

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

JM,		: No. 08-21,702
	Plaintiff	:
		:
vs.		: CIVIL ACTION - LAW
		:
MH,		:
	Defendant	: CUSTODY

OPINION AND ORDER

AND NOW, this 8th day of **May, 2013**, after a hearing held on April 16, 2013, in regard to the Petition for Special Relief filed by Father on February 14, 2013, at which time MH, Father, was present with his counsel, Christina Dinges, Esquire, and JM, Mother, was present with her counsel, Meghan Young, 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 daughter, KH, born November 25, 2007. KH is currently 5 years of age. She currently attends kindergarten at her pre-school. Both parents agree that she will attend kindergarten again during the 2013-2014 school year at a public school. Father is requesting that KH attend school in the Loyalsock Township School District where he resides. Mother is requesting that KH attend school in the Muncy Area School District where she resides.

Under the parties' current custody Order, the parties share legal and physical custody of their daughter. Each parent has the child every other weekend from Friday until Monday morning and has the child two weeknights overnight per week.

Father has resided at his current residence in the Loyalsock Township School District for the past four years. Father was married to SH in August, 2010. Father has a six-month old son, LH, who is a half sibling of KH. Once school age, LH will attend school in the Loyalsock Township School District. Father has worked for the Pennsylvania Department of Transportation for nine years. If KH attends school in the Loyalsock Township School District, KH's step-mother would put her on the bus in the mornings and KH would be picked up by her Father after school. Father has offered to pick KH up from school on Mother's days as well and return her to Father's home where Mother can pick her up once she has finished working. Father argues that KH is familiar with the Loyalsock neighborhood, and that KH would have more stability by attending Loyalsock Township School District. Father argues that Mother has lived in Muncy for less than one year. Father also argues that if KH attends school in the Loyalsock Township School District, she would not have to participate in any type of daycare as she could return to Father's home each evening immediately after school. Father is significantly concerned about the difference in the math programs offered between the Loyalsock Township School District and the Muncy Area School District. Father testified that math class occurs five days per week in the Loyalsock Township School District elementary school, while it only occurs two days per week in the Muncy Area School District.

Mother has resided in the Muncy Area School District since September, 2012. Mother resides with her boyfriend, KB, whom she has known for five years and has been dating for the past two years. Mother and KB were engaged in February, 2012, but no date has been set for marriage as they want to be sure to have enough money saved to have a nice

wedding. They are under a three year, rent to own contract on their residence. KB has two children, QB, age 4, and XB, age 7. QB and XB are in Mother's and KB's home on a week on/week off basis. KB has a third child, BB, age 12, that resides in the home every other weekend. Mother currently works for Northwest Consumer. She began her employment there in June, 2012. She currently works at a location in Williamsport near Father's home. She indicated to the Court that her position is a fill-in position and she could be going to a location in Lock Haven and/or Sunbury. If Mother is working in Lock Haven, she would still continue to travel through the Williamsport area to get to her place of employment. If Mother is working in Sunbury, she would travel in the opposite direction of Williamsport for her employment. Prior to moving to Muncy, Mother was looking for homes in the South Williamsport School District.

Mother believes that it is important for KH to attend school in the Muncy Area School District so that she can attend school with her boyfriend's children. XB currently attends Muncy School District and QB will begin to attend a year after KH. Mother argues that KH is very close to both of her boyfriend's children and that if she attends school in Loyalsock, she will not have any quality time with her future step-brothers. Mother indicated that there is a lot of parent interaction and communication within the Muncy School District.

If KH attends school in the Muncy Area School District, she would have the opportunity to have breakfast with XB and QB one to two mornings per week. The Court notes that XB and QB are on a week-to-week schedule while KH is with Mother two or three overnights per week on school nights. KH would be dropped off at school by either her

mother or her mother's boyfriend. After school, KH would go to Pitter Patter Daycare which is located behind the elementary school in Muncy. KH would then be picked up by either her mother or her mother's boyfriend at approximately 5:15 p.m. QB and XB would also be at the Pitter Patter Daycare after school with KH.

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 she will attend. The fundamental issue in all custody cases is the best interest of the child. *Tripathi v. Tripathi*, 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. Each party did present their own testimony as to information they had received concerning various issues in both school districts. The Court does have some familiarity with both school districts. Both the Muncy 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 KH's educational needs. The Court was not made aware of any special needs of KH which would be better addressed by one school district over the other. The Court is unaware of any activities KH participates in which may be better addressed by one school district over the other school district. KH is currently involved in gymnastics at Dynamats which is located in the Loyalsock area. The Court finds that both the Loyalsock Township School District and the Muncy Area School District would meet KH's educational needs.

While the Court will not determine whether one school district is better than the other school district, the Court concludes that KH's best interests would best be served by her attending school in the Loyalsock Township School District. Father has clearly been established in the Loyalsock Township School District for the past four years and owns a home in this school district. KH is familiar with the neighborhood in which Father resides and the only activity that she currently is involved with, gymnastics takes place in the Loyalsock area. Though the Court does recognize that children from many communities attend gymnastics at Dynamats. The Court finds that Father's stability and likelihood in remaining in the Loyalsock School District is stronger than Mother remaining in the Muncy School District. Though there was no indication to the Court that Mother had any plans on moving from Muncy, Mother does not own the home in which she resides in the Muncy Area School District and has only resided there for several months. Immediately prior to moving to the Muncy Area School District, Mother was looking for homes in the South Williamsport Area School District.

ORDER

AND NOW, this 8th day of May, 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, KH, shall be enrolled in the Loyalsock Area School District. Both parties are reminded that they must adhere to the provisions of shared legal custody as outlined in their Custody Order.

By the Court,

Joy Reynolds McCoy, Judge