

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

MA,		: No. 04-20,775
	Plaintiff	:
		:
vs.		: CIVIL ACTION - LAW
		:
BA		:
	Defendant	: CUSTODY

OPINION AND ORDER

AND NOW, this **12th** day of **November, 2013**, after a hearing held on November 1, 2013, the Court enters the following opinion and order on the Father’s petition for special relief to resolve a conflict between both parents who share legal custody as to whether their minor daughter should change her school program. Mother was present and represented by Melissa Clark, Esq. and Father was present and was represented by Marc Drier, Esq. Specifically, the issue before the Court is whether the parties’ minor daughter, EA, born December 12, 1997, will continue attending Loyalsock High School where she is currently enrolled as a sophomore, or be home-schooled by her father. For the reasons stated below, the Court has determined that it is in the best interests of EA to continue in her current school program at Loyalsock High School.

Factual Background

By way of background, a Custody Order was entered on March 25, 2009, regarding custody after a three-day Custody Trial. Pursuant to the Court Order, Father was granted primary physical custody of the parties’ daughter EA (“EA”), born December 12, 1997. During the school year, mother essentially has physical custody every other week from

Thursday after school until Tuesday at the start of school. In the summers, the parties share a week to week schedule. The parents have a holiday and vacation schedule. The parents have shared legal custody. The parents live within about five and a half miles of each other and within five miles from Loyalsock High School. EA is currently a sophomore at Loyalsock High School and will turn sixteen years old next month.

Father is requesting that EA engage in home-schooling with him because he believes that her overall academic and spiritual education will be better. Father believes that home-schooling would allow EA to use her time more flexibly and to take more advantage of learning opportunities outside the classroom. Home-schooling allows mobility for learning and would allow EA to travel regarding her academic interests such as learning Spanish or working as a missionary. Father is concerned that EA is not getting all of the experiences she needs. Home-schooling would allow academics and religious education to be more closely intertwined, which is important because EA evidences a deep commitment to her religious faith. Father's profession affords him tremendous flexibility in his work schedule, which would allow him to design and implement a home-school program. Father's has sufficient educational qualifications and motivation to provide successful home-schooling as evidenced by his success with his other daughter. Father's research suggests to him that home-schooling students do better on standardized tests and that they are sought after by Ivy League Schools. Father believes home-schooling would allow EA to enroll in online college courses for credit from Liberty University – a school which EA has expressed an interest in attending. Home-schooling would allow for more self-directed study. Father expressed a

desire to include Mother with home-schooling. Mother's schedule would allow her to participate in home-schooling as well.

Father also believes that home-schooling will provide more balance in EA's life. Father believes home-schooling will provide EA with more quality time with both of her parents, as both of them are available when EA is in school during the day. Father believes it is in EA's best interest to spend more time with him and further develop the father-daughter bond in the two years before adulthood. Father believes home-schooling would allow a better use of his daughter's time. Father expressed concern that EA spends at least 35 hours per week, usually more, in school and on other activities that are not geared toward her Christianity. Father believes that EA would be able to continue with some extracurricular activities at Loyalsock High School even if she were home-schooled. Father expressed concern that EA is over-scheduled and experiencing anxiety because of her schedule and pressure to succeed. Father observed signs of stress, such as poor sleeping habits. Mother did not observe these symptoms but, as a result of Father's concerns, both parents agreed to allow EA to participate in counseling. No testimony was presented from the counselor. Father expressed concerns the EA engages in too many activities to please others. Father is concerned that EA feels pressure to get good grades and excel out of a desire to get approval from her parents. Father does not believe that EA is doing as well as she appears to be doing because of anxiety from a desire to please others and achieve success in academics, music and other areas of her life. Father does not believe that his daughter's preference to remain at Loyalsock High School should determine the outcome in this matter.

In sum, Father loves his daughter and wants to protect her and solidify her values and character in the two years before she is off to college.

