

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

SBB,		: No. 09-20,268
	Plaintiff	:
		:
vs.		: CIVIL ACTION - LAW
		:
JEB-S,		:
	Defendant	: CUSTODY

OPINION AND ORDER

AND NOW, this 17th day of **July, 2018**, the parties appeared before the Court on July 6, 2018, in regard to Father's Petition for Modification of Custody filed on April 11, 2018. Both Mother and Father were present and were unrepresented. The Guardian Ad Litem, Patricia Shipman, Esquire, was also present. The Court notes that the sole issue before the Court as agreed upon by the parties is whether or not the parties' child shall continue to attend school in the Williamsport Area School District, or if the child should attend school in the Montgomery Area School District where Father resides. The parents have a week-on/week-off shared custody schedule.

By way of background, the Court notes that the parents have engaged in a tremendous amount of litigation concerning custody of their daughter, KB, born June 4, 2008. There have been numerous hearings before this Court regarding both legal and physical custody issues concerning the child. On April 3, 2014, after a Custody Trial held over two separate days, this Court issued an Order which granted the parties' shared physical custody to continue upon the condition that Father returns to reside in Lycoming County. Father relocated to Union County where he worked and filed a Notice of

Relocation with this Court. Mother objected to the relocation. In its Order entered on April 3, 2014, this Court indicated that if Father moved back to Lycoming County, the parties' week-on/week-off custody schedule would continue. The Court further ordered that unless the parties agreed otherwise, the child would attend school in the Williamsport Area School District and Father would be responsible for transporting the child to and from school during his week of custody. If Father chose not to relocate to Lycoming County, the Court Order indicated that Mother would have primary physical custody during the school year. Father did relocate back to Lycoming County. He now resides in Montgomery, Pennsylvania, which is approximately 30 minutes from Mother's home in Williamsport. Father's home is in the Montgomery Area School District.

KB has completed third grade and will be commencing fourth grade in the upcoming school year. She has just turned ten years old. KB was diagnosed with profound hearing loss at a very young age. She received cocular implants at four years of age. She currently has implants in both ears. Her surgeries were completed at Children's Hospital of Philadelphia, where she receives yearly checkups. Both parties agree, due to her hearing impairment, to not start KB in kindergarten until she was six years of age. She currently has an Individualized Educational Plan (IEP) in place. She utilizes a school-provided and maintained FM System, which helps magnify the sound, improving KB ability to hear. KB receives mobile therapy. The therapy occurs in both Mother's home and Father's home. Her mobile therapist is Marjaneh Frelin. Ms. Frelin works with both parents and, based upon both parents' testimony, appears to have a close relationship with KB. Regardless which school KB would attend, she would continue with her mobile therapist.

Pursuant to the Guardian Ad Litem's Report, KB is performing at mostly grade level in all subjects. She receives support for extended time for test taking, is seated in the front of the class, wears an FM System, attends thirty minutes of hearing support class weekly, and is given accommodation in addition to extra time during testing. The supports are implemented as a result of KB's IEP.

Father is requesting that the parties' daughter, KB, be permitted to attend school in the Montgomery Area School District where he currently resides commencing in the 2018-2019 school year. Father presented several reasons as to why it would be in the child's best interest to switch school districts. First, Father argues that KB will be entering the 4th grade this upcoming school year. She will be required to make a transition from a primary school to an intermediary school if she remains in the Williamsport Area School District. Therefore, Father's position is that she will be changing schools regardless which school district she attends. Father believes that the Montgomery Area School District is a better school district than the Williamsport Area School District arguing that Montgomery is rated higher than Williamsport. Father presented Father's Exhibits 1 and 2 which show statistics in regard to both school districts. Father states that the disabled student body in the Williamsport Area School District is underachieving compared to the disabled student body in the Montgomery Area School District. Father argues that KB's academics are slipping and that she struggles in the area of math. He believes she would do better academically if she attended the Montgomery Area School District. Father also argues that the Montgomery school is approximately one and one-half blocks away from his home which would enable KB to walk to school with neighborhood children. Father states that KB has

not made a lot of outside school friends in the Williamsport Area School District, but in his community she has made lots of friends in the neighborhood, especially because of attending the Summer Alive Day Camp. The children she attends this camp with mostly attend the Montgomery Area School District. It is noted that Mother does allow KB to attend this day camp during her week of custody during the summer. Father thinks that KB has trouble with students in the Williamsport Area School District bullying her, and he does not believe this would occur in the Montgomery Area School District. Father argues that it is difficult for him and his wife to transport KB to the Williamsport Area School District during his weeks of custody as they both work in the opposite direction of the Williamsport Area School District from their home.

Mother's position is that KB should maintain her education in the Williamsport Area School District where she has been since starting school. She states that there are teachers of the deaf who are employees of the Williamsport Area School District. In the Montgomery Area School District, Mother states that there are no school district faculty that are trained to teach the deaf. She does acknowledge that the school district would need to bring in special teachers on a contract basis to teach KB as part of her IEP. She believes a contracted teacher of the deaf would not be as effective as a school district employed teacher of the deaf. Mother states that KB has worked with the Williamsport Area School District audiologist, Mrs. Rank, since commencing school. Mother states that the school district is in the process of obtaining an updated FM system for KB as her current system is outdated. This system helps KB to be able to hear in the classroom. Mother states that KB reads above her grade level. Mother disputes that KB does not have long lasting

relationships in the Williamsport Area School District. She states that KB is involved in Girl Scouts and dance class during her periods of custody in the Williamsport area. Mother further states that KB has made a lot of progress this past year in dealing with the bullying issue she experienced in school. She states that there has not been as much of an issue with bullying in the third grade. Mother argues that KB is thriving in the Williamsport Area School District, that she has a long-standing relationship with the special teachers of the deaf which will continue to teach her in the middle school. Mother states that the school district issue was determined by the Court prior to KB attending kindergarten and that there is no reason to change the school district at this time. Mother states that it would be a significant hardship on her if she were required to transport KB to the Montgomery School District during her week of custody. Mother states that in addition to KB in her home, she has a nine-month old son and is expecting a third child in February.

Neither parent presented any witnesses besides themselves in support of their position concerning where KB should attend school. The only evidence, besides the parents' testimony, that was presented were the exhibits Father's 1 and 2 presented by Father which are a printout of statistics from the elementary school in Montgomery and the intermediate school in Williamsport. Neither party provided report cards or other school documentation. KB was not brought to the Court at the time of the hearing so the Court, therefore, did not have the opportunity to speak with her regarding this issue. The Court did receive a report from the Guardian Ad Litem and received testimony from the Guardian Ad Litem. Based upon the testimony and evidence presented, the Court cannot find a basis to change KB school district. Overall, KB appears to be doing well in the

Williamsport Area School District. She has had long-standing services in place since starting school to help her academically with the difficulties that may arise as a result of her hearing impairment. Though the Court believes that these same services ultimately could be made available to KB in the Montgomery Area School District, there is no reason to change what is currently in place. KB works directly with an audiologist in the Williamsport Area School District, as well as teachers specifically trained in teaching the deaf. KB clearly has relationships with these individuals already and those relationships will continue as she progresses through the Williamsport Area School District. While the Court is confident that the Montgomery Area School District could provide similar services, there is no basis to change what KB is already familiar with. Both parents have taken steps to address the bullying issues that KB has experienced since starting school. It is clear that her mobile therapist works with KB to process these issues and provides her with skills on how to address the issues. KB seems to have developed the appropriate skills to address these issues. Though Father does not believe bullying would be an issue in the Montgomery Area School District, there is no way that anyone can predict whether this would or would not occur in the Montgomery Area School District. The Guardian Ad Litem has indicated that KB's desire is to transfer to the Montgomery Area School District. Based upon KB's age and based upon the long-term battle that has gone on between the parties and influences that they have had over KB at various times, the Court does not put significant weight on KB preference. At ten years of age and entering the fourth grade, the Court does not believe that KB is mature enough to be able to make such a significant decision concerning her education and the Court is uncertain that KB understands the

ramifications of such a decision. The Court has reviewed the Guardian Ad Litem's Report and has taken into consideration the Guardian Ad Litem's recommendation. The Guardian appears to put significant weight on KB request. The Court cannot find, at KB age that without other significant reason to make a switch in school districts, that such weight should be placed solely upon KB wishes.

The Court understands the significant hardships that it places on Father to ensure that KB gets to the Williamsport Area School District for school during his week of custody. The Court further understands that this same hardship would be placed on Mother if the school districts were changed. The Court would point out, however, that it was Father's decision to move to Montgomery and not closer to the Williamsport Area School District when Father was well aware of the fact the Court ordered that KB would attend school in the Williamsport Area School District and he would be responsible for getting her to school on his weeks.

The Court would strongly urge both parents to take to heart the comments made by the Guardian Ad Litem in regard to the fact that it is clear that KB lives two completely separate lives on a week to week basis, down to the point where she has a separate backpack at Mother's home and a separate backpack at Father's home. It is time for both Mother and Father to begin to work together in regard to KB's best interest.

ORDER

Based upon the above, Father's request that the Custody Order entered on April 3, 2014, be modified to allow to KB to attend school in the Montgomery Area School District is hereby DENIED.

By The Court,

Joy Reynolds McCoy, Judge

JRM/jrr