

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

D.J.S.,	:	
Plaintiff	:	DOCKET NO. 09-21545
	:	CIVIL ACTION – LAW
v.	:	
	:	IN CUSTODY
J.R.S.,	:	
Defendant	:	

OPINION AND ORDER

This matter is before the Court on the request of Mother, D.J.S. (hereafter referred to as D.J.N. due to Mother’s resuming of her prior surname), to relocate the parties’ fourteen-year-old, special-needs child, K.S., from Lycoming to Northumberland County. This decision requires this Court to consider the ten relocation factors set forth in the Commonwealth’s newly enacted Child Custody Act, 23 Pa.C.S. §§ 5321-5340 (Child Custody Act). For the reasons that follow, Mother’s request to relocate the parties’ daughter is GRANTED. This Court finds that Mother’s proposed move to Northumberland County will not significantly impair the ability of Father, J.R.S., to exercise his custodial rights with K.S. *Cf. C.M.K. v. K.E.M.*, 2012 Pa. Super. 76 (Pa. Super. Ct. 2012) (appellate court affirmed the trial court’s denial of Mother’s relocation petition because Mother’s proposed move would significantly impair Father’s ability to exercise his custodial rights with the parties’ minor child).¹

I. Factual Background

K.S. was born on May 24, 1997. After Mother and Father separated, Mother acquired primary physical custody of K.S.; Father exercises periods of partial physical custody with the child. The parties share legal custody of K.S. Mother and K.S. live in Montoursville, Lycoming

¹ Due to the change in the custody law, our appellate courts have not had the opportunity to review many trial court decisions applying the Child Custody Act. The *C.M.K.* case appears to be the only reported case thus far from the Superior Court that addresses and evaluates a trial court’s application of the ten relocation factors. *See* 2012 Pa. Super. 76.

County, Pennsylvania. Father resides in Cogan Station, Lycoming County, Pennsylvania. Mother requested permission from this Court to relocate the parties' child to Paxinos, Northumberland County, Pennsylvania. Currently, the distance between Mother's home and Father's home is approximately twenty-two (22) miles; the distance between Father's home and the proposed household in Paxinos is approximately sixty-nine (69) miles.

K.S. suffers from autism. She is currently enrolled in a Life Skills Program in the McCall Middle School of the Montoursville Area School District. K.S.'s Individualized Education Program (IEP) indicates that she functions on a first or second grade level. Mother has been the primary care taker of K.S. for the child's entire life; Mother has attended to the child's physical needs, medical care and alike. Mother has also taken an active role in K.S.'s education, including assisting K.S. in a cyber-school program. Father's role in K.S.'s life has increased throughout the past few years. In 2008, Father became disabled. Prior to his disability, Father worked as an over-the-road truck driver. When Father and Mother were married, Father was the sole wage-earner in the home. However, since Father's disability and the parties' separation, Father has become more involved in K.S.'s life.

The parties entered into their current custody order on October 7, 2011. This order provides that, during the school year, Father has physical custody of K.S. every other weekend from Friday night until Sunday night; in addition, Father has a mid-week dinner with K.S. every other Thursday. During the summer, the parties divide equally (50/50) custody of K.S.; these custodial periods revolve around K.S.'s summer programming. The parties testified that Father has never exercised a period of physical custody with K.S. for more than one (1) week.

The parties' adult son, D.S., lives within several hundred yards of Father's home in Cogan Station. Neither of Mother's parents is living. Mother has a brother that lives in the same

general area as Father and D.S. Mother did not testify to her relationship with her brother.

Neither of Father's parents is living, but Father has four (4) sisters, two of which Father maintains a close relationship with. These sisters frequently see K.S. during Father's custodial time.

Currently, Mother and K.S. reside in temporary housing at a bed and breakfast. The bed and breakfast is located within the confines of the Montoursville Area School District. Prior to this temporary living situation, Mother and K.S. lived in a home in Montoursville that was owned by Mother's father. Recently, Mother's father passed and the home had to be sold. Mother could not afford to purchase that home at the time that it was sold. To date, Father lives in the parties' past marital home.

