

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

ANGEL KUKLO	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
SARAH WALTER	:	
	:	
Appellee	:	No. 268 WDA 2023

Appeal from the Order Entered February 2, 2023
In the Court of Common Pleas of Bedford County
Civil Division at No(s): 1038 for the year 2015

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

MEMORANDUM BY KING, J.:

FILED: JANUARY 19, 2024

Appellant, Angel Kuklo ("Grandmother"), appeals from the order entered in the Bedford County Court of Common Pleas, which granted legal and primary physical custody of the minor child, K.W. ("Child"), to Appellee, Sarah Walter ("Mother").¹ We affirm.

The trial court opinion set forth the relevant facts and procedural history of this appeal as follows:

[Grandmother] is the paternal grandmother of [Child]. The

¹ Although this appeal involves a custody action, we will use the parties' names in the caption "as they appeared on the record of the trial court at the time the appeal was taken." Pa.R.A.P. 904(b)(1). Notably, "upon application of a party and for cause shown, an appellate court may exercise its discretion to use the initials of the parties in the caption based upon the sensitive nature of the facts included in the case record and the best interest of the child." Pa.R.A.P. 904(b)(2). **See also** Pa.R.A.P. 907(a). The parties have not applied to this Court for the use of initials in the caption. Nevertheless, we will use the child's initials or refer to him as "Child."

child was born out of wedlock [in January 2015]. The child's natural father is Bryant Nichols ["Father"].

[Mother] is the child's natural mother. On June 16, 2016, by agreement of the parties, an order of court was entered awarding Grandmother and Mother shared legal custody, Grandmother primary physical custody and Mother periods of partial custody at such dates and time as the parties may agree.^[2] On July 9, 2021, Mother filed a petition to modify custody and an emergency petition for special relief.^[3] By *ex parte* order dated July 12, 2021, the court granted Mother temporary primary custody of the child and scheduled the matter for conference on July 29, 2021. On July 29, 2021, Grandmother's legal counsel failed to appear so the conference was continued until August 23, 2021 and the court modified the *ex parte* order to allow Grandmother to have periods of partial custody to be exercised in her home or Mother's home during the daytime and that the child have no contact with [Father] or Zachary Nichols (the child's paternal uncle). At the conference on August 23, 2021, the court scheduled a custody hearing for October 29, 2021 and expanded Grandmother's periods of partial custody to include each Friday evening after school until 8:00 p.m. and every other weekend from Friday after school until Sunday at 6:00 p.m., provided that the child have no contact with [Father] or Zachary Nichols. Additionally, the

² At that time, Mother was struggling with housing and employment. Mother subsequently turned her life around, obtained steady housing, and she is currently enrolled in a program to earn an accounting degree. Also, at the time of the original custody order, Father was incarcerated. Although Father was subsequently released from prison, he has had limited involvement in Child's life, and he is not a party to the current action.

³ In the petition for special relief, Mother alleged that Grandmother "recently secured bail for the pretrial release of [Father] and his brother (Zak Nichols). [Father] and his brother are now residing with [Grandmother]." (Emergency Petition, filed 7/9/21, at ¶5). Mother asserted that Father and his brother were charged with "numerous sexual assault-like offenses," and their stay at Grandmother's home forced Child to share a bed with Grandmother. (*Id.* at ¶6). Mother also claimed that Father "has exhibited significant issues with the use of controlled substances, having served a state prison sentence for drug-related criminal offenses[.]" (*Id.* at ¶14).

court ordered that neither party shall use derogatory or demeaning language regarding the other party in the presence of the minor child, nor permit others to do so and that neither party shall discuss the ongoing litigation or custody issues in this matter with or in the presence of the minor child, nor permit others to do so.

