

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

CU,	:	No. 10-20,351
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
DU,	:	
Defendant	:	CUSTODY

OPINION AND ORDER

AND NOW, this 15th day of **August, 2013**, after a hearing held on August 14, 2013, in regard to the Petition for Special Relief filed by Mother on May 7, 2013, and Answer to Petition for Special Relief and Counterclaim filed by Father on May 23, 2013, at which time Mother, DU, was present with her counsel, Christina Dinges, Esquire, and Father, CU, was present with his counsel, Janice R. Yaw, Esquire. The issue before the Court is whether the parties' child will attend Kindergarten for the 2013-2014 school year.

The parties are the parents of CU, born April 1, 2008. CU is currently five years of age. Father believes that the child is ready to commence Kindergarten and requests that he attend Kindergarten commencing with the 2013-2014 school year. Mother believes that CU is not yet ready to start Kindergarten and is requesting that CU not attend Kindergarten, but instead attend pre-school again for the 2013-2014 school year. Both parties live in the Montoursville Area School District and there is no dispute as to which school district CU would attend if the Court orders CU to commence Kindergarten. Additionally, both parties stipulate that if the Court orders that CU not commence Kindergarten, he will return to his prior daycare, Cillo's Child Care.

Under the parties' current Custody Order, the parties share legal and physical custody of their children. The parties also have two older children, MU, born September 19, 2001, and CoU, born March 4, 2007.

Mother wishes for CU to attend pre-school during the upcoming school year, thus commencing Kindergarten in the Fall of 2014 when he would be six years of age. Mother testified that she believed that CU is more interested in being a boy than anything else. Mother further testified that she has been a Kindergarten teacher herself for the past 13 years and has completed readiness screenings for Kindergarteners for the past 11 years. Mother currently works in the Montoursville Area School District where CU would be attending. Mother testified that maturity-wise, she believed CU is lagging behind and also has some concerns with his behavior and concerns that she can see when even speaking with CU. She testified that she would have a significant concern if CU were to have to repeat Kindergarten after the first year in regard to how it would affect his self-esteem and peer relationships.

Mother presented the testimony of Cathy Cillo who provided care for CU when he was enrolled in her child care center from September of 2012 through June of 2013 in the pre-school program. In May, 2013, Ms. Cillo prepared a Child Services Report which describes a child's growth and development. After completing the Child Services Report, Ms. Cillo had a conversation with Mother where Ms. Cillo agreed that waiting an extra year would be good for CU. She testified that CU was part of a group of pre-Kindergarten students. Only a small portion of the students in the pre-Kindergarten group continued to take naps in the afternoon while the remaining students participated in activities. CU was one of those students that continued to take a nap during the afternoon. She also indicated that CU was typically the first child to fall asleep and that in her experience as a pre-school

provider, the year before a child enters Kindergarten, they generally do not wish to take a nap any longer and fight sleeping. Ms. Cillo testified that from a social perspective, CU was loved by all of the children. She did indicate that he asked a lot of questions and continually needed assurance as to what he was doing was correct.

Father testified that he believed CU was ready to commence Kindergarten. He testified that CU and his next oldest brother, CoU, are only 13 months apart in age and he believes it is important to keep the children only one grade apart in school. He testified that the boys are very close emotionally. He testified that with the boys only being 13 months apart in age, they should not be two years apart in school. Father raised concern that if the boys were separated by two academic years, that they would not be able to participate on the same athletic teams as they progressed through school. Specifically, he testified that next Spring, if CU were to repeat pre-school, it would be necessary to him to remain in T-ball rather than progressing to coach pitch with his brother, CoU.

