

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

AC,		: No. 11-20,887
	Plaintiff	:
		:
vs.		: CIVIL ACTION - LAW
		:
SC,		:
	Defendant	: CUSTODY

OPINION AND ORDER

AND NOW, this **14th** day of **May, 2012**, a Custody Hearing was held before this Court on April 20, 2012, at which time SC, Mother, was present with her counsel, Mary Kilgus, Esquire, and AC, Father, appeared with his counsel, Melissa Clark, Esquire.

By way of background, the parties were before this Court on December 8, 2011, for a Custody Trial. At that time, both parties were seeking primary physical custody of their child as Mother had relocated to Ohio and Father resided in Lycoming County, Pennsylvania. Prior to commencement of trial, Mother's counsel indicated that Mother's fiancé had obtained employment in the Lycoming County area and that Mother would shortly be returning to Lycoming County. Both parties advised the Court at that time that if they resided in the same general area, they may be able to reach an agreement among themselves without the need to proceed to trial in regard to physical custody and requested that a custody conference be scheduled once Mother relocated back to Lycoming County. A custody conference was scheduled for February 7, 2012. Pending the custody conference, the parties shared physical custody of the child. At the time of the custody conference on

February 7, 2012, the parties agreed to a week-to-week shared physical custody schedule exchanging the child each Sunday. The Court Order of February 7, 2012, indicated that Father was permitted to register the child for Kindergarten in the Montoursville Area School District; however, the child could not actually attend Kindergarten in the Montoursville Area School District unless Mother agrees or Father obtained an order of court indicating the child shall attend Kindergarten in the Montoursville Area School District. Another custody conference was scheduled for April 13, 2012.

At the time of the follow-up custody conference on April 13, 2012, the parties advised the Court that they were in agreement with the shared custody schedule; however, they could not agree as to where PC should attend Kindergarten. Mother was requesting that PC attend Kindergarten in the East Lycoming School District where she currently resides and Father was requesting that PC attend Kindergarten in the Montoursville Area School District where he currently resides. The legal custody issue of which school district the child will attend is what is now before this Court.

PC was born on June 28, 2007. He will turn 5 years of age on June 28, 2012, and is therefore eligible to attend Kindergarten during the 2012-2013 academic year. Both parents wish for PC to attend school in the school district in which the parent resides. Mother resides in Hughesville, Pennsylvania, which is in the East Lycoming School District. Father resides in Montoursville, Pennsylvania, which is in the Montoursville Area School District.

Father currently resides at 878 Heilman Road, Montoursville, Pennsylvania. Heilman Road is located in a rural part of Montoursville. The residence is owned by Father's mother, Deborah Clark, with whom Father resides along with his wife, Stefany, and

two children, Jack, age 2, and Lola, age 1. Father moved into this residence in January, 2012. Prior to that, Father resided at 1514 Country Club Lane, Williamsport, Pennsylvania, from 2006, which is located in the Loyalsock Area School District. Father has moved into his mother's home to reside there until such time as he is able to correct his credit situation. Father anticipates residing with his mother for at least three years. Father is employed by Alcan Cable where he has worked since 2005. Father works from 7:00 p.m. to 7:00 a.m. on a rotating schedule. During week 1, Father works Monday, Tuesday, Friday and Saturday evenings; during week 2, Father works Sunday, Wednesday and Thursday evenings. Father's week of physical custody of PC is during the second week of his work rotation. Father's wife, Stefany, is a stay-at-home mom, but indicated that she is currently looking for some type of part-time employment. Father's mother is employed. Her hours vary, but generally she works from 9:30 a.m. to 3:30 p.m.

If PC attends school in the Montoursville Area School District, he will ride a bus to and from school. The bus stop is located up the street from Father's residence. Father will be available to walk PC to and from the bus stop. It is approximately a ½ hour bus ride from Father's home to the elementary school. The bus would pick the child up at 7:50 a.m. each morning and drop him off around 3:45 p.m. PC would attend elementary school at the Lyter Elementary School which provides full-day Kindergarten. Father's sister resides in the same general area as Father. She has children age 12, 10 and 6. These are cousins of PC. PC gets along with all three cousins and would ride the school bus with them and attend the same elementary school as the youngest two cousins. Father's brother has a son, Kaden, who would also attend the same elementary school. Father's mother testified that Father, his wife

and two children, along with PC on an every-other-week schedule reside with her. She indicated that they could reside with her for as long as they desired. Father and his siblings all attended the Montoursville Area School District.

Father argues that he has the more stable home for PC as there is no immediate plan to move from the current residence and that when Father is able to rectify his credit situation and he is able to obtain his own housing, he intends to remain in the Montoursville Area School District. Father argues that there is a family tradition of his family attending the Montoursville Area School District. Father also argues that PC will know at least two children in his elementary school as his cousins will attend that school. Three of PC's cousins will ride the school bus with him and Father believes that there is an important support network for PC in the Montoursville Area School District.

Mother currently resides at 287 Second Street, Hughesville, Pennsylvania. She resides in a duplex which she currently rents. Mother resides with her fiancé, Jesse, and their one-month-old daughter, Lilian. Mother moved into this residence on March 1, 2012. Immediately prior to residing in Hughesville, Mother resided in Ohio from approximately July, 2011, until returning to Pennsylvania. Prior to moving to Ohio, Mother resided in two different locations in Lock Haven, Pennsylvania for approximately two years.

Mother does not intend to stay in her current apartment because it is not taken care of by the landlord and is not an appropriate place to bring up PC. Mother desires to find another place to reside in the East Lycoming School District.

The home Mother currently rents is located three blocks from the Ashkar Elementary School which PC would attend if he attends school in the East Lycoming School District.

Mother indicated that she would either walk PC to school or, depending on weather, drive PC to school or, if necessary, PC could take a bus. Mother does not currently work indicating that she is on maternity leave. Mother does plan to obtain a job. She indicated that she would work daytime hours that were accommodating to PC's school schedule. If necessary, Mother would enroll PC in an after-school program, though Mother did not provide any testimony as to what after-school programs were available in the East Lycoming School District.

If PC attends school in the East Lycoming School District, Mother would be available to walk or drive PC to school. If necessary, there would be a bus available for PC to ride to school. Ashkar Elementary School provides for full-day Kindergarten. Students must arrive in their classroom by 8:10 a.m. and are dismissed at 2:55 p.m. for student who walk or are parent-pick-up.

Mother argues that she is the more stable parent and provides the more stable home for PC. Mother wishes for PC to attend school in the East Lycoming School District as Mother's family is in the area and the school is very close to her. Mother argues that if something were to happen during the day, she is there and close to PC. Mother argued that the majority of her family is within five minutes of the school.

Despite the parties agreeing to and being obligated to work together to promote their child's best interest, they have placed their child, at age 4, squarely in the middle of a controversy as to what school district the child will attend. The fundamental issue in all custody cases is the best interest of the child. *Triphathi v. Triphathi, 787 A.2d 436 (Pa. Super. 2001)*. 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).

Neither parent presented any testimony from the respective school districts or provided any information as to the curriculum offered by the school, class size, school ranking, or special programs offered by either school. The Court does have some familiarity with both school districts. Both Montoursville Area School District and East Lycoming School District are public school districts of a more rural setting in Lycoming County. There is no reason for the Court to believe that either school district would not meet PC's educational needs. The Court was not made aware of any special needs of PC which would be better addressed by one school district over the other. The Court is unaware of any activities PC participates in which may be better addressed by one school district. The Court finds that both the Montoursville Area School District and East Lycoming School District would meet PC's needs.

Though both parents have argued to this Court that they have the more stable home for PC and therefore should attend school in the district in which that parent resides, the Court concludes that neither parent, at this point in time, offers much stability for PC. Father has recently moved into a home with his mother which she owns. From the testimony, it is clear that Father had to do this due to financial difficulties that he has experienced and, therefore, makes it unable for him to afford his own residence at this time. Though it is uncertain as to when it will occur, Father does intend to move PC to another residence at some point in the future, though Father has indicated it will be in the Montoursville Area School District.

Mother has lived in three locations over the past several years. First in the Lock Haven, Pennsylvania, area. Thereafter moving to Ohio with her boyfriend, and thereafter returning to the East Lycoming School District in Hughesville, Pennsylvania. Mother has also indicated to the Court that she does not intend to remain in her current location due to the poor upkeep of the household by the landlord. Mother, therefore, will also be moving PC to a new residence at some point in the future. Mother is also adamant that she will remain in the East Lycoming School District.

Father has chosen to live in the Montoursville Area School District because his family resides in the school district, he attended school in the school district, and the child will be familiar with cousins who attend the same school. Mother has chosen to move to the East Lycoming School District because all of her family is within close proximity to the school. The Court finds that both parents have the capability of getting PC to and from school regardless what school district the Court places PC in. The Court acknowledges, however, that it will cause some hardship on the parent who does not reside in the school district where the Court ultimately determines that PC should attend. This hardship will be caused by the travel that will be required by that parent during their week of custody to get PC to school in the other parent's school district. Again, though the Court finds that there will be a hardship upon this parent, the Court considers it more of an inconvenience and not an impossibility for the parent to get PC to and from school.

In both households, PC has younger siblings who will ultimately attend school with him if he attends school in those siblings' school district. All of his siblings, however, are significantly younger and he will most likely be out of the elementary school grades by the

time his younger siblings commence elementary school. In Father's school district, PC would have the benefit of attending school with cousins whom he has weekly contact and whom he has a good relationship with. He would also ride the bus to and from school with three of his cousins.

While the Court cannot determine that one school district is better than the other school district, the Court does conclude that PC's best interests will be served by attending school in the Montoursville Area School District. PC's peer group, which from the testimony given, consists primarily of his cousins, attend the Montoursville Area School District. At least two of his cousins attend the same elementary school and are in grades close to PC. This will enable PC to attend school activities with his cousins and will allow him to be on the same schedule. This further will allow for PC to have familiarity with individuals that he will ride the bus with and attend the same elementary school with. The Court concurs with Father that this provides an important support network for PC that is already established in the Montoursville Area School District.

ORDER

AND NOW, this 17th day of **May, 2012**, following a hearing and argument and for the reasons set forth in this Opinion and Order, the Court hereby **ORDERS** that the minor child, PC, shall attend school in the Montoursville Area School District. Both parents are

reminded that they must adhere to the provisions of shared legal custody as outlined in their Court Order.

By The Court,

Joy Reynolds McCoy, Judge

JRM/jrr