

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

WAYNE AND DENISE BAILEY	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
R.N. AND C.I.	:	
	:	
	:	No. 1356 WDA 2022
	:	
	:	
	:	
GINA KNEPPER AND BRENDA	:	
KNEPPER	:	
	:	
Appellants	:	

Appeal from the Order Dated October 21, 2022
In the Court of Common Pleas of Bedford County Orphans' Court at
No(s): 364-2021

BEFORE: BENDER, P.J.E., STABILE, J., and PELLEGRINI, J.*

MEMORANDUM BY BENDER, P.J.E.: **FILED: June 2, 2023**

L.W.N., born in March of 2017, and D.M.N., born in May of 2019, (collectively Children) are the subjects of this custody case. Brenda Knepper (Brenda), the maternal great-grandmother, and Gina Knepper (Gina), the maternal grandmother, (collectively Appellants) were the Intervenor below. Wayne and Denise Bailey (the Baileys), the paternal grandmother and step-grandfather, were the Plaintiffs below. C.I. (Mother) is the natural mother of the Children and R.N. (Father) is the natural father of the Children. Following our review, we affirm.

* Retired Senior Judge assigned to the Superior Court.

Following a number of hearings, the trial court issued a Memorandum Opinion (TCMO), dated October 21, 2022, in which it set forth the factual background of this case and listed the petitions filed by the various parties. The trial court also included a discussion directed at all sixteen custody factors identified in 23 Pa.C.S. § 5328(a) and the relocation factors contained in 23 Pa.C.S. § 5337(h). The trial court further included an Order (TCO), dated October 21, 2022, detailing a custody schedule.

After the TCMO and the TCO were issued by the trial court, Appellants appealed to this Court and raised the following three issues for our review:

1. Did the trial court abuse its discretion and commit an error of law when it awarded primary physical custody to paternal grandparents despite the dangers posed by a household member, namely, Father, especially when 23 Pa.C.S.[] [§] 5328(a) requires the [c]ourt to give weighted consideration to the factors which affect the safety of the [C]hild[ren]?
2. Did the trial court abuse its discretion in its determination that Appellants should not share legal custody of the minor [C]hildren?
3. Did [the trial court] abuse its discretion by awarding paternal grandparents primary physical custody when the custody factors weighed heavily in favor of Appellants?

Appellants' brief at 4.

The trial court then issued a Pa.R.A.P. 1925 Opinion (1925 Opinion), dated December 20, 2022, that provided a summary of the case, a list of the issues raised by Appellants, a reference to the TCMO with regard to the first and third issues raised and a discussion supplementing its brief statement discussing the second issue in the TCMO. **See** 1925 Opinion, 12/20/22.

The relevant scope and standard of review in custody matters are as follows:

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

V.B. v. J.E.B., 55 A.3d 1193, 1197 (Pa. Super. 2012) (citations omitted).

Furthermore, we note that:

The 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)).

A.H. v. C.M., 58 A.3d 823, 825 (Pa. Super. 2012). Moreover, "[w]hen a trial court orders a form of custody, the best interest of the child is paramount."

S.W.D. v. S.A.R., 96 A.3d 396, 400 (Pa. Super. 2014) (citation omitted).

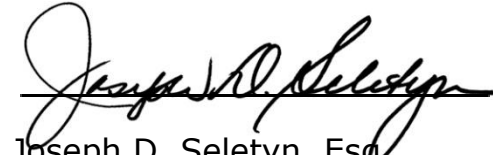
Appellants' arguments are essentially requesting that this Court re-find facts and re-weigh the evidence presented. However, our standard of review

does not permit us to function in this manner. Rather, our standard of review requires that we “accept findings of the trial court that are supported by competent evidence of record, as our role does not include making independent factual determinations.” **V.B.**, 55 A.3d at 97. Moreover, 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.” **Id.** We do not conclude that that is the situation here. The trial court’s findings are based on competent evidence contained in the record and its conclusions are not unreasonable.

We have reviewed the certified record, the parties’ briefs, the applicable law, and the thorough, well-reasoned TCMO, dated October 21, 2022, and the 1925 Opinion, dated December 20, 2022, both that were authored by the Honorable Brandi J. Hershey of the Court of Common Pleas of Bedford County. We conclude that Judge Hershey’s opinions properly dispose of the issues presented by Appellants in this appeal. Accordingly, we adopt both of the trial court’s opinions as our own and affirm the custody order on that basis.

Order affirmed.