Mother desires to relocate to a large home owned and occupied by her boyfriend, D.A.K. D.A.K.'s home is located on Irish Valley Road in Paxinos, Northumberland County, Pennsylvania. D.A.K. has a thirteen-year-old daughter who resides in his home. K.S. has a good relationship with D.A.K.'s daughter. Basically, Mother and K.S. would be residing in Mother's boyfriend's home, along with her boyfriend's daughter. Currently, Mother is not employed. Mother does not have any job offers awaiting her in Northumberland County. However, Mother testified that she plans to gain employment in D.A.K.'s personal business and return to school if permitted to relocate to Northumberland County.

Father's main objection to Mother's proposed relocation appears to be relocating the parties' special needs child to a different school district. K.S. enrolled in the Montoursville Area School District approximately ten months ago and, presently, does not appear to have friends within the district. Father is concerned with the potential set-backs that K.S. might face by moving to the Shamokin Area School District in Northumberland County. Additionally, Father

objects to the relocation because it places an additional 48 approximate miles between himself and his daughter. Father believes that this additional distance will hinder Father's ability to participate in K.S.'s schooling and activities and will infringe on his summer custodial time. This Court does not believe that Father's time with K.S. will be substantially impaired by Mother's relocation to Northumberland County.

II. Discussion

When considering the relocation of a minor child, the law within the Commonwealth requires this Court to consider ten relocation factors; in particular, Section 5337(h) of the Child Custody Act provides:

- (h) **Relocation factors.** – In determining whether to grant a proposed relocation, the court shall consider the following factors, giving weighted consideration to those factors which affect the safety of the child:
- (1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.
 - (2) The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.
 - (3) The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.
 - (4) The child's preference, taking into consideration the age and maturity of the child.
 - (5) Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.
 - (6) Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.
 - (7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.
 - (8) The reasons and motivation of each party for seeking or opposing the relocation.
 - (9) The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.
 - (10) Any other factor affecting the best interest of the child.

23 Pa.C.S. § 5337(h). The burden of establishing that the relocation will serve the best interests of the child is placed on the party proposing the relocation. 23 Pa.C.S. § 5337(i). Therefore, in this instance, Mother has the burden of proving that the relocation to Northumberland County will be in K.S.'s best interest. Mother has met this burden. This Court finds her testimony credible.

This Court will address each of the relocation factors in turn. *See E.D. v. M.P.*, 33 A.3d 73, 81 (Pa. Super. Ct. 2011) (mandating that the trial court consider all of the relocation factors in Section 5337(h) in making its decision and give explanations for its conclusions). While no one factor is dispositive on the relocation issue, this Court must give weighted consideration to those factors that affect the safety of the child. *Id.* This Court notes that it received no testimony and does not believe that K.S.'s safety is in jeopardy in any way.

This Court will analogize this case to the case presented to our Superior Court in *C.M.K. v. K.E.M.*, 2012 Pa. Super. 76 (Pa. Super. Ct. 2012). In *C.M.K.*, our Superior Court affirmed a trial court's denial of Mother's relocation petition. In that case, the trial court found that the continuity and frequency of Father's involvement with the parties' minor child would be significantly impaired if the court permitted Mother to relocate with the child. In particular, the Court found that Father had continued and regular co-parenting involvement with the parties' child that went beyond Father's periods of partial physical custody. The Court found that Father was involved in the child's school activities, extra-curricular activities, and medical appointments. Additionally, the court found that allowing the relocation yet awarding Father additional time with the child would not ameliorate the adverse effects that the relocation would have on Father's relationship with the child.

With this precedent in mind, this Court will now address the relocation factors as they pertain to the case at hand.

