

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

MF,		: No. 07-21,490
	Plaintiff	:
		:
vs.		: CIVIL ACTION - LAW
		:
RR,		:
	Defendant	: CUSTODY

ORDER

AND NOW, this 30th day of **July, 2012**, at a time set for a Hearing on the Petition for Special Relief filed by Father on July 19, 2012, at which time Father was present with his counsel, Melody Protasio, Esquire, and Mother was present and was unrepresented. The issue before the Court revolves around where the parties' minor child will attend kindergarten for the 2012-2013 school year.

The parties are the parents of a son, AR, born December 16, 2006. AR is currently 5 years of age and is therefore eligible to attend kindergarten during the 2012-2013 academic year. Mother is requesting that AR attend school in the Williamsport Area School District where she resides, specifically the Jackson Elementary School. Father is requesting that AR attend catholic school at St. John Neumann Regional Academy. Father has indicated that he will solely be responsible for all costs associated with the child's tuition at St. John Neumann Regional Academy.

Under the parties' current custody schedule, the parties share legal custody of their son. Mother has primary physical custody of the child with Father having custody each

weekend. Though the Custody Order indicates that on alternating weekends, Father returns the child to Mother on Saturday, the testimony presented by both parties was that Father has custody through Sunday each weekend.

Father's reasoning for the child attending school in a catholic school setting is that he wants the child to have a better understanding of the catholic religion. Father further stated that the teacher-to-student ratio is smaller than in the public schools and that St. John Neumann Regional Academy is a smaller school. Father stated that everyone in the school knows each other and it is a tighter community. Father further argued that the school is focused on parental involvement and, in fact, has a mandatory requirement of 10 hours per parent per year. Though Father indicated he was not familiar with the curriculum in the Williamsport School District, he believes that the catholic school is more focused on curriculum. The Court notes that there was no testimony presented by either party from either of the schools as to what type of curriculum is offered by the schools. Father also has a significant concern that the majority of the kids he knows who have attended public school have not finished school. He uses his sisters as examples of this fact.

AR recently completed pre-school at Head Start. Both parents seem to believe that AR is prepared to enter kindergarten. Though AR apparently has an energetic side, he has never been officially diagnosed with any type of behavioral disorder. AR has apparently done well in pre-school. Mother advised the Court of one occasion during the past school year when AR got in trouble at school for wrestling around with other boys. Mother appeared to be very involved with AR's pre-school attending all family days and volunteering on at least two occasions. AR's paternal grandfather volunteered at the pre-

school on a weekly basis. Father did not appear to have any involvement with AR's pre-school indicating that he was not advised of AR attending pre-school until AR told him. Father admitted that once he learned from AR that he was attending school, Father never did anything further to follow up with becoming involved with AR's pre-school.

Father currently resides in Lock Haven, Pennsylvania. Father indicated that though he has AR every Sunday, he averages attending church approximately one time per month with AR. Father has never enrolled AR in Sunday School, nor has he gotten him involved in any type of religious education through the church. Father attends the Annunciation Church which is located in Williamsport, Pennsylvania. Father indicated that he did not enroll AR in any type of formal church schooling through Sunday School because he teaches AR about religion and his wife's mother also teaches AR about religion. Both Mother and Father were raised Catholic and Father grew up attending catholic school at what is now the St. John Neumann Regional Academy.

Mother resides in Newberry, Pennsylvania. She desires for AR to attend Jackson Elementary School which is also located in Newberry. Mother testified that she does not practice any particular religion. She has no objection to AR learning about the Catholic religion; however, she believes that AR can receive his religious training through attending church and Sunday School. Mother indicated that though she was raised catholic, she does not practice the catholic religion and has some fundamental disagreements with the teachings of the catholic religion. Her preference is that her son attend public school. If Father wishes for AR to receive catholic training, Mother believes it should occur on Sundays through church and Sunday School and therefore allowing AR, as he gets older, to make his own

decisions concerning religion. Mother believes that by attending catholic school, religion will be forced upon AR.

AR's current closest friend is Tiyeef. Tiyeef attended pre-school with AR and will be attending elementary school at the Jackson Elementary School. AR also has two playmates, Zade and Jordan, who live in his neighborhood. Jordan will also be attending kindergarten in the Fall at Jackson Elementary School. Zade already attends school at Jackson Elementary School and will be going into the second grade. AR also has an older cousin who graduated from Jackson Elementary School this past school year and will be attending a middle school in the Williamsport Area School District.

In both parent's households, AR has a younger sibling. In Mother's household, he has a younger sister, Madelyn, who is two years of age. In Father's household, he has a younger brother, Emery, who is three years of age. Mother has indicated that when she becomes school age, Madelyn will attend public school at Jackson Elementary School. Father has indicated that when Emery becomes school age, he will attend catholic school in the Lock Haven area.

If AR attends Jackson Elementary School, he will be considered a walking student as Mother's home is in close proximity to the elementary school. Mother indicated that she would either take AR to school or the paternal grandfather would take AR to and from school. If AR attends St. John Neumann Regional Academy, he will attend elementary school at St. Ann's School, which from the Court's knowledge, the distance is approximately 5 miles. Father indicated that there is bussing which will be provided for AR to get to and from 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 5, squarely in the middle of a controversy as to whether or not the child will attend public school or catholic school. The decision by a parent to send a child to a catholic school or public school is certainly not a decision to be taken lightly. 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. Father did present a sheet from St. John Neumann Kindergarten Program which was prepared by the school and outlined some basic facts concerning the school. This information does indicate that the St. John Neumann Kindergarten Program is a faith-centered learning environment with a student-teacher ratio of one to fifteen. There was no information provided concerning the Williamsport Area School District, though the Court has familiarity with this school district. There is no reason for the Court to believe that AR's education needs could not be met in either the public school setting or the catholic school setting. The Court was not made aware of any special needs of AR's which would be better addressed by one school over the other. There does not appear to be any activities of AR's which would be better addressed by one school versus the other school. The Court finds that both the Williamsport Area School District public school and the St. John Neumann Regional Academy catholic school would meet AR's current educational needs.

While the Court cannot determine that one school is better than the other school, the Court concludes that AR's interests will best be served if he attends school at Jackson Elementary School in the Williamsport Area School District. This decision is based on several factors. AR's peer group, family members and friends will be attending Jackson. They will be able to attend school activities together and will be on the same schedule. They will be able to create a bond which would not otherwise exist. Jackson is also a neighborhood school. AR will be able to develop new friendships with individuals who reside in the geographical area near his home, thus making it easier to socialize.

AR's spiritual needs can sufficiently be met by Father seeing that AR attend church and Sunday School on a regular basis. Father has custody of AR on the majority of Sundays; therefore, it is completely within Father's control to see that AR receive religious training. The Court is somewhat confused by Father's reasoning for AR attending catholic school so that he has a better understanding of the catholic religion; however, Father has taken no initiative in the first five years of AR's life to see that he has a regular and consistent educational upbringing in the Catholic Church. Father has indicated that he has yet to even look into the Sunday School programs and religious training offered through his church for AR.

ORDER

AND NOW, this 30th day of July, 2012, following a hearing and for the reasons set forth on the record and in this Opinion and Order, the Court hereby ORDERS that the minor child, AR, shall attend school in the Williamsport Area School District, specifically Jackson Elementary School. 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