Mother opposes EA being removed from her current educational program at Loyalsock High School where, by all accounts, EA has excelled academically and socially. Mother presented uncontroverted evidence of EA's outstanding academic and musical achievement at Loyalsock High School and the Loyalsock Township School District. *See exhibits*, M1 – M17, and M19-24. In her first marking period for tenth grade, EA earned honor roll status and a marking period average of 94.16 while tackling Honors Geometry and AP Bio-Cells and Genetics. *See exhibit*, M4. In Band, it was noted that EA is a pleasure to teach and has good mastery of subject matter. *See exhibit*, M4. EA earned a high honor roll status and final average grade of 96.3275 for ninth grade at the Loyalsock Township High School. *See exhibit*, M3. In 2012, EA scored advanced in math and reading and proficient in science and writing on the PSSAs. *See exhibit*, M2. EA earned a distinguished honor roll status and average of 98.09 in eighth grade at the Loyalsock Township Middle School. *See exhibit*, M1. EA has received awards and recognition for her academics and musical achievement while in the Loyalsock Township School District. *See exhibits*, M1, 3-24.

EA's principal, Dr. Matthew Reitz, testified and confirmed EA's academic and social success at the school. Dr. Reitz testified that EA is often selected to lead and mentor others. Dr. Reitz testified that the school is demographically diverse. Dr. Reitz testified that students at their high school have opportunities to work in groups on projects quite a bit which requires interaction with each other and shared responsibilities. Dr. Reitz is proud of their music program. Dr. Reitz has known EA since she was a "little kid." Dr. Reitz has

observed personal growth in EA from being shy to being more out of her shell. Dr. Reitz testified that EA has become a leader. Dr. Reitz confirmed that EA can take college credit at their school. Dr. Reitz testified that Loyalsock School's performance profile was categorized as very good and reported at 91.6 percent. In addition to Dr. Reitz, EA's Spanish teacher, Ms. Rebecca Leid, also testified. Ms. Leid testified that EA is a role model and leader. Ms. Leid testified that EA is advanced in Spanish and pushes herself. Ms. Leid identified EA as one of the students relied upon to assist substitute teachers. Ms. Leid testified that EA is not surrounded by bad influences at the school. Ms. Leid testified that EA has forgone opportunities like a school trip to Italy and tutoring in order to reduce her scheduled activities.

Mother testified that she believes remaining at Loyalsock High School would be in EA's best interests. Mother believes that EA's current school allows more opportunities for EA to work on group projects as part of a team, provides access to more materials such as lab materials, provides exposure to different teaching styles and nourishes EA's social development. EA is involved with youth group at Loyalsock High School. Mother is employed at Loyalsock High School and can seek EA out at her school and interact with EA's teachers. Mother feels very comfortable participating with EA's education at Loyalsock High School and fears she would not feel as welcome or comfortable to participate if EA is home-schooled by her Father. The parents communicate mostly by email and cannot see each other's points of view. Mother testified that she usually feels worse after communications with Father. Mother does not believe they could effectively co-educate EA in a home-school environment. Mother attends open house conferences and

events related to band, Spanish Club, Christian Band and Chorus at Loyalsock High School. Mother believes that EA has a wonderful group of friends at Loyalsock High School. Mother fears that EA would lose some of her social contacts if she left Loyalsock High School. Mother has not observed the symptoms of stress or concerns that Father has raised. Mother agreed to counseling for EA so that an objective observer could evaluate her level of stress and provide support for EA. Mother agreed to limit some of EA's activities because of Father's concerns. Mother testified that EA engages in the Christian Club at school and may take over a leadership role there. Mother also noted that EA is exposed to religion at school in an historical context. Mother believes that remaining at Loyalsock High School will help EA with balance in her life.

The parties stipulate that EA herself has a preference to remain at her current high school, Loyalsock High School. The Court met with EA in chambers at which time she confirmed her preference to remain at Loyalsock High School. The Court was impressed with EA's maturity, character and her commitment to Christianity.

Legal Standards

The parents share legal custody but have been unable to agree about whether or not it is best for their daughter to remain at her current high school or begin home-schooling with her Father. The concept of shared legal custody allows both parents' input into the major decisions in their child's lives. *Hill v. Hill*, 619 A.2d 1086 (Pa. Super. 1993). When the parents cannot agree, the Court must and will settle disputes between them. *In Re: Wesley J.K.*, 445 A.2d 1243, 1249 (Pa. Super. 1982). 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). “[T]he well-established best interests standard, applied on a case by case basis, governs a court’s decision regarding public schooling verses home schooling.” Staub v. Staub, 960 A.2d 848 (Pa. Super. 2008). The Court recognizes that this decision is very important and certainly does not take it lightly. The Court further recognizes that both parents are good and loving parents and EA displays maturity seldom seen at her age.