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: 6/2/2023

**IN THE COURT OF COMMON PLEAS OF BEDFORD COUNTY,
PENNSYLVANIA
CIVIL DIVISION--LAW**

WAYNE AND DENISE BAILEY, :
PLAINTIFFS :
V. : NO. 364 FOR 2021
R.N. :
[REDACTED] AND :
[REDACTED], :
C.I. DEFENDANTS : IN CUSTODY
V. :
BRENDA AND GINA KNEPPER, :
INTERVENORS :

MEMORANDUM OPINION

AND NOW, this 21st day of October 2022, the Court enters the following Memorandum Opinion:

On March 17, 2022, July 28, 2022, August 11, 2022, and October 7, 2022, custody hearings were held regarding the minor children, [REDACTED] L.W.N., [REDACTED] D.M.N., [REDACTED] L.W.N., born March 2017, (hereinafter "[REDACTED]") and [REDACTED] D.M.N., born May 2019, (hereinafter "[REDACTED]"). [REDACTED] C.I. is the natural mother, (hereinafter "Mother") and [REDACTED] R.N. is the natural father, (hereinafter "Father") of the children. The parents were never married. The Plaintiffs are Wayne and Denise Bailey, the paternal grandmother and step-grandfather of the children, (hereinafter "Baileys"). The Intervenor is Brenda Knepper, the maternal great-grandmother and Gina Knepper, the maternal grandmother (hereinafter "Brenda" and "Gina" respectively or the "Kneppers" collectively).

The Baileys filed a Petition for Custody on May 25, 2021, followed by an Amended Petition for Custody on June 30, 2021, and then an Emergency Petition for Special Relief on August 31, 2021. The Court entered an Ex-Parte Order on August 31, 2021, granting the Baileys legal and primary physical custody and periods of supervised partial custody to the parents. A custody hearing was scheduled for October 13, 2021, at which the Father failed to appear despite being served. An Order was entered by agreement between the Baileys and Mother whereby the Baileys would retain legal and primary physical custody, Mother would exercise periods of partial custody to be supervised by a professional agency, and Father would have periods of supervised physical custody.

On December 2, 2021, the Kneppers filed an Emergency Petition to Intervene. At the Conference on January 10, 2022, the Petition to Intervene was granted and the Kneppers were granted partial custody every other weekend, by agreement of the parties. The Kneppers then filed a Petition to Modify the Custody Order on January 27, 2022, along with a Notice of Proposed Relocation filed on March 22, 2022, essentially seeking primary physical custody of the children. Mother filed a Petition for shared legal and shared unsupervised physical custody of the children on March 3, 2022. At the custody hearing held on March 11, 2022, the parties reached an interim agreement that the Baileys and the Kneppers would share legal custody, that during the school year, the Baileys would exercise primary physical custody and the Kneppers would exercise partial custody every other weekend. Mother and Father would each exercise supervised partial custody, with

supervision being provided by their respective family members. During the school summer vacation, the Baileys and the Kneppers would share physical custody on a weekly basis. Further hearing was scheduled for July 28, 2022. Thereafter, the Kneppers filed an Emergency Petition for Special Relief on June 29, 2022, requesting the children be enrolled in therapy. On July 11, 2022, Father filed a Petition to Modify the Custody Order, requesting that he be granted primary physical custody. The various petitions were all heard at the custody hearings as set forth above.

In making a primary custody determination, a Court must be guided by the best interests of the child. That determination must include a consideration of the physical, intellectual, moral and spiritual well-being of the child, as well as the factors enumerated in the custody statute. **Speck v. Spadafore**, 895 A.2d 606 (Pa.Super.2006), **L.F.F. v. P.R.F.**, 828 A.2d 1148, 1152 (Pa.Super. 2003). When doing the above analysis, it must be noted that in custody cases between the biological parents, there shall be no presumption that custody should be awarded to a particular parent. **23 Pa.C.S.A. § 5327(a)**. In cases involving a parent and a third party, such as a grandparent, there is a presumption that custody should be awarded to the parent. The presumption in favor of the parent may be rebutted by clear and convincing evidence. **23 Pa.C.S.A. § 5327(b)**. Clear and Convincing evidence is evidence that is so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts at issue.

When deciding a custody matter, a court must conduct a thorough analysis of the best interests of the child based on the relevant Section 5328(a) factors. **E.D. v. M.P.**, 33 A.3d 73, 80 (Pa.Super.2011). "All of the factors listed in section 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).

Turning to the factors contained in **23 Pa.C.S.A. § 5328**, the Court considers the following:

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.

Unfortunately, the evidence has shown that none of the parties would be likely to encourage and permit frequent contact between the children and the other parties. Each respective side of the family has effectively demonstrated a lack of respect for the other side of the family. The relationship between the two families is nothing less than toxic, and sadly, these children suffer the consequences of this estrangement. Denise Bailey testified that initially, almost every time they had contact with the Intervenors, it resulted in the Pennsylvania State Police being summoned. However, the Court notes the testimony of Denise Bailey that the "Intervenors

are good caregivers for the children and have every right to see them." The Baileys made attempts to switch weekends which would result in sharing the Easter holiday with the Intervenors, but that offer was met with criticism and apparently declined by the Intervenors because "she only offered because it would suit her," alleging that Mrs. Bailey had an open house at her store that day. Additionally, the Baileys offered for the Intervenors to keep the children an extra day on President's Day. The Court also notes that Brenda Knepper testified that if granted primary custody, she felt the Baileys should only be entitled to periods of supervised partial custody, which is unreasonable given the fact that the Baileys have exercised primary custody for quite some time and the children are doing fairly well. It is apparent to the Court that the Knepper's high level of animosity toward the Baileys prevents them from objectively making decisions that would be in the children's best interest. The testimony of both Intervenors leads the Court to be concerned that if they were granted primary physical custody, they would engage in a pattern of behavior to restrict or limit the Baileys' contact with the children as much as possible. As a result, the Court finds that this factor may weigh in favor of the Baileys, but only slightly.

