

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TM,		: NO. 02 – 20,992
	Plaintiff	:
		: CIVIL ACTION - LAW
vs.		:
		:
MM),		:
	Defendant	: Petition for Relocation

**OPINION AND ORDER**

Before the Court is Mother’s request to relocate with the parties’ minor child, notice of such proposed relocation having been filed March 7, 2013. A hearing on the request was held on May 17, 20, 22 and June 11, 2013. The matter is now ripe for decision and the Court enters the following:

**FINDINGS OF FACT**

1. The child at the middle of this dispute is EVM, born April 20, 2002, currently age 11.
2. E resides primarily with her mother, MM, at 30 Washington Boulevard, Williamsport, Pennsylvania.
3. E spends alternate weekends, Tuesdays overnight, some holidays and other, unscheduled, time with her father, TM, who resides at 819 Baldwin Street, Williamsport, Pennsylvania.
4. Also residing in Mother’s household are her husband, F, his daughter, S, age 12 (who currently lives primarily with her mother in Beaver Springs, Pennsylvania), and their two children, V and S, ages 4 and 5.
5. Father resides alone, although his girlfriend, HY, lives next door and spends significant time with Father.
6. Mother’s house and Father’s house are currently just around the corner from each other.

7. Mother seeks to move to Winfield, Pennsylvania, a distance of approximately 30 miles from her current residence. She is currently under contract to purchase a home there; closing is imminent but is contingent on her request for relocation being granted.
8. Mother is employed as a nurse at Evangelical Hospital in Lewisburg, approximately 24 miles from her current residence and 6 miles from her proposed residence. Mother works each weekend, Friday, Saturday and Sunday, for twelve hours each day. She occasionally is scheduled to be on call, which requires that she report to work within thirty minutes of being called. The current trip from her home in Williamsport to Evangelical Hospital takes her 25 to 30 minutes.
9. According to Mother's supervisor, other employees in her department who are subject to the on call duty and who live in Williamsport have been able to comply for the most part with the thirty minute requirement; while there have at times been "difficulties", no one has ever been subject to discipline with respect to this issue.
10. Mother earned her nursing degree in May 2012 and worked for the first eight months thereafter at Geisinger Medical Center in Danville, which is approximately 35 miles from Williamsport, a further distance from Williamsport than Lewisburg.
11. Prior to graduation, Mother was offered employment with Susquehanna Health System in Williamsport but declined the job offer as it was in the behavioral health field and she believed she would lose her nursing skills in that job. Mother chose to not seek employment with Susquehanna Health System following her work at Geisinger based on her belief that it "is not a good place to work". Mother could earn approximately the same salary at Susquehanna Health System as she earns at Evangelical Hospital.
12. Father is employed in Northumberland, Pennsylvania, which is located in the same general area as Lewisburg.
13. Mother's husband, FH, is employed as a salesman. He works out of the home and travels in the northeastern United States.
14. E has a close relationship with her step-sister, S.
15. E has a close relationship with Father's girlfriend, H, whom she has known for about four years. It is uncertain whether Father and H will marry in the future.

16. E spends time with Father's mother (who lives in Williamsport) and H's mother (who lives in Unityville, Pennsylvania, approximately 30 miles away). Father's Mother also sometimes picks E up from school when Father is unavailable.
17. Mother's Husband's extended family lives in Lewistown, Pennsylvania, approximately 80 miles from Williamsport and 50 miles from Lewisburg.
18. Mother's extended family lives in Minersville, approximately 70 miles from Williamsport and 50 miles from Lewisburg.
19. E just completed 5<sup>th</sup> grade and will begin 6<sup>th</sup> grade in the fall.
20. The Williamsport school district has reorganized the elementary and middle schools such that E will now attend Curtin Elementary School which will serve students in grades 4 through 6; Roosevelt Middle school will serve grades 7 and 8 and the High School will serve grades 9 through 12. The students who attended 5<sup>th</sup> grade with E will attend either Curtin or Lyco Valley Elementary School. Most of the children in E's 5<sup>th</sup> grade class will be attending Lyco Valley, but they will be re-united with those attending Curtin when they all enter the 7<sup>th</sup> grade at Roosevelt.
21. In the Lewisburg area, E would attend Eichorn Middle School, which serves students in grades 6 through 8.
22. E's educational needs will be met equally well by either school district.
23. E's interests include music, soccer, theater and art. She played AYSO soccer, and was involved in the art club, theater club and choir in school this past school year. All but theater club will be available to her at either Curtin or Eichorn. Theater club will be available to her at Roosevelt.
24. E is an outgoing, mature 11-year-old who appears to enjoy time with her family as well as activities with friends.
25. E has a very good relationship with both of her parents.
26. E spends a fair amount of time with her Father during what would be considered "Mother's time" under the custody Order; it appears much of this time is arranged spontaneously, in response to events or activities. Both parents are flexible with the schedule to accommodate E's wishes to spend time with one parent or the other.

