

K.L.	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
K.K. AND K.W.	:	
	:	
APPEAL OF: K.W.	:	No. 2037 MDA 2013

Appeal from the Order October 21, 2013
 In the Court of Common Pleas of Lebanon County
 Civil Division at No. 2007-20497

BEFORE: BENDER, P.J.E., DONOHUE, J. AND STRASSBURGER, J.*

MEMORANDUM BY BENDER, P.J.E. **FILED APRIL 14, 2014**

K.W. (Grandmother) appeals from the October 21, 2013 order awarding to K.L. (Father) both legal and primary physical custody of N.K., who was born in December of 2001.¹ After review, we affirm.

Grandmother raises the following issue for our review:

Whether the lower court committed an error of law or abused its discretion in disregarding the child’s best interest and granting Father primary physical and legal custody and permitting him to relocate the child to West Virginia?

Grandmother’s brief at 13. Within the context of this overarching issue, Grandmother presents thirteen separate arguments relating to the findings

¹ Specifically, the October 21, 2013 order provides for Grandmother to retain primary physical custody of N.K. for the remainder of the 2013-2014 school year, with K.K. (Mother) and Father to have partial physical custody of N.K. pursuant to the parties’ agreement or pursuant to the schedule set forth by the trial court. Father and Grandmother were awarded shared legal custody of N.K. At the end of the school year, legal and primary physical custody of N.K. is awarded to Father, with Grandmother and Mother to have partial

*Retired Senior Judge assigned to the Superior Court.

and conclusions reached by the trial court. Moreover, Grandmother discusses the ten relocation factors as applied by the trial court, again asserting that the court committed legal error or abused its discretion by allowing Father to relocate N.K. to Father's home in West Virginia.

Our scope and standard of review are as follows:

[O]ur scope is of the broadest type and our standard is abuse of discretion. This Court 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, this Court must defer to the trial judge who presided over the proceedings and thus viewed 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.

E.D. v. M.P., 33 A.3d 73, 76 (Pa. Super. 2011) (quoting ***A.D. v. M.A.B.***, 989 A.2d 32, 35-36 (Pa. Super. 2010)). Furthermore, we note that:

[t]he discretion that a trial court employs in custody matters should be accorded the utmost respect, given the special nature of the proceeding and the lasting impact the result will have on the lives of the parties concerned. Indeed, the knowledge gained by a trial court in observing witnesses in a custody proceeding cannot adequately be imparted to an appellate court by a printed record.

Ketterer v. Seifert, 902 A.2d 533, 540 (Pa. Super. 2006) (quoting ***Jackson v. Beck***, 858 A.2d 1250, 1254 (Pa. Super. 2004)).

physical custody pursuant to the parties' agreement or pursuant to the schedule provided by the trial court.

A.H. v. C.M., 58 A.3d 823, 825 (Pa. Super. 2012).

The primary concern in any custody case is the best interests of the child. The best-interests standard, decided on a case-by-case basis, considers all factors that legitimately have an effect upon the child's physical, intellectual, moral, and spiritual well-being. **Saintz v. Rinker**, 902 A.2d 509, 512 (Pa. Super. 2006) (citing **Arnold v. Arnold**, 847 A.2d 674, 677 (Pa. Super. 2004)). Furthermore, we recognize that the recently enacted Child Custody Act (Act), 23 Pa.C.S. §§ 5321-5340, governs all proceedings commenced after January 24, 2011. The specific factors that a court must consider are listed at 23 Pa.C.S. § 5328(a)(1) – (16). **See E.D.**, 33 A.3d at 79-80 (holding that "best interests of the child" analysis requires consideration of all section 5328(a) factors). Additionally, 23 Pa.C.S. § 5337(h) provides a list of ten factors that a court must consider when a case involves a relocation.

Here, in its fifty-six page opinion, the trial court set forth the factual and procedural history of this case, and discussed its reasons for appointing a guardian *ad litem*. The opinion also contains an extensive discussion of all the factors listed in section 5328(a) and in section 5337(h) of the Act as they relate to the specific facts articulated by the witnesses and the conclusions the court reached in light of those findings of fact. Additionally, based on our review of Grandmother's brief, it appears that she is requesting that this Court re-find and/or re-weigh the evidence. However,

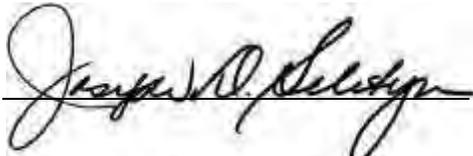
as stated above, we are required to “accept findings of the trial court that are supported by competent evidence of record, as our role does not include making independent factual determinations.” **C.R.F., III v. S.E.F.**, 45 A.3d 441, 443 (Pa. Super. 2012). We also note the trial court’s recognition of the difficulties presented by this case, wherein it stated that the choice it had was “neither easy nor clearcut.” Trial Court Opinion, 10/21/13, at 2.

We have reviewed the certified record, including the transcripts of the hearings, the briefs of the parties, the applicable law, and the thorough, well-reasoned opinion authored by the Honorable Bradford H. Charles of the Court of Common Pleas of Lebanon County, dated October 21, 2013. We conclude that Judge Charles’ extensive opinion properly disposes of the issues presented by Grandmother in this appeal.

Order affirmed.

Judge Strassburger files a dissenting statement.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/14/2014

IN THE COURT OF COMMON PLEAS OF L
EBANON COUNTY
PENNSYLVANIA

CIVIL ACTION - LAW

K.L.

[REDACTED]

: NO. 2007-20497

Plaintiff

v.

K.K.

[REDACTED]

and

K.W.

[REDACTED]

Defendants

Appearances:

Desiree Brougher, Esquire
REILLY, WOLFSON, SHEFFEY,
SHRUM & LUNDBERG, LLC

For

K.L.

[REDACTED]

Lawrence L. Newton, Esquire

For

K.K.

[REDACTED]

Mary H. Burchik, Esquire
BUZGON DAVIS LAW OFFICE

For

K.W.

[REDACTED]

Paul Kilgore, Esquire
SPITLER & KILGORE

Guardian Ad Litem for Minor
Child, N.K.

Opinion, Charles, J., October 21, 2013

As a general rule, children should be raised by parents and spoiled by grandparents. In this case, 11 year-old N.K.¹ has been both raised and spoiled by his maternal grandmother. Today, we are asked to decide whether the generally good but overindulgent care provided for N.K. by

¹ We will refer to the child who is the subject of this dispute by his initials instead of his name to help preserve his privacy

his grandmother should continue, or whether we should send N.K. into a new and in some ways unproven environment with his father. The decision we must make is complicated by a legal presumption that favors the father. Ultimately, the choice we must make is neither easy nor clear-cut.

I. BACKGROUND AND PROCEDURAL HISTORY

^{K.L.} [REDACTED] (hereinafter "FATHER") and ^{K.K.} [REDACTED] (hereinafter "MOTHER") are the natural parents of N.K. ^{K.W.} [REDACTED] (hereinafter "GRANDMOTHER") is N.K.'s maternal grandmother. Approximately twelve years ago, MOTHER and FATHER engaged in one night of recreational sex. N.K. was the product of this encounter. Unfortunately, when N.K. was born on December 8, 2001, MOTHER did not identify the father. It was not until 2005 that FATHER learned N.K. was his son. Because of this, FATHER was prevented from having a relationship with N.K. during his formative early childhood years.

When N.K. was born, MOTHER was either unwilling or unable to provide necessary care. Even though MOTHER and GRANDMOTHER did not have a good relationship, GRANDMOTHER stepped to the plate to care for N.K. and MOTHER voluntarily ceded caregiving responsibilities to GRANDMOTHER. For the first five years of N.K.'s life, GRANDMOTHER was the only caregiver N.K. knew.

In 2005, MOTHER initiated a custody action against GRANDMOTHER that was eventually litigated before Judge Stewart Kurtz

of Huntingdon County. During this same period of time, GRANDMOTHER sought out FATHER and surprised him with the revelation of that N.K. was his son. A blood test subsequently confirmed FATHER's paternity. As a result of the custody litigation before Judge Kurtz, custody of N.K. was awarded to MOTHER. N.K. then began living with MOTHER at her home in Huntingdon, PA. FATHER was introduced to N.K. and began to develop a relationship with him.

Unfortunately, MOTHER's lifestyle was dysfunctional. On at least two occasions, GRANDMOTHER called the Huntingdon Child Services Agency to report MOTHER for child abuse. These child abuse allegations were unfounded, but they triggered a decision by MOTHER to voluntarily return custody of N.K. to GRANDMOTHER. In late 2006, MOTHER and GRANDMOTHER signed a stipulation whereby GRANDMOTHER was granted primary physical custody of N.K.

FATHER was not a party to the custody stipulation that transferred custody of N.K. from MOTHER to GRANDMOTHER. However, the custody stipulation did grant partial custody on alternating weekends to MOTHER. To her credit, MOTHER kept an open line of communication with FATHER and provided FATHER with liberal opportunities to visit N.K. during MOTHER's alternating weekends. GRANDMOTHER was not nearly so generous in terms of facilitating FATHER's relationship with N.K. On multiple occasions, GRANDMOTHER refused FATHER's request for time

with N.K., claiming that N.K. was "busy" or "uncomfortable" travelling to FATHER's residence.

On April 11, 2012, FATHER initiated a custody action seeking primary physical custody of N.K. Shortly thereafter, MOTHER filed her own custody petition that similarly sought physical custody. While MOTHER and FATHER have proffered competing requests for primary custody, they were united in their belief that GRANDMOTHER should no longer have custody.