(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. Section 5329.1(a) (relating to consideration of child abuse and involvement with CYS).

Mother testified that during their relationship, both her and Father used multiple illicit drugs, including methamphetamine. Mother and her family blames Father for her drug addiction. Likewise, Father and his family blames Mother for his drug addiction. Mother further testified that their relationship was physically abusive, often times in the presence of the young children. The parents began dating in October 2015 and separated for the final time in May 2021. The parties separated multiple times during those seven years. Specifically, Mother testified that he would yell, scream, break things, physically hold her down, dragged her down the hall, held a knife to her throat, and during one occasion, choked her until she was unconscious. On that last occasion, Mother awoke to ^{D.M.N.} screaming at her. The Baileys testified that they were not aware of the abuse as it was happening. The Court found Mother's testimony credible as to these acts of abuse. Concerning to the Court was Gina's testimony that she knew the parents were on drugs and that there was domestic violence, to some degree, but that she never called the police or child protective services because she had the children a lot of the time and that it was not her place to call. Father denies ever abusing Mother, stating that her testimony was all lies and a complete fabrication. However, on cross examination, Father admitted that they were both serious drug users at the time and it is possible he did those things and did not remember because he was high. He further testified that it is just as likely that she made it all up because she was high on drugs too.

Additionally, there are other instances of Father's volatile temper which concerns the Court. Mother alleged, and Father admitted in his

testimony, that he fired a shotgun into her vehicle in the summer of 2021. In his testimony, Father attempted to justify these actions by stating Mother was cheating. Approximately, two years ago, Father got into a physical altercation with Wayne Bailey in the presence of the children. The altercation was over Father's continued use of illicit drugs. Furthermore, Father and Mr. Bailey got into an altercation in June 2022, which led to Father entering a guilty plea to Harassment-Subjecting Other to Physical Contact, 18 Pa.C.S.A. § 2709(A)(1). The Court specifically notes that both Mr. Bailey and Father testified on direct that they enjoy a really good relationship and neither mentioned this incident in their testimony until subject to cross examination, at which point both only conceded the altercation was verbal in nature. Unfortunately, this glaring omission causes the Court to question their credibility as to all aspects of their testimony. When questioned about why he and Mr. Bailey argued during this June 2022 incident, Father claimed he could not remember, which leads this Court to conclude that Father is not credible. Mr. Bailey was recalled as a witness and testified that he called the state police after Father became enraged after Mr. Bailey disciplined the children. Mr. Bailey explained that in the past, a sign of Father's drug use was inexplicable or unreasonable anger. Upon observing that behavior again during the June 2022 incident, Mr. Bailey became concerned that Father was using drugs again, which prompted the call to the state police.

Additionally, the Court heard about an incident following one of the Court hearings wherein Father drove to Mother's residence to confront her boyfriend about his possible role in a recent burglary of Denise Bailey's retail

business. It would seem to the Court that Father continues to have difficulty in controlling his emotions, which leads him to engage in inappropriate and risky behavior, which is concerning as it relates to the best interests of the children if he were to be awarded primary custody or even unsupervised custody. The Court is of the belief that Father would benefit from an anger management counseling program.

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

When the children are in the Kneppers' custody, Brenda watches them during the day while Gina works, and Gina watches them in the evenings. Generally, the Kneppers perform typical parental duties for the children while in their custody, such as meals, activities, discipline and attending to their various needs. The Kneppers allege the Baileys do not properly care for the children. However, the record does not support this allegation. The Baileys likewise perform parental duties for the children, such as meals, assistance with school, and medical care. Each side alleges the other fails in each of these regards. For example, the Kneppers alleged the Baileys are not giving the children proper nutrition, alleging the boys are thin and act odd. However, sufficient evidence was not presented to substantiate these allegations. Each party admitted to failing to discuss these concerns with the other party due to the toxic nature of the relationship. Currently, while the children are in the custody of the Baileys, Father does perform some parental duties, such as playing with them and cooking for them. However, the bulk of the parental duties in that household are performed by the Baileys. Likewise,

currently, Mother performs limited parental duties for the children. The Kneppers do not approve of Mother's paramour. Due to Mother's admission that he uses drugs, the Kneppers do not allow the children around him. As a result, Mother inexplicably has gone long periods of time not seeing the children, even though she would have been able to come to the Kneppers' house to see them anytime.

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

The evidence has demonstrated that these children have been subjected to a significant amount of instability and upheaval when they were in the care of the parents. Both parents were drug addicts and the children witnessed acts of domestic violence. Both the Kneppers and Baileys are stable in all of the important areas, such as financial, housing and their relationships. Unfortunately, the relationship between the Kneppers and the Baileys is poor at best, which likely has subjected these children to additional hardship and trauma. It is no surprise that the Court heard testimony that at the exchanges, these children are afraid to express any emotion, for fear of upsetting either the Kneppers or Baileys. That is a most heavy burden for these children to carry. The Kneppers testified that the children historically spent a lot of time in their home, spending the night three or four nights per week. This continued following the parent's separation in May 2021, when Mother "was not in a good place." Mother testified that she was staying with various friends and using meth on a daily basis. Mother acknowledged that she was not being a good mom during this time. The Baileys filed for custody

against the parents in August 2021, and the Court granted them primary custody. The children remain in their primary care and custody, excepting the summer of 2022, wherein the Baileys and Kneppers shared physical custody. The children need stability, especially due to the turmoil of their early years. That stability could be had in either the Bailey or Knepper home. At this point, while Father is moving forward in gaining stability, he still has areas he must improve upon, including anger management, housing and overall independence. Father is currently employed at two pizza shops. Likewise, Mother is improving in gaining stability, but the Court has strong concerns about her mental health, managing her addiction, and her choices, especially in terms of living with a boyfriend who uses illegal marijuana. Initially, the Court only granted Mother partial custody while being supervised by a professional agency. Mother did well during these supervised visits and the Court vacated the requirement for professional supervision, in favor of Brenda or Gina providing the supervision. The Kneppers feel that Mother is ready for loosely or unsupervised time with the children, provided that her boyfriend does not have any contact with the children. Mother is gainfully employed with a medical marijuana company.

(5) The availability of extended family.

Multiple people live in the Knepper house, which is owned by Brenda and her husband Les Knepper. Gina resides in the home and Brenda's other daughter Selena, resides in an apartment above the garage. Selena is not employed due to schizophrenia and Les is retired. The Court was concerned about how only Gina and to a lesser degree, Brenda, appear to be the only

ones in that household that are fully invested and engaged with the children. Brenda testified that Les is not a "child guy." He will watch the children if necessary, but he does not provide day to day care for them. Additionally, there was no evidence that Selena is engaged in a relationship with the children. This is concerning because if the children live in the Knepper home primarily, there is a strong likelihood that they will not have the feeling that all children deserve, to live in a household with individuals who are fully committed to their care, security and safety. On the other hand, in the Bailey household, both Wayne and Denise are both very "hands-on" with the children and are obviously highly invested in their daily lives. Additionally, Father also lives in the Bailey home and the children have daily contact with him. Other extended family of the Baileys live nearby, and the children have lots of cousins they play with regularly.

(6) The child's sibling relationships.

The Court believes that it is in the children's best interest to keep them together. It appears that their disagreements are typical for brothers of their age. There are no other siblings or half-siblings involved in this matter.

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

Due to their age, the Court did not interview the children, nor did any party request it.

(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.

As set forth above, the relationship between the Baileys and Kneppers is very tenuous and difficult. There is no trust between the parties. The Pennsylvania State Police and Bedford County Children and Youth Services have been called multiple times. In August 2021, when the Baileys were granted ex-parte temporary physical custody, the Kneppers refused to relinquish the children and a physical altercation almost erupted, until the state police were summoned. Once the Baileys had primary custody and before the Kneppers intervened in the case, multiple reports were made to children and youth services. All of these reports were unfounded. Custody exchanges between the Kneppers and Baileys have been tumultuous at times. As recently as June 2022, Gina Knepper admitted to yelling at the Baileys due to issues with scheduling dental and medical visits for the children. The children have been subjected to angry verbal exchanges between the Baileys and Kneppers. This tension filled tug-of-war between the Baileys and Kneppers is having a profound negative impact on the children. Each side feels justified in their inappropriate actions and blames the other party for all of the resulting issues.

(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.

By the Knepper's own testimony, they initially conceded that Mother is not yet in a place where she is ready to expand her periods of custody. Mother

could have been seeing the children a lot more, but instead choose to continue living with a paramour who, by her own testimony, continues to use drugs.

This past summer, Mother went two months without seeing the children, with no legitimate excuse. Father is making some progress, he has been clean and sober, he is employed and has regular interactions with the children.

However, as set forth above, he still has hurdles to overcome in gaining sufficient stability and consistency.

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

While exercising primary custody, the Baileys have attended to the children's daily needs, including medical care. The boys receive routine medical and dental care, including immunizations. ^{D.M.N.} [REDACTED] has a speech issue and the Baileys enrolled him in Early Intervention until he aged out of that program. He is scheduled to see specialists to further investigate his ongoing speech issue. The Kneppers filed a Petition to enroll the children in counseling. Denise Bailey testified that she did not feel that was necessary, although conceded that ^{D.M.N.} [REDACTED] has displayed concerning behavior. Denise Bailey further testified that she is open to an evaluation to see if the child would benefit from counseling. The Court believes that an evaluation for counseling would be appropriate for both children due to the observed domestic violence between the parents as well as the tumultuous relationship between the grandparents. ^{L.W.N.} [REDACTED] appears to be developing typically and currently does not receive any specialized services. Overall, the Court

concludes that the Baileys have been meeting the children's daily needs in all areas.

