

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

TASHA L. DODD	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
ADAM J. BOWSER	:	
	:	
Appellant	:	No. 544 WDA 2023

Appeal from the Order Dated April 13, 2023
In the Court of Common Pleas of Armstrong County Civil Division at
No(s): 2022-0986-CIV

BEFORE: BOWES, J., OLSON, J., and KING, J.

MEMORANDUM BY OLSON, J.: **FILED: November 21, 2023**

Appellant, Adam J. Bowser ("Father"), appeals from the order entered April 13, 2023, modifying Father's custody arrangement with Tasha L. Dodd ("Mother") regarding the parties' three children, A.F.B., A.C.B., and A.A.B. (collectively, the "Children."). We affirm.

The facts and procedural history of this case are as follows. Mother and Father

were formally married to each other and have [three] . . . children that were the product of the marriage: A.F.B., age 17, A.C.B., age 14, and A.A.B., age 10. The parties [] divorced on April 29, 2021. The related marriage settlement agreement dated December 12, 2020 had a section on custody providing Mother with primary physical custody and Father with partial custody to take place every other weekend from Friday at 5:00 p.m. to Sunday at 5:00 p.m.

Trial Court Memorandum, 11/18/22, at 1-2.

Mother filed a complaint for custody and a proposed notice of relocation on July 29, 2022. **Id.** at 2. Father opposed Mother's relocation. **Id.** An expedited hearing on Mother's proposed relocation was held on November 17, 2022. The next day, the trial court entered an order granting Mother's proposed relocation. Trial Court Order, 11/18/22.¹ Because Mother did not propose any changes to the custody-related terms of the parties' December 12, 2020 marriage settlement agreement, no changes to the parties' custody agreement were made at that time. **Id.; see also** N.T. Relocation Hearing, 11/17/22, at 8-9.

Father filed a counter-claim for modification of custody on December 2, 2022. In addition, on December 6, 2022, Father moved for reconsideration of the trial court's November 18, 2022 order. In his motion for reconsideration, Father not only renewed his objection to Mother's relocation, but also claimed that the trial court erred in granting relocation following only a two-hour hearing. Father's Motion for Reconsideration, 12/6/22, at *1 (unpaginated). The trial court issued an order on December 8, 2022, denying reconsideration. Trial Court Order, 12/8/22, at 1. In so doing, the trial court specifically held that "the parties were given adequate time at the [November 17, 2022] hearing to present evidence as to all the relocation factors and argue their respective positions as to relocation" and, as such, its "decision to

¹ A.F.B., who was 17 at the time, elected to remain in Kittanning, Pennsylvania, with her grandparents to finish her senior year of high school. As such, she did not relocate with Mother and was not a subject of the trial court's November 18, 2022 relocation order.

grant the proposed relocation was supported by the record created by the parties.” ***Id.***

After the trial court disposed of Father’s motion for reconsideration, the parties proceeded to a custody trial on April 4, 2023. At the outset of the hearing, the trial court adopted the testimony proffered during the November 17, 2022 relocation hearing, as well as the exhibits submitted by the parties. N.T. Trial, 4/4/23, at 6-7. Thereafter, the trial court received testimony from, *inter alia*, Mother, Father, and the Children. ***Id.*** at 7-250. On April 13, 2023, the trial court issued an order in which it “reaffirm[ed] its approval of Mother’s relocation” and ordered the parties to continue shared legal custody and allow Mother to exercise primary physical custody of A.C.B., and A.A.B., subject to Father’s periods of partial physical custody every other weekend, and “physical custody of A.F.B. as the parties may agree.” Trial Court Memorandum, 4/13/23, at 11. This timely appeal followed.