We conducted an initial pre-trial conference on June 28, 2012. At the conference, all counsel agreed that there was so much intra-family animosity that appointment of a Guardian Ad Litem would be helpful for N.K. Therefore, we appointed Paul Kilgore, Esquire to serve in that capacity. Since June of 2012, Attorney Kilgore has met with N.K. on multiple occasions, and has participated in every aspect of the above-referenced custody dispute.

An initial two day custody trial was conducted before this Court on November 6 and 7, 2012. On November 27, 2012, we issued a fifty-six page Opinion via which we retained GRANDMOTHER as N.K.'s primary physical custodian.

Our initial decision to retain GRANDMOTHER as primary custodian was not unqualified. Within our Opinion, we described GRANDMOTHER as "overprotective," "overbearing," and "overindulgent." Our dilemma with respect to GRANDMOTHER was summarized on page 23 of our Opinion.

On the hit TV show "The Big Bang Theory," character Howard Wolowitz's mother is never shown but oft described as overprotective, overbearing, and jealous of Howard's affections. Those descriptions fit GRANDMOTHER perfectly. Left unchecked, we fear that GRANDMOTHER would raise N.K. to become enabled and socially inept. In addition, we fear that GRANDMOTHER would continue to employ manipulation as a tool to keep N.K. from enjoying a healthy relationship with his parents.

On the other hand, we cannot ignore the fact that GRANDMOTHER has had custody for nine of N.K.'s ten years of life. We cannot ignore the obvious bond of affection between N.K. and GRANDMOTHER, nor can we lightly discount the time GRANDMOTHER has spent introducing N.K. to a myriad of positive activities.

Given GRANDMOTHER's long-term familiarity with N.K., given that geographic continuity can only be achieved via an award of custody to GRANDMOTHER, and given the Guardian Ad Litem's recommendation [favoring GRANDMOTHER], a decision in this case favoring GRANDMOTHER would be the safe and easy choice. However, our grave concerns about GRANDMOTHER's overprotectiveness and willingness to estrange N.K. from his parents leads us to question whether an award of custody to GRANDMOTHER would be the right choice.

Our concerns about GRANDMOTHER were counterbalanced by worries that we also expressed about MOTHER and FATHER. We described MOTHER as "well-meaning but ill-equipped to undertake primary custody." We noted that MOTHER was being supported by her 88 year-old grandmother and that she had never supported herself or lived independently. Sadly, MOTHER also has a history of poor choices regarding men. MOTHER's brother stated: "She will not date anyone who does not have a criminal record." In fact, one of MOTHER's paramour's was a Megan's Law offender and was abusive. In addition, multiple witnesses described MOTHER's home as "cluttered," "messy" and

unkempt. Ultimately, we concluded "dysfunction is endemic to MOTHER's life, and this outweighs everything else."

Our worries about FATHER had nothing to do with stability; he enjoyed a stable lucrative job and a stable marriage. Rather, we had a qualm about the extent and duration of FATHER's relationship with N.K. We stated:

We cannot emphasize enough that the deficits in FATHER's relationship with N.K. ARE NOT HIS FAULT. Nevertheless, the fact remains that FATHER's relationship with N.K. has been limited and the father/son bond that many ten year-olds enjoy has simply not been formed.

(Slip Opinion at 30.) In addition, we noted that FATHER's life was in a period of transition. As of November of 2012, FATHER's wife was pregnant with their first child, FATHER's wife expressed a desire to leave her employment once she became a mother, and FATHER was planning to build a new home and relocate from the city of Charleston, West Virginia to a suburb of that city. We stated:

If we were to afford FATHER with custody, N.K. would be forced to transition between school districts not just once, but twice. In addition, we would be injecting N.K. into a household that is coping with the challenges created by a newborn infant. We are just not sure that N.K.'s interest would be served by placing him in this environment of transition.

(Slip Opinion at 34-35). In addition to the above, we expressed one final concern about FATHER:

Positive activities are an important aspect of any child's education and development. In his testimony, FATHER appeared to discount the value of N.K.'s current activities. This is unfortunate, because we believe that activities such as music and sports are of critical importance to the development

of any child. These types of activities teach teamwork, social skills, and the benefit of delayed gratification (i.e., practice makes you better).

We can appreciate why FATHER has grown resentful of N.K.'s activities in Palmyra because GRANDMOTHER has utilized those activities as part of her campaign to limit N.K.'s contact with his parents. In some ways, FATHER's negative reaction to the plethora of N.K.'s activities is natural and understandable. Still, FATHER's testimony about limiting N.K.'s activities concerned us. Especially for a child who is struggling to cope with familial dysfunction, a wide variety of activities can serve as both an outlet for frustration and an escape from emotional turmoil. Regardless of where he will live, we believe that N.K. should continue his involvement with sports and music. We fear that FATHER may not share this belief, and this is a factor that concerns us.

(Slip Opinion at 30-31).

Ultimately, we decided to retain GRANDMOTHER as N.K.'s primary custodian. However, our decision was neither enthusiastic nor unqualified. We stated:

Ultimately, our preference is to award primary custody of N.K. to FATHER. FATHER is a natural parent who is closer in age to N.K. than is GRANDMOTHER. He has a steady job and a stable marriage. Moreover, FATHER can model the attributes of strength, hard work, self-discipline and sacrificial love without exposing N.K. to manipulation, back-stabbing and overindulgence. Simply stated, we conclude that an award of custody to FATHER would provide N.K. with the best opportunity for a "normal" upbringing.

On the other hand, we have serious reservations about the wisdom of immediately transferring custody from GRANDMOTHER to FATHER. FATHER's life is in transition. If we were to immediately award FATHER custody, N.K. would be forced to change school districts not once, but twice. In addition, we would be thrusting N.K. into an environment where two new parents are navigating the change in lifestyle that always accompanies the birth of a couple's first child. Moreover, FATHER and N.K. have not as of yet been given the opportunity to spend concentrated and significant time with one another in order to cement a parent-child bond.

With respect to GRANDMOTHER, we can never forget or underestimate the time, money and love she has invested in N.K. It would be unthinkable to contemplate where N.K. would be now without GRANDMOTHER. While we continue to have serious concerns about the long-term impact of GRANDMOTHER's personality and parenting patterns, we cannot declare her to be "unfit," and we cannot characterize N.K.'s current environment as pathologically unhealthy. At least on a short-term basis, GRANDMOTHER's home remains a viable option for N.K.

For now, we will keep N.K. with his grandmother. However, we will dramatically alter the custody paradigm of this case by awarding FATHER joint legal custody and by expanding the amount of time N.K. will be required to spend with his parents. In a very real sense, our goal will be to "wean" N.K. from GRANDMOTHER while establishing a foundation upon which to build a lasting relationship between N.K. and his father.

(Slip Opinion at 46-48).

Pursuant to our November 27, 2012 Opinion and Order, we conducted a review hearing that began on September 9, 2013 and ended on September 27, 2013. The information adduced at these hearings will be incorporated within the body of this Opinion and we will not outline it now. Following the hearing, Guardian Ad Litem Paul Kilgore submitted a 32 page Report in which he strongly recommended that N.K. remain with GRANDMOTHER.

II. LEGAL PRINCIPLES

The key to any custody trial has been, is, and always will be: What is in the best interest of the children? For most of the history of Pennsylvania jurisprudence, the so-called "best interest" test was relatively amorphous and left to the discretion of the Trial Judge. In 2010,

Pennsylvania's General Assembly passed a comprehensive custody act that specified factors that a Court must consider in determining what is best for children. In pertinent part, that custody act states:

§ 5328. Factors to consider when awarding custody

(a) **Factors.** – In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those facts which affect the safety of the child, including the following:

(1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.

(2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.

(3) The parental duties performed by each party on behalf of the child.

(4) The need for stability and continuity in the child's education, family life and community life.

(5) The availability of extended family.

(6) The child's sibling relationships.

(7) The well-reasoned preference of the child, based on the child's maturity and judgment.

(8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.

(9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.

(11) The proximity of the residences of the parties.

(12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from

abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

(14) The history of drug or alcohol abuse of a party or member of a party's household.

(15) The mental and physical condition of a party or member of a party's household.

(16) Any other relevant factor.

(b) **Gender neutral.** – In making a determination under subsection (a), no party shall receive preference based upon gender in any award granted under this chapter.

23 Pa.C.S.A. § 5328(a)-(b).

The General Assembly did not prioritize between the above factors. Therefore, Trial Judges retain considerable discretion in weighing all of the above factors in order to determine what is in the best interest of the child. The ultimate goal of a custody court is to encourage on-going, nurturing, healthy, and stable parent-child relationships. *Etter v. Rose*, 684 A.2d 1092 (Pa.Super. 1996).

In addition to the general factors outlined above, we must also consider legal principles relating to a child's relocation. At present, N.K. resides with GRANDMOTHER in Palmyra. MOTHER lives approximately two hours away by car in Huntingdon, PA. FATHER lives six hours away in Charleston, West Virginia. If we were to award custody to either MOTHER or FATHER, N.K. would be forced to relocate. This triggers the necessity for us to consider child relocation factors that were also established by Pennsylvania's Custody Act. Those factors are as follows:

- (1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.

- (2) The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.
- (3) The feasibility of preserving the relationship between the non-relocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.
- (4) The child's preference, taking into consideration the age and maturity of the child.
- (5) Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.
- (6) Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.
- (7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.
- (8) The reasons and motivation of each party for seeking or opposing relocation.
- (9) The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.
- (10) Any other factor affecting the best interest of the child.

23 Pa.C.S.A. § 5337(h).

The custody relocation statute further provides that "[t]he party proposing the relocation has the burden of establishing that the relocation will serve the best interest of the child as shown under the factors set forth in subsection (h)". 23 Pa.C.S.A. § 5337(i).