The Court believes that the Kneppers would likewise attend to the children's daily needs if they were granted primary custody. They simply have not done so because even though they previously watched the children several overnights per week, Mother essentially was still their custodian at that time. During the instant litigation, the Kneppers attempted to direct the children's medical and dental care, which resulted in heated arguments with the Baileys as to who was entitled to make the appointments and choose the providers.

Mother admits that when she had the children, they were behind on routine shots. Although the Court accepts the testimony that ^{D.M.N.} [REDACTED] being behind was pursuant to doctor's instructions.

Father participates in the children's care to an extent and also attends doctor visits whenever possible. However, Father does not take the lead in these areas, likely due in large part to the Court's requirement for supervised contact.

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

The distance between the Bailey and Knepper residences is approximately 51 miles and they are in different school districts.

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

The evidence demonstrated that both the Baileys and the Kneppers are able to make appropriate child-care arrangements when necessary.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another.

As set forth above, there exists an extremely high level of animosity between both sides of the family. Each side blames the other side for a multitude of transgressions. Custody exchanges have been tumultuous. The Court heard testimony that on one occasion, Brenda Knepper, age 79, pulled her fist back and threatened to punch Denise Bailey in the face. At another exchange, Denise Bailey was explaining ^{D.M.N.'s} [REDACTED] negative reaction to a shot and Gina Knepper got in her face and screamed at her that "it was all her fault." The Baileys admitted to their role in also getting verbally heated at multiple exchanges. Denise Bailey testified that initially, every time they had contact with the Kneppers, the state police had to be called. The Baileys described difficulty in communicating, aggressiveness, threats of physical violence and an overall antagonistic manner on the part of the Kneppers. These assertions made by the Baileys were bolstered by this Court's observations of Gina Knepper in the courtroom. At one hearing, this Court found Gina Knepper in contempt for her inappropriate conduct during the proceeding. Additionally, multiple reports were made to Bedford County Children and Youth Services against the Baileys, leading the Baileys to allege that this was a form of harassment by the Kneppers. All investigations were unfounded.

Due to all of this conflict, the children are afraid to display any emotion toward to other party. Both the Baileys and the Kneppers consistently

testified that communication with the other side is almost non-existent, and it is clear to this Court that there is no trust between the parties. There is little to no communication as to medical appointments, doctor visits, therapy appointments or other important matters involving the children. In fact, large fights have resulted in the inability of the Kneppers and Baileys to communicate and share information effectively. This inability has negatively affected the children in a multitude of ways. For example, potty training ^{D.M.N.} [REDACTED] has been made even more difficult because the parties refuse to share information about progress in each home. In the forthcoming Order, the Court intends to address the current "shared legal custody" arrangement, due to the antagonistic behavior and inability to cooperate about important matters involving the children.

There were a few instances wherein the parties communicated successfully regarding the custody schedule. The Court notes that the parties made an interim agreement to share physical custody during the summer months. However, every instance of a request to modify the schedule is met with suspicion. For example, the Baileys offered to switch weekends that would then allow the Kneppers to see the children on Easter. Rather than being happy to have the opportunity to see the children on a holiday weekend, the Kneppers only offered criticism as to the motivation behind the gesture. So, while history has demonstrated that cooperation is possible, it is not likely. However, the Court believes that despite their animosity, the parties will follow the terms of the ultimate court order.

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

As set forth above, both Mother and Father struggled with drug abuse during their relationship and following separation. Mother testified that Father regularly drank alcohol and they both abused many kinds of drugs including marijuana, heroin, methamphetamine and bath salts. Neither the Baileys or the Kneppers have a history of drug or alcohol abuse. Mother testified that she has not used methamphetamine in over a year and currently has a prescription for medical marijuana. Of great concern to the Court is that Mother continues to associate with individuals, such as her boyfriend, that ingest illegal substances. Mother testified that her boyfriend uses marijuana and does not have a prescription. The Court recognizes that a successful addiction recovery is less likely when one continues to surround oneself by those using illegal drugs. Mother continues to choose the company of her boyfriend over spending time with her children, although that seems to have improved somewhat more recently. The Court notes that Mother "had a falling out" with the Kneppers regarding this issue and they will not allow the boyfriend in their home, which precipitated Mother choosing not seeing the children for two months in the summer of 2022. Mother is currently on probation and has passed all of her drug tests. In April 2022, Mother entered a guilty plea to Endangering the Welfare of a Child, a charge filed in 2020, for not supervising her child and allowing him to wander near the road.

Father testified that he last used marijuana a year ago and last used methamphetamine and heroin two years ago. He testified that he stopped

using drugs because he found God. He currently is not enrolled in any type of drug treatment or counseling. Father attended drug and alcohol counseling two years ago, although there was no evidence that he successfully completed that outpatient program.

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

Father has been diagnosed as being Bipolar, having Attention Deficit Disorder, Obsessive Compulsive Disorder and Drug Induced Psychosis. Two years ago, when he was heavily using methamphetamine and heroin, Father was involuntary placed at the Meadows for inpatient mental health treatment. Currently, Father sees a doctor at Hyndman Area Health Center for medication management. Father testified that he only is prescribed Ritalin at this point.

Mother testified that she suffers from Post-Traumatic Stress Disorder, resulting from the abusive relationship with Father, as well as depression. Mother further testified that she physically suffers from neuropathy and neck pain. Prior to the July 2022 hearing, Mother had not meaningfully addressed her mental health and was not seeing the children. Gina Knepper testified that Mother needed to focus on her mental health first and that Mother "wasn't ready to take the steps she needs in terms of therapy and counseling." Mother has since enrolled in counseling and has resumed visits with the children.

16) Any other relevant factor.

The Kneppers are seeking primary custody of the minor children. If that Petition were granted, it would involve a relocation of the children. In **D.K. vs. S.P.K.**, 102 A.3d 467 (Pa.Super.2014), the Pennsylvania Superior Court recognized that neither parent was relocating at the time of the petition, only the children if the requested modification were granted. The Court found that the Relocation Statute is not triggered *per se* where neither parent is relocating and only the custodial rights of the parties are at issue. However, the Court in **D.K.** stated:

“[W]e do not hold that a trial court cannot or should not consider the factors of section 5337(h) in a case where a request for modification of the custody order involves the change of residence of the child to a significantly distant location.”

Id. at 474.

“In a custody case where neither parent is relocating, but the child stands to move a significant distance, trial courts should still consider the relevant factors of section 5337(h) in their section 5328(a) best interest analysis.”

Id. at 477-478.

Pursuant to the above, the Court intends consider the relocation factors as set forth in **23 Pa.C.S.A. §5337(h)** as part of the overall best interest analysis pursuant to the custody factors as set forth in **23 Pa.C.S.A. § 5328(a)**. Inasmuch as the Court has already made factual findings as set forth above, we do not intend to repeat the same information below in the relocation analysis. However, the Court will offer additional findings and rationale as set forth below:

Pursuant to **23 Pa.C.S.A. § 5337(h) Relocation factors**.—In determining whether to grant a proposed relocation, the court shall consider

the following factors, giving weighted consideration to those factors which affect the safety of the child:

- (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.**

Both the Baileys and the Kneppers were involved with the children prior to the Baileys being granted primary custody in August 2021. Denise Bailey testified that transitioning to their home primarily was not a shock to the children because they were used to spending time in their home. Likewise, the Kneppers testified that when Mother still had custody of the children, they stayed with the Kneppers several times each week. However, the Court gives weight to the dynamics in each home. As set forth above, the Court harbors some concern as to the dynamics in the Knepper home, as there are other people in the household that do not appear invested and engaged with the children.¹ On the other hand, in the Bailey home, every household member, including Father, is fully engaged with the children. The Court is also concerned that Mother is less stable and less consistent in her path to recovery. An example being her choice to not visit with the children for two months this past summer.

- (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.**

¹ The Court notes that Les, a household member, was not called as a witness to offer sworn testimony. Likewise, Selena who lives above the garage, was not called as a witness. The evidence was unclear as to whether she would qualify as a household member.

^{L.W.N.} [REDACTED] is five (5) years old and ^{D.M.N.} [REDACTED] is three (3) years old. ^{D.M.N.} [REDACTED] is enrolled in I-U8 preschool. Until the age of three, the Baileys had ^{D.M.N.} [REDACTED] enrolled in Early Intervention for speech and occupational therapy. ^{D.M.N.} [REDACTED] was tested again, and additional services were recommended, prompting his enrollment in I-U8. ^{L.W.N.} [REDACTED] has started kindergarten and seems to be doing well. He has made friends and played T-ball. The Court does not place much weight with the "change of schools" component of this factor, since the boys are still so young. While a change in schools would be somewhat disruptive, the Court believes this would be minimal due to their young age. The Court trusts that whichever household is ultimately awarded primary custody will endeavor to enroll ^{D.M.N.} [REDACTED] in whatever services are necessary for his success.

(3) The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.

As set forth at length above, there is strong animosity and distrust between all of these parties. The only way the relationship will be preserved with the other party is through entry of a detailed court order. The Court notes the parties live approximately fifty miles from one another. Both the Baileys and the Kneppers are financially stable and that is not expected to change in the future.

(4) The child's preference, taking into consideration the age and maturity of the child.

The Court did not interview either child due to their young age.

(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.

As set forth at length above, both the Kneppers and the Baileys have engaged in a pattern of behavior that is concerning and inappropriate when judged in terms of the best interests of the children. If given the chance, the Kneppers would end or severely curtail the Baileys' involvement with the children. However, there was some indication that the Baileys begrudgingly recognized the Kneppers place of importance in the children's lives, based upon the testimony of Denise Bailey.

(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.

As the Kneppers themselves are not proposing to move, this factor is not relevant.

(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.

The Court did not hear any credible evidence that moving the children would enhance the general quality of life for the children, other than being in the primary care and control of the Kneppers.

(8) The reasons and motivation of each party for seeking or opposing the relocation.

The Court concludes that the respective positions of the Kneppers and Baileys is genuinely held. There is no hidden motivation on the part of either, both the Kneppers and the Baileys truly believe that their respective household is better suited for primary custody of the children.

(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.

