

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

C.R.H.	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
J.S.H.	:	No. 2045 MDA 2018

Appeal from the Order Entered November 16, 2018
 In the Court of Common Pleas of Lancaster County Civil Division at
 No(s): CI-18-00287

BEFORE: BOWES, J., NICHOLS, J., and STEVENS*, P.J.E.

MEMORANDUM BY BOWES, J.: **FILED JUNE 20, 2019**

C.R.H. (“Father”) appeals from the November 16, 2018 custody order granting J.S.H. (“Mother”) primary physical custody of their son, J.R.H., born in July of 2016. In addition to challenging the trial court’s custody determination, Father assails the portion of the custody order that announced the court’s finding of contempt against him and the imposition of a \$500.00 sanction. We affirm in part, and reverse in part.

The certified record reveals the following facts. J.R.H. was born of the volatile, intermittent relationship between Father and Mother.¹ The parties

¹ Father has a twelve-year-old son from a prior marriage. He exercises physical custody on alternating two-week periods. Similarly, Mother has three children from a prior marriage, including two sons, ages fourteen and eleven, and a daughter, age nine. She shares physical custody of these children with her ex-husband pursuant to an informal agreement.

* Former Justice specially assigned to the Superior Court.

did not marry or cohabitate during the three-and-one-half-year liaison. To Mother's fury, Father periodically initiated relationships with other women. Unnerved by Father's brazenness, Mother typically reacted to the trysts by threatening to withhold access to J.R.H., and by menacing Father and his paramours with obscenity-laced threats of physical harm. By December 2017, when J.R.H. was approximately seventeen months old, the parties terminated their relationship permanently.

On January 12, 2018, Father initiated the underlying custody action by filing a complaint seeking shared legal and physical custody of J.R.H. The trial court set forth the following relevant procedural history:

A custody conciliation conference was held on February 13, 2018, which resulted in a [r]isk of [h]arm hearing (per 23 Pa.C.S.A. § 5330) being scheduled to determine if Father poses a risk of harm to [J.R.H.] due to his pending stalking charge in which Mother was the alleged victim.^[2] By Order dated April 13, 2018, the . . . hearing was canceled by agreement of counsel and another custody conciliation conference was scheduled.

Father filed a Petition for Special Relief on June 5, 2018, requesting among other things that the parents share transportation for custody exchanges and that the matter proceed directly to a custody hearing. By this time[,] the parents had an agreement in place which granted Father partial physical custody of [J.R.H.] every Monday and Wednesday from 3:00 p.m. until

² Father was charged with stalking on January 19, 2018, due to sending three text messages to Mother. N.T., 10/29/18, at 239; Trial Court Opinion, 1/14/19, at 10, ¶ 56. At the preliminary hearing, on a date unspecified in the record, Mother agreed to withdraw the charge after 90 days if Father committed no further violations. Trial Court Opinion, 1/14/19, at 10, ¶ 56. Father's stalking charge was withdrawn on June 19, 2018. *Id.* at 11, ¶ 58.

7:00 p.m. and alternating weekends. The request for special relief was denied [by order dated July 18, 2018].

Trial Court Opinion, 1/14/19, at 1-2.

The conciliation conference occurred on July 25, 2018, during which Father participated *via* telephone. The conciliation officer submitted a conference summary and recommended order that maintained the informal custody schedule exercised by the parties, *i.e.*, Mother exercised primary physical custody and Father exercised partial physical custody on every Monday and Wednesday from 3:00 p.m. to 7:00 p.m. and on alternating weekends from Friday at 3:00 p.m. to Sunday at 4:00 p.m. In addition, as it relates to Father's appeal of the contempt finding, the recommended order provided, "Any 3rd parties who accompany the parents to exchanges shall not leave the vehicle, and shall not involve themselves in the exchanges in any way." Recommended Order, 7/25/18. By interim order dated August 22, 2018, the trial court adopted the foregoing provisions in the recommended order and scheduled a custody hearing for October 29, 2018.

On August 23, 2018, Mother filed a petition for contempt against Father, wherein she alleged that Father willfully disobeyed the recommended order that the conference officer submitted for approval on July 25, 2018. She alleged, in part, that during the custody exchange on August 1, 2018, Father's "paramour proceeded to roll her window all the way down, hang out the car window and interrupt the exchange by saying, '[J.R.H.] come give me a big kiss! I love you so much baby!' [Father], who was holding the child,

proceeded to give child to his paramour so she could kiss him.” Petition for Contempt, 8/23/18, at ¶ 8. The trial court held Mother’s contempt petition in abeyance until the custody hearing scheduled on October 29, 2018.

During the ensuing hearing, Father testified on his own behalf and presented the testimony of J.R.H.’s paternal grandmother, M.H. Mother countered with her own testimony and that of her boyfriend, K.S. Contrary to the relief sought in Father’s custody complaint, during the hearing, Father requested primary physical custody rather than simply increased periods of partial physical custody.

By order dated November 15, 2018, and entered on November 20, 2018, the trial court awarded Mother primary physical custody and granted Father partial physical custody consistent with the prior informal arrangement. However, rather than continuing weekly physical custody on Monday and Wednesday evenings from 3:00 p.m. to 7:00 p.m., Father was awarded weekly overnight custody between 3:00 p.m. Wednesday and 8:00 p.m. Thursday. The existing periods of overnight custody on alternating weekends remained unchanged beyond coordinating the dates to coincide with the weekends that Father has physical custody of his older son. In the same order, the trial court found Father in contempt of the August 22, 2018 interim order and imposed a \$500.00 sanction.

On December 14, 2018, Father timely filed a notice of appeal and a concise statement of errors complained of on appeal pursuant to Pa.R.A.P.

1925(a)(2)(i) and (b). The trial court filed its Rule 1925(a) opinion on January 14, 2019.

On appeal, Father presents the following issues for our review:

1. Did the trial court err in finding Mother was more likely than Father to encourage contact between [J.R.H.] and the other parent where the only evidence presented regarding this factor was that Mother had prevented Father from seeing [J.R.H.]?
2. Did the trial court err in concluding that Mother would provide greater stability in [J.R.H.]’s life than Father, relying in large part on an unsupported assertion that Father would expose [J.R.H.] to multiple romantic partners, and despite finding no evidence that [J.R.H.] was negatively impacted by any of his partners?
3. Did the trial court err in concluding that the scale tipped to Mother in terms of a healthy emotional development for [J.R.H.] when the court did not find any evidence that Father’s conduct [had] an adverse effect on the emotional development of [J.R.H.]?
4. Did the trial court err in reducing the visits Father had under the interim custody order, giving him a limited partial custody schedule and awarding Mother primary custody when the factors did not weigh in Mother’s favor over Father, and the court’s conclusions were contrary to its findings?
5. Did the trial court err by holding Father in contempt of an Order when the incident cited occurred before the Order was issued and did not violate the terms of the Order?

Father’s brief at 11-12 (re-ordered for ease of disposition).

We review Father’s issues according to the following scope and standard of review:

[T]he appellate court is not bound by the deductions or inferences made by the trial court from its findings of fact, nor must the reviewing court accept a finding that has no competent evidence to support it. . . . However, this broad scope of review does not vest in the reviewing court the

duty or the privilege of making its own independent determination. . . . Thus, an appellate court is empowered to determine whether the trial court's incontrovertible factual findings support its factual conclusions, but it may not interfere with those conclusions unless they are unreasonable in view of the trial court's factual findings; and thus, represent a gross abuse of discretion.

R.M.G., Jr. v. F.M.G., 986 A.2d 1234, 1237 (Pa.Super. 2009) (quoting **Bovard v. Baker**, 775 A.2d 835, 838 (Pa.Super. 2001)).

Moreover,

on issues of credibility and weight of the evidence, we defer to the findings of the trial [court] who has had the opportunity to observe the proceedings and demeanor of the witnesses.

The parties cannot dictate the amount of weight the trial court places on evidence. Rather, the paramount concern of the trial court is the best interest of the child. Appellate interference is unwarranted if the trial court's consideration of the best interest of the child was careful and thorough, and we are unable to find any abuse of discretion.

R.M.G., Jr., supra at 1237 (internal citations omitted). The test is whether the evidence of record supports the trial court's conclusions. **Ketterer v. Seifert**, 902 A.2d 533, 539 (Pa.Super. 2006).

A.V. v. S.T., 87 A.3d 818, 820 (Pa.Super. 2014). In addition,

[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, supra at 540 (Pa.Super. 2006) (quoting **Jackson v. Beck**, 858 A.2d 1250, 1254 (Pa.Super. 2004)).

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 wellbeing.” ***Saintz v. Rinker***, 902 A.2d 509, 512 (Pa.Super. 2006) (citing ***Arnold v. Arnold***, 847 A.2d 674, 677 (Pa.Super. 2004)).

The Child Custody Act (“Act”), 23 Pa.C.S. §§ 5321-5340, provides the following enumerated list of factors a trial court must consider in determining the best interests of a child when awarding any form of custody:

§ 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 factors 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.

(2.1) The information set forth in section 5329.1(a)(1) and (2) (relating to consideration of child abuse and involvement with protective services).

(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.

23 Pa.C.S. § 5328(a).

This Court has stated that, “[a]ll of the factors listed in [§] 5328(a) are required to be considered by the trial court when entering a custody order.”

J.R.M. v. J.E.A., 33 A.3d 647, 652 (Pa.Super. 2011) (emphasis in original).

Further,

Section 5323(d) provides that a trial court “shall delineate the reasons for its decision on the record in open court or in a written opinion or order.” 23 Pa.C.S.A. § 5323(d). Additionally, “section 5323(d) requires the trial court to set forth its mandatory assessment of the sixteen factors prior to the deadline by which a litigant must file a notice of appeal.” **C.B. v. J.B.**, 65 A.3d 946, 955 (Pa.Super. 2013), *appeal denied*, 70 A.3d 808 (Pa. 2013).

A.V., supra at 822-23.

Instantly, the trial court entered an order and contemporaneous opinion which explained its consideration of all of the § 5328(a) custody factors. **See** Trial Court Opinion, 11/19/18, at 1-9. The court found determinative § 5328(a)(1), (4), and (10), which all weighed in favor of Mother. It weighed § 5328(a)(2), (3), (5), (6), (9), and (13) equally between the parties, and found the remaining factors inapplicable. None of the custody factors weighed in Father’s favor.

As it relates to Father’s first three issues, we restate the relevant portions of the trial court’s analysis. With respect to § 5328(a)(1), which party is more likely to encourage and permit frequent and continuing contact between the child and another party, the court found, in part:

Father tormented Mother by sending her pictures of other women he was seeing during their breakups. He even indicated that one of these women “would raise” [J.R.H.]. Mother reacted strongly to these communications by threatening to kill the woman and

Father amidst a torrent of foul language. Apparently, Father knows how to “bait” Mother. There were numerous incidents involving the police over the course of the parents’ relationship. Father has a harassment conviction.^[3] Mother has a disorderly conduct conviction.^[4] The credible evidence substantiates that Mother wanted to raise [J.R.H.] with Father, but Father had no intention of being monogamous with Mother. . . . Mother was deeply hurt by Father’s practice of toying with her. Father relished victimizing Mother by proclaiming his sexual exploits. . . . Despite the turbulence in their relationship, Mother gave Father a partial physical custody schedule with [J.R.H.].

Id. at 3.

With respect to § 5328(a)(4), the need for stability and continuity in the child’s education, family life, and community life, the court found:

Father suggests that Mother’s present financial situation is precarious. The [c]ourt does not agree, as Mother is gainfully employed as a registered nurse. Father suggested that Mother does not have the resources to pay for activities [J.R.H.] would enjoy. Again, the [c]ourt finds this claim without merit. Mother has three other children in her home from her now-dissolved marriage. Mother is able to provide the stability and continuity necessary for [J.R.H.]’s family life. Mother has a new paramour who appears to be of a stable nature. Based upon past behavior, the [c]ourt finds that Father will continue to date many women and, as a consequence, [J.R.H.] will be exposed to a string of Father’s paramours, which would be contrary to [J.R.H.]’s best interest.

Id. at 5-6.

³ In December of 2017, Father was charged with summary harassment of Mother due to sending her text messages, and he was subsequently convicted. Trial Court Opinion, 1/14/19, at 8, ¶ 42; N.T., 8/29/18, at 112-113.

⁴ Mother was convicted of disorderly conduct arising from a custody exchange on June 18, 2018, when she screamed a profanity in public at M.C., Father’s then-girlfriend, who was also a police officer. N.T., 10/29/18, at 246-250.

Finally, with respect to § 5328(a)(10), which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child, the court found, "in terms of a healthy emotional development for [J.R.H.], the scale tips to Mother. Father's manipulative nature is a concern for the [c]ourt." ***Id.*** at 8.

In its opinion pursuant to Pa.R.A.P. 1925(a), the trial court subsequently explained the custody decision as follows:

[J.R.H.] is the product of [a] relationship between Mother and Father which extended back several years prior to the Child's birth. That relationship is characterized by a series of antagonistic separations followed by resumptions. As the court stated in its [Opinion] which accompanied the Order under appeal, both parents engaged in disreputable behavior. In a thorough review of the statutory custody factors, the court found that the scale tips to Mother as the more stable and loving parent. The demeanor of the parents during their respective testimonies was most telling. Father was aggressive and at times obnoxious in portraying Mother as the root cause of their toxic relationship. By contrast, Mother presented as humble and earnest. She acknowledged her mistakes and the fact she should have walked away from Father when the first incident of his bad behavior occurred. In comparison, Father minimized his responsibility for his behavior. In Father's testimony, Father requested that he be granted primary physical custody of [J.R.H.]. Father's objective plainly ignored the fact that [J.R.H.] is in a stable, loving home where he is beneficially bonded with his three older half-siblings. Father's choice to prioritize his desire to punish Mother ahead of [J.R.H.]'s welfare speaks loudly to his motives. As Mother indicated in her testimony, according to Father "everything must be on Father's terms."

Mother has a healthy relationship with the father of her three children. The testimony established that Mother is able to manage a past relationship in a manner consistent with her children's needs and interests. Mother also has a healthy adult relationship with [K.S., her boyfriend, with whom she did not

cohabit at the time of the proceedings.] These relationships contrast sharply with the relationship between Father and Mother.

There can be little doubt that Father will continue to have multiple paramours with whom his relationships will come and go, as this is his historical pattern of behavior. Stability for [J.R.H.] and [J.R.H.]’s need for a healthy emotional environment dictates that Mother should continue to have primary physical custody of [J.R.H.].

Trial Court Opinion, 1/14/19, at 18-19.

Turning to the merits of this appeal, in his first issue, Father asserts that the trial court abused its discretion in weighing § 5328(a)(1) in favor of Mother. Specifically, he argues that the court’s conclusion on this custody factor is unreasonable in light of its finding that “Mother’s jealousy drove her to threaten Father and his various romantic liasons [sic]” and that Mother engaged in “periodic threats of violence.” Father’s brief at 32; Trial Court Opinion, 1/14/19, at 7. In addition, Father contends that the court’s conclusion is an abuse of discretion because Mother intermittently withheld custody of the child throughout the relationship and she precluded contact entirely between August 2017 and January 2018, the date that Father initiated the underlying custody action. N.T., 10/29/18, at 9, 26-27.

In rejecting Father’s complaints, the trial court found that a pattern of behavior existed between the parties even before J.R.H. was born where they “would have a serious disagreement, Father would leave Mother[,] and Mother would get upset and threaten Father.” Trial Court Opinion, 1/14/19, at 4. However, the court credited Mother’s testimony that she eventually realized

that Father enjoyed manipulating her emotions, and Mother's acknowledgement that she should have terminated the relationship at the first sign of his unscrupulous behavior. **Id.** at 13. In contrast to these character determinations in favor of Mother, the court found that "Father minimized his responsibility for his behavior." **Id.** at 18. It reasoned, "Father's manipulation and victimization of Mother speaks volumes as to the esteem in which he regards [her.]" **Id.** at 22.

Moreover, the trial court concluded that, following the end of their romantic relationship, Mother encouraged Father to maintain contact with J.R.H. and even suggested that Father take the child to dinner. **Id.** at 10. Again, the record supports the trial court's findings. N.T., 19/29/18, 134-35, 219-21.

Similarly, the record sustains the court's decision to credit Mother for waiving the risk of harm hearing in April of 2018, and granting Father partial physical custody prior to the custody conciliation conference. Father acknowledged on cross-examination as follows:

Q. You never had a [risk] of harm hearing?

A. You're right.

Q. Because at one point [Mother] decided to waive that and forgo that?

A. Yes.

Q. And the basis for that was the stalking charge?

A. You're correct.

Q. And when you have one of those charges that require a [risk] of harm hearing, the [c]ourt is not permitted to give any custody pending that hearing. Are you aware of that?

A. Yes, I'm aware of that.

Q. So it was pending that hearing [that] you were not able to see [J.R.H.] after you filed for custody?

A. Yes, that was a large portion of that time.

Q. And that after a period of time [Mother], as I already stated, agreed to waive that [hearing] and began permitting time with [J.R.H.], agreeing to custody?

A. Yes. . . .

Q. But she agreed to waive the [risk] of harm hearing prior to the charges being withdrawn?

A. Yes.

Q. And she started out with a Monday, Wednesday?

A. Yes.

Q. And then expanded that, correct?

A. Eventually, yes.

Q. And then expanded that yet again to every other weekend?

A. Yes.

Id. at 109-10. Thus, based on the testimonial evidence, we discern no abuse of discretion by the court in holding that, despite evidence that Mother previously withheld custody as retribution for Father's infidelity, Mother acknowledged those mistakes and currently is the party who is more likely to

encourage and permit frequent and continuing contact between the child and another party pursuant to § 5328(a)(1). Father's first issue fails.

In his second issue, Father argues that the court abused its discretion to the extent it relied on his prior romantic relationships in weighing § 5328(a)(4) against him and in favor of Mother. Father asserts that he introduced J.R.H. to only one girlfriend, and that he has not cohabited with any girlfriend since J.R.H.'s birth. Further, Father asserts that there is no record evidence that his prior relationships had an adverse effect upon J.R.H. We disagree.

While Father never cohabitated with other women during his relationship with Mother, the certified record not only established Father's pursuit of sexual relationships with multiple women, but it also confirms Mother's visceral reactions to his infidelity, which affects the child indirectly. **See** N.T. 10/29/18, 35-37. For example, during the hearing, Father produced a series a voicemail messages, ostensibly to expose Mother's backlash. However, that evidence also highlighted the collateral effects of Father's misconduct. As Father testified, "you can actually hear [J.R.H.] in the background" during one of the angry outbursts. **Id.** at 61. Hence, the court did not abuse its discretion in considering the secondary effects of his behavior on J.R.H.

Moreover, Father does not dispute the court's findings that he would "venture out and invest in somebody else." Trial Court Opinion, 1/14/19, at 6. Nor does Father dispute that he was in relationships with at least three

women, “both before and after [J.R.H.] was born,” that he initiated a brief relationship during August of 2017, and that he dated a third woman, M.C., between August of 2017 and the end of August of 2018. **Id.** at 6. In contrast, there is no evidence that Mother engaged in multiple romantic relationships or that her love life impaired J.R.H. in any way. To the contrary, the record supports the court’s finding that Mother was in a relationship for approximately one year with K.S., who enjoys a good rapport with all of the children, including J.R.H. N.T., 10/31/18, at 269, 271.

In its Rule 1925(a) opinion, the trial court reasoned, “The record wholly supports the court’s finding that Father thrives on having multiple romantic partners. The best indicator of future behavior is past behavior.” Trial Court Opinion, 1/14/19, at 21. The court concluded, “A parade of Father’s paramours entering and exiting [J.R.H.]’s life does not promote the stability the [c]hild needs to thrive psychologically and emotionally.” Trial Court Opinion, 1/14/19, at 21. Based on our review of the certified record, and on the well-settled principle that determinations regarding weight of the evidence are within the sole province of the trial court, we discern no abuse of discretion by the court in concluding that Father’s history of multiple romantic relationships is a detriment to J.R.H.’s stability. **See A.V., supra** at 820 (“[O]n issues of credibility and weight of the evidence, we defer to the findings of the trial [court] who has had the opportunity to observe the proceedings and demeanor of the witnesses.”) (citation omitted).

In his third issue, Father asserts that the court abused its discretion in finding, pursuant to § 5328(a)(10), that Mother is the party more capable of providing for J.R.H.'s emotional well-being. He supports his position by reciting Mother's disreputable behavior, including her disorderly conduct conviction arising from a custody exchange on June 18, 2018. In addition, Father challenges the court's finding that he victimized Mother, and that he lacks the capacity to sustain durable, healthy adult relationships. Finally, Father contends that, assuming that the court's fact finding is accurate, that evidence is insufficient to demonstrate that he is incapable of attending to J.R.H.'s emotional development.

The trial court responded to Father's contention as follows:

Father complains that it was error for the court to find that in terms of healthy emotional development for [J.R.H.], the scale tips to Mother. Again, the court heard the testimony and determined the credibility of the parties and their witnesses. Mother provides a healthy and wholesome environment in which [J.R.H.] will thrive. Father was not credible as he attempted to persistently portray Mother as unfit. The record demonstrates the degree to which Father victimized Mother, often by provoking her in a passive-aggressive manner. Notably, Mother has demonstrated her ability to maintain healthy adult relationships with men other than Father, while Father appears to lack the capacity to sustain durable, healthy adult relationships. The only possible conclusion based on the record is that Mother is more able than Father to provide for the healthy emotional development for [J.R.H.].

Trial Court Opinion, 1/14/19, at 22-23. The certified record corroborates the court's findings regarding Father's philandering, and his manipulative behavior, as well as its credibility determinations in favor of Mother and

against Father. N.T., 10/29/18, at 38, 51, 186-88, 193, 195, 196-98. The court's conclusion that Mother is better able to provide a healthy emotional environment for J.R.H. is reasonable in light of those findings. Father's third issue fails.

In his fourth issue, Father asserts that the trial court abused its discretion in altering his partial custody schedule. Specifically, Father complains that the custody order, which grants him overnight physical custody every Wednesday at 3:00 p.m. through Thursday at 8:00 p.m. and on alternating weekends, eliminated the four-hour custodial period that he previously exercised on Mondays from 3:00 p.m. to 7:00 p.m. Ignoring the weekly net increase of thirty-five hours of physical custody that Father enjoys under the current schedule, Father complains that, on weeks that he does not exercise weekend custody, he does not have custody of J.R.W. for six consecutive days between Thursday night and the following Wednesday afternoon. Under the prior arrangement, that period was one day fewer, *i.e.*, the five days between Wednesday night to Monday afternoon. In sum, Father asserts that the court-ordered periods of partial custody are not proportionate to the court's ultimate finding that all but three of the statutory best-interest factors either weighed in favor of both parents equally or were inapplicable.