1. The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.

Due to K.S.'s autism, this Court finds that the single most important benefit to K.S. relocating with her Mother is K.S. remaining with Mother. In consideration of the first factor, this Court notes that Mother has been the primary caretaker and nurturing parent of K.S. for K.S.'s entire life. Mother has attended to K.S.'s physical, emotional, educational, medical, and social needs. Additionally, Mother's boyfriend, D.A.K., and K.S. have a good relationship. K.S. and D.A.K.'s thirteen-year-old daughter also have a good relationship. While K.S. is in Paxinos, K.S. enjoys spending time with D.A.K.'s daughter. K.S. and the daughter listen to music, talk, fix each other's hair, and put on make up. D.A.K.'s daughter would be living in the proposed home in Paxinos with Mother, K.S. and D.A.K.. This Court believes that K.S. would benefit from living with another teenaged female in a familial setting.

Father's relationship with K.S. has not reached the level of importance that K.S.'s relationship with her Mother has. During Mother and Father's marriage, Father worked as an over-the-road truck driver. While Father testified that he was home everyday, he recognized that Mother attended to K.S.'s needs while Father was working. K.S.'s adult, older brother, D.S., lives approximately 300 yards from Father's home. D.S. and K.S. have a good relationship and enjoy each other's company. While K.S. is in Father's custody, K.S. and D.S. enjoy riding 4-wheelers and playing. However, D.S. has also visited with Mother and K.S. in Paxinos on

Mother's weekends. Therefore, this Court does not believe that Mother's relocation will have an adverse impact on D.S.'s relationship with K.S.

2. The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.

This Court believes that Mother's relocation with K.S. will have a minimum impact on K.S., despite K.S.'s special needs. Father believes that relocating K.S. would be difficult due to the child's special needs. This Court fully understands Father's concerns. As stated previously, K.S. is autistic and her IEP indicates that she functions at a first or second grade level. K.S. is enrolled in a Life Skills Program in the Montoursville Area School District. However, K.S. was placed into this program approximately ten months ago. Father testified that he had the same concerns that he has currently when K.S. transitioned into the Montoursville Area School District. Yet, this Court received testimony from both Mother and Father that K.S. transitioned very well into the Montoursville Area School District. Additionally, K.S.'s report card indicates that she transitioned very well into the middle school in Montoursville.

Mother testified that a similar life skills program exists in the Shamokin Area School District. Mother testified that the Shamokin Area School District tends to integrate its special needs children more into the classroom setting; an example of this integration includes the District's use of wrap-around aids, referred to as TSSs, in the classroom. Mother believes this integration would be beneficial to K.S. in her middle school years and would assist the child in developing social skills. Additionally, Mother has arranged for tutoring to take place in the new home. This Court believes that K.S.'s change in school districts due to the relocation would have a minimal impact on K.S.'s development based upon her successful transition in

Montoursville. Additionally, this Court believes that integrating K.S. into the classroom setting and with her peers would be beneficial to K.S.'s development into a young woman.

3. The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.

This Court believes that K.S. and Father's relationship can be completely preserved despite the child's relocation to Northumberland County. If K.S. relocates to Northumberland County, K.S. and her Father will be approximately forty-seven (47) more miles apart from each other. This Court does not believe that distance will interfere with Father's relationship. Both parties testified that Father *never* requested additional time with the child, beyond his custodial periods. As stated previously, Father's activity in K.S.'s emotional and physical development has increased throughout the past few years, but Father still maintains a passive role in K.S.'s life. Father testified that he enjoys his weekends and Thursday night dinners with K.S. These custodial times will not be displaced by K.S.'s relocation to Northumberland County.

4. The child's preference, taking into consideration the age and maturity of the child.

In making its decision, this Court did not take into account K.S.'s preference. During the relocation hearing, this Court interviewed K.S. in chambers. This Court determined that, due to K.S.'s lack of maturity and her functioning at a low-level, K.S. could not express an intelligent preference on her relocation to Northumberland County. Most of the questions that this Court asked K.S. invoked no response from the child; if K.S. did respond to a question, it was by a shake of the head.

5. Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.