Court’s Findings and Discussion

The Court finds that both educational programs would adequately meet EA’s current educational needs. The Court finds that the evidence overwhelmingly establishes that EA’s academic needs have been met at Loyalsock High School. The Court also find that home-schooling would adequately meet EA’s academic needs because Father is sufficiently motivated and skilled enough to provide an educational program that meets his daughter’s educational needs, especially since EA is an excellent student who is eager to learn. Even though the Court finds that both programs would adequately meet EA’s academic needs, the Court finds that remaining in her current program at Loyalsock High School serves EA’s best interests given all of the specific circumstances present here. This decision is based on several factors.

EA’s level of academic achievement at Loyalsock High School weighs heavily in favor of maintaining the status quo in her educational program. EA is an honor roll student, often distinguished and/or high honors, tests at advanced levels in math and reading, and challenges herself with Honors Geometry and AP Bio-Cells and Genetics. *See exhibit*, M4. The Court finds that it is in EA’s best interests not to make such a dramatic change to her educational program with

this level of academic achievement at stake. While the Court recognizes that EA cannot enjoy all of the benefits of home-schooling with her father because of being tied to the school's schedule, the Court hopes that Father could work with the school to include some of his ideas for his daughter in her current program at school. Many school districts allow families to take educational field trips to accommodate the type of experiences father seeks for his daughter, such as trips for language studies and missions. Ms. Leid testified about school trips for language and culture being offered by the school. The Court also finds that college credit is available at Loyalsock High School.

The Court also finds it is in EA's best interests to remain in her current school and complete high school with her classmates because EA has a strong preference to do so. The Court met with EA in chambers and was extremely impressed by her. EA is almost sixteen years old. The Court does not believe that automatic deference to a sixteen year old's preference would be in that adolescent's best interests. Here, however, the Court believes that EA has earned more deference to her preference than a typical teenager, given the mature choices she has already made for herself in her academics, religious commitment, career goals, choice of friends and extra-curricular activities. The Court believes that going against EA's preference in these circumstances may undermine her continued success and social development.

Another factor supporting the Court's decision is that the Court believes that Loyalsock High School will allow both parents to participate in EA's education more fully. Mother and Father have not been able to communicate with each other well and mostly do so by email. Despite Father's expressed desire to include Mother in the home-schooling process, the parties would have to immediately improve their communication when they have had years to do so and

have not been able to do so. The Court finds that it is more likely that EA will be able to have both parents fully participate with her schooling at Loyalsock High School rather than with home-schooling under these circumstances. While Loyalsock High School does not afford Father the same level of participation as home-schooling, there was no evidence to suggest that Father could not become more involved at the school. There was evidence that Mother would not feel her presence and views are welcome in the home-school environment because the parents have difficulty reconciling their views. The Court urges parents to repair their relationship so they fully and jointly support EA during her remaining high school years and for her college choice.

Conclusion

In conclusion, the Court believes that allowing EA to remain in her current setting at Loyalsock High School is the best way to achieve both parents' goals for their daughter. Father's concerns about EA's stress level can be monitored by her counselor and adjustments can be made by her parents accordingly. At this point, the Court believes that EA has been able to maintain her strong spiritual commitments and a balance with academics, music, extra-curricular activities and a social life. The Court does not believe it is in EA's best interests to dramatically change her current setting given how well she has been doing.

ORDER

AND NOW, this ____th day of November, 2013, following a hearing and argument on this matter, Father's petition for special relief is **DENIED**. The Court **ORDERS** and **DIRECTS** that the parents continue to enroll their minor daughter, EA, in Loyalsock High School and allow her to attend that school. As parents with shared legal custody, should the parents both agree to alter EA's educational program and school, they may do so without further Order of Court.

By The Court,

Richard A. Gray, Judge

cc: Marc S. Drier, Esq.
Melissa Clark, Esq.
Gary Weber, Esquire