

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

CVS,		:	CUSTODY
	Plaintiff	:	
		:	
vs.		:	NO. 07-20,504
		:	
JV,		:	
	Defendant	:	

OPINION AND ORDER

AND NOW, this 7th day of **December, 2012**, this Order is entered after a hearing held on December 6, 2012, in regard to Mother, CVS's Petition for Change of Venue filed on October 25, 2012. Mother is requesting that the above-captioned matter be transferred to Lancaster County, Pennsylvania, where she and the minor child, JV, reside. Mother was represented by Christina Dinges, Esquire. Father was present and was represented by Michael Morrone, Esquire.

The Uniform Child Custody Jurisdiction Act applies not only to courts of different states, the statute "also allocates jurisdiction and functions between and among the Courts of Common Pleas of this Commonwealth". **23 Pa.C.S.A. §5471**. In the present case, the initial and existing child custody order was from Lycoming County Court of Common Pleas. 23 Pa.C.S.A. §5442 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 exist 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. Rosenthol**, 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).

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 [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 be fully addressing all of the factors set forth above in order. There was no testimony presented from either party concerning any issues of domestic violence. Because Mother’s home is in Lancaster County, the Lancaster County Court would be in a better position to monitor Mother’s home

conditions including potential issues involving domestic violence using Lancaster County agencies and other resources.

The child has resided with Mother in Lancaster County as his primary place of residence for over four years. An Order entered on July 9, 2008 by agreement of the parties grants Mother primary physical custody of the child in Lancaster County. It is approximately a two and a half hour drive between Lancaster County and Lycoming County. There are, however, traffic issues which, at times, cause the drive to be longer.

Mother works approximately 32 hours a week at \$10.00 per hour. Mother has indicated that she does not have a reliable vehicle to drive to Lycoming County and, therefore, when it is necessary for her to travel to Lycoming County, Mother must rent a vehicle. This costs her approximately \$189.00 to rent the vehicle plus the cost of gas. Father does not have a license and, therefore, relies upon other individuals to provide his transportation for him. Father is self-employed as a handy-man making \$15,000 to \$20,000 per year. Neither party has significant assets and, therefore, transportation is a burden. Additionally, Mother does not have a reliable vehicle and Father does not have a license. The Court would note, however, that both parents have always been able to make it to the custody exchanges in order to exchange custody of their child; therefore, they are able to make the arrangements necessary for transportation when needed.

The parties have no agreement regarding which county should hear their custody proceeding.

The initial Custody Order was entered in July, 2008, granting Mother primary custody and allowing her to exercise that custody in Lancaster County. Pursuant to that Order, Father's partial custody was supervised under a supervision plan developed by Lycoming County Children & Youth Services.

Thereafter, nothing occurred in the parties' case until November 8, 2011, when Father filed a Petition for Modification of Custody. Prior to a hearing on Father's petition, Mother filed a Petition to Change Venue and Preliminary Objections to Jurisdiction. At the time Mother appeared before the Court, the parties were able to resolve the underlying custody modification issue. Based upon the agreement reached by the parties, Mother withdrew her Preliminary Objections to Jurisdiction and her Petition for Change of Venue. It is specifically noted in the Court Order, however, that Mother's withdrawal of the Objections to Jurisdiction and Petition to Change Venue were without prejudice for her to file said motions at a future date. Seven months later on October 17, 2012, Father filed another Petition for Modification of Custody. At that time, Mother again filed a Petition for Change of Venue.

Regardless which county a custody proceeding is held in, there will be witnesses from the other county which will be inconvenienced and will be necessary to testify. The child attends school in Lancaster County and attends weekly counseling in Lancaster County. There are friends of Mother's who live

in Lancaster County who would be testifying. Father indicated that in a custody proceeding, there would be relatives and friends from church who would be called to testify. Significantly, the child resides in Lancaster County with the exceptions of his partial custody schedule with his Father. The least amount of disturbance to the child would occur if the hearing were to be held in Lancaster County.

Both counties 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, but that conference has yet to take place. In this county, custody conferences are the first Court event scheduled pursuant to a petition for modification of custody. Upon transferring this matter from this Court to the Lancaster County Court, the process can commence there. Thus, minimal delay, if any, will result in the transfer of this case to Lancaster County at the present time.

Lancaster 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 by agreement of the parties on March 12, 2012. The issue which Father is seeking to modify is not a change in the child's primary place of residence, but rather a change in his partial custody provisions. This Court does not foresee that the child's residence will be changed. As the child's residence will not be changed by Father's pending

Petition for Modification of Custody, transfer of this case to Lancaster County will allow the Lancaster 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 Lancaster County.

Thus, for the reasons set forth above, it is appropriate for Lancaster County to exercise jurisdiction in this matter, this Court is an inconvenient forum under the circumstances and the Lancaster County Court is a more appropriate forum pursuant to 23 Pa.C.S.A. §5427(a) and (b).

Pursuant to 23 Pa.C.S.A. §5427(c), the custody proceedings pending currently in Lycoming County are stayed pending a child custody proceeding being promptly commenced in Lancaster County by either party. Pending an Order entered by Lancaster County, the parties shall abide by the Custody Order issued by this Court on March 12, 2012.

BY THE COURT,

Joy Reynolds McCoy, Judge