Father argues that Mother does not wish to send CU to Kindergarten as he is the baby and she is not able to let go. He pointed to the fact that during the prior year, Mother did not wish to send CoU to school and that there was a dispute between Mother and Father regarding CoU commencing school when he was five years of age. Ultimately, Mother conceded and CoU did attend school at age five. Mother testified that the situation with CoU was much different than CU. She admitted that she did not want to send CoU to Kindergarten and that she was having difficulty letting go. She testified, however, that the reasoning with CoU is different than those reasons with CU. CoU had significant medical issues from the time of his birth which apparently at one point were life-threatening. Mother stated that in light of the difficulties that he had medically, she had extreme difficulty in

letting go and allowing him to attend school and that it had nothing to do with his readiness academically or socially. Mother ultimately conceded and allowed CoU to commence school at age five and he did well during his Kindergarten year.

As both parties work in the Montoursville Area School District, neither party was comfortable with a teacher in the Montoursville Area School District conducting a Kindergarten Readiness Assessment for CU. Pursuant to an Order entered by this Court on July 10, 2013, the parties agree that the Court could select a school teacher from a different school district to conduct a readiness assessment for the child.

A Kindergarten Readiness Assessment Report was completed by Mrs. Michelle McClain, a current Kindergarten teacher. The assessment was conducted on July 23, 2013. In her assessment, Ms. McClain indicated that CU was a little apprehensive about coming into the room with her, but was easily calmed with an invitation to complete a puzzle. She found CU to be well-behaved, attentive and polite and easily completed each task without redirection. Based upon the Kindergarten Readiness Assessment that she completed, Ms. McClain determined that CU was ready to begin Kindergarten based upon the snapshot she was able to see of his skills.

Despite the parties being obligated to work together to promote their child's best interest by having shared legal custody, they have reached a stalemate regarding this issue. Father wishes CU to attend Kindergarten and Mother does not. The fundamental issue in all custody cases is the best interest of the child. *Tripathi v. Tripathi*, 782 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. *Zummo v. Zummo*, 574 A.2d 1130 (Pa. Super. 1990).

The Court has received evidence from the pre-school teacher indicating that she agreed waiting an extra year to commence Kindergarten would be good for CU. This opinion was based upon the Child Services Report she completed and her observations of CU during the year she taught him in pre-school. The Court has also been provided with a Kindergarten Readiness Assessment completed by an independent third party who is a current Kindergarten teacher in another school district. Based upon this readiness assessment, it was determined that CU was ready to begin Kindergarten. Mother's primary reason for not wanting to send CU to Kindergarten is based upon her belief as both CU's mother and a Kindergarten teacher for the past 13 years, that he is not ready to commence Kindergarten. Father believes CU is ready to commence Kindergarten and also believes it is important for CU to only be one academic year behind his brother primarily for sports reasons.

In viewing all of the evidence that was presented to the Court, the Court concludes that it is in CU's best interest to not commence Kindergarten during the 2013-2014 academic school year, but rather wait until he is six years of age and commence Kindergarten in the 2014-2015 school year. Though CU passed the Kindergarten Readiness Assessment performed by the independent Kindergarten teacher, the Court is compelled to give more weight to the assessment of CU's pre-school teacher who has taught him for the entire past academic year. In reviewing both the Kindergarten Readiness Assessment performed by the independent Kindergarten teacher and the Child Services Report completed by his pre-school teacher, it appears that the results of the actual testing were similar. The Court, therefore, gives deference to the pre-school teacher who has had the opportunity to interact with CU on a regular basis to provide the Court with the most comprehensive assessment as

to whether or not CU is prepared to commence Kindergarten. As Mrs. McClain stated in her report, her belief that CU was ready to be in Kindergarten is based only on the snapshot of his skills which she was able to assess during one interaction with him. Additionally, when weighing the reasoning expressed by both parents, the Court finds that Mother's reasoning for retaining CU are more compelling than Father's request that CU commence Kindergarten this year.

ORDER

AND NOW, this 15th day of **August, 2013**, following a hearing and argument and for the reasons set forth in this Opinion and Order, the Court hereby **ORDERS** that the minor child, CU, shall not be enrolled in Kindergarten for the 2013-2014 academic year, but rather shall attend Cillo's Pre-School. CU shall be enrolled to commence Kindergarten in the 2014-2015 academic year.

By The Court,

Joy Reynolds McCoy, Judge