To further complicate our analysis, this case involves a dispute between natural parents and a non-parent. Under Pennsylvania law, a presumption exists that a child should be raised by a parent instead of another person, even a grandparent. See, e.g., 23 Pa.C.S.A. § 5327(b). “Thus, even before the proceedings start, the evidentiary scale is tipped, and tipped hard, to the [biological] parents' side.” *T.B. v. L.R.M.*, 753 A.2d 873, 889 (Pa.Super. 2000), (citing *In re: Hernandez*, 376 A.2d 648 (Pa.Super. 1977)). This presumption in favor of a natural parent may be rebutted, but only by clear and convincing evidence. See, e.g., 23 Pa.C.S.A. § 5327(b).

In reviewing the factual evidence presented, we will consider all of the custody factors and relocation factors outlined above. We will then examine all of the evidence through the prism provided by the presumption favoring the award of custody to a parent.

III. DISCUSSION

A. INTRODUCTION

Initially, we wish to emphasize that our decision today will be based upon the totality of information presented to us both in 2012 and in 2013. In particular, we incorporate by reference everything that we articulated within our November 27, 2012 Opinion, as it provides a necessary foundation for the analysis we will embark upon today.

The first section of our discussion will involve MOTHER. Following the conclusion of testimony on September 27, 2013, we advised all parties that we did not view MOTHER as a candidate for primary custody. While we do not wish to belabor the point, we still need to provide at least a basic explanation for why we do not view MOTHER as a viable primary custodian for N.K.

Following our brief explanation for discounting MOTHER as a candidate for primary custody, we will proceed to undertake a comprehensive analysis on the very difficult question of whether N.K. should live with GRANDMOTHER or FATHER. In undertaking this analysis, we will begin by analyzing the factors set forth in Pennsylvania's Custody Act. For the sake of simplicity, we will refer to the general custody factors set forth in § 5328(a) of the Custody Act as "Custody Factors," and we will refer to the relocation factors set forth in § 5337(h) as "Relocation Factors." Because many of the custody and relocation factors are related, we will combine quite a few for purposes of discussion. After we complete our discussion of the Custody Factors, we will employ qualitative scrutiny in order to reach a final decision.

B. Mother Cannot Be Primary Custodian

We continue to view MOTHER as well-meaning but ill-equipped to be primary custody of N.K. In our November 2012 Custody Opinion, we set forth nine pages of analysis with respect to MOTHER. Nothing has changed that would cause us to disregard or even depreciate the serious

concerns we articulated about MOTHER. MOTHER continues to live with her grandmother. MOTHER still does not work. MOTHER continues to smoke. MOTHER's estrangement with her own family continues unabated. Moreover, we have heard absolutely nothing that would lead us to believe that MOTHER's lifestyle has undergone the type of dramatic transformation that we would have viewed as necessary for her to be a viable primary custodian.

To her credit, MOTHER likely recognized the proverbial handwriting on the wall before the September 2013 testimony even began. In her testimony, MOTHER's most poignant plea was for us to remove N.K. from GRANDMOTHER and place him in FATHER's custody. MOTHER stated: "N.K. needs a parent...He needs a normal upbringing."

To the extent necessary, we incorporate by reference pages 35-44 of our November 2012 Custody Opinion. Having done so, and having concluded that nothing has appreciably changed with respect to MOTHER, we conclude that MOTHER should not be designated as N.K.'s primary custodian. Essentially, as a preliminary presupposition, we eliminate MOTHER as a candidate and will proceed to our analysis as to whether FATHER or GRANDMOTHER should be afforded custody of N.K.

C. CUSTODY FACTORS

(1) Accommodation

Pennsylvania's Custody Act expresses a strong preference that custody litigants work together for the best interests of the child. No

fewer than three Custody Factors and one Relocation Factor require us to analyze the degree to which the parties are able to work together. (See, Custody Factor 1, Custody Factor 8, Custody Factor 18 and Relocation Factor 5). The Custody Factors relating to accommodation have long been a concern of the Pennsylvania Superior Court and this Court. In *Roadcap v. Roadcap*, 778 A.2d 687 (Pa.Super. 2001), the Superior Court stated: "In considering the best interest of a child, one of the factors warranting a change of physical custody from one parent to another is the custodial parent's willingness to cooperate in encouraging the children's relationship with the non-custodial parent." *Id.* at 690. In *Long v. Long*, C.P.Leb.Co., No. 2008-20606 (September 4, 2009), this Court stated: "Perhaps the most profound duty of a custodial parent is to make sure that the other parent continues to enjoy a healthy relationship with the child."

In our November 27, 2012 Opinion, we decried GRANDMOTHER's unwillingness to be an accommodating parent. We weighed the factor of accommodation "strongly" against GRANDMOTHER and stated:

- [G]RANDMOTHER has done everything in her power to promote estrangement between N.K. and his parents. Some of the reasons for this conclusion include the following:
- (a) GRANDMOTHER has never permitted FATHER to enjoy custody of N.K. on any holidays.
 - (b) In the summer of 2012, FATHER requested a week of custody with N.K. GRANDMOTHER acknowledged that she would only permit FATHER to enjoy three days with his son.
 - (c) GRANDMOTHER has involved N.K. in a wide variety of activities, most of which we applaud. However, she has used these activities to drive a wedge between N.K. and

his parents. On occasion, GRANDMOTHER has withheld periods of physical custody from MOTHER and FATHER due to activity conflicts in N.K.'s schedule. During her testimony, GRANDMOTHER asked this Court to further limit the custody rights of MOTHER and FATHER so as not to adversely affect N.K.'s activities. Even more problematic, GRANDMOTHER has enlisted N.K. as an ally in her campaign to elevate activities over parental relationships. It is alarming to us that N.K. has begun saying to his parents: "I could be [fill in activity here] but I cannot because I am forced to be here with you."

- (d) GRANDMOTHER has also withheld periods of partial custody by stating that N.K. is "uncomfortable" traveling to the homes of MOTHER and FATHER. It is the job of a person with custody to encourage with some degree of firmness a child's obligation to spend time with the non-custodial party. Not only has GRANDMOTHER failed to encourage N.K. to spend time with his parents, she has actively discouraged contact by enabling N.K.'s "discomfort" to become a reason for estrangement.
- (e) On multiple occasions, GRANDMOTHER reported MOTHER or caused others to report MOTHER for child abuse. While all of the allegations of abuse were eventually rejected, it was obvious that GRANDMOTHER employed this tactic in an effort to limit contact even further between N.K. and MOTHER.

GRANDMOTHER's husband, Bobby Weir, testified that GRANDMOTHER would suffer "separation anxiety" whenever N.K. left Palmyra to be with his parents. It is obvious to us that this "separation anxiety" has manifested itself in a calculated campaign by GRANDMOTHER to limit the time spent by N.K. with his parents. The custody factors relating to "accommodation" will be weighed heavily against GRANDMOTHER.

(Slip Opinion at 14-15).

At the hearing that took place on September 27, 2013, GRANDMOTHER testified that she took the blunt language in our November 2012 Opinion "to heart." Since November of 2012, GRANDMOTHER has provided a plethora of information regarding N.K.'s activities to both MOTHER and FATHER and has encouraged N.K. to

speak with his parents via telephone. Both MOTHER and FATHER acknowledged that his communication with GRANDMOTHER improved since the date of the last custody hearing.

While acknowledging that improvement has occurred, vestiges of GRANDMOTHER's continuing "I know best and you do not" attitude continued to appear in 2013. For example, GRANDMOTHER sent excessive amounts of personal belongings with N.K. when he traveled to FATHER's house. By so doing, GRANDMOTHER was subtly communicating: "I know what is best for N.K. and I know what he needs; you do not." More disturbing, FATHER was reported for child abuse when he employed physical discipline when N.K. attempted to run away from him during a day at Hershey Park. While GRANDMOTHER presented evidence that the child abuse report was forwarded by N.K.'s counselor, we have little doubt that GRANDMOTHER was involved in framing the issue in such a way that a report of child abuse became an almost foregone conclusion. For example, when N.K. returned to GRANDMOTHER's home and complained about FATHER's behavior, GRANDMOTHER could have squelched the complaint immediately by saying to N.K.: "Your father had every right to do what he did given that you were attempting to run away in a crowded amusement park where your own well-being could have been endangered without adult supervision." Similarly, GRANDMOTHER could have explained to the therapist that N.K. was not injured and that she supported FATHER's use

of physical discipline within the context created by N.K. That GRANDMOTHER did not support FATHER was both obvious and concerning to this Court.

Incorporated within our moniker of "accommodation" is the concept of manipulation. As aptly summarized by GAL Kilgore, "Each party has attempted in their own way to manipulate the child against the other parent and custodian. There has been no outright demeaning of the other parties...but the actions of these parties speak louder than words." With respect to GRANDMOTHER, one incident in particular is of concern. MOTHER described an incident that occurred during one of N.K.'s visits. She described how GRANDMOTHER pressed her to change her position regarding custody. MOTHER stated that GRANDMOTHER continually "pestered" her until N.K. was forced to step in and say: "Gammy, please stop." The fact that GRANDMOTHER attempted to discuss issues relating to custody and pressure MOTHER to change her opinion in the presence of N.K. is precisely the sort of "manipulation" that the GAL decried in his Report.

Our final concern about GRANDMOTHER from the perspective of accommodation was her unwillingness to communicate with FATHER about N.K.'s therapy with Janice Miller. When GRANDMOTHER called Janice Miller to testify at trial, it was with the intent of convincing this Court that GRANDMOTHER had nothing to do with the report of abuse against FATHER. While Ms. Miller verified that she reported FATHER's

supposed "abuse," she also provided troubling testimony that she had never met with FATHER or spoke with him. Moreover, we learned that GRANDMOTHER did not timely update FATHER with respect to N.K.'s therapy.²

With respect to FATHER, we received mixed messages regarding the factor of accommodation. On the one hand, both FATHER and GRANDMOTHER testified that FATHER made an effort to adjust his own custody times in order to make sure that N.K. could attend his activities. In addition, FATHER permitted N.K. to speak frequently with GRANDMOTHER while he was visiting West Virginia even though FATHER believed that the phone calls were "excessive." On the other hand, FATHER continues to display overt hostility toward GRANDMOTHER. During a custody exchange, GRANDMOTHER invited FATHER into her home to help celebrate N.K.'s birthday celebration, but FATHER refused to enter that home. Moreover, FATHER at one point in a fit of anger advised GRANDMOTHER "if I get custody, you will never see N.K. again."³ Given that GRANDMOTHER has expended significant time, energy, money and love to raise N.K., she has earned the right to be respected by FATHER, and we fear that FATHER's hostility has made it difficult for him to display the respect GRANDMOTHER has earned.

² We realize that this testimony cuts both ways. FATHER could and should have initiated contact with Ms. Miller after he learned of N.K.'s therapy. That he did not is also of concern to us.

³ To be fair, FATHER articulated these words after he had been reported for child abuse and at a time that he reasonably believed that GRANDMOTHER was responsible for the child abuse report. In some ways, we understand and empathize with FATHER's anger given the circumstances.

Considering everything, we will continue to weigh the factor of accommodation against GRANDMOTHER. However, we will no longer weigh the accommodation factor "heavily," and we do give GRANDMOTHER kudos for making a concerted effort to improve her relationship with both MOTHER and FATHER.

(2) Abuse

One Custody Factor (Custody Factor 2) and one Relocation Factor (Relocation Factor 9) implicate abuse. The topic of abuse did not feature prominently in our November 27, 2012 Opinion because neither GRANDMOTHER nor FATHER proffered allegations of abuse against one another. Sadly, that has now changed.

During the September 2013 Custody Trial, GRANDMOTHER attempted to rely upon an incident between FATHER and N.K. that occurred at Hershey Park. Some context is necessary. During one of FATHER's visits to see N.K. in Central Pennsylvania, FATHER decided to treat N.K. to a day at Hershey Park. While the day was largely positive, a disagreement did arise. When N.K. did not get his way, he decided to run away from FATHER. Rather than let N.K. go, FATHER grabbed him physically and grabbed his ear while looking in his eyes to emphasize the seriousness of N.K.'s transgression. During the course of this event, N.K.'s ear became red and he suffered pain, but the pain was fleeting and no injury was suffered.

N.K.'s therapist reported this incident to Lebanon County Children & Youth Services as potentially abusive conduct. Based upon the manner in which GRANDMOTHER responded to the incident, based upon her demeanor at trial, and based upon the manner in which GRANDMOTHER attempted to use the incident against FATHER, we reach the conclusion that GRANDMOTHER tacitly encouraged N.K. to view FATHER's conduct as inappropriate and even "abusive." We could not disagree more with this characterization.

Hershey Park is not a place where a 10 year-old boy should be walking or running in an unsupervised fashion. Not only could a 10 year-old boy unwittingly hurt himself in such an environment, but he could also subject himself to potential nefarious behavior by others who may prey upon children. Recognizing the potential peril that could occur if N.K. were left to his own devices among the throngs of people at Hershey Park, FATHER took swift and aggressive action to address and curb N.K.'s inclination to flee. We do not disagree with FATHER's decision to take action, and we will not second guess with 20-20 hindsight the specific actions undertaken by FATHER to respond to the rapidly evolving and emotionally stressful situation created by N.K.

As an aside, both FATHER and his wife Meredith testified that the incident at Hershey Park had an impact upon N.K. that transcended the immediate concern about N.K.'s flight from FATHER's custody. As we understand it, N.K. became far less disrespectful and defiant following the

discipline imposed by FATHER. Sometimes, children need to experience unpleasant consequences in order to learn valuable lessons. We view the Hershey Park incident as falling within this category.

We take this opportunity to declare emphatically that we do not view FATHER as abusive and we will not weigh the Custody Factors regarding abuse either for GRANDMOTHER or against FATHER. In fact, we view FATHER's decision to impose swift discipline upon N.K. at Hershey Park as a factor that actually favors FATHER.

(3) Parental Duties and Developmental Needs

Three Custody Factors all relate to the duties undertaken by parents to fulfill a child's developmental needs. Custody Factor 3, Custody 10, and Relocation Factor 2 all focus upon the comprehensive and fact-specific imperatives that each child requires to grow into productive adulthood. Because the factors are interrelated, we will address them together under the moniker of "Parental Duties and Developmental Needs."

Initially, we wish to emphasize that both FATHER and GRANDMOTHER can provide a safe and adequate physical environment for N.K. Both FATHER and GRANDMOTHER reside in safe suburban neighborhoods where positive children's activities abound. Both FATHER and GRANDMOTHER have the financial resources to provide adequate food and clothing for N.K. and neither has displayed an inclination to withhold necessary resources that are beneficial for N.K. In short, we

perceive little difference between the physical environments that both FATHER and GRANDMOTHER can provide.

The category of "parental duties" does not end with physical necessities; the role of a caregiver is much more comprehensive than simply providing food, shelter and clothing. In this case, there are distinctions between FATHER and GRANDMOTHER with respect to how each has and would undertake caregiving responsibilities.

GRANDMOTHER has been primarily responsible for shepherding N.K. from birth through age 10. By all accounts, N.K. is a generally kind, focused and intelligent young man who values achievement. These attributes cannot be underestimated, and their etiology must be attributed to the work and love displayed by GRANDMOTHER.

N.K. is now in sixth grade at the Palmyra Area School District. His final report card for the fifth grade year was admitted as Exhibit 8. With a couple minor exceptions,⁴ N.K.'s report card revealed exemplary achievement. At the end of the 2013 school year, N.K. was awarded a Presidential Silver Certificate in recognition of outstanding academic achievement (Exh. 10).

In addition to his academic prowess, N.K. participates in quite a few positive activities, including baseball, basketball, and guitar lessons. On top of all of the above, GRANDMOTHER has involved N.K. in her church.

⁴ The "minor exceptions" occurred during N.K.'s second report period, which encompassed November of 2012. During the report card, N.K. received a D and a C and showed regression in several developmental skills. It did not escape our attention that N.K.'s relatively poor performance during his second marking period coincided with the parties' 2012 custody litigation.

N.K. and GRANDMOTHER regularly attend the St. Paul's Church in Palmyra; N.K. is undertaking classes so that he can join the church in the near future, and N.K.'s faith is nurtured at home via daily prayers.

Our primary concern about GRANDMOTHER's caregiving is her overindulgent instinct. FATHER stated in his testimony: "Kathy is raising N.K. like a grandparent and not like a parent." We agree with this sentiment. Because we are concerned about the impact of GRANDMOTHER's overindulgent instincts, we will address them separately under the "miscellaneous factor" category. At this point, we will simply state that our view of GRANDMOTHER's generally good caregiving has and must be tempered by our concern about her tendency to "spoil" N.K.

FATHER's parenting strengths and weaknesses are almost a mirror-image opposite of those displayed by GRANDMOTHER. FATHER is a strong role model who will impose discipline upon N.K. without indulging his whims. During his testimony, FATHER poignantly testified that a parent must teach personal responsibility, self-reliance and a work ethic. We have no doubt that FATHER will live what he preaches and will model values of personal responsibility and self-reliance in a manner that N.K. may not see at GRANDMOTHER's house.

On the other hand, positive activities are extremely important for a developing child. The fear that we expressed in our November 2012 Opinion was that FATHER did not view activities outside the home as

critical to a child's development. Sadly, N.K.'s summer time with FATHER reinforced our fears in this regard. For example, FATHER did not facilitate N.K.'s musical education development during his time in West Virginia, FATHER did not play baseball or basketball much, if at all, with N.K., and FATHER did not involve N.K. in temporary youth activities at a church. All of this was concerning to GAL Kilgore, and we share that concern.

We are well aware that the time spent by N.K. with FATHER in West Virginia was in many ways a great challenge. We are sure that N.K. was apprehensive about leaving GRANDMOTHER and his home in Palmyra. We are confident that FATHER's attempts to impose self-reliance upon N.K. contrasted dramatically with GRANDMOTHER's indulgent tendencies, and this caused friction. We also understand that the limited time N.K. spent in West Virginia would not have permitted participation in a sports league or other organized youth activity.

With all of the above being recognized, we still fear that FATHER does not fully appreciate the value of involving a child in organized positive activities that teach teamwork, self-discipline and the value of delayed gratification. While we view GRANDMOTHER's primary caregiving weakness as overindulgence, we view FATHER's primary caregiving weakness as a tendency to under-expose N.K. to the value of positive activities outside the home.

Considering everything together, we must weigh the factor of parental duties in favor of GRANDMOTHER, but only slightly. GRANDMOTHER has been the primary caregiver for N.K. up to this point in time, and GRANDMOTHER's history of providing good physical care, encouraging academic excellence, and involving N.K. in positive activities requires us to tip the "parental duties" scale in her favor. This is not to say that FATHER would be a bad parent. As noted above, N.K. will more acutely need the influence of FATHER's positive attributes as he enters adolescence. That is why we will weigh this factor only slightly in favor of GRANDMOTHER.

(4) Stability

Two Custody Factors actually utilize the word "stability" and an additional factor implicates the concept without using the actual word. Custody Factors 4 and 9 highlight the need for stability in a child's community life and relationships. Relocation Factor 1 requires us to consider "the extent of involvement and duration of a child's relationship" with each party. We will address all of these factors within this section that we will entitle "Stability."

The factor of stability is the one that weighs most heavily in favor of GRANDMOTHER. For almost all of N.K.'s life, GRANDMOTHER has been his primary caregiver. If there is one thing about which N.K. can be absolutely, positively and confidently assured, it is that GRANDMOTHER

will love him and do anything for him. This rock-solid foundation is not one that can be easily or safely shaken.

In addition to the above, Palmyra is N.K.'s home. N.K. has flourished in the Palmyra Area School District. He has participated in positive activities in the community and in his church. He has made friends with whom he is comfortable. Removing any child from the environment with which he/she is familiar would be traumatic, and we cannot lightly disregard the trauma that relocation away from one's "home" would create.

FATHER has a stable job and a stable marriage. However, aspects of FATHER's life are still in a transition phase. As of the September 2013 Court Hearing, FATHER was in the process of building a new home, but he and his family had not yet moved to that home. In addition, FATHER and his wife were adjusting to the requirements of parenting an infant daughter. On top of all this, FATHER's wife Meredith had given notice of her intent to leave her long-standing job and was planning to open a catering business in the parties' new home. FATHER's wife Meredith said it best in her testimony when she declared: "We have a lot going on."

At this point in time, the factor of stability must be weighed heavily in favor of GRANDMOTHER. Not only does GRANDMOTHER provide a stable environment in a familiar location, but there was nothing that we heard about GRANDMOTHER's life that was in a state of flux. In contrast, FATHER's life is at this point still in a phase of transition. Injecting an 11

year-old boy into this type of transitory environment would create significant challenges for both N.K. and FATHER.

(5) Extended Family

Custody Factor 5 requires us to consider “the availability of extended family,” and Custody Factor 6 requires us to keep in mind a child’s sibling relationships. We will address both of these factors within this section.

As it relates to the dispute between FATHER and GRANDMOTHER, the most important person in N.K.’s “extended” family is MOTHER. While we have rejected MOTHER as a candidate for primary physical custody, we in no way wish to depreciate her importance to N.K. MOTHER gave birth to N.K., and she will always be an important part of N.K.’s life. Because of this, we must evaluate how FATHER and GRANDMOTHER would work to involve MOTHER in N.K.’s life.

In most cases, parents enjoy better relationships with their own mother than they do with an ex-paramour. This situation is dramatically different. Here, MOTHER and FATHER enjoy a good relationship and they “communicate well.” Both MOTHER and FATHER have facilitated N.K.’s contact with the other. Most telling, MOTHER has clearly and emphatically supported FATHER’s quest to obtain custody of N.K.

Unfortunately, GRANDMOTHER and MOTHER are estranged. While GRANDMOTHER has undertaken steps to improve the relationship with her daughter since the November 2012 Custody Trial, the relationship is

still not good. There is a history that underlies GRANDMOTHER's relationship with MOTHER, and that history includes unfounded allegations of child abuse levied by GRANDMOTHER against MOTHER, threats by GRANDMOTHER to attempt to gain custody of MOTHER's other son Alex, and overt efforts by GRANDMOTHER to discourage affection between N.K. and his mother. This history will not be soon forgotten or easily overlooked. Lamentably, this history has contaminated the relationship between GRANDMOTHER and MOTHER, and this is a factor that we must consider.

Both FATHER and GRANDMOTHER are married. Fortunately, the parties' spouses are both good people who project a positive influence upon N.K. GRANDMOTHER's husband, ^{B.W.} [REDACTED], serves as a counterbalance to GRANDMOTHER and helps moderate some of her more emotional instincts. Moreover, ^{B.W.} [REDACTED] has an affinity for music and can share his aptitude and passion for music with N.K. Similarly, we were impressed by the common sense attitude and caregiving instincts of FATHER's wife ^{M.L.} [REDACTED] ^{M.L.} [REDACTED] poignantly described some of the challenges that she and FATHER faced when N.K. spent extended time with them during the summer. Rather than force N.K. to abruptly and completely change every aspect of his lifestyle, ^{M.L.} [REDACTED] astutely focused on trying to form a bond and slowly change behavior. As ^{M.L.} [REDACTED] stated, she was forced to "choose our battles" and she wisely decided not to let "small items" create unnecessary conflict. We were impressed by the

wisdom and conscious prudence exhibited by ^{M.L.} [REDACTED] during what must have been a very challenging time in her life. In summary, we conclude that both ^{B.W.} [REDACTED] and ^{M.L.} [REDACTED] have been and would continue to be positive influences for N.K.

N.K. has half-siblings. His half-sibling Alex resides with MOTHER. By all accounts, N.K. has a good relationship with Alex; but he sees Alex only when visiting his mother.⁶ In addition, N.K. has a new half-sibling. N.K. got to know his baby sister while spending time at FATHER's house this summer. From what we were able to learn, N.K. showed appropriate affection for his baby sister and helped feed her with a bottle. While N.K.'s baby sister is still an infant, we have little doubt that N.K. would grow to enjoy the role of "big brother."

We heard relatively little about other members of FATHER's family and GRANDMOTHER's family. However, we did hear significant testimony about time spent between N.K. and ^{M.L.'s} [REDACTED] family. While in West Virginia, both FATHER and ^{M.L.} [REDACTED] were required to work.⁶ While FATHER and ^{M.L.} [REDACTED] were working, N.K. spent time with ^{M.L.'s} [REDACTED] family. By all accounts, N.K. bonded with ^{M.L.'s} [REDACTED] family, particularly with a boy of his own age by the name of Evan.

⁶ Because of MOTHER's estrangement from GRANDMOTHER, Alex does not spend time in Palmyra.

⁶ To his credit, FATHER took vacation during the first two weeks when N.K. was in West Virginia. However, FATHER could not indefinitely take vacation and he did have to return to work while N.K. was in his custody.

We will weigh the factor of extended family in favor of FATHER. We do so primarily because of FATHER's good relationship with MOTHER, because N.K.'s relationship with his two step-siblings would be facilitated better by FATHER, and because of the common sense parenting instincts displayed by ^{M.L.} [REDACTED].

(6) Preference of the Child

Custody Factor 7 and Relocation Factor 4 both require us to consider the "well-reasoned" preference of the child. In this case, it came as no surprise that N.K. strongly preferred to stay with GRANDMOTHER in Palmyra.

Most of the reasons given by N.K. were good ones. For example, N.K. stated that he enjoys his friends in Palmyra, and he enjoys his sports and music activities. In addition, N.K. told us that he likes attending church and that he enjoys the Palmyra Area School District. In contrast, N.K. complained that he did not go to church very often in West Virginia and that: "I wanted to play baseball in West Virginia, but I could not." All of the above provided legitimate and maturely-reasoned grounds for N.K.'s preference to remain in Central Pennsylvania.

With the above being said, N.K. did blurt out something during his testimony that we found to be illuminating. When N.K. stated that he did not get along well with FATHER and ^{M.L.} [REDACTED] during his time in West Virginia, he was asked why this was so. He responded: "We never got to do what I wanted to do." He made this relatively surprising statement

after acknowledging that he enjoyed a vacation with FATHER to the beach, he enjoyed playing with ^{M.L.'s} [REDACTED] nephew Evan and he enjoyed riding go-carts with his father. Given the entirety of N.K.'s testimony, we interpreted his "We never did what I wanted to do" statement as "We did not *always* do what I wanted to do." Translated, N.K. was complaining that he was not indulged at FATHER's house as he was accustomed to being indulged at the home of his grandmother.

While we will consider N.K.'s preference, and while we find that many of the reasons given by N.K. for his preference were "well-reasoned," we temper these conclusions with the recognition that N.K. is a child who enjoys being indulged and who does not recognize that being pampered and coddled may not be in his best interest. In addition, we also recognize that N.K.'s preference has no doubt been fed by GRANDMOTHER's almost irrational fear of being separated from N.K.⁷ Ultimately, we will weigh N.K.'s preference in favor of GRANDMOTHER, but only slightly.

(7) Proximity of Residences

The proximity of the parties' residences are implicated by Custody Factor 11 and Relocation Factor 3. In this case, it is not just the proximity of FATHER's residence and GRANDMOTHER's residence that we must consider; we must also remember that MOTHER lives over 100

⁷ We learned at the first hearing that GRANDMOTHER and N.K. would pray for a successful outcome of the custody trial. This is only one way in which GRANDMOTHER's obsessive fear of being separated from N.K. would have become embedded in N.K. himself.

miles away from both FATHER and GRANDMOTHER. As N.K. grows older, the distance between the three loci of this custody triangle will create challenges no matter who is awarded primary physical custody. The proximity of the parties' residences is not a factor that we will consider for or against anyone; it is what it is. However, the distance between the parties is something we cannot forget when crafting an appropriate Custody Order.

(8) Childcare

Custody Factor 12 requires us to consider the availability of appropriate childcare arrangements. Fortunately, both GRANDMOTHER and FATHER are able to provide appropriate caregiving at all times when N.K. is not in school. GRANDMOTHER is retired and can personally serve as caregiver. FATHER's wife ^{M.L.} [REDACTED] will shortly become a stay-at-home mom and will be available to provide direct caregiving for N.K. after school. This is not a factor that we will weigh in favor of either party.

(9) Physical Condition of the Parties

Custody Factor 15 requires that a court consider "the mental and physical condition of a party or member of a party's household." It is within this category that we will consider the relative ages of the parties. In our November 27, 2012 Opinion, we stated:

GRANDMOTHER's age is not a specific factor set forth in the Custody Act. However, we must consider GRANDMOTHER's age and generational distance from N.K. under the umbrella of the "mental and physical condition"

factor (C-15) and the omnibus custody and relocation factors. (C-16; R-10). While GRANDMOTHER's age has not yet become significantly problematic for N.K., we are concerned that the fifty plus years of difference between GRANDMOTHER and N.K. will become problematic as N.K. enters puberty.

Raising a teenager is difficult, even for a parent who is relatively young and vigorous. One of the toughest lines a parent must walk is the one between freedom and limits. Parents must discern how to give teenagers the freedom to grow and act independently while at the same time enforcing limits to rein in reckless experimentation.

GRANDMOTHER is half a century removed from her teenage years. She grew up in an era of different technology and different mores. By itself, this would present a difficult challenge for GRANDMOTHER. When you add to the age gap the fact that GRANDMOTHER has already spoiled N.K., we are skeptical that GRANDMOTHER would be able to successfully navigate the passage between freedom and limits.

We cannot forget that GRANDMOTHER will be almost seventy years old while N.K. is still a teenager. A sad reality of human existence is that people in their late sixties and early seventies sometimes die. If GRANDMOTHER were to be afforded custody today and if she were to die prior to N.K.'s eighteenth birthday, the result could be devastating for N.K.

(Slip Opinion at 20-21).

The age difference between N.K. and GRANDMOTHER has not changed, nor will it change. Everything we articulated in our November 27, 2012 Opinion remains applicable today. GRANDMOTHER's age and the difference in age between GRANDMOTHER and N.K. are factors that we can and must weigh in favor of FATHER.

(10) Effect of Relocation Upon Parent

Relocation Factor 6 requires us to evaluate the effect that relocation will have upon a parent. Relocation Factor 8 requires an assessment of a parent's motivation for relocation. This case is not the typical relocation case in that no party is seeking to actually change his/her residence.

However, the factors set forth in the relocation statute are implicated because FATHER is seeking to move N.K. from Central Pennsylvania to his home in West Virginia. As a result, we will assess FATHER's motivation for seeking a change of the existing custody paradigm within this section of our Opinion.

At times during both the 2012 Custody Hearing and the 2013 Custody Hearing, GRANDMOTHER implied that FATHER's quest for custody was motivated by a desire to avoid paying child support. We reject this claim; FATHER's motivation for seeking custody is based upon love and not money.

Given the purposeful estrangement of FATHER during N.K.'s formative years and given the inconvenience necessitated by distance, it would have been relatively easy for FATHER to resign himself to a secondary or even tertiary role in N.K.'s life. To his credit, FATHER has chosen to undertake an active rather than a passive role in his son's life. This is not something that a person would do for pecuniary gain. It is something that can be and was motivated by love and a sense of responsibility.

With respect to this custody dispute, we conclude that FATHER's motive is pure and his desire for custody is legitimate. Accordingly, we will not accept GRANDMOTHER's effort to impugn FATHER's motivation in seeking custody.

(11) Effect of Relocation Upon Child

Relocation Factor 7 requires us to evaluate how N.K.'s life would be altered by a move to West Virginia. Within the umbrella of this very general factor are two sub-questions: (1) What would the external environment be like for N.K. in West Virginia? And (2) How would relocation impact N.K. from an emotional/psychological standpoint? We will briefly discuss each of these sub-questions.

(a) Environmental Issues

We do not view FATHER's geographic area as differing greatly from that of GRANDMOTHER. Charleston, West Virginia is the capital and largest city in West Virginia. Its metropolitan area has a population of approximately 300,000 people. It is the home to numerous institutions of higher learning, including the University of Charleston, Marshall University and the West Virginia University Institute of Technology. Its unemployment and crime rates are relatively low and a plethora of recreational and cultural opportunities are available.

FATHER proposes to live in the Charleston suburb of Winfield. Winfield is served by the Putnam County School District, which has won awards for educational excellence. FATHER testified that youth sports leagues and other activities are available for N.K. in Winfield.

We view FATHER's home in Winfield, West Virginia as being remarkably similar to GRANDMOTHER's residence in Palmyra. Both towns are located relatively close to the capitals of their respective

states. Both towns are served by excellent school districts. Cultural and recreational activities are available in both places. In short, both Palmyra, Pennsylvania and Winfield, West Virginia are good places to raise children. We perceive little difference between the two geographic locations and we will not weigh the environmental surroundings of GRANDMOTHER and FATHER for or against either side.

(b) Emotional/Psychological Impact

On a short-term basis, a move by N.K. to West Virginia would be traumatic. A move would separate N.K. from his friends, his school, his activities and the couple who raised him almost since birth. We cannot and will not underestimate the short-term angst that relocation would cause to N.K.

The long-term outlook of relocation upon N.K. is more difficult to predict. If N.K. were to be relocated, we have little doubt that he would make friends and would become involved in at least some positive activities. Moreover, after what we would expect to be a difficult period of transition, we have little doubt that N.K. would settle into a positive routine family life with FATHER and ^{M.L.} [REDACTED]. Moreover, N.K.'s relationship with MOTHER would be enhanced. N.K. would without question miss constant contact with his "Gammy," but time would help cement N.K.'s relationship with his father and would ameliorate the short-term separation anxiety that relocation would cause.

N.K. is currently in sixth grade. A transition by N.K. to a new middle school would be difficult, but not nearly as difficult as a transition would be in two or three years when N.K. is firmly emplaced within a high school. Therefore, if N.K. is to be relocated, the relocation should occur in the relatively near future rather than during N.K.'s high school years.

When we consider all aspects of N.K.'s relocation, we conclude that relocation would cause short-term apprehension and angst for N.K. However, we are confident that in the long term, N.K. would be able to flourish in West Virginia at least as well as he would in Central Pennsylvania. Accordingly, we will not weigh Relocation Factor 7 for or against either side.

(12) Miscellaneous Factor 1 – “Spoiling” of N.K.

Both Custody Factor 16 and Relocation Factor 10 permit us to consider any other determinant circumstances that could impact N.K.'s long-term best interest. We will be considering two such “miscellaneous” factors. The first is GRANDMOTHER's troubling tendency to overindulge and “spoil” N.K.

One of the traditional privileges of grandparenthood is the ability to “spoil” the grandchildren. Grandparents often joke that their “job” is to spoil the grandchildren and then send them home. Implicit in this joke is the premise that parents must provide the type of discipline that can serve as a counterbalance to the sometimes irrational pandering that grandparents are prone to display. Bill Cosby once quipped:

"Grandparents are similar to a piece of string – handy to have around and easily wrapped around the fingers of their grandchildren." Even though West Point educated and universally respected basketball coach Mike Krzyzewski observed: "It's funny what happens when you become a grandparent. You start to act all goofy and do things you never thought you would do."

In this case, the record is replete with evidence that GRANDMOTHER has fallen prey to what we will euphemistically call the "grandparenting disease" described by Bill Cosby and Mike Krzyzewski. The problem is that there is no parental counterbalance to GRANDMOTHER's tendency to overindulge N.K. In essence, N.K. is becoming "spolled."

In November of 2012, we articulated the following observation about GRANDMOTHER:

While overprotectiveness and indulgence are not specifically listed as custody factors, they fall within the umbrella of C-3 (parental duties include the need to afford children with guided growth), C-9 (nurturing requires the encouragement of growth and the establishment of limits), and C-10 (Indulgence and overprotectiveness are not consistent with a child's developmental needs). In addition, we will consider GRANDMOTHER's overprotectiveness and indulgence within the omnibus umbrella of C-16.

N.K. has all the material possessions, electronic games, music equipment, and other items that a ten year-old could possibly desire. Both MOTHER and FATHER expressed a concern that N.K. does not know the value of money because he has never wanted for anything. When GRANDMOTHER's husband, ^{B.W.} [REDACTED] was asked what N.K. wants but does not have, a lengthy pause occurred before he could identify any item and the item that was identified was relatively insignificant.

N.K. is not obese, but he is obviously overweight. Both MOTHER and FATHER complained that GRANDMOTHER allows N.K. to eat fattening and non-nutritious foods such as donuts, hotdogs, hamburgers, etc. FATHER and his wife have become concerned that N.K. will not eat fruit and vegetables when at their home.

We also classify GRANDMOTHER's behavior as controlling. She still cuts N.K.'s food for him. She has not encouraged N.K. to ride a bike and he does not know how to do so. Until recently, GRANDMOTHER tied N.K.'s shoes for him. She has advised N.K. that he should not swim when he visits MOTHER and FATHER because he could drown. GRANDMOTHER's overprotectiveness has already retarded N.K.'s maturation, but not to a degree that has of yet made N.K. the object of peer ridicule. This could change, though, as N.K. enters adolescence, especially if he remains overweight and subject to the obvious controlling influence of a hovering grandmother.

(Slip Opinion at 18-19).

Unfortunately, GRANDMOTHER's overindulgent instinct has not moderated since November of 2012. Specifically, we heard testimony about the following:

- When N.K. spent time at his father's house, he expected to be waited upon. Friction occurred when neither FATHER nor ^{M.L.} [REDACTED] would perform simple tasks on N.K.'s behalf.
- While N.K. was at his father's house, his father attempted to have N.K. perform the chore of mowing grass. N.K. cried and called home to Palmyra. He spoke with GRANDMOTHER and ^{T.B.W.} [REDACTED] and stated: "I don't want to die." This was an irrational response by N.K. and his instinct to reach out to GRANDMOTHER as one who would "coddle" him was illuminating.