27. Both parents agree that the custody schedule will not change even if Mother is permitted to move E to Lewisburg.
28. Father is very involved with E's school and her school activities, as well as with her soccer team. Mother is also involved but not to the same extent. Father appears to promote E's interests more than does Mother.
29. E would continue to see the same doctor and dentist she currently sees. Both are in Williamsport.
30. S's parents have agreed to change custody of S to a shared arrangement in order that S might attend Eichorn Middle School in Lewisburg. S's Mother is considering moving closer to Lewisburg from Beaver Springs, which is approximately 30 miles away.
31. Mother's primary reason for wishing to move to Winfield is for the convenience which would follow from having E, Sebastian and Violet in the same school district and same soccer region as S. She also cites the proximity to her employment, her belief that the Lewisburg School District is superior to the Williamsport School District, the crime statistics which show less crime per capita and the statistics which show fewer registered sex offenders in the Lewisburg area than in the Williamsport area.
32. Father's primary reason for opposing the move is his belief that he is more supportive of E's interests and academic achievement and that the distance will negatively affect his ability to continue to support her and thus negatively affect her achievements. Father also believes E would benefit from remaining close to her friends, teachers, soccer coaches and church (where she attends occasionally). Father also cites the inconvenience and "burden" of having to travel to Lewisburg.
33. E wishes to remain in Williamsport, "where my friends are who I've known all my life." E also expresses a desire to spend more time with her Father, specifically indicating that she likes the week-to-week schedule the parties follow in the summer.

## **DISCUSSION**

In deciding whether to permit Mother to relocate E to Winfield, the court is to consider the factors enumerated in 23 Pa.C.S. Section 5337. Therefore, this section will be divided into numbered paragraphs which correspond with those factors.

### **1. The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.**

E has a good relationship with both of her parents, although it appears that her Father is somewhat more involved in her activities and her interests than is her Mother. The proposed move would not significantly affect her relationship with her Mother, but would make the relationship with her Father less “spontaneous”. Father would not be able to be as involved in E’s school activities, although the court notes that he does travel near the proposed school on his way to and from work in Northumberland. The distance may have more of a perceived negative impact on the relationship than a real one, but Father’s ability to provide “last-minute” or spontaneous care<sup>1</sup> would be somewhat diminished.

E has a good relationship with her half-siblings and her step-sister. The proposed move would increase the time spent with S, but this does not appear to be as important to E as it appears to be to Mother.

E has a good relationship with Father’s girlfriend and her parents but it appears that the proposed move would not significantly affect that relationship.

E has a good relationship with Father’s mother and it is noted that Father’s mother sometimes picks E up from school when Father is not available. While Father’s mother may still be able to sometimes pick her up from the new school (as she also works at Evangelical Hospital and it is possible that her work schedule would coincide with the end of the school day), it appears that the proposed move might negatively impact Father’s mother’s ability to provide “back-up” care for E.

Overall, the court finds this factor to weigh against the move.

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<sup>1</sup> For example, Father testified to a call from the school requesting a baby picture of Ella for a school publication; the picture was needed immediately as the publication was about to “go to press” when they realized they did not have the picture.

**2. The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.**

E is an outgoing, mature 11-year-old who appears to enjoy time with her family as well as activities with friends. While she has no special needs, she is at the age where parental guidance is extremely important, as she enters her teenage years. That said, it does not appear that the move will have a significant effect on any aspect of her development. The physical activities available to her in both places are equally adequate, the educational systems in both places are equally adequate, and there appears no reason why both her parents cannot continue to be as involved in her life as they have been, with the exception regarding spontaneity as noted above, but which the court does not believe will affect E's emotional development.

Overall, the court finds this factor to not weigh into the decision one way or the other.

**3. The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.**

Both parties agree that the custody arrangement will not change. Father will still have custody of E on alternating weekends, each Tuesday overnight, holidays and extra time as agreed upon. Summers will still be shared week-to-week. The financial circumstances of the parties do not weigh into the matter as both are able to meet the expense of the extra travel involved.

Overall, the court finds this factor to not weigh into the decision one way or the other.

