

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

KW,		: No. 12-20,266
	Plaintiff	:
		:
vs.		: CIVIL ACTION - LAW
		:
KH,		:
	Defendant	: CUSTODY

OPINION AND ORDER

AND NOW, this 9th day of **May, 2013**, after a hearing held on April 19, 2013, at the Court's directive to address whether or not the parties' minor child would attend private or public school, at which time Mother was present and unrepresented and Father was present and was represented by his counsel, William Miele, Esquire. The issue before the Court revolves around whether the parties' minor daughter, AWH, date of birth December 6, 2007, will attend public school in the Danville Area School District or attend Catholic school.

By way of background, a Custody Order was entered on January 30, 2013, regarding custody after a five-day Custody Trial. Pursuant to the Court Order, Father was granted primary physical custody of the parties' daughter commencing with the 2013-2014 school year. Mother was granted partial physical custody during the school year every other weekend and Wednesday evening from 4:00 p.m. until 7:30 p.m. The parties have shared legal custody. Father resides in the Danville area. Mother resides in the Williamsport area. At the time the Court rendered its custody determination, the Court was aware that a dispute would most likely occur between the parents where the child would attend school for the

2013-2014 school year. The Court directed the parties to attempt to reach an agreement as to whether the child would attend private school or public school and in anticipating that the parties would not be able to reach an agreement, scheduled a hearing on the matter at which time both parties were to be prepared to present witnesses and evidence regarding the school issue.

The parties' daughter, AWH, is currently five years of age and is, therefore, eligible to attend kindergarten during the 2013-2014 academic year. Mother is requesting that AWH attend public school in the Danville Area School District. Father is requesting the AWH attend Catholic School at St. Cyril Academy/St. Joseph's which is located in Danville. Father has indicated that he will be solely responsible for all costs associated with the child's tuition at Catholic school.

Father is requesting that the child attend school in the Catholic school setting because he believes that her overall education will be better. Father, his wife, and the child have attended church regularly for the past three years. The Catholic church that they attend is associated with the school. Father also testified that his son (AWH's half-brother) will go to school at St. Cyril/St. Joseph's when he becomes school age. Father indicated that AWH is interested in religion and church and he believes that attending school in the Catholic school setting will instill a belief system and moral beliefs into her. Father attended and graduated from a Catholic school setting and would like his children to have the same educational experience.

Father testified that he would be retiring from his employment prior to the commencement of the school year. There will be no real schedule difference for the child

whether she attends Catholic school or public school. Both schools are located within close proximity to one another and both schools are located within one mile from Father's home. Both schools start and end at approximately the same time of day and have the same general yearly schedule. Father indicated to the Court that he had no objection to the Danville public school and, in fact, his mother taught in the Danville public school system. However, Father believes that based upon his own upbringing and based upon what he believes AWH can learn from the Catholic school setting, that it is important for her to attend the Catholic school setting. Additionally, Father has indicated that AWH's half-brother will attend school in the Catholic school setting once he is of school age (the Court notes that AWH will be in the 4th or 5th grade when her half-brother commences school).

Mother opposes AWH attending Catholic school. Mother believes that public school offers more than private school and that AWH would receive broader socialization by attending school in the public school setting. Mother also testified that there are coaches/specialists within the teaching class in the public school setting. Mother believes it is important for AWH to be introduced to how the real world is and to be exposed to different people. Mother believes that the public school setting can offer this better than the Catholic school setting.

Mother indicated that her older children who attend school in the Williamsport area, have succeeded in public school both academically and athletically. Mother has indicated that she has been involved in her older children's education through the public school setting.

Mother does not currently attend church on a regular basis. She was raised Lutheran; however, her mother is Catholic and Mother indicated that she disagrees with some beliefs of the Catholic religion.

Mother argued that there is not a reasonable need for AWH to attend Catholic school and it is not in her best interest. Mother argued that the education in the public setting provides equal or better benefits to the child than the Catholic school setting.

Sister Donna Marie from the St. Cyril academy testified. She indicated that the Kindergarten program at St. Cyril is a full-day program with a maximum of 17 students per class. After Kindergarten, the children attend St. Joseph's which is grades 1-8. She testified that a child does not have to be Catholic to attend this school and that there have been children from many different religions that have attended school. She testified that parents are invited to participate and volunteer in the school. She indicated that the teachers and staff at the school email with parents quite frequently. She further indicated that the school has no objections to sending separate mailings when a child has parents in two different households. She testified that the children spend approximately five minutes in church every day and do learn prayers; however, that they do not focus specifically on religion in regard to everything that is taught at the school.

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 whether or not the child will attend public school or Catholic school. The decision by a parent to send their child to a Catholic school or public school is certainly not a decision to be taken lightly. The Court suspects that the controversy of Catholic versus public school occurs between many

parents each school year. 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).

Mother did not present any testimony from any individuals in the Danville School District; however, she did provide the Court with a district report card for the Danville Area School District for the 2011-2012 school year, as well as several other schools comparing private schools and public schools. Mother did raise the issue that the Catholic school is not subject to the same statewide standard testing that the public school is subjected to. Father presented testimony from Sister Donna Marie of the St. Cyril Academy. Father also provided several articles regarding Catholic education versus public education. The Court is convinced that there is a substantial amount of information available that would support both Catholic schools over public schools, as well as a substantial amount of documentation that would support public schools over Catholic schools. Mother did raise a concern that there are not specialists in the Catholic school setting that would be available in the public school setting. There was, however, no information provided to the Court that either party is aware of any special needs that AWH currently faces. Based upon the testimony presented, there is no reason for the Court to believe that AWH's educational 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 AWH which would be better addressed by one school over

the other and there does not appear to be any activities of AWH's which would be better addressed by one school versus the other school. The Court finds that both the Danville Area School District and the St. Cyril/St. Joseph's Catholic School would meet AWH's current educational needs.

While the Court cannot determine that one school is better than the other school, the Court concludes that AWH's interests would best be served if she attended school at the St. Cyril Academy/St. Joseph's Catholic School. This decision is based on several factors. It is clear that Father's desire is that his daughter be raised in a Catholic school setting as he was. Father, his wife, and child all attend church on a regular basis at the church which is affiliated with the Catholic school which AWH would be attending. The Court anticipates that AWH will have classmates who will also attend both her church and her school. When Father's son becomes school age, he will attend the Catholic school. At least at this point in her education, it is clear that the Catholic school will address AWH's educational needs. The Court does note that obviously as AWH grows and her needs change, that this issue may need to be re-addressed by the parents at a later date. It is also clear to the Court that whether AWH attends the public school or the Catholic school, her schedule and routine would be virtually the same.

Based upon the testimony provided, it is clear that Mother will have a sufficient opportunity to be involved in AWH's Catholic schooling as she believes she would be able to do in the public school setting. There will be no changes or revisions which must occur to Mother's custody schedule due to the fact that AWH is attending the Catholic school versus a public school as the schedules are virtually the same. While Mother argued that the public school would better serve AWH's needs as it would expose her to different people and provide her with a better education, the Court received no evidence to support this proposition except for Mother's beliefs.

It is clear to this Court that both public school and Catholic school have their pros and cons. At this point, the Court believes it is AWH's best interest to attend Catholic school.

ORDER

AND NOW, this 9th day of May, 2013, following a hearing and argument on this matter, the Court ORDERS that the minor child, AWH, shall attend school at St. Cyril Academy/St. Joseph's. 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