Father raises the following issues on appeal:

1. Did the trial court abuse its discretion and err as a matter of law when it considered the November 1[8], 2022 interim order granting Mother’s request for a temporary relocation pending trial as a final order of court and failed to consider evidence related to the relocation factors set forth in 23 Pa.C.S.A. § 5337 at the final hearing on April 4, 2023, and its final order of court dated April 12, 2023[?]
2. Did the trial court abuse its discretion and err as a matter of law when it denied Father appropriate notice and due process when it treated the November 18, 2022 order as a final order of court when the November 17, 2022[] hearing was scheduled to address the issue of a temporary relocation and Father was not afforded the opportunity to litigate the

issue of a final relocation at the April 4, 2023 hearing, despite his request for reconsideration?

3. Did the trial court abuse its discretion and err as a matter of law in reaffirming its approval of Mother's relocation without setting forth its reasons for doing so or addressing any of the relocation factors in its memorandum and order to incorporate additional testimony and evidence presented at the April 4, 2023 hearing?
4. Did the trial court abuse its discretion and err as a matter of law in its application of the custody factors set forth in 23 Pa.C.S.A. § 5338(a)?

Father's Brief at 4 (superfluous capitalization omitted).

In custody cases, our standard and scope of review are as follows:

In reviewing a custody order, our scope is of the broadest type and our standard [of review] 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.

R.S. v. T.T., 113 A.3d 1254, 1257 (Pa. Super. 2015), *appeal denied*, 117 A.3d 298 (Pa. 2015) (citation omitted).

We have stated:

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.

R.L.P. v. R.F.M., 110 A.3d 201, 208 (Pa. Super. 2015) (citation omitted).

Thus, we will only find an abuse of discretion “if in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be manifestly unreasonable or the product of partiality, prejudice, bias, or ill will[.]” **Estate of Sacchetti v. Sacchetti**, 128 A.3d 273, 282 (Pa. Super. 2015) (citation omitted).

Father’s first three issues relate to the actions taken by the trial court with respect to Mother’s proposed relocation. Initially, Father claims that the trial court abused its discretion by granting Mother’s request for relocation following the November 17, 2022 hearing because it was only two hours and, as such, was not a “full evidentiary hearing.” Father’s Brief at 7. Then, Father challenges the trial court’s decision to “reaffirm” its decision granting Mother’s relocation in its April 12, 2023 custody order. **Id.** at 16. In Father’s view, the trial court’s November 18, 2022 order only “granted [Mother] temporary relocation pending trial.” **Id.** at 15. Thus, Father claims that the trial court erred as a matter of law by “reaffirming” its decision regarding Mother’s relocation without considering the evidence proffered by Father during the April 3, 2023 hearing and, further, in failing to set forth its reason for doing so in its April 13, 2023 order. **Id.** at 11-25. In his final issue, Father claims that the trial court abused its discretion in its application of the custody factors set forth in 23 Pa.C.S.A. § 5338(a).

In general, a party is not permitted to relocate with children unless every individual with custody rights to the children consents or the party obtains court approval. 23 Pa.C.S.A. § 5337(b). If a party seeks to relocate, he or she must “notify every other individual who has custody rights” of the proposed relocation, as well as other information, to enable the “party entitled to receive notice” to file an “an objection to the proposed relocation.” 23 Pa.C.S.A. § 5337 (c)(1), (c)(3), and (d).

If a counter-affidavit regarding relocation is filed with the court which indicates the nonrelocating party objects either to the proposed relocation or to the modification of the custody order consistent with the proposal for revised custody schedule, the court shall modify the existing custody order only after holding a hearing to establish the terms and conditions of the order pursuant to the relocation indicating the rights, if any, of the nonrelocating parties.

23 Pa.C.S.A. § 5337(f). With regard to a hearing, Section 5337(g) states:

- (1) Except as set forth in paragraph (3), the court shall hold an expedited full hearing on the proposed relocation after a timely objection has been filed and before the relocation occurs.
- (2) Except as set forth in paragraph (3), the court may, on its own motion, hold an expedited full hearing on the proposed relocation before the relocation occurs.
- (3) Notwithstanding paragraphs (1) and (2), if the court finds that exigent circumstances exist, the court may approve the relocation pending an expedited full hearing.
- (4) If the court approves the proposed relocation, it shall:
 - (i) modify any existing custody order; or
 - (ii) establish the terms and conditions of a custody order.