**4. The child's preference, taking into consideration the age and maturity of the child.**

E expresses a preference to remain in Williamsport. She is an articulate, thoughtful girl who does appear to have given the matter serious consideration. Friends appear to be quite important to her and while she realizes she could make new friends in Winfield, she states a desire to remain with the friends she now has. She also expresses a desire to spend more time with her Father and appears to express a fear that the move will mean that she has less time

with him. While the move will not decrease the scheduled time, it may decrease the spontaneous time.

The court finds this factor to weigh heavily against the move.

**5. Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.**

Both parties appear to promote E's relationship with the other party. Neither party seems to do anything to thwart the relationship.

The court finds this factor to not weigh into the decision one way or the other.

**6. Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.**

Mother could earn a similar salary working in Williamsport as she does in Lewisburg. Her husband works out of the home and travels in the northeastern United States; his employment will not be affected by the move. Thus, the move offers no financial benefit to Mother.

Mother testified that the home in Winfield is more rural than her current residence in Williamsport, that it is more quiet and serene. She may thus achieve some emotional benefit from the move, although it is noted that she offered this testimony to show that E, not she herself, would benefit. It is also noted that she emphasized the safety aspect of this fact, not the emotional benefit from any improved serenity. Mother also testified to wanting to be in the same school district and soccer region as S in order to lessen travel for the children's activities and the court admits that such would be an emotional benefit to anyone. (As S is changing to the Lewisburg school district and her mother is considering moving closer to Lewisburg in order to effectuate such an arrangement, however, it does not appear that such could only be achieved by moving to Winfield.)

Finally, as Mother indicated no intention of seeking further education, any educational opportunity is not a factor.

Overall, the court finds this factor to weigh slightly in favor of the move.

**7. Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.**

The court can see no financial benefit to E from the move; indeed, the parties will be spending a little more money on her transportation and thus it will actually present a slight financial detriment.

E's educational opportunities are equal in both locations and thus there is no educational benefit to be derived from the move. The court does note that the Lewisburg School District does not offer theater club, which E expressed a high degree of interest in, and such will be available to her once she begins 7<sup>th</sup> grade at Roosevelt.

Importantly, E's strong desire to remain with her "lifelong" friends suggests that she may suffer emotionally from being removed from those friends. While it is unlikely that she will suffer any long-term effects, it does suggest that E will gain no emotional benefit from the move.

Overall, the court finds this factor to weigh against the move.

**8. The reasons and motivation of each party for seeking or opposing the relocation.**

Mother's primary reason for wishing to move to Winfield is for the convenience which would follow from having E, S and V in the same school district and same soccer region as S. She also cites the proximity to her employment, her belief that the Lewisburg School District is superior to the Williamsport School District, the crime statistics which show less crime per capita and the statistics which show fewer registered sex offenders in the Lewisburg area than in the Williamsport area.

Father's primary reason for opposing the move is his belief that he is more supportive of E's interests and academic achievement and that the distance will negatively affect his ability to continue to support her and thus negatively affect her achievements. Father also believes E would benefit from remaining close to her friends, teachers, soccer coaches and church (where she attends occasionally). Father also cites the inconvenience and "burden" of having to travel to Lewisburg.

Both parties are sincere in their beliefs regarding the move. Mother is not seeking to move simply to distance E from Father (although the same cannot be said about her apparent wish to distance *herself* from him), and Father is not opposing the move out of “mean-spiritedness”.

Thus, the court finds this factor to not weigh into the decision one way or the other.

**9. The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.**

Although Father testified to having been assaulted by Mother’s husband during confrontations between them, the court cannot find “abuse in the household” which would present a risk of harm to E. Therefore, the court finds this factor to not weigh into the decision one way or the other.

**CONCLUSION**

Considering all of the factors as discussed above, and noting that the court finds no other factor to affect the best interest of the child, Mother’s request to relocate E to Winfield must be denied. The court wishes to point out that both the strength and the weakness of Mother’s case lies in the relatively short distance involved: strength because the custody arrangement need not be modified; weakness because the move is not really necessary. It does seem a shame that the parties could not work out some alternate arrangement because the request is really not unreasonable.

The court relied heavily on its discussion with E, who is resolute in her desire to remain here in the school district with which she is familiar and the community where her friends live and participate with her in the various activities of interest to her. Although Mother will be impacted by the decision, that impact is certainly not insurmountable. While inconvenient, it will not affect her employment and such inconvenience does not outweigh the benefit to E from remaining close to her Father and friends.

**ORDER**

AND NOW, this 13<sup>th</sup> day of June 2013, for the foregoing reasons, Mother's request to relocate with the parties' minor child is hereby DENIED. The current custody Order shall continue in effect.

BY THE COURT,

Dudley N. Anderson, Judge

cc: TM, 819 Baldwin Street, Williamsport, PA 17701  
Meghan Young, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson