

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

<b>AW,</b>	<b>Plaintiff</b>	: <b>No. 12-21, 698</b>
		:
<b>vs.</b>		: <b>CIVIL ACTION - LAW</b>
		:
<b>CW,</b>	<b>Defendant</b>	: <b>CUSTODY</b>

**OPINION AND ORDER**

**AND NOW**, this 15<sup>th</sup> day of **May, 2015**, after a hearing held on May 7, 2015, on Mother's Petition for Special Relief filed December 11, 2014, at which time AW, Mother, was present and was represented by her counsel Christina Dinges, Esquire and CW, Father, was present and was represented by his counsel, Jonathan Bach, Esquire. The issue before the Court is Mother's request for the parties' minor children, BW, date of birth June 21, 2008 and AW, date of birth January 23, 2010, to attend school in the Loyalsock Township School District instead of attending school in the Williamsport Area School District where the parties' oldest child is currently enrolled. Father filed an Answer to the Petition for Special Relief on January 2, 2015.

By way of background, a Custody Order was entered on January 23, 2013, by agreement of the parties. Pursuant to the Court Order, the parties have shared physical custody with exchanges occurring nearly every day. The parties have shared legal custody. Father resides in the parties' former marital residence in the

Williamsport area. Mother resides in the Loyalsock area in a home she recently purchased.

The parties' son, BW, is currently 6 years old and in first grade in the Williamsport Area School District, hereinafter WASD. BW also attended Kindergarten in the Williamsport Area School District. The parties' daughter, AW, is currently five years of age and is, therefore, eligible to attend kindergarten during the 2015-2016 academic year. Mother is requesting that both children attend public school in the Loyalsock Township School District, hereinafter LTSD. Father is requesting that BW remain in, and AW enroll in, the WASD.

Mother is requesting this change because she feels the LTSD is in the children's best interest. Mother is concerned because the WASD only sends mailings to one home address (in this case Father's) which causes her to feel like the school is not recognizing her as a parent. Mother was aware of this policy at the time she enrolled her child in WASD nearly two years ago. Mother also believes LTSD is in the children's best interests because it would not be necessary for the children to attend before school care due to the school's start time. Mother and Father both reported BW having some issues when school started settling into his school routine when coming from the before school program. The parties would save approximately \$30.00 per week were the children not enrolled in before school care, a total of approximately \$1,080.00 in savings in a 180-day school year. Mother confirmed she would be available to assist Father with morning childcare in the event of delays.

Father opposes the children's school being changed. He argues, and the WASD principal at BW's primary school confirms, that there is only one mailing sent per year, consisting of an informational packet in the summer months. The WASD relies on the use of folders sent home with the children for most communication. Further, Mother has been an active participant in WASD activities. Father offered to pay \$15 towards the cost of the child care difference were the children to remain in Williamsport. Father feels that BW's behavioral problems, and his teacher confirms, have resolved. Father believes WASD has proven successful for BW. Father further argues that the parties' minor child, AW, will be more comfortable to begin attending the school she has visited on a nearly daily basis with her brother. Father is also concerned, if there is not morning child care program, how he would provide child care in the event of a school delay. The LTSD does not have a morning child care program.

Despite the parties agreeing to being obligated to work together to promote their child's best interest, they have placed their children squarely in the middle of a controversy as to whether or not the children will attend the Williamsport or Loyalsock School District. The decision by a parent to send their children to a specific school district is certainly not a decision to be taken lightly. The concept of shared legal custody allows both parents' input into the major decisions in their children'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 children. **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 children's physical, intellectual, moral and spiritual well-being. **Zummo v. Zummo, 574 A.2d 1130 (Pa. Super. 1990)**.

While the Court cannot determine that one school is better than the other school, the Court concludes the children's interests would best be served if they attended the WASD. This decision is based on several factors. Mother did not present any testimony from any individuals in the Loyalsock Township School District. The Court is unaware if it is also Loyalsock School's policy to send mailings to only one home. Further, because most information is sent home with the children, and the parties share custody, Mother has an equal opportunity to be the parent in receipt of the folder and any information contained therein. The party who receives information is responsible to provide it to the other party. If Father fails in this regard, the proper recourse is a Contempt action, not a request to change school districts. It is clear Mother has had sufficient opportunity to be involved in her son's education while he has been enrolled in Williamsport Area School District.

Neither party confirmed that BW's behaviors were improved if he started the school day directly from home. It may be that BW would take time to settle regardless of whether he began his day in the before school program with friends or in his home with his sibling. Mother's argument is not compelling. Further, based upon the testimony presented it appears that the issues with BW's behavior were easily remedied once addressed by the teacher. Both parents were in communication with the teacher to help resolve the issues.

The Court cannot ignore the financial savings to the parties if the children were to attend the LTSD; however, the best interests of the children outweigh the financial benefit. The Court considers the children's need for stability and continuity which would best be met by remaining in WASD. AW should be granted the opportunity to attend the school she has grown accustomed to through activities with her big brother. BW should continue in his established school community.

Based upon the testimony provided, it is clear that the parties jointly chose Williamsport Area School District for their son. The Court believes these parents had their child's best interest in mind when they reached their decision and sees no reason for a change at this time.

**ORDER**

**AND NOW**, this 15<sup>th</sup> day of May, 2015, following a hearing and argument on this matter, the Court ORDERS that the minor children, BW and AW shall attend Williamsport Area School District for the 2015-2016 school year. 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