Id. “The party proposing the relocation has the burden of establishing that the relocation will serve the best interest of the child.” 23 Pa.C.S.A. § 5337(i).

To determine whether to grant a proposed relocation, the court must consider the following factors:

- (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 nonrelocating 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 the 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). “Each party has the burden of establishing that the integrity of that party's motives in either seeking the relocation or seeking to prevent the relocation.” 23 Pa.C.S. § 5337(i)(2).

When making a relocation decision, if the court is also called upon to render a custody decision, the “court must consider all ten relocation factors and all [16] custody factors.” **A.M.S. v. M.R.C.**, 70 A.3d 830, 836 (Pa. Super. 2013).² Section 5328 sets forth the custody factors to be considered. It states:

(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

² If, however, a trial court’s decision regarding relocation does not involve a custody decision, the court need not consider all ten relocation factors and all 16 custody factors. **See M.B.S. v. W.E.**, 232 A.3d 922, 930 (Pa. Super. 2020) (stating that “because the trial court did not decide physical or legal custody, or change the amount of custodial time that either party had with the children, its failure to examine the [Section 5328(a)] factors was not error”); **see also E.D. v. M.P.**, 33 A.3d 73, 82 n.6 (Pa. Super. 2011) (stating, “[i]n accordance with proper practice under [S]ection 5337, where the nonrelocating party merely objects to modification of the existing custody order in his[, or her, response to the petition for relocation], the trial court will not perform a best interests of the child analysis pursuant to the [S]ection 5328(a) factors, but will instead decide whether the existing custody order should be modified pursuant to the section 5337(h) factors”).

which party can better provide adequate physical safeguards and supervision of the child.

(2.1) The information set forth in section 5329.1(a) (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.

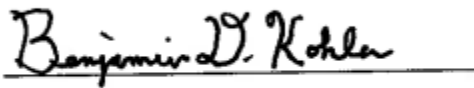
(16) Any other relevant factor.

23 Pa. C.S.A. § 5328(a).

We have reviewed the briefs of the parties, the relevant law, the certified record, and the opinions of the able trial court judge, the Honorable Chase G. McClister. We conclude that Father is not entitled to relief in this case for the reasons expressed in Judge McClister's November 18, 2022, April 13, 2023, and May 23, 2023 opinions. Therefore, we affirm based on Judge McClister's opinions and adopt them as our own. In any future filing with this or any other court addressing this ruling, the filing party shall attach copies of Judge McClister's November 18, 2022, April 13, 2023, and May 23, 2023 opinions.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 11/21/2023

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY,
PENNSYLVANIA

TASHA L. DODD,

Plaintiff,

vs.

ADAM J. BOWSER,

Defendant.

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No. 2022-0986-CIVIL

MEMORANDUM and ORDER

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IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY,
PENNSYLVANIA

TASHA L. DODD,

Plaintiff,

vs.

ADAM J. BOWSER,

Defendant.

No. 2022-0986-CIVIL

MEMORANDUM

McCLISTER, J.

Tasha L. Dodd ("Mother") filed a custody complaint and a notice of relocation on July 29, 2022. The Court conducted a relocation hearing as required by 23 Pa.C.S.A. § 5337(g) on November 17, 2022, and approved Mother's relocation by Order dated November 18, 2022.

Adam J. Bowser ("Father") filed a counterclaim for custody on December 2, 2022. The Court conducted a custody trial on April 4, 2023, and at the parties' request the Court incorporated the evidence from the relocation hearing into the record.

FACTUAL BACKGROUND

The parties are the parents of three minor children: a 17-year-old daughter, A.F.B., a 14-year-old daughter, A.C.B., and a 10-year-old son, A.A.B. The parties were married and lived together for about 16 years until January 2021, when Father moved out and Mother filed for divorce. The divorce was granted in April of 2021.