The Court discussed the concerns about Father's past abusive behavior and apparent continued anger management issues at length above. Currently, both parent's periods of custody are supervised. The Court intends to address Father anger management issues in the forthcoming Order. The Court does not have any abuse concerns as to the Kneppers and Baileys.

(10) Any other factor affecting the best interest of the child.

None.

ORDER OF COURT

AND NOW, this 21st day of October 2022, the Order of Court is as follows:

- I. The Plaintiffs, Wayne and Denise Bailey shall have legal custody of the minor children, ^{L.W.N.} [REDACTED], born March 2017, and ^{D.M.N.} [REDACTED], born May 2019. The Defendants, ^{R.N.} [REDACTED] and ^{C.I.} [REDACTED], and the Intervenors, Gina Knepper and Brenda Knepper, shall have full access to service providers for the minor children, including but not limited to doctors, dentists, counselors, psychologists, psychiatrists, teachers and therapists. They shall also be permitted to have copies of the children's records from each of the above-described providers, provided that they shall be responsible for the cost associated therewith. They shall also be permitted to consult with said providers.

However, all decisions regarding the child's care shall be made solely by the Plaintiffs Wayne and Denise Bailey.

2. During the school year, Plaintiffs, Wayne and Denise Bailey, shall have primary physical custody of the minor children. Intervenor Brenda and Gina Knepper shall have partial custody of the children every other weekend from Friday at 6:00 p.m. until Sunday at 4:00 p.m.
3. During the school summer vacation, the Plaintiffs, Wayne and Denise Bailey and the Intervenor, Brenda and Gina Knepper, shall share physical custody of the minor children on a week-to-week rotation, with the custody exchanges to occur on Sundays at 4:00 p.m. The summer schedule shall commence the first Sunday following the last day of school. The summer schedule shall end and the school year schedule shall resume the last Sunday prior to the first day of school.
4. Defendant ^{A.J.} [REDACTED] shall have loosely supervised periods of partial custody to be exercised during the Intervenor's weekends at such dates, times and circumstances as her and the Intervenor may reasonably agree. All overnight portions of these periods of custody shall occur at the Knepper residence. The children shall have no contact with ^{C.I.'s} [REDACTED] paramour, ^{L.K.} [REDACTED].
5. Defendant ^{R.N.} [REDACTED] shall have periods of supervised partial custody at such dates and times as he and Plaintiffs, Wayne and Denise Bailey, may reasonably agree.
6. The minor children shall undergo an evaluation to see if they would benefit from a program of therapeutic counseling. Any treatment

recommendations shall be followed until discharged from the provider, if applicable.

7. Defendant, ^{R.N.} [REDACTED], shall enroll and successfully complete a program of anger management counseling. Proof of successful completion shall be submitted to the Court.
8. No party shall be under the influence of illegal drugs or alcohol while exercising custody of the minor children, nor permit others to do so in the minor children's presence. In the event that either ^{R.N.} [REDACTED] or ^{C.I.} [REDACTED] appears to be under the influence of drugs or alcohol during their periods of custody, the said period of partial custody shall be terminated and/or not take place.
9. Defendant, ^{R.N.} [REDACTED], shall continue taking all medication as prescribed and follow any treatment recommendations from his physician.
10. Defendant, ^{C.I.} [REDACTED], shall continue taking all medication as prescribed and shall continue with her mental health counseling until successfully discharged by her counselor.
11. Custody exchanges shall take place at the Everett Sheetz store, or other location as the parties may agree.
12. The holidays shall be shared by the parties as they may reasonably agree.

BY THE COURT:

 J.

Counsel for Plaintiffs:

Anthony J. Zaroni, Esquire

Counsel for Defendant ^{C.I.} [REDACTED]:

Michael Gieg, Esquire

Counsel for Intervenor Brenda and Gina Knepper:

Matthew Dombrosky, Esquire

Defendant ^{R.N.} [REDACTED]: Pro-Se

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A11025-23

**IN THE COURT OF COMMON PLEAS OF BEDFORD COUNTY,
PENNSYLVANIA
CIVIL DIVISION--LAW**

WAYNE AND DENISE BAILEY, :
PLAINTIFFS :
V. : NO. 364 FOR 2021
R.N.
[REDACTED] AND :
[REDACTED],
C.I. **DEFENDANTS : IN CUSTODY**
V. :
GINA and BRENDA KNEPPER,
INTERVENORS :

Pa. R.A.P. 1925 OPINION

I. Summary of Case

On March 17, 2022, July 28, 2022, August 11, 2022, and October 7, 2022, custody hearings were held regarding the minor children, *L.W.N.* [REDACTED], born March 2, 2017, (hereinafter "*L.W.N.*") and *D.M.N.* [REDACTED], born May 21, 2019, (hereinafter "*D.M.N.*"). *C.I.* [REDACTED] is the natural mother, (hereinafter "Mother") and *R.N.* [REDACTED] is the natural father, (hereinafter "Father") of the children. The parents were never married. The Plaintiffs are Wayne and Denise Bailey, the paternal grandmother and step-grandfather of the children, (hereinafter "Baileys"). The Appellants are the Intervenor, Brenda Knepper, the maternal great-grandmother and Gina Knepper, the maternal grandmother (hereinafter "Brenda" and "Gina" respectively or the "Appellants" collectively).

