

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

ASHLEY WALTHER,	:	No. 17-21,138
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
CHASE WALTHER,	:	
Defendant	:	CUSTODY

OPINION

I. Factual and Procedural History

This custody action initially arose out of the filing of a Custody Complaint by Ashley Walther (Mother) on September 6, 2017. Since that time, the parties have been able to stipulate to custody periods and have agreed to share physical and legal custody of their minor children until November 13, 2019 when Mother filed a Complaint to Modify Custody asking the Court to grant her primary physical custody. Chase Walther (Father) indicated at the January 24, 2020 custody conference that he would also like to have primary physical custody of the children, which would require the children to move out of state.¹

This matter proceeded to trial on August 14, 2020, which was continued to a second day of trial on August 19th. During trial, Father introduced evidence of several photographs of Mother as well as “chat logs,” text messages, and other electronic communications between Mother and various third parties. These

¹ At the time of the January 24, 2020 custody conference, Father lived in New Hampshire but had moved to West Virginia just prior to the first day of the custody trial. Mother has and continues to reside in Montgomery, Pennsylvania.

photographs and “chat logs” either depicted or mentioned Mother’s use of drugs. The Court’s decision was verbally given to the parties on August 20, 2020² at which time the Court granted Father primary physical custody of the minor children. The minor children moved to West Virginia on August 28, 2020 and are currently enrolled at the Ridgedale Elementary School. On August 31, 2020, Mother filed a Motion for Reconsideration and New Trial. Argument was held on September 23, 2020.

II. Discussion

In her Motion, Mother asserts that the basis of the Court’s Order granting Father primary physical custody “included the Court’s belief Plaintiff was currently involved with illegal drugs.” *See Mother’s Motion at Paragraph 10.* Mother’s assertion is correct, as stated on the record as well as in the Court’s written order. Mother states that this Court should order a new trial because the “chat logs” and other evidence of electronic conversations mentioned above were not authenticated, were not date stamped, and included hearsay because the other party to the conversations did not testify. Additionally, according to Mother, the photographs introduced at trial were unclear as to whether the items depicted were contraband or legal items. Finally, Mother argues that she should be granted a new trial because her prior attorney did not offer for Mother to undergo a drug test at the time of trial.

² The Court’s written Order was issued August 21, 2020.

Under Pennsylvania Rule of Evidence 901, text messages may be authenticated three ways including by testimony from **either the author or the sender**. *Com. v. Murray*, 174 A.3d 1147, 1156-57 (Pa. Super. 2017) (emphasis added). All conversations introduced at trial, whether via text message, Facebook Messenger, or other electronic means of communication, were authenticated by Mother in that she admitted to sending and receiving the messages. Mother also identified herself in the photographs that were admitted into evidence.³ Most photographs and electronic conversations contained date stamps and other conversations referenced the COVID-19 pandemic and lockdown, which means the conversations could have only taken place since March 2020.

Next, Mother argues that she is just a bad speaker and that this is the reason the Court found her unbelievable and incredible. The Court recognizes that Mother's new counsel did not have the opportunity to review the trial transcript or the exhibits prior to the thirty (30) day time limitation to file the Motion for Reconsideration and that he obviously did not have the advantage of being present at trial to hear Mother's testimony. However, as the Court explained to Mother's new counsel, Mother's testimony regarding her drug use was even less credible in person than a cold written transcript will reveal. Mother was extremely evasive in answering questions about her drug use and recent drug purchases. Further, the explanations that Mother did provide regarding drug use are not credible and frankly implausible. For example, Mother testified that her friend was providing Mother with

³ In fact, Mother was unable to identify the person in a photograph presented by Father because

urine so that Mother could test it for drugs since she had a kit to do so. In reading the message in its entirety, it is highly unlikely that this explanation is true. Even if the Court accepts it as true, the Court questions why Mother would have a kit to test urine for drugs in the first place. The implausible nature of Mother's explanation of this electronic conversation is reinforced by the several other conversations Mother acknowledged being true, one of which included a long, back-and-forth discussion with a drug dealer that sent Mother the equivalent of a takeout menu of drugs. The bottom line is that Mother displayed no sense of acknowledgement of her drug use, even after the proof was provided.

Finally, Mother argues that she would have been willing to submit to a drug test on the day of trial but was not given the opportunity because her attorney never requested it. However, the Court is not concerned about whether Mother was intoxicated on a particular day, but rather with Mother's drug use during the time prior to trial, especially while the minor children were in her custody. Additionally, it is possible that Mother had ingested certain drugs prior to trial that would not have shown up on a drug screen that particular day.

The Court has major concerns surrounding Mother's drug use and lack of responsibility and acknowledgement of same. Mother has set forth no circumstances warranting reconsideration of this Court's August 21, 2020 Order or a new trial.

of the quality of the photograph. That photograph was not admitted into evidence for this reason.

ORDER

AND NOW, this 28th day of **September, 2020**, upon consideration of Plaintiff's Motion for Reconsideration and New Trial and Defendant's response thereto, for the reasons set forth above, Plaintiff's Motion is **DENIED**.

By the Court,

Ryan M. Tira, Judge

RMT/ads

cc: Timothy Reitz, Esquire
Joseph Orso, Esquire
John Pietrovito, Esquire
Gary Weber, Esquire – Mitchell Gallagher