

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

<b>JP,</b>		<b>: No. 11-20,399</b>
	<b>Plaintiff</b>	<b>:</b>
		<b>:</b>
<b>vs.</b>		<b>: CIVIL ACTION - LAW</b>
		<b>:</b>
<b>TS,</b>		<b>:</b>
	<b>Defendant</b>	<b>: CUSTODY</b>

**OPINION AND ORDER**

**AND NOW**, this 9<sup>th</sup> day of **July, 2013**, after a hearing held on June 3, 2013, in regard to the Petition for Modification filed by Father on January 13, 2013, at which time JP, Father, was present and was unrepresented and TS, Mother, was present with her counsel, Janice Yaw, Esquire. The issue before the Court revolves around where the parties' minor child will attend kindergarten for the 2013-2014 school year.

The parties are the parents of a son, CP, born June 17, 2008. CP is currently five years of age. Both parents agree that he will attend Kindergarten during the 2013-2014 school year. Father is requesting that CP attend school in the Montoursville Area School District where he resides. Mother is requesting that CP attend school in the Loyalsock Township School District where she resides.

Under the parties' current custody order, the parties share legal and physical custody of their son. The parents share physical custody on a week-to-week basis, with the parties exchanging the child each Friday after work. The non-custodial party has custody from after work on Monday until Wednesday morning.

Father currently resides on Broad Street in Montoursville where he has lived for approximately one year. Prior to that, Father resided at 1204 Pine Street, Montoursville, which is also in the Montoursville Area School District. He resided there for approximately 1 ½ years. Prior to that Father and Mother lived together at 1565 Northway Road, which is located in the Loyalsock Township School District.

Father has three other children, MP, age 16, and KP, age 14, who reside with him full time and, KP, age 6, who resides with him 75% of the time. Father's older two daughters attended school in the Loyalsock School District for approximately one year when he and Mother resided together. They began attending school in Montoursville Area School District when Father moved there.

Father currently works at Mid-State Beverage as a salesman. He travels with his job and works from approximately 8:30 a.m. until 5:30 p.m., Monday through Friday. Father testified that if CP attends school in the Montoursville Area School District, he would drop CP off at school in the morning and, at the conclusion of school, CP would attend an after-school program in Montoursville. The Lyter Elementary School where CP would attend is approximately three blocks from Father's home. Father testified that his daughter, KP and CP are very close. KP just completed Kindergarten in the Montoursville Area School District. Both children would attend the same elementary school and after-school program. Father believes it is in CP's best interest to attend school in the Montoursville Area School District so that he can attend school with his half-sibling, KP, whom Father indicates he is close to and the two children will be one year apart in school.

Mother resides at 2537 Lincoln Drive which is located in the Loyalsock Township School District. She has resided in this residence for approximately 2 ½ years. Mother currently rents her residence. It is Mother's intent to remain in the Loyalsock Township School District. At the time of Mother and Father's separation, they resided together in the Loyalsock School District. Mother intentionally chose a new home in the Loyalsock Township School District so that her older son, BS, would continue to attend school in the Loyalsock Area School District and that CP would ultimately attend school in the Loyalsock Township School District. BS has just completed the second grade in the Loyalsock Township School District and will be going into third grade.

Mother has been employed with Verizon for approximately 2 ½ years. She works from 9:30 a.m. until 5:30 p.m. each day. If CP attended school in the Loyalsock Township School District, Mother would drop CP off at school each morning and CP would participate in the after-school program at his elementary school which is run by the Williamsport YMCA. The pre-school and daycare that CP currently attends and has attended for some time, is also run by the Williamsport YMCA.

Mother testified that CP and her son, BS, are very close and are best friends. Mother believes it is in CP's best interest to attend school in the Loyalsock Township School District so that he can remain in the same school district with his half-brother. Mother argues that she offers consistency as BS has been in the same school district since he started school and that this would also be her intention for CP. Mother also argues that the after-school program which CP currently attends is the same after-school program which he would attend once he begins Kindergarten in the Loyalsock Township School District, just a different

location. Mother also argues that CP has played T-ball in the Loyalsock Little League which encompasses children that attend school at the Loyalsock School District and also has attended several functions at the elementary school that he would attend in the Loyalsock Township School District with BS.

Despite the parties agreeing to 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 what school district he will attend. 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).

Neither party presented any testimony from the respective school districts. Each party did present their own testimony concerning the schools. Both parents clearly have a familiarity with the school district in which they live as they have other children who attend school there. The Court does have some familiarity with both school districts. Both the Montoursville Area School District and the Loyalsock Township School District are public school districts of small to medium size. There is no reason for the Court to believe that either school district would not meet CP's educational needs. The Court was not made aware of any special needs of CP which would be better addressed by one school district over the other. The Court is also not aware of any activities CP participates in which may be better addressed by one school district over the other school district. CP's current interest is baseball and the Court is aware that both school districts offer Little League baseball and high school baseball. Both schools are within close proximity to one

another. In fact, the school districts boundary one another. Based on the Court's personal knowledge of the location of the two schools, the Court would estimate that both elementary schools are within 5-8 miles of one another.

It is clear from the testimony presented that the child could equally succeed in either school district. Additionally, both parents, based upon their work location and work schedules, have the ability to get the child to and from school in the other parent's school district. CP would attend the after-school program regardless which school district he attends. CP would be taken to school by his parents and would participate in an after-school program in either school district.

This is a difficult decision for the Court to make due to the fact that the Court believes that either kindergarten program would be beneficial for CP. In taking into consideration the totality of the circumstances and weighing the competing factors, the Court finds that it is in CP's best interest to attend school in the Montoursville Area School District. This decision in part is based on the fact that CP's half-sister KP will only be one grade level ahead of CP in school.

**ORDER**

*AND NOW*, this 8<sup>th</sup> day of **July, 2013**, following a hearing and argument on this matter, the Court **ORDERS** that the minor child, CP, shall attend Montoursville Area School District. 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