On May 2, 2022 Mother filed a protection from abuse petition against Father alleging uncontrolled anger, threats of suicide, and a late-night entry to Mother's home which sounded the burglar alarm. The parties entered into a consent order, with no admission of abuse by Father, on May 11, 2022. That final order granted Mother custody of the three children, and permitted the parties to communicate using the Our Family Wizard app for custody purposes only.

This custody action was initiated a couple of months after the P.F.A. order, and Mother asked for the Court's approval to move to State College, Pennsylvania. As noted above, the Court has approved that relocation and Mother moved into a home she has purchased in Boalsburg, Pennsylvania, close to State College.¹ The two younger children moved with Mother to Boalsburg, and attend school there. The older daughter remained with family in Armstrong County in order to finish her senior year of high school here.

For the first seven months after separation, Father did not request any overnight visits or weekends with the children. Beginning in July 2021 he saw the children sporadically, sometimes for a partial weekend. Over time, Father has seen the children more regularly, and prior to the relocation he attended and participated in all of their extracurricular activities such as band, sports, and the like.

Since April 2022, after Father's suicidal episode and hospitalization, Father has received psychological counseling every two to three weeks. Essentially, Father

¹ For the Court's reasoning regarding the relocation, see the Memorandum and Order filed at this docket number on November 18, 2022.

claims he is trying to control his feelings of anger, frustration and despair over the custody matters. Although he claims to have gotten over the breakup of his marriage, he has a history of becoming very emotional and trying to somehow put the marriage back together, sometimes demanding to know personal information about Mother's social and dating life, etc.

Importantly to this custody matter, Father has admittedly spoken very badly about Mother to the children, blaming her for taking them away from him, ruining his life, and basically victimizing him. This includes blaming her for relocating. He continues to disparage Mother, despite testifying in November 2022 and April 2023 that he's "working on it." He admits that this is wrong, but deflects the blame, testifying: "But this whole [custody] process is wrong."

On March 19, 2023, Father got into a loud screaming argument with his own father, while the children were present. A.A.B. heard Father tell his father that if things do not go his way in this custody case he might kill himself. This, of course, alarmed A.A.B. greatly. Father admitted to making this threat, but once again brushed it off as his way of trying to scare his father to manipulate the situation.

Father likewise admitted at trial to using threats, weeping and self-pity to manipulate the children in his favor. He admitted to telling A.C.B. that he would not allow her to participate in marching band during his custodial time, telling the Court that he wanted to cause the children to suffer negative consequences from Mother's relocation, so that they would regret the move and would want to return to Armstrong County.

Since Mother relocated, Father has not attended any of the children's athletic events or other school functions. He has not participated in any counseling with the children or attended any medical appointments. When A.C.B. and A.A.B. began counseling, Father was sent a link to participate in the intake process. He did not participate in the intake or in the creation of treatment plans for A.C.B. or A.A.B. Father admitted that he was unaware that A.A.B. takes medications until about a month before trial.

Father testified that he has not engaged with any of the children's activities in Boalsburg because he considers the relocation to be temporary and he wants the children to return to live in Armstrong County.

FINDINGS AND DISCUSSION

Statutory Factors and Burden of Proof

"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" 23 Pa. Cons. Stat. Ann. § 5328(a). Section 5328(a) goes on to provide a list of factors that the Court is to consider in making any custody determination. The Court makes the following findings under each factor:

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

Neither party has discouraged contact between the children and the other parent. This factor is neutral.

(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.

Mother has a Protection From Abuse order against Father that is set to expire in May 2023. Although Father consented to the entry of the order with no admission of abuse, the factual allegations stem from Father's suicidal threat and a possible late-night trespass into Mother's house. There is no history of physical abuse by either party. This factor is neutral.

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

There have been no reports of child abuse, nor has Children and Youth Services provided any services to either party. This factor is neutral.

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

Each of the parents perform appropriate parental duties during their periods of custody. This factor is neutral.

