

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

CRYSTAL LEE SMITH,	:	
Plaintiff,	:	No. 17-21,166
	:	
vs.	:	CIVIL ACTION - LAW
	:	
NICHOLAS A. SMITH,	:	IN CUSTODY
Defendant.	:	

ORDER

AND NOW, this 22nd day of December, 2023, upon consideration of the Motion for Special Relief/Declaratory Relief filed by the Defendant on May 23, 2023,¹ it is hereby ORDERED and DIRECTED that the Motion is DENIED, as explained below.

I. BACKGROUND.

The parties are the parents of a Minor Child, who was born August 9, 2010. Plaintiff Mother lives in Hughesville, while Defendant Father lives in South Williamsport. The parties share 50/50 custody of the Minor Child, but she spends more overnights with the Defendant. Plaintiff contends that is because the Minor Child attends school in the community where Defendant lives, rather than in the community where she lives.² The reason for that disparity, however, is not material to this Court's decision. Support is calculated as if overnights are 50/50.³

The parties were scheduled for a custody trial in 2022, based on a Petition to Modify Custody filed by Defendant on September 27, 2021. Prior to trial, however, the parties, both of whom were represented by counsel, entered into an agreement

¹ Motion for Special Relief/Declaratory Relief, filed May 23, 2023 ("Motion").

² Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Special Relief/Declaratory Relief, filed September 7, 2023 ("Plaintiff's Brief"), p.1.

³ Order, dated August 23, 2022 and entered August 25, 2022 ("Custody Order"), ¶ 6.A.

to resolve the dispute. By Custody Order entered August 25, 2022, the Honorable Ryan M. Tira of this Court entered an Order based upon the terms of their agreement.⁴ The Custody Order is the operative Order concerning the matters it addresses.

The instant Motion was filed by Defendant seeking Declaratory Relief concerning a provision of the Custody Order. Defendant contends there that a provision of the Custody Order concerning child support is void as against public policy.⁵ The Court heard argument on the Motion on August 8, 2023, at which time the parties requested an opportunity to file briefs. Defendant filed a brief in opposition to the Motion on September 7, 2023,⁶ and Plaintiff filed a brief in support of it on September 22, 2023.⁷ The briefs having been filed, the matter is now ripe for disposition.

II. DISCUSSION.

Defendant's principal contention in his Motion is that a provision in the Custody Order provides that if Defendant takes any position in support court adverse to the existing arrangement, the Custody Order will automatically adjust to provide the parties will get exactly equal overnights.⁸ He contends this is void as against public policy since it permits modification of the Custody Order without taking into consideration the best interests of the Minor Child⁹ or the Minor Child's right to adequate support.¹⁰ He argues that our appellate courts have found orders with

⁴ See Custody Order dated August 23, 2022 and entered August 25, 2022.

⁵ See Motion, filed May 23, 2023.

⁶ Plaintiff's Brief, filed September 7, 2023.

⁷ Defendant's Responsive Brief in Support of Petition for Special Relief/Declaratory Relief, filed September 22, 2023 ("Defendant's Brief").

⁸ See Custody Order, ¶ 6.A.

⁹ Motion, ¶¶ 4-5 (citing 23 Pa. C.S. § 5328).

¹⁰ *Id.*, ¶ 7 (citing *Sams v. Sams*, 808 A.2d 206, 211 (Pa. Super. 2002) (citing *Kesler v. Weniger*, 744 A.2d 794) (Pa. Super. 2000)); *Ferguson v. McKiernan*, 855 A.2d 121, 123 (Pa. Super. 2004)).


similar defects to be void.¹¹ Plaintiff contends in opposition that parties to this sort of proceeding are permitted to resolve their differences by agreement, provided that the agreement is fair and reasonable, made without fraud or coercion, and does not prejudice the welfare of the child,¹² and that one term cannot be removed from an agreement without upsetting the entire agreement, particularly in light of the fact that the agreement contained no severability provision.¹³

The Court agrees with the Plaintiff. The Custody Order states that it was entered based upon the terms of the agreement between the parties.¹⁴ This Court will not remove one provision from an agreement and allow the remainder to stand, as what remains at that point will no longer represent the agreement of the parties.¹⁵ As such, the Court will deny the Defendant's Motion. If Defendant believes that the Custody Order is no longer working for the parties, he may file a petition to modify custody and have the Court revisit the entire matter.

III. CONCLUSION.

For the reasons explained above, the Defendant's Motion for Special Relief/Declaratory Relief filed on May 23, 2023 is hereby DENIED.

IT IS SO ORDERED.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/bel

cc: Christina Dinges, Esq.
Melody Protasio, Esq.
Stephanie Snyder (Family Court)
Gary Weber, Esq. (Lycoming Reporter)

¹¹ *Id.*, ¶¶ 8-9 (citing *Kraisinger v. Kraisinger*, 928 A.2d 333, 345 (Pa. Super. 2007)).

¹² Plaintiff's Brief, pp. 2-3 (citing *Robert v. Furst*, 561 A.2d 802, 803 (Pa. Super. 1989)).

¹³ *Id.*, pp. 3-4.

¹⁴ Custody Order, p. 1.

¹⁵ The Court finds it to be particularly important that both parties were represented by counsel in reaching their agreement. See Custody Order, p. 1.