,

Joy Reynolds McCoy, Judge