We disagree with Father's assertion. Stated plainly, the certified record demonstrates that the custody court considered all of the relevant factors carefully and thoroughly and fashioned a custody order that achieves J.R.W.'s

best interests. **See** Trial Court Opinion, 11/18/18, at 2-9. While Father assails the court's order, he neglects to explain how the additional consecutive day without physical custody impairs J.R.W.'s best interest in light of the fact that Father was awarded a period of overnight custody that increased the duration of his weekly net custody by thirty-five hours. As Father's custody schedule is based upon the court's § 5328(a) analysis, which is supported by the certified record, we will not disturb that decision. **See Saintz, supra** at 512 ("appellate interference is allowed only where it is found that the custody order is manifestly unreasonable as shown by the evidence of record."). Father's fourth issue fails.

In his final issue, Father challenges the portion of the November 16, 2018 custody order that found him in contempt of the August 22, 2018 *interim* custody order for an incident that occurred on August 1, 2018. Highlighting the fact that the predicate behavior happened **before** the trial court entered the order proscribing it, Father asserts that he cannot be held in contempt retroactively. We agree.

In reviewing an appeal from a contempt order, our standard of review is as follows:

Each court is the exclusive judge of contempts against its process. The contempt power is essential to the preservation of the court's authority and prevents the administration of justice from falling into disrepute. When reviewing an appeal from a contempt order, the appellant [sic] court must place great reliance upon the discretion of the trial judge. On appeal from a court order holding a party in contempt of court, our scope of review is very narrow.

We are limited to determining whether the trial court committed a clear abuse of discretion.

Harcar v. Harcar, 982 A.2d 1230, 1235 (Pa.Super. 2009) (quoting ***Langendorfer v. Spearman***, 797 A.2d 303, 307-08 (Pa.Super. 2002)).

The Child Custody Law provides, in pertinent part, "A party who willfully fails to comply with any custody order may, as prescribed by general rule, be adjudged in contempt." 23 Pa.C.S. § 5323(g)(1). This Court has held as follows:

In order to sustain a finding of civil contempt, the complainant must prove certain distinct elements by a preponderance of the evidence: (1) that the contemnor had notice of the specific order or decree which she is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent.

Harcar, supra at 1235.

Instantly, the trial court's interim custody order entered on August 22, 2018 prescribed that, "Any 3rd parties who accompany the parents to exchanges shall not leave the vehicle, and shall not involve themselves in the exchanges in any way." Custody Order, 8/22/18 at 2. Recognizing that the alleged violation associated with Father's paramour's participation in the August 1, 2018 custody exchange predated the operative order by approximately three weeks, the trial court concluded that Father violated the spirit of the order that the custody conciliation officer **recommended** on July 25, 2018. The court reasoned that the August 22, 2018 custody order simply "memorialized" a condition set forth in the conciliation officer's recommended

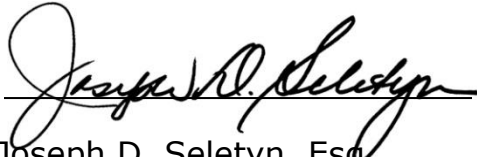
order. Trial Court Opinion, 1/14/19, at 14. The trial court's rationale overlooks the fact that the recommendations outlined in the conference officer's suggested order were not binding on the parties until formally adopted by the trial court. Indeed, apparently recognizing that the trial court was free to reject the conciliation officer's recommendation in its entirety, Mother did not file the underlying petition for contempt until August 23, 2018, the day **after** the court adopted the recommendation. Thus, while we agree with the trial court's view that Father violated the spirit of the conciliation officer's recommendation regarding the involvement of third parties, we reject the notion that Father's overstep of a proposed recommendation constitutes contempt pursuant to §5323(g)(1). Stated another way, the conference officer's recommendation is not the equivalent of a custody order and the relevant incident occurred before the trial court issued the custody order that formally precluded the third-party interaction that forms Mother's complaint. Therefore, the court abused its discretion by finding Father in contempt retroactively.

For all of the foregoing reasons, we affirm the trial court's respective award of primary physical custody to Mother and partial physical custody to Father. However, we reverse the trial court's finding of contempt and vacate the \$500.00 sanction.

Order affirmed in part, and reversed in part. Jurisdiction relinquished.

J-S18011-19

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: 06/20/2019