On October 4, 2021, Grandmother filed an emergency petition to modify, alleging that Mother spanked the child [as] evidenced by a bruise on his hip. The court entered an order scheduling a hearing on the matter for the custody hearing already scheduled for October 29, 2021 and ordered that neither party shall physically discipline the child. Following [the] hearing on October 29, 2021, the court scheduled further hearing on February 9, 2022. Grandmother requested a continuance, which was granted and further hearing was scheduled for April 7, 2022. Grandmother requested another continuance, which was granted and further hearing was scheduled for June 23, 2022. On May 16, 2022, Mother filed a petition for special relief and finding of contempt, alleging that Grandmother was making inappropriate statements to the child designed to alienate him from Mother in an effort to make the child's transition to Mother's custody difficult. Hearing on this petition was likewise scheduled for June 23, 2022, and the court further ordered that Grandmother shall not make any statements or take any actions in the presence of the minor child that could reasonably be expected to alienate the child from Mother. Grandmother then requested another continuance, which was granted and further hearing was scheduled for September 1, 2022.

Mother next filed an emergency petition to modify custody.... On August 11, 2022, the court entered an order suspending Grandmother's periods of partial custody based upon a Children and Youth Services investigation and scheduled a hearing on Mother's petition for the custody hearing already scheduled for September 1, 2022. Following the September 1, 2022 hearing, the court scheduled further hearing for October 28, 2022 and ordered that Grandmother shall resume unsupervised partial custody each Sunday from 9:00 a.m. until 6:00 p.m. and provided for telephone calls between Grandmother and the child. Following the hearing on October 28, 2022, the court

scheduled further hearing for November 14, 2022 and ordered that the child be enrolled in a program of counseling. Following the hearing on November 14, 2022, the court scheduled further hearing for January 11, 2023. On January 3, 2023, Grandmother filed a petition for appointment of a guardian *ad litem* [“GAL”]. On January 9, 2023, Mother filed a petition for special relief and finding of contempt, alleging that Grandmother continued to engage in a pattern of alienation. Following the hearing on January 11, 2023, the court appointed [Attorney Rose] to serve as [GAL] for the child and scheduled further hearing for January 31, 2023.

On January 27, 2023, Grandmother filed a petition for contempt, alleging that the child reported to Grandmother that Mother had spanked him and punched him in the face. This alleged incident was reported to Bedford County Children and Youth Services. Following the hearing on January 31, 2023, Grandmother withdrew her petition for contempt filed on January 27, 2023, as the alleged incident was unfounded by Children and Youth Services. At the hearing on January 31, 2023, the court additionally received the recommendation from the [GAL].

(Trial Court Opinion, filed 3/28/23, at 1-4) (internal footnotes and some capitalization and omitted).

By order entered February 2, 2023,⁴ the court granted legal and primary physical custody of Child to Mother. The court permitted Grandmother to have partial physical custody every other weekend from Saturday at 6:00 p.m. until

⁴ The order at issue is dated January 31, 2023, and the prothonotary’s office stamped the order as “filed” on February 1, 2023. Nevertheless, the docket entries attached to Grandmother’s notice of appeal indicate that the prothonotary provided Pa.R.C.P. 236 notice of entry of the order on February 2, 2023. Therefore, we consider February 2, 2023 as the date of entry for the order. **See** Pa.R.A.P. 108(b) (stating date of entry of order shall be day on which clerk makes notation in docket that notice of entry of order has been given as required by Rule 236(b)).

Sunday at 6:00 p.m., as well as any other dates and time as the parties may agree. The court ordered the parties not to discuss custody issues with or in the presence of Child, and the court prohibited the parties from using derogatory language towards each other in Child's presence. Further, the court specifically directed Grandmother not to "make any statements or take any action in the presence of the minor child that could reasonably be expected to alienate the child from [Mother]." (Order, filed 2/2/23, at ¶7).⁵ On March 3, 2023, Grandmother timely filed a notice of appeal and concise statement of errors complained of on appeal.

Grandmother now raises three (3) issues for our review:⁶

Whether the trial court erred in awarding primary physical custody of the minor child to [Mother] on [Mother's] petition for special relief which was filed when [Grandmother] bailed her two sons out of jail and making such award of primary custody without findings of fact that said the act of posting bail was detrimental to the child and without concluding that the decision was in the best interest of the child?

Whether the trial court erred and abused its discretion by providing [Mother] with a preferred status for custody because [Mother] is the biological mother of the child?

⁵ The order included additional provisions mandating: 1) Child is to have no contact with Father or the paternal uncle until further order of court, or unless agreed to by Mother; 2) Child shall continue with a program of therapeutic counseling until discharged by the counselor; and 3) Mother's January 9, 2023 contempt petition was granted with no sentence other than admonishment.

⁶ Although the statement of questions involved presents four (4) discrete issues, the argument section of the brief declares that Grandmother has withdrawn her third issue challenging the adequacy of the court's on-the-record findings of fact. (**See** Grandmother's Brief at 20-21). Consequently, we only address Grandmother's remaining claims.

* * *

Whether the trial court erred in the way it applied the evidence to the 16 custody factors of 23 Pa.C.S.A. § 5328 in forming the final custody order?

(Grandmother's Brief at 6-7).

In reviewing a child custody order:

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

S.J.S. v. M.J.S., 76 A.3d 541, 547-48 (Pa.Super. 2013) (quoting **A.D. v. M.A.B.**, 989 A.2d 32, 35-36 (Pa.Super. 2010)).

It is not this Court's function to determine whether the trial court reached the 'right' decision; rather, we must consider whether, 'based on the evidence presented, given due deference to the trial court's weight and credibility determinations,' the trial court erred or abused its discretion in awarding custody to the prevailing party.

E.B. v. D.B., 209 A.3d 451, 468 (Pa.Super. 2019) (quoting **King v. King**, 889 A.2d 630, 632 (Pa.Super. 2005)).

In her first issue, Grandmother asserts that the court initially transferred

primary physical custody of Child to Mother in a “temporary *ex parte* order” dated July 12, 2021. (Grandmother’s Brief at 16). Grandmother contends that the court based the custody transfer upon the allegations in Mother’s emergency petition for special relief, which complained that Father and his brother were going to reside in Grandmother’s house with Child. Grandmother insists, however, that Father and his brother had moved out of her residence by the time the court conducted the subsequent custody conference in August 2021. Therefore, Grandmother maintains that the court erred by transferring primary custody of Child to Mother based on the allegations in the petition for special relief.

Grandmother acknowledges that the July 2021 order applied on an interim basis, and the “change of custody did not become permanent until 19 months later, after the completion of the evidentiary hearings on January 31, 2023.” (*Id.* at 15). Despite the fact that the interim order is no longer in effect, Grandmother argues that the interim order “impacted the *status quo* so much that this Court should review the propriety of that order.” (*Id.*) Grandmother relies on *E.B., supra* for the proposition that this Court may review an interim custody order (that is replaced by a final order) when the interim order impacted the *status quo* that would later set the stage for the full custody trial.

Further, Grandmother avers that she suffered prejudice due to the entry of the July 2021 order:

[I]nstead of [Mother] having to prove affirmatively at the custody trial that a modification was in the child's best interest, [Mother] simply had to point to the almost 19-month old *de facto status quo* created by the special relief order, leaving [Grandmother] with the uphill battle of arguing against the new *de facto status quo* in an attempt to claw her way back to her prior long-term custody order that was in place for six years.

(Grandmother's Brief at 17-18). Grandmother concludes the court committed reversible error by transferring primary physical custody of Child to Mother via the July 2021 interim order, and this Court must grant relief. We disagree.

As a prefatory matter, Grandmother's issue regarding the interim order appears moot. **See *K.W. v. S.L.***, 157 A.3d 498, 499 n.1 (Pa.Super. 2017) (holding parent's challenge to interim order replaced by another interim order was moot).

Despite our general rule regarding mootness,

this Court will decide questions that otherwise have been rendered moot when one or more of the following exceptions to the mootness doctrine apply: 1) the case involves a question of great public importance, 2) the question presented is capable of repetition and apt to elude appellate review, or 3) a party to the controversy will suffer some detriment due to the decision of the trial court.

In re D.A., 801 A.2d 614, 616 (Pa.Super. 2002).

In ***Plowman v. Plowman***, [597 A.2d 701 (Pa.Super. 1991)], we reviewed the merits of an interlocutory order permitting a mother to relocate with her child despite the existence of a later order entered after a full custody hearing. We reasoned that the order was reviewable because otherwise the relocation order would be likely to evade review due to its interlocutory nature. ***Id.*** at 704-05. Since the order affected a substantial right of the non-

custodial parent's access to the child and impacted the *status quo* that would later set the stage for the full custody trial, we concluded that we ought to review the proper procedures for entry of such an interim order.

E.B., supra at 461-62 (internal footnote omitted).

In ***E.B.***, a father raised issues related to the trial court's interim order modifying the parties' custody schedule. Specifically, the father claimed that the court

erred in modifying custody in the Interim Order because (1) modifying the long-standing and oft-litigated custody arrangement without a hearing deprived Father of due process; (2) modifying custody was not in the best interests of Child; and (3) the trial court did not delineate its reasons for the modification in open court, in the Interim Order, or in a written opinion.

Id. at 461. Citing ***Plowman***, this Court determined that "the questions presented concerning the Interim Order are capable of repetition and apt to elude appellate review." ***Id.*** at 462. Thereafter, this Court emphasized that the duration of the interim order impacted the *status quo* that the court subsequently considered at the custody trial:

A custody proceeding, particularly a highly contentious one, continually produces issues that the trial court must decide on an interlocutory basis. The history of this case suggests that these parties are likely to litigate continually aspects of their custody arrangement, and the trial court might again try to resolve their issues without conducting a full trial. Although the trial court entered the Interim Order on an interim basis, that interim basis lasted for almost ten months during discovery and pre-trial proceedings, and ultimately impacted the *status quo* the trial court had to consider at the custody trial. Therefore, because of the importance of ensuring that trial courts follow correct procedures when entering interlocutory custody orders that

have significant impact on the final custody decision, we will proceed to the merits.

Id. (internal citation and footnote omitted).

Here, Grandmother correctly notes that she received primary physical custody of Child for the first six years of his life. Grandmother's custody changed, however, due to the interim order granting Mother's petition for special relief. The interim order lasted for approximately 19 months, thereby impacting the *status quo* that the court considered at the subsequent custody trial. Therefore, consistent with the reasoning set forth in ***E.B.***, we will proceed to the merits of Grandmother's challenge to the interim order.

Pennsylvania Rule of Civil Procedure 1915.13 governs the modification of custody pursuant to a petition for special relief:

Rule 1915.13. Special Relief

At any time after commencement of the action, the court may on application or its own motion grant appropriate interim or special relief. The relief may include, but is not limited to, the award of temporary legal or physical custody; the issuance of appropriate process directing that a child or a party or person having physical custody of a child be brought before the court; and a direction that a person post security to appear with the child when directed by the court or to comply with any order of the court.

Pa.R.C.P. 1915.13.

Under appropriate circumstances, a trial court may modify a custody order temporarily pursuant to Rule 1915.13. ***See Choplosky[v. Choplosky***, 584 A.2d 340, 343 (Pa.Super. 1990)] ("special relief" may in some cases be appropriate (and necessary) where the situation is such that, for example, temporary modification of custody or visitation rights would preserve the well-being of the children involved

while the parties prepare to resolve more permanently the question of where and/or with whom the children should remain.”)[.]

J.M. v. K.W., 164 A.3d 1260, 1270 (Pa.Super. 2017) (internal footnote omitted).

Instantly, Mother’s petition for special relief alleged that: 1) Grandmother secured bail for Father and his brother after the Commonwealth charged them with sex offenses; 2) Father and his brother were residing with Grandmother; and 3) Father and his brother’s presence in Grandmother’s home forced Child out of his normal bedroom. Based upon these allegations, the court provided the following justification for its decision to grant Mother’s petition:

Mother’s emergency petition for special relief raised safety concerns for the child in Grandmother’s home. The child’s Father and Uncle (Grandmother’s sons) were facing charges of various sex and drug crimes and due to Grandmother posting bail for them, they both were residing in the same home as the child. Both individuals were scheduled to enter guilty pleas on or about July 30, 2021. Father has a lengthy criminal record involving controlled substances. Additionally, the child no longer had his own bed to sleep in, due to being displaced from his room by his Uncle and the living room couch by his Father. The court expedited scheduling the matter and the parties appeared for a Conference within seventeen (17) days.

(Trial Court Opinion at 7).

