

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

<b>KB,</b>	:	<b>NO. 09-20109</b>
<b>Plaintiff</b>	:	
	:	
<b>vs.</b>	:	
	:	
	:	
<b>JB,</b>	:	<b>CIVIL ACTION - CUSTODY</b>
<b>Defendant</b>	:	

**REVISED ORDER**

**AND NOW**, this 8<sup>th</sup> day of **February, 2012**, this order is a revision of the February 3, 2012 order which was entered after a hearing regarding Father's Petition to Transfer Jurisdiction filed October 20, 2011. Father is requesting that the above-captioned matter be transferred to New York State where he and his children reside. At the hearing held on January 31, 2012, JB (Mother) was present and was represented her counsel by Tiffany Shoemaker, Esquire. KB (Father) was present and was represented by his counsel John Smay, Esquire.

The facts stipulated to were as follows. Father has primary physical custody of the minor children. Father and the children reside in New York State; the children have lived in New York with Father since August 27, 2010. Mother resides in Lycoming County Pennsylvania. During the school year Mother's time of custody is every other weekend and holidays, during the summer months Mother has every other week. The children attend school in New York and their primary care physicians are located in New York. Other than Father's sister who resides in

New York all extended family reside in Pennsylvania. Additionally, the children do have friends in 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 Allegheny County, New York is the home county of the child. Therefore, “[a]n action *may* be brought . . .” *Id.* (emphasis

added). The Court finds that Allegheny County, New York has jurisdiction over the aforementioned matter.

Turning to Lycoming County, 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 the children visit Lycoming County every other weekend during the school year and every other week during the summer. The children have retained friends in Lycoming County.<sup>1</sup> While the children's extended family live in Pennsylvania there was no testimony as to how often the children visit with them. As previously mentioned, the primary care physician for the children is in New York. The Court finds that the children do not have significant connections to Lycoming County. Even though Lycoming County initiated the original and current custody order and the children do not have significant connections to Lycoming County.

This Court holds that Lycoming County has does not retain exclusive, continuing jurisdiction as outlined in 23 Pa. C.S. 5422. Father's Petition to Transfer Jurisdiction is hereby **GRANTED**.

BY THE COURT,

Joy Reynolds McCoy, Judge

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<sup>1</sup> In the Order of February 3, 2012 it was erroneously stated that there was no mention as to whether the children has retained friends in the area. However that fact alone did not carry enough weight as to change the decision of the Court.