This Court does not believe that either party engages in conduct that either promotes or thwarts the relationship of K.S. with the other party. This Court received testimony that Father filed a custody contempt petition one time against Mother; however, the parties resolved the conflict without any court involvement. This Court does not believe that this one instance constitutes an established pattern, and, therefore, did not consider the contempt in making its decision on Mother's relocation request.

6. Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.

While this Court questions the improvement in the quality of life for relocating Mother, there is no question that Mother will be relocating to a stable household. This household will permit Mother to pursue employment and further educational opportunities. Additionally, this household will assist Mother in parenting her special needs child. While this Court would prefer that Mother was establishing a marital relationship with D.A.K., this Court recognizes the realities of modern life. This Court believes that the relocation will improve Mother's financial position and will provide Mother with an emotional benefit that she does not currently possess.

7. Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit, or educational opportunity.

This Court finds that relocation will improve K.S.'s quality of life and believes that K.S. will benefit greatly from living with another young teenager. Mother's proposed relocation

involves K.S. living with D.A.K.'s thirteen-year-old daughter. In the proposed home, the two girls will have separate bedrooms. This Court believes that K.S. will benefit from living in a family setting with another teenager because this arrangement will improve her social interactions which are often a problem for autistic children.

8. The reasons and motivation of each party for seeking or opposing the relocation.

This Court does not question either party's motivation behind seeking or opposing the relocation. Currently, Mother resides with K.S. in a small rental space of a bed and breakfast. She is not employed. Through this relocation, Mother is seeking to create a better environment both for her daughter and for herself. Naturally, Father wants K.S. to remain in Lycoming County. Father wants K.S. to remain close to him and in her current school setting. Father believes that the school setting is stable, although he has not been active in K.S.'s educational life. Father is concerned about moving K.S. from another school setting after K.S. so recently became enrolled in the Montoursville Area School District.

9. The present and past abuse committed by a party or a member of the party's household and whether there is a continued risk of harm to the child or an abused party.

In this case, there is no past or present abuse in either household that would be a continuing risk of harm to K.S., Mother, or Father.

10. Any other factor affecting the best interest of the child.

In this instance, the evidence reveals that Mother has a stable home to relocate to in Northumberland County. D.A.K. appeared at the relocation hearing and testified that he will provide both Mother and K.S. with stable support if this Court permits Mother's relocation request. Both Mother and D.A.K. testified that the household will provide support to K.S.'s

special needs. Additionally, Mother and D.A.K. testified that D.A.K.'s community will provide K.S. with multiple venues of support. This Court notes that K.S. has already established a relationship with D.A.K.'s neighbors, including the neighbors' two minor children.

III. Conclusion

While the advantages of the relocation in this instance are not bountiful, this Court believes that there will be an improvement in Mother's quality of life by approving her relocation to Northumberland County. This Court believes that this relocation will not substantially diminish or interfere with Father's contact and stresses the importance of this finding. This Court notes that Father testified that he has *never* asked for additional custody time with K.S. In short, this Court concludes that Mother's proposed relocation is in the best interest of K.S., from a social, emotional, financial, and educational perspective.

ORDER

AND NOW, this 24th day of April, 2012, Mother's request to relocate is GRANTED. The parties' previous custody order dated October 7, 2011, is AFFIRMED, with the following changes:

1. The Regular School Year Schedule shall be AMENDED to provide that Father's weekends will be extended until Monday evening at 6:00 p.m. on any of his regular weekends when school is not in session on Monday.
2. The Summer Schedule is AMENDED to provide that the parties shall share custody on an equal (50/50) week-on, week-off basis. Should the parties agree to enroll K.S. in a special program during the summer, the parties may agree to change this order for that particular summer, with the idea that Father and Mother should be receiving equal time with K.S. during the summer.

3. The Transportation provision is AMENDED to provide that the location for custody exchanges shall be at the McDonalds restaurant, located outside the Lycoming Mall, Muncy, Lycoming County, Pennsylvania, unless the parties specifically agree to the contrary.

This Order is EFFECTIVE the day following the last day of Montoursville Area School District's 2011-2012 school year.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

cc: Katherine E. Garren, Esquire
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