Our review of the record confirms that competent evidence of safety concerns justified the court’s decision to disrupt the existing custody arrangement. **See S.J.S., supra.** We acknowledge that Grandmother’s

counsel subsequently informed the court that Father had moved out of Grandmother's house by the time of the custody conference. (**See** N.T. Conference, 8/23/21, at 6). Nevertheless, the court acted on this new information by modifying its prior order to give Grandmother extended periods of partial physical custody. (**See id.** at 12-13). Moreover, the court recognized that its interim order

is just a temporary order to get us to the hearing. And I'll certainly have an open mind. I understand that both parties wish to essentially have primary custody, so I understand that. And this temporary order doesn't really give either party a leg up. It's just to get us to the hearing.

(**Id.** at 14). While several delays plagued this case after the custody conference, we cannot say that the court ran afoul of Rule 1915.13 where it intended to make a temporary modification of custody to preserve Child's well-being while the parties prepared for the custody trial. **See J.M., supra.** Accordingly, Grandmother is not entitled to relief on her first claim.

Grandmother's final two issues are related, and we address them together. Grandmother acknowledges that she is considered a "third party" under the Domestic Relations Code for purposes of this custody dispute. Although there is a presumption that custody should be awarded to a biological parent over a third party, Grandmother insists that she presented clear and convincing evidence to rebut this presumption. Grandmother emphasizes that: 1) she served as Child's primary custodian for the first six years of his life; 2) she did not observe any behavioral problems with Child, whereas

Mother has needed to enroll Child in counseling due to his erratic behavior in her home; 3) she has always acted in Child's best interests by ensuring that Child maintained a relationship with Mother; and 4) she has no criminal record, whereas Mother and her paramour have criminal records.

Grandmother also observes that a court must evaluate sixteen custody factors, pursuant to 23 Pa.C.S.A. § 5328, when deciding a petition for custody. Grandmother conducts her own analysis of these factors, which leads her to opine "that the overall best interest of the child would be for [Child] to reside with [Grandmother]." (Grandmother's Brief at 25). Grandmother concludes that this Court must vacate the current custody order and direct the trial court to return primary physical custody of Child to Grandmother. We disagree.

The paramount concern in any custody case under the Child Custody Act is the best interests of the child. **See** 23 Pa.C.S.A. § 5328 (stating: "In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors..."); 23 Pa.C.S.A. § 5338 (stating: "Upon petition, a court may modify a custody order to serve the best interest of the child"). Section 5328(a) sets forth the best interest factors that the trial court must consider in awarding custody:

§ 5328. Factors to consider when awarding custody

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

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

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

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

In custody disputes between natural parents and a third party, "there shall be a presumption that custody shall 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). Accordingly:

[W]here the custody dispute is between a biological parent and a third party, the burden of proof is not evenly balanced. In such instances, the parents have a *prima facie* right to custody, which will be forfeited only if convincing reasons appear that the child's best interest will be served by an award to the third party. Thus, even before the proceedings start, the evidentiary scale is tipped, and tipped hard, to the biological parents' side.

V.B. v. J.E.B., 55 A.3d 1193, 1199 (Pa.Super. 2012) (quoting **Charles v. Stehlik**, 560 Pa. 334, 340, 744 A.2d 1255, 1258 (2000)).

What the [trial court] must do, therefore, is first, hear all evidence relevant to the child's best interest, and then, decide whether the evidence on behalf of the third party is weighty enough to bring the scale up to even, and down on the third party's side.

McDonel v. Sohn, 762 A.2d 1101, 1107 (Pa.Super. 2000) (quoting **Ellerbe v. Hooks**, 490 Pa. 363, 367-68, 416 A.2d 512, 513-14 (1980)). In [**Ellerbe**,] our Supreme Court noted that "these principles do not preclude an award of custody to the non-parent. Rather they simply instruct the hearing judge that the non-parent bears the burden of production and the burden of persuasion and that the non-parent's burden is heavy." Essentially, the Supreme Court determined, "where circumstances do not clearly indicate the appropriateness of awarding custody to a non-parent, we believe the less intrusive and hence the proper course is to award custody to the parent or parents." [**Id.** at 369, 416 A.2d at 514].

V.B., supra at 1199.

Instantly, the court conducted an on-the-record evaluation of the custody factors at the conclusion of the