² Section 5329.1(a) generally requires the Court to determine 1) whether the child has been the subject of an indicated or founded report of child abuse, 2) whether a party or a member of his or her household has been identified as a perpetrator in an indicated or founded report of child abuse, and 3) whether a party or a member of his or her household has been provided with child protective services. Section 5329.1(a) further requires the Court to determine the circumstances surrounding each instance where any of these factors are present. See 23 Pa. Cons. Stat. Ann. § 5329.1(a)(1),(2).

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

The Court approved Mother's relocation to Boalsburg, which necessitated a change of schools and community life for the two younger children. That change has been easier for A.C.B. than for A.A.B., but both children testified that it is getting better. The custody schedule that the parties were following did not change as a result of the relocation, however. This factor is neutral.

(5) The availability of extended family.

Extended family of both parents live in Armstrong County. The children have positive close relationships with the family members that live in this area. However, Father does not make any effort for the children to see their maternal family members during Father's custodial time. This factor favors Father.

(6) The child's sibling relationships.

A.F.B. and A.C.B. both testified about A.A.B.'s temper, and occasional tantrums, but stated that he can also be "sweet" at times. The sibling relationships appear to be normal. This factor is neutral, but would support a custody schedule where the two younger siblings would remain together.

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

A.F.B. is about to turn 18 and she stayed behind in Armstrong County with the consent of her parents in order to graduate from the high school she is attending. Her post-graduation plans are to remain in the area for the summer and then attend college in the fall and live with Mother. She likes Mother's new house and the community of Boalsburg and is supportive of Mother's relocation.

A.C.B., age 14, is currently residing primarily with Mother. She likes the new house, but finds life in Boalsburg to be "boring" because she does not have her extended family in the area. She likes the new school and thinks it is an improvement over her old school in Armstrong County. She likes visiting her friends and relatives in Armstrong County, but is fine with the custody schedule as it is.

A.B.B., age 10, is not used to living in the State College area yet and admits to having difficulty adjusting to it. He doesn't enjoy the two-hour drive and he preferred his old school to his new one. He was not impressed with the fifth-grade band, but looks forward to the musical opportunities in middle school, which will begin in the fall. He was not able to give an answer when asked which parent he would like to live with primarily or what kind of custody schedule he would like for the Court to enter.

While it was easy to anticipate that the two younger children would not be thrilled to leave their schools and friends and move to Boalsburg, they seem to have adjusted fairly well to the new arrangement.

(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 discussed above, Father has continually spoken badly about Mother to the children. Father readily admits this, as does his own mother.

Not only has Father blamed Mother for his own unhappiness, he blames Mother and her relocation for the children's anxiety and depression. He admits that he has told A.F.B. that Mother has "abandoned" her.

Father also admits that he has refused to accommodate A.C.B.'s wish to participate in marching band in the coming fall, specifically because he wants A.C.B. to realize the relocation was bad for her.

There has been no evidence of Mother of attempting to turn the Children against Father. This factor strongly favors Mother.

(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.

Father's self-pity and resentment toward Mother has not only been frequently on display for the children to experience, but causes stress and trauma for the children because they worry about his sadness. The children all love their father, but his own behavior and the anguish it causes the children supports less custodial time, not more. This factor favors Mother.

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

There is uncontradicted testimony and evidence that Mother is the primary caregiver of the Children and arranges all of their medical and therapy appointments. Mother admits that she often did not give information about the Children's medical and other needs to Father, but at the same time Father never asked for it or made attempts to find out on his own. Other than appointments and administering medication, both parents are capable of providing for the Children's daily needs. This factor slightly favors Mother.

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

Father lives in Ford City, Mother lives in Boalsburg, Pennsylvania. The parties are approximately two hours apart by car. The approximate mid-point is Ebensburg, Pennsylvania.