- We have yet to learn that N.K. lacks any material possession he desires. When N.K. traveled to his FATHER's house in the summer, GRANDMOTHER packed an unreasonably large amount of "stuff," including stuffed animals and other non-essential items.
- When N.K. spent time with FATHER at Christmas, he displayed disappointment and not gratitude when FATHER gave him a gift. Apparently, Christmas at FATHER's house was "not up to the standards" that had been created by his Gammy.
- GRANDMOTHER gave N.K. a cellular phone when he went to visit his father. N.K. used the phone to call GRANDMOTHER each and every day, often for unreasonably long periods of time. At no time did GRANDMOTHER encourage a dissipation of N.K.'s dependence upon her.
- While at his father's house, N.K. did not display the ability to do simple tasks that most 10 year-olds would be able to perform such as peeling an orange and making a snack for himself. FATHER reasonably concluded that GRANDMOTHER had performed all of these tasks for N.K. and that he never had a need to learn to them.
- MOTHER testified that when N.K. visited her, he would "throw tantrums a lot" when he did not get what he wanted. This is a clear symptom of a child who was accustomed to getting what he wanted.
- When N.K. was with FATHER at Hershey Park, he responded to a disagreement by attempting to run away. When FATHER physically

restrained him and inflicted a relatively minimal amount of physical discomfort, N.K. chose to complain about FATHER's conduct to his therapist rather than accept FATHER's legitimate effort at discipline. This is also a symptom of a child who was not accustomed to being challenged and corrected by a caregiver.

- When N.K. spoke to this Jurist about what he did not like at FATHER's house, he complained "We never get to do what I wanted to do" despite the fact that he had minutes before described several activities that he did enjoy at his FATHER's house. Rather than being grateful for the opportunities he was given by his father, he complained that he did not always get what he wanted.

When children are raised to believe that they are the center of the universe, they will conclude that the world should revolve around them. This is never healthy. Overindulged children often grow up with an attitude of self-entitlement and without the character to fight through adversity. We fear that N.K. is rapidly headed in this direction. While well-meaning, we doubt that GRANDMOTHER possesses the inclination or strength to establish and enforce limits and we fear that GRANDMOTHER lacks the desire to relinquish the control she now enjoys over N.K.'s life. Together, these caregiving and developmental deficits could be nothing less than disastrous for N.K.

(13) Miscellaneous Factor – Opinion of Guardian Ad Litem

GAL Kilgore has been actively involved in the above-referenced case since 2012. Not only has he been present in court for all the testimony presented, but he has met on multiple occasions with N.K. Some of these meetings were initiated by N.K. We have absolutely no doubt whatsoever that GAL Kilgore has focused on nothing but N.K.'s interest since the outset of his appointment.

In November of 2012, GAL Kilgore recommended that GRANDMOTHER continue to enjoy primary physical custody. However, GAL Kilgore expressed some reservations about GRANDMOTHER's lack of cooperation and outright hostility toward MOTHER and FATHER. He also expressed some concern about GRANDMOTHER's overindulgence. The Opinion that we authored on November 27, 2012 followed the recommendation of GAL Kilgore, and the reservations we expressed in that Opinion mirrored some of the ones he articulated.

Following the September 2013 hearings, GAL Kilgore submitted a 32 page written Report. Focusing upon the parental duties performed by the parties, the GAL wrote "Your guardian can only conclude that the minor child's obvious good character is by [and large] the product of this child being raised by his grandmother." GAL Kilgore also emphasized the stability and continuity of N.K.'s life in Palmyra. GAL Kilgore wrote:

As to stability and continuity of the child's family life, there are stark differences between the parties. While at the grandmother's house, he is the focus of his grandmother and step-grandfather, which at times may be overindulging, nevertheless, his environment is stable, interactive, supporting, and clearly has shown the development of minor child to be an excellent environment for this child's growth mentally (good attitude, performance in school, interest in outside activities, including the playing of musical instruments, etc.), physically (active in sports), socially (numerous friends and ability to make new friends), spiritually (active participation at church and in prayer); and, emotionally (kind, sensitive and good natured).

GAL Kilgore applauded the improvement in the parental bond and relationship between N.K. and FATHER. He stated: "His willingness to consider a relationship with his father, his initiative to call his father, and his opening up to his father and talking to his father as testified by his father is good." However, GAL Kilgore argued that N.K.'s willingness to embrace a continuing relationship with FATHER should serve only to emphasize the weight to be placed upon N.K.'s preference that he continue to live in Palmyra.

GAL Kilgore ended his Report by referencing the legal presumption that a child should be raised by a parent instead of a grandparent. The GAL concluded that the evidence was sufficient to rebut his presumption.

GAL Kilgore stated:

Given what your Guardian feels is a failure to be positive about his son and to dwell on the negative, his continued animosity towards the grandmother, and the father's failure to stand up to the plate this past summer, is enough, in your Guardian's opinion, to rebut that presumption. The circumstances that father found himself in this summer were not good for a change in custody. He and his family are in the process of building a house, he and his family were expecting

a child and that child is now six months old, his family is expecting his wife will stop working and start a catering business once they move into the new house, new financial issues with the new house, expense of two mortgages (old and new house) and the need for healthcare for the family when his wife quits her employment, are enough in and of itself. To add the responsibility of an 11 year-old boy to the mix, in your Guardian's opinion, was too much. The father and his wife were not ready to actively exercise parental duties for the minor child. In your Guardian's opinion, there were too many statements of intentions by the father and his side of the family without actions. I am happy that he is starting to have a better relationship with his son and I think that bears well for the minor child in the long run but given the testimony the Court has before it, and the promises yet unfilled and the lack of involvement of the father and his family in West Virginia, is enough for your Guardian to conclude that the family cannot provide for the needs of this 11 year-old boy at the present time. The soil is rich here in Pennsylvania and is rocky in West Virginia and the boy that has sprouted up from the seeds here in Pennsylvania is strong, active and engaging and should not be cut down and planted somewhere else, despite what some might consider to be contrary to the law of presumptions.

(GAL Report at 30-31).

GAL Kilgore has no agenda in this case other than to effectuate what is best for N.K. GAL Kilgore obviously took his role seriously and his 32 page Report was both articulate and compelling. We must and will afford GAL Kilgore's recommendation with a significant amount of weight.

IV. ANALYSIS

No custody decision is easy, but this one is more difficult than most. In this case, we must decide between a grandmother who has spent almost every waking moment of the past eleven years loving and caring for her grandson and a father who through no fault of his own is only just

now beginning to form a bond with his son. We must weigh the fact that N.K. enjoys living in Palmyra and is in many ways thriving in his current geographic environment against the recognition that N.K.'s relationship with both of his natural parents would be improved with relocation to West Virginia. We must recognize that both the law and tradition presumes that a child is better off being raised by a parent and that the 50 plus year difference in age between N.K. and his grandmother would create challenges in the future, some of which may be insurmountable. Against this, we must weigh the palpable short term angst that relocation would cause to N.K.

As difficult as balancing all of the above factors may be, this case is complicated even further by two counterbalancing concerns we have about the parties themselves. With respect to GRANDMOTHER, we are convinced that she is overindulgent. With respect to FATHER, we fear that he might under-expose N.K to opportunities that N.K. will need to grow and thrive.

How do we sift through all of the above? In fourteen years on the bench, this Jurist has learned that sometimes difficult decisions can be clarified by compartmentalizing sub-issues that may be more easy to evaluate. We will employ this method today. In so doing, we reach several preliminary conclusions based upon all of the information and evidence presented to us. Those conclusions are as follows:

1. N.K. should not be uprooted immediately from Palmyra.

For multiple reasons, we do not believe that a change in custody should be effectuated immediately. As of this moment in time, N.K. is in the middle of a school year. A transfer of custody would require a transfer of school districts. Transferring school districts immediately would force N.K. to move from curriculum that is already in progress to a new location where different curriculum could be in place. This type of academic disruption should be generally avoided.

In addition to the above, FATHER's life is still in a state of flux. N.K.'s baby sister remains an infant who may not yet be sleeping through the night and whose needs require constant attention. In addition, FATHER and ^{M.L.} [REDACTED] are in the process of moving from one home to another.⁸ Finally, ^{M.L.} [REDACTED] will be transitioning from a career outside the home to one that involves cooking large quantities of food for parties and events. At this point in time, FATHER and ^{M.L.} [REDACTED] have much on their collective plates.

If or when custody is changed in this case, N.K.'s move from Palmyra to West Virginia will be a reluctant one. Tears will be shed. Tantrums will be thrown. Lifestyles will be dramatically altered. All of the above will come at a significant psychological cost. In addition, hours of time will have to be expended by FATHER and ^{M.L.} [REDACTED] to familiarize

⁸ Uprooting a family from one home to another, even if those homes are in relatively close proximity to one another, requires a great deal of work to pack, unpack, organize, address lingering construction glitches, etc.

N.K. with West Virginia and introduce him to activities through which he can grow roots and meet new friends. At least at this point, the timing of N.K.'s transportation needs may conflict with his baby sister's nap schedule. The time and energy that will need to be expended by FATHER and ^{M.L.} [REDACTED] to facilitate N.K.'s adjustment to West Virginia would be challenging even in the best of times; we fear that during this transitional phase of FATHER's life, he simply may not have the time and energy to appropriately shepherd N.K. through what we realize will be a difficult transitional time.

In life, timing is always important. When addressing the life-changing question of primary physical custody, timing is even more critical. As we see it, now is not the proper time to uproot N.K. from his current environment in order to move him to his father's residence in West Virginia.