The Baileys filed a Petition for Custody on May 25, 2021, followed by an Amended Petition for Custody on June 30, 2021, and then an Emergency Petition for Special Relief on August 31, 2021. The Court entered an Ex-Parte Order on August 31, 2021, granting the Baileys legal and primary physical custody and periods of supervised partial custody to the parents. A custody hearing was scheduled for October 13, 2021, at which the Father failed to appear despite being served. An Order was entered whereby the Baileys would retain legal and primary physical custody, Mother would exercise periods of partial custody to be supervised by a professional agency, and Father would have periods of supervised physical custody.

On December 2, 2021, the Kneppers filed an Emergency Petition to Intervene. At the Conference on January 10, 2022, the Petition to Intervene was granted and the Kneppers were granted partial custody every other weekend. The Kneppers then filed a Petition to Modify the Custody Order on January 27, 2022, along with a Notice of Proposed Relocation filed on March 22, 2022, essentially seeking primary physical custody of the children. Mother filed a Petition for shared legal and shared unsupervised physical custody of the children on March 3, 2022. At the custody hearing held on March 11, 2022, the parties reached an interim agreement that the Baileys and the Kneppers would share legal custody, during the school year, the Baileys would exercise primary physical custody and the Kneppers would exercise partial custody every other weekend. Mother and Father would each exercise supervised partial custody, with supervision being provided by their respective family members. During the school summer vacation, the Baileys and

the Kneppers would share physical custody on a weekly basis. Further hearing was scheduled for July 28, 2022. Thereafter, the Kneppers filed an Emergency Petition for Special Relief on June 29, 2022, requesting the children be enrolled in therapy. On July 11, 2022, Father filed a Petition to Modify the Custody Order, requesting that he be granted primary physical custody. Following the hearings as set forth above, the Court entered a Memorandum Opinion and Order dated October 21, 2022. The instant appeal, filed by Intervenors Gina and Brenda Knepper, was timely filed on November 21, 2022.

II. Issues

Appellants filed a *Concise Statement of Errors Complained of on Appeal*, pursuant to Pa.R.A.P. §1925(b) and raises the following issues on appeal:

1. Did the trial court abuse its discretion and commit an error of law when it awarded primary physical custody to paternal grandparents despite the dangers posed by a household member, namely, Father, especially when 23 Pa.C.S.A. 5328(a) requires the Court to give weighted consideration to the factors which affect the safety of the child?
2. Did the trial court abuse its discretion in its determination that Appellants should not share legal custody of the minor children?
3. Did [the trial court] abuse its discretion by awarding paternal grandparents primary physical custody when the custody factors weighed heavily in favor of Appellants?

Essentially, Appellants' issues 1 and 3 are very similar, with both relating to the trial court's application of the custody factors. This Court respectfully directs the Pennsylvania Superior Court to the rationale set forth in the Memorandum Opinion, as a basis for the Order that is the subject of the instant appeal. The Court briefly addressed Issue 2 regarding legal custody in the Memorandum

Opinion and respectfully directs the Pennsylvania Superior Court to pages 15-16.

The Court offers the following as a supplement thereto:

Pursuant to 23 Pa.C.S.A. 5322(a), "Legal custody" is defined as the right to make major decisions on behalf of the child, including, but not limited to, medical, religious and educational decisions.

In making the legal custody award, the Court placed the most weight with factor (13), *The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another.*

In the instant case, the Court notes that initially, in January 2021, the Appellants were granted shared legal custody of the children. However, that arrangement did not serve the best interests of the children because multiple altercations resulted from the parties' refusal to cooperate or communicate effectively on even the most basic *legal custody* issues, such as who has the power to choose the medical and dental providers and make the appointments.

Arguments consisting of screaming, yelling and casting blame regarding medical providers have occurred at custody exchanges in the presence of the children. On multiple occasions, the Pennsylvania State Police were summoned. Children and Youth Services were notified about the Baileys numerous times for seemingly trivial reasons and the reports were all unfounded. Unfortunately, the Court is not optimistic that the toxic relationship between the Baileys and Appellants will improve. While the Court considered the fact that the parties did initially agree to shared legal custody, that fact is outweighed by their continued inability to cooperate and their high level of animosity. As such, there is insufficient evidence

that there exists a sufficient degree of cooperation between the parties to justify a shared legal custody award.

III. ORDER OF COURT

AND NOW, this 20th day of December 2022, the Prothonotary/Clerk of Courts of Bedford County is hereby ordered to transmit the record in the above-captioned matter to the Prothonotary of the Superior Court of Pennsylvania in accordance with Pa.R.A.P. 1931(c).

BY THE COURT:

 J.

Counsel:

For Appellants Gina and Brenda Knepper:
Matthew Dombrosky, Esquire

For Plaintiffs Wayne and Denise Bailey:
Anthony Zaroni, Esquire

For Defendant ^{C.I.} [REDACTED]:
Michael Gieg, Esquire

For Defendant ^{R.W.} [REDACTED] Pro-Se