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

Both parents are capable of providing childcare during their periods of custody. Father's cousin Rhonda Martin lives next door to him and paternal grandparents live nearby in Kittanning. Paternal Grandmother testified regarding the Children visiting her during periods of Father's custody. While neither one of them testified that they are able and willing to take care of the Children in Father's absence, it is likely that they would do so if asked due to their relationship with the Children and their close proximity to Father's residence. Mother testified that the Children come home from school before she does and they are at home alone for

brief period of time. Both of the younger children are old enough to be left alone for reasonably short periods of time without child care. This factor slightly favors Father.

(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.

There is a high level of conflict between the parties and both parties agree that communication between them is very difficult. The parties have been using Our Family Wizard to communicate regarding custody matters, but conflict between the parties persists. Father is still resentful about the parties' divorce and Mother's relocation. Mother is more willing to be flexible and cooperate with Father than the other way around. This factor favors Mother.

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

Neither party testified as to drug or alcohol use, and no evidence has been submitted regarding the same. This factor is neutral.

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

Father's mental condition is of paramount importance in this case, although neither party offered a particular mental health diagnosis for Father. His depression, anger and threats of suicide have been an ongoing problem for the

children. Father appears to take very little responsibility for his behavior, preferring to blame Mother's relocation. Father does see a therapist on a regular basis, and is able to call the therapist by phone when a crisis requires it. He also takes a medication.

There has been no evidence or testimony submitted that indicates Mother is suffering from any physical or mental impairment. This factor strongly favors Mother.

(16) Any other relevant factor.

None.

CONCLUSIONS

The Court reaffirms its approval of Mother's relocation with the children. Father will continue to have physical custody of the two younger children every other weekend, and physical custody of A.F.B. as the parties may agree. Father must continue to see his therapist and follow all recommended psychological or psychiatric treatment, including medication management.

Unless they agree otherwise, the parties will meet each other halfway for every custody exchange, at the Sunoco Gas Station near the intersection of Center Street and High Street in the middle of Ebensburg.

During the summer months when school is not in session, the Court will order the parties to share physical custody on a week-on/week-off basis.

If A.C.B. participates in marching band, Father shall accommodate the marching band schedule or, if he is unwilling to do so, he will forfeit his custody time to the extent necessary to allow her to participate. The parties may agree to allow Father some make-up time in return.

An appropriate order consistent with this memorandum is filed herewith.

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY,
PENNSYLVANIA

TASHA L. DODD,
Plaintiff,

vs.

ADAM J. BOWSER,
Defendant.

No. 2022-0986-CIVIL

1925(a) OPINION

McCLISTER, J.

Defendant Adam J. Bowser appealed this Court's orders of November 18, 2022 and April 12, 2023 regarding relocation and custody. The Court will address all of the issues raised in a single opinion.

A "relocation" is a change in a child's residence which significantly impairs the ability of the nonrelocating party to exercise custodial rights.¹ The Plaintiff's proposed move in this case, about two hours' drive away, would not change the custody schedule at all. So the Court took the opportunity at the relocation stage to note that this does not meet the definition of a relocation. Nonetheless, both parties have proceeded with the matter as a relocation.

The Defendant first contends that the Court did not allow the parties enough time for the relocation hearing. The Plaintiff's petition for special

¹ 23 Pa.C.S.A. § 5322(a).

relief, filed on August 12, 2022, requested “an expedited relocation hearing pursuant to 23 Pa.C.S. §5337.” Her proposed order requested two hours for hearing and that is what the Court scheduled -- two hours. The Court scheduled this hearing as an “expedited full hearing” pursuant to 23 Pa.C.S.A. 5337(g)(1). The relocation procedure must always be “expedited.” Pa.R.C.P. 1915.17(d).

At no time did the Plaintiff request a “temporary” approval pursuant to 23 Pa.C.S.A. § 5337(g)(3), nor did the Court ever make a finding of exigent circumstances consistent with the application of Section 5337(g)(3). Indeed, the trial court always has the option of conducting a full hearing on its own motion prior to the relocation. 23 Pa.C.S.A. § 5337(g)(2).

At the relocation hearing on November 17, 2022,² there was some discussion by counsel at the commencement of the hearing that the Plaintiff was on a short time frame, and had been granted extensions on her job offer pending the relocation hearing. In fairness to both parties, it may be that both attorneys thought this was to be a temporary hearing because of exigent circumstances, but that was not what was requested and the Court treated this as a full relocation hearing. The Defendant did not object to the two-hour hearing at any time prior to or during the hearing. Neither party requested

² The Defendant moved to continue the original relocation hearing date one time, with the rescheduled hearing also being allotted two hours as the Plaintiff originally requested.

an adjournment or continuance to allow for more time. There was no error by the Court in conducting a full expedited hearing pursuant to Section 5337(g)(1) or (2).

While the children were not called as witnesses at the relocation hearing by either party, the Court, in its Memorandum approving the relocation, noted that the proposed relocation would not modify the parties' existing physical custody schedule at all. So the custodial time with Defendant/Father would not be lessened regardless of the outcome of the relocation hearing. Other aspects of the proposed move, such as the effect of the change of schools for two of the three children fall under relocation factors 2 and 7.³

Because the Plaintiff did not seek any change to the parties' existing custody arrangement, it was not necessary for the Court to modify custody or conduct an analysis of the standard custody factors at the relocation hearing. Those were all addressed at the custody trial conducted on April 4, 2023.

The hearing conducted on April 4, 2023 was the custody trial. At the parties' request, the Court incorporated into the record all of the testimony and evidence from the relocation hearing. Having already conducted a full relocation hearing, the Court had no need to address the relocation factors a

³ 23 Pa.C.S.A. § 5337(h)(2),(7).

second time or to reconsider or formally reaffirm its findings and conclusions made in the relocation memorandum of November 18, 2022.

For the Court's full analysis of the relocation and custody factors, please see the memoranda filed on November 18, 2022 and April 13, 2023.

Respectfully submitted,

Date: May 23, 2023

Chase G. McClister, J.
Chase G. McClister

Certified from the Record
File 24 day of May 2023 A.D.

Carole C. Bowser / Kdy

Prothonotary and Clerk of Courts
Armstrong County, Pennsylvania

MY COMM. EXPIRES 1ST
MON. JAN. 2024

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY, PENNSYLVANIA

TASHA L. DODD

Plaintiff,

v.

ADAM J. BOWSER

Defendant.

NO. 2022-0986-CIVIL

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COURT CLERK

MEMORANDUM AND ORDER

[Signature]
Certified from the Record
Filed *[Signature]* 11/18/22, 2022 A.D.
[Signature]
Brenda E. George,
Prothonotary and Clerk of Courts
Armstrong County, Pennsylvania

MY COMM. EXPIRES 1ST
JAN. 2024

[Handwritten signature]
Jellington EG 7-11-18-22
Geri Plunkett EG @ 3:30 PM

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY, PENNSYLVANIA

TASHA L. DODD,

Plaintiff,

vs.

ADAM J. BOWSER,

Defendant.

No. 2022-0986-CIVIL

MEMORANDUM

McClister, J.

Before the Court for disposition is the Petition to Relocate filed by Plaintiff Tasha L. Dodd. A petition for special relief requesting an expedited hearing on the matter was filed on August 12, 2022 and an expedited hearing on relocation was held on November 17, 2022. Both parties attended and were represented by counsel. For the reasons that follow in this memorandum, the Court approves the proposed relocation.

BACKGROUND

Plaintiff Tasha L. Dodd (hereinafter "Mother") and Defendant Adam J. Bowser (hereinafter "Father") were formerly married to each other and have 3 minor children that were the product of that marriage: A.F.B., age 17, A.C.B., age 14, and A.A.B., age 10. The parties were divorced on April 29, 2021. The related marriage settlement agreement dated December 12, 2020 had a section on custody providing Mother with primary physical custody and Father with partial custody to take place every other weekend from Friday at

5:00 p.m. to Sunday at 5:00 p.m. The marital residence is in East Franklin Township, where Mother and the children currently reside. Father currently resides in Manor Township.

Mother filed a proposed notice of relocation on July 29, 2022. Her intention is to move to State College, Pennsylvania with the children in order to take a position that would offer significantly higher pay. Father opposes this proposed relocation on the grounds that the children are involved in extracurricular activities, have extensive ties to the community, have deep relationships with extended family on both sides that live in the area, and that he wishes to have his children live near him.

FINDINGS AND DISCUSSION

Because Father's exercise of physical custody will not be "significantly impaired" by Mother's proposed move, an argument could be made that this is not a relocation, as that term is defined in the Child Custody Act. Nonetheless, the proposed move is significant enough to require two of the children to change school districts. Both parties are approaching the matter as a relocation under Section 5537.

Relocation Factors

"The 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. Cons. Stat. Ann. § 5337(i). Section 5337(h) provides a list of factors that the Court must consider before deciding a proposed relocation. The Court will address each in turn.

(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.

The children have lived with both parents during the duration of their marriage and with Mother after the separation and divorce. They have a good relationship with both of their parents. They have a good relationship with their extended family on both sides that live in Armstrong County. Even though the children would be moving approximately 2 hours away from Kittanning, they would have the opportunity to maintain their relationships with family and friends in the area during Father's custodial time. This factor is neutral.

(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.

A.F.B., who is 17, intends to remain in Kittanning with her grandparents in order to finish her senior year of high school. She will not be moving regardless of the outcome of the relocation hearing. A.C.B. and A.A.B. are actively involved in school and extracurricular activities and seem to be doing well in regards to their development. While it is unlikely that the children are eager to change schools, there is no evidence in the record to support a finding that the relocation would be detrimental to their physical, educational, and emotional development. This factor is neutral.

(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.

The relocation will not change the custody arrangement as agreed upon in the divorce settlement, and Father will be able to preserve his relationship with the children.

This factor strongly favors Mother.

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

Neither party presented testimony from any of the children.

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.

Father did not deny that he made disparaging remarks regarding Mother to the children, to other people in the presence of the children, and to A.F.B.'s soccer team. Father claims that he is "working on it." Father also made disparaging comments about Mother online and in a shared text message where the children can see it. There has been no testimony or evidence that Mother has attempted to turn the children away from Father.

This factor favors Mother.

(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.

Mother wishes to relocate in order to pursue a position that will pay her over \$30,000 more per year than what she is currently earning. Mother also testified that this move will benefit her emotionally as she wishes to make a fresh start for herself and the conflict between her and Father was starting to harm her professional reputation. Mother also testified that her new employer will pay for additional education for her if she wishes to pursue it. This factor favors Mother.

(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 children's quality of life should benefit from Mother's enhanced earnings. Mother testified that the schools in State College are great and the children will have opportunities to participate in extracurricular activities there if they desire to do so. This factor is neutral.

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

Mother wants to relocate in order to pursue a job that would pay significantly more than what she is currently earning. She also wants to move on from the divorce and make a fresh start for herself. The Court finds that these are legitimate reasons for wanting to relocate. Mother has not made the decision to move lightly, nor is she trying to thwart the children's relationship with their father. She is leaving behind her parents and extended family, her patients and co-workers, and her support network. But she is doing so for the benefit of her children and her professional career.

Father objects to this relocation because he wants his children to live near him and be able to maintain their relationships with their friends and extended family that live in the area. The Court finds these objections are understandable, and Father articulated them clearly, but they do not outweigh the benefits to be gained by the proposed move. This factor favors neither party.

(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 notes that there is currently a Protection From Abuse order on the behalf Mother against Father that was entered into with his consent and in which he made no admissions of abuse. The order is set to expire in May 2023. The Court finds that Father does not pose a risk of harm to the children or Mother. This factor is neutral.

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

There are no other factors affecting the best interest of the children.