2. Over the long term, N.K. should be with a parent.

Try as we might, simply cannot conclude that it would be in N.K.'s long-term best interest for him to remain indefinitely with his grandmother in Palmyra. There are many reasons for this, most of which have been chronicled in the preceding section of this Opinion. For the purpose of emphasis, we will repeat two:

- (1) GRANDMOTHER has been overindulgent, and we have no confidence that she can or will change her indulgent tendencies in the future. While N.K. may be doing fairly well now, the seeds of

being a "spoiled kid" have already been planted and the weeds of dysfunction created by GRANDMOTHER's overindulgence are just now beginning to germinate. These weeds need to be uprooted before they begin to suppress and overwhelm the more positive aspects of N.K.'s life. In our opinion, FATHER is the only party to this litigation who has the strength and wherewithal to uproot the weeds of dysfunction created by GRANDMOTHER's overindulgence before they become permanently problematic for N.K.

- (2) The age difference between GRANDMOTHER and N.K. is significant and profound. Raising teenagers is one of the most difficult tasks that any human being can undertake. It should be undertaken by people for whom their own teenage years are less than a very distant memory. Adolescence is literally a minefield of potential peril for young people. Bad decisions by teens often end up permanently affecting their own lives and the lives of others. Because of these realities, firm limits must be established and enforced for teenagers. FATHER has displayed the ability to do this for N.K. We fear that GRANDMOTHER has not.⁹

MOTHER testified that N.K. should live in a "normal" environment with a parent. FATHER testified that N.K. should be raised by a parent

⁹ The difference in age between GRANDMOTHER and N.K. would also be apparent in more tangible ways. For example, suppose that N.K.'s Hershey Park tantrum would have occurred when he was with GRANDMOTHER instead of FATHER. Would GRANDMOTHER have had the physical strength and ability to catch N.K. before he ran away? Would GRANDMOTHER have had the physical resources to employ physicality to get N.K.'s attention? Sadly, the answer to the above questions is an obvious "no," and the potential peril that this recognition would create for N.K. could be nothing less than devastating.

who is not subject to what we previously and euphemistically described as "grandparents' disease." We agree with both of these conclusions. Over the long term, it is our opinion that N.K. needs to live with his father.

3. *N.K. will need a continuing relationship with all three parties to this dispute.*

N.K. is fortunate that he has three adults who love him so much that they were willing to spend significant time, resources, money and effort to seek custody. If nothing else is obvious to us, it is that MOTHER, FATHER and GRANDMOTHER all love N.K. We are confident that N.K. recognizes this. Moving forward, it will be necessary for N.K. to maintain a healthy relationship with MOTHER, FATHER and with GRANDMOTHER.

4. *N.K. will need to continue his involvement in positive activities.*

Positive activities are important for young people. Whether it be sports, music, drama, debate teams, or community service, positive activities facilitate socialization, teach teamwork and provide tangible proof that hard work and practice ultimately pay important dividends. Especially for a child like N.K. who is experiencing emotional turmoil in his life as a result of conflict between loved ones, positive activities can serve as a "safe haven" within which the child can focus on something other than the sad turmoil that surrounds him. In this case, we believe it will be absolutely critical for N.K. to continue involvement in positive activities wherever he lives.

5. *We must respect and apply the parental presumption found in the Custody Act*

Pennsylvania's General Assembly has declared as a matter of public policy that as a general rule, children should be raised by parents. The manifestation of this declaration is the presumption favoring parents in a custody fight against non-parents except where clear and convincing proof exists that the child should not be with a parent. The term "clear and convincing evidence" has long been defined as evidence that is "so clear, direct, weighty and convincing as to enable the [fact-finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue..." *Vrolda v. Travelers Inc. Co.*, 316 Pa. 444, 448, 175 A.2d 492 (1934). This standard has been described as the "highest burden in our civil law." *Suber v. Pennsylvania Commission on Crime and Delinquency*, 885 A.2d 678 (Pa.Cmwlt. 2005).

As between FATHER and GRANDMOTHER, FATHER enjoys the benefit of the legal presumption referenced above. The lens through which we view all of the facts in this case must be focused by employing the legal presumption favoring FATHER. We cannot blithely overlook or circumvent this presumption. Ultimately, in order to award GRANDMOTHER with ongoing custody, the scales of justice would have to weight considerably in GRANDMOTHER's favor.

Contemplating all of the sub-compartmentalized issues outlined above has enabled us to develop a framework within which a proper custody order can be crafted. That framework is as follows:

- (1) For the immediate future, custody of N.K. should remain with GRANDMOTHER.
- (2) Over the long term, the legal presumption favoring FATHER and the factual evidence adduced at trial favor a transfer of custody to FATHER.
- (3) Regardless of who is awarded primary custody, the relationship between N.K. and the other parties to this dispute must be protected jealously.
- (4) Whoever is granted primary custody will have to be encouraged to continue N.K.'s involvement in positive activities outside the home.

Having decided upon the above as a framework for our decision, our final role will be to develop an appropriate and specific Court Order to effectuate the goals outlined in our custody framework. We will do so within the final section of this Opinion.

V. CONCLUSION

With respect to legal custody, we will be temporarily designating FATHER and GRANDMOTHER as joint legal custodians. Within our Court Order, we will require both FATHER and GRANDMOTHER to communicate with MOTHER and to consider her input with respect to decisions of importance relating to N.K.

Between today's date and June of 2014, GRANDMOTHER will remain as primary physical custodian for N.K. Commencing on the Sunday following the conclusion of N.K.'s school year in Palmyra, primary physical custody will be transferred from GRANDMOTHER to FATHER. Commencing in August/September of 2014, N.K. will enroll in and attend the Putnam County School system in West Virginia.

Because we cannot know with certainty whether events will arise between today and June of 2014 that could materially affect our decision to transfer primary physical custody, we will afford leave for any party to seek a review hearing. Such a review hearing will have to be requested on or before April 1, 2014. If new and material information is presented, we will revisit the primary custody transfer contemplated by our decision today. However, we wish to emphasize to everyone that something more than "N.K. and I do not want this custody transfer to occur" will have to be presented.

Between today's date and June of 2014, the existing custody schedule will be continued in place with very few modifications. Commencing in June of 2014, we will establish new ground rules with respect to physical custody. For the summer of 2014, we will direct that N.K. spend most of his time with FATHER so that he can be enrolled in positive activities and can become acculturated to his new home in Winfield, West Virginia. However, we will afford both MOTHER and

GRANDMOTHER with time over the summer to spend with N.K.¹⁰ Commencing with the 2014-2015 school year, we will afford both GRANDMOTHER and MOTHER with periodic intervals of physical custody, both at their own residences and in West Virginia.¹¹

While we are reluctant to micromanage FATHER's role as primary physical custodian, we do believe that outside activities are of such importance to N.K. that we will direct that FATHER work with GRANDMOTHER and N.K. to develop a plan for outside activities that will be both practical for FATHER's family and stimulating for N.K. In addition, we will include provisions in our Order to promote communication between the parties and the availability of ongoing counseling for N.K.

Before proceeding to issue a specific Court Order to effectuate the above, we need to end with several comments. In outline form, they are as follows:

- (1) We have noted improvement in the relationship between all three parties since November of 2012. However, lingering animosity exists, and a truly functional tripartite custody arrangement has yet to be attained. We urge all parties to set aside their own animosity for one another in order to work together for N.K.'s benefit.

¹⁰ Commencing with the summer of 2015, we will expand the time that N.K. will spend with both his mother and grandmother during the summer months.

¹¹ As FATHER has inconvenienced himself to spend time with N.K. in Central Pennsylvania, we will expect both MOTHER and GRANDMOTHER to inconvenience themselves in order to spend time with N.K. at his new home in West Virginia.

Essentially, we ask MOTHER, FATHER and GRANDMOTHER to all elevate their love for N.K. over the animus they feel for one another. N.K. is well aware of the hard feelings that exist in this case. As he grows older, N.K. will without question learn to recognize, respect and appreciate any loved one who demonstrates the ability to sublimate animosity beneath love.

- (2) We are not blind to the potential peril that could accompany our decision to transfer custody to FATHER but delay its implementation until June. We recognize that GRANDMOTHER could seek to use the next nine months as a time to sabotage N.K.'s relationship with his father. We also have little doubt that such a campaign would succeed in the short term given N.K.'s already expressed desire to remain in Palmyra. However, such a tactic by GRANDMOTHER would not be in N.K.'s best interest. What will be in N.K.'s best interest would be for GRANDMOTHER to swallow her own disappointment and work hard to make the transfer of N.K.'s custody as easy and seamless as possible. At the same time, GRANDMOTHER should savor and enjoy the nine additional months of primary physical custody that we have granted her.
- (3) The Order we will enter today is intended to create a process by which N.K.'s primary custody will be transferred from GRANDMOTHER to FATHER. We do not expect this process to always be easy. Therefore, we will continue Attorney Kilgore's role

as Guardian Ad Litem and we encourage both GRANDMOTHER and FATHER to become actively involved in N.K.'s counseling. Our goal is to provide N.K. with a support system upon which he can rely as he comes to grips with the reality that his life will be very different one year from now.

- (4) Finally, we wish to again remind both parties of something we articulated in our November 27, 2012 Opinion. We stated:

Implicit in our custody decision is the NECESSITY that the parties communicate. We are well aware that lingering animosity will make communications difficult and uncomfortable. So be it. N.K. needs to learn that everyone loves him more than they dislike each other. In addition, he must learn that civil communication is necessary, even among those who consider themselves to be enemies...To both FATHER and MOTHER we add this: "It is obvious that you do not like or trust GRANDMOTHER. However, she is the woman who spent significant time, effort and money to raise your child for almost ten years. Even if you do not like GRANDMOTHER, she has earned your respect and you should always act in N.K.'s presence in a manner that conveys the respect she has earned."

A Court Order to effectuate the decisions we have rendered today will be entered simultaneous with this Opinion.