IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RP,	**:**	**No. 13-21,695**
Plaintiff	**:**	**955 MDA 2019**
	:	
vs.	**:**	**CIVIL ACTION - LAW**
	:	
KF,	**:**	
Defendant	**:**	

Date: July 2, 2019

OPINION IN SUPPORT OF THE ORDER DOCKETED MAY 14, 2019, IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Appellant, KF (hereinafter referred to as "Mother"), has appealed this Court's Order dated May 13, 2019, and docketed on May 14, 2019, issued after a custody trial, with regard to the Petition for Modification of Custody filed by RP (hereinafter referred to as "Father") on September 6, 2018. At the time of the custody trial, Father was present and represented by Melody Protasio, Esquire, and Mother was present and represented by Brandon Schemery, Esquire. Prior to the trial, Father and Mother reached an agreement on a custody schedule for their child, GP (hereinafter referred to as "Child"), date of birth November 15, 2013, wherein the parties would share physical custody on a week-on/week-off basis with the custody exchanges taking place on Fridays at 4:30 p.m.

Although the parties agreed to the physical custody schedule, they could not agree on which school district the Child will attend when he enters Kindergarten in the fall of 2019. Additionally, Mother requested that the custody order contain a provision indicating that if a party would need care for the Child for a period of three hours or longer, that party must offer the other parent the right of first refusal to care for the Child during that time. Father objected to the inclusion of this provision as his mother has

provided childcare for the Child's entire life, and he wishes to allow her to continue doing so during his periods of custody.

Following a full day of testimony and, after careful consideration of the facts and exhibits, this Court determined that the Child would attend the South Williamsport School District where Father resides. Additionally, the Court declined to include a right of first refusal/babysitting provision in the Order. Mother's counsel filed a Petition for Reconsideration on May 23, 2019, which was summarily denied on May 29, 2019. Mother filed a timely Notice of Appeal on June 12, 2019.

Mother raises the following issues in her Concise Statement of Matters Complained of on Appeal, filed on June 12, 2019, contemporaneously with her Notice of Appeal:

> 1. The trial court abused its discretion, pursuant to 23 Pa.C.S.A.§5324 and as a matter of law, in denying Mother's request for a modified inclusion of a long-standing mutual babysitter/first option clause in the final custody Order by giving a third party de facto visitation in lieu of Mother's ability to provide childcare.
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> 2. The trial court abused its discretion, pursuant to 23 Pa.C.S.A. §5328(a) and as a matter of law, in failing to give appropriate weight to Appellant's overwhelmingly favorable factors related to the minor child attending the Williamsport Area School District.

Mother alleges that this Court abused its discretion in denying her request for a modified inclusion of a long-standing mutual babysitter/first option clause in the final custody Order. Mother further alleges that this essentially gave a third party de facto visitation in lieu of Mother's ability to provide childcare. Mother cites 23 Pa.C.S. §5324 in her Concise Statement. The Court initially notes that Mother's reliance on this statute in support of her position is misplaced. 23 Pa.C.S. §5324 describes certain individuals who may file an action for any form of physical or legal custody. In the instant case, the

maternal grandmother was not requesting to intervene in the current custody case, nor was she seeking any defined periods of custody of the Child. The Court heard testimony from NP, paternal grandmother, that she retired in March of 2016 and started to babysit her grandchild, and had watched him every day since then. (N.T. May 13, 2019, pg. 28). The paternal grandmother also babysits her other grandchildren, one of whom is very close with the Child. (T.P. May 13, 2019, pg. 32) For years, paternal grandmother babysat the Child with the consent of both parties, including during Mother's periods of custody. (T.P. May 13, 2019, pg. 31, 164). It is evident to this Court that there is a very close bond between the Child and paternal grandmother, and that she has consistently played an important role in his life as a caregiver.

This Court's decision did not grant paternal grandmother any type of standing or any defined periods of visitation or physical custody of the Child. Instead, it simply gave Father the opportunity to make his own arrangements for childcare if needed when the Child is in his custody. Nothing in this Court's Order precludes Father from offering Mother additional time with the Child during his weeks of custody when he is working or during the summer. It merely gives Father the freedom to choose what is most convenient for him in terms of childcare while allowing him to maintain the important long-standing bond between paternal grandmother and the Child.

Mother next alleges that this Court abused its discretion pursuant to 23 Pa.C.S.A. §5328(a) by failing to give appropriate weight to her "overwhelmingly favorable factors" related to the minor child attending the Williamsport Area School District, where she resides. Again, this Court notes that Mother's reliance on 23 Pa.C.S.A. §5328 is misplaced. This statute enumerates the factors the Court must consider in determining the best interest of the child when ordering any form of custody. In the present case, the

parties arrived on the day scheduled for the custody trial with an agreement regarding a shared physical custody schedule. Therefore, counsel for the parties agreed that a comprehensive evaluation of the factors enumerated in 23 Pa.C.S.A. §5328(a) was not required. (T.P. May 13, 2019, pg. 160). While the parties agreed on a shared physical custody schedule, they left it for the Court to decide which school district the Child would attend and whether or not Mother's request for a babysitting provision should be granted. Essentially, with the physical and legal custody provisions agreed upon, the testimony on the remaining issues was akin to a hearing on a petition for special relief.

When determining that the Child should attend the South Williamsport School District, the Court carefully considered both parties' positions. Mother, who recently had another child with her new husband, will be a stay-at-home mother. Father works Monday through Friday. His hours are currently 8:00 a.m. to 4:00 p.m.; however, he testified that if his request to have GP attend the South Williamsport School District was granted, he had the flexibility to change his hours to 9:00 a.m. to 5:00 p.m. (T.P. May 13, 2019, pg. 73). Students in the South Williamsport School District can arrive for school at 8:15 a.m. and classes begin at 8:35 a.m. (T.P. May 13, 2019, pg. 63). This would enable Father to take the Child to school every day on his custody weeks. In the Williamsport School District, the doors do not open until 8:50 a.m. (T.P. May 13, 2019, pg. 129). This would prevent Father from ever being able to take the Child to school during his weeks of custody, even if he changed the start of his work day to 9:00 a.m., and require him to arrange for childcare prior to the start of the school day, including a third party having to transport the Child to school in Williamsport.

Father has lived in the South Williamsport School District for 9 years and lives within walking distance of the elementary school that Child will attend. Father had two

witnesses testify that they live in his neighborhood and have children who also attend the school, and therefore the Child, who was described as shy, will have peers that he is familiar with when he starts school in South Williamsport. (T.P. May 13, 2019, pgs. 6-8, 14). Mother, who has lived in her current home for only one year, lives approximately 10 highway miles from the elementary school in Williamsport that the Child would attend had this Court found in her favor. (T.P. May 13, 2019, pg. 174). Mother argued that she has another child who will eventually attend the Williamsport School District, and that it would be an inconvenience to have her children in different school districts. (T.P. May 13, 2019, pg. 177). Although the Court understands Mother's desire to have her children attend the same school district, because there is a five-year age difference between her two children they will never attend the same school together. (T.P. May 13, 2019, pg. 210). Therefore, the Court did not find this to be a sufficient reason to tip the scales in favor of the Williamsport School District.

The Court did consider the inconvenience that Mother may encounter if she has to make two trips to South Williamsport to take the Child to and from school on her weeks of custody. However, as with any decision in a custody matter, the Court must determine what is in the best interest of the Child. This Court reasoned that by attending South Williamsport School District, on Mother's weeks of custody he will be dropped off and picked up by her. On Father's weeks of custody, he will be dropped off or walked to school by Father and picked up by paternal grandmother and taken back to Father's house. This significantly reduces the amount of back-and-forth that the Child could encounter on Father's weeks of custody if the Child were to attend the Williamsport School District. This arrangement, coupled with the fact that paternal grandmother will

continue to babysit the Child on Father's weeks of custody, provides the most consistent and stable schedule for the Child as he transitions into Kindergarten.

In reviewing a custody order, the Superior Court's scope is of the broadest type and the standard is abuse of discretion. The Superior Court has held:

> We must accept findings of the trial court that are supported by competent evidence of record, as our role does not include making independent factual determinations. In addition, with regard to issues of credibility and weight of the evidence, we must defer to the presiding trial judge who viewed and assessed the witnesses first-hand. However, we are not bound by the trial court's deductions or inferences from its factual findings. Ultimately, the test is whether the trial court's conclusions are unreasonable as shown by the evidence of record. We may reject the conclusions of the trial court only if they involve an error of law, or are unreasonable in light of the sustainable findings of the trial court

M.J.M. v. M.L.G., 63 A.3d 331, 334 (Pa. Super. 2013). Based on the foregoing reasoning, this Court submits that its decision to grant Father's request that the Child attend school in the South Williamsport School District and deny Mother's request that the custody Order contain a right of first refusal/babysitting provision was supported competent evidence of records. Accordingly, this Court respectfully requests that Mother's appeal be denied and the Order dated May 13, 2019, and docketed on May 14, 2019, be affirmed.

BY THE COURT,

Joy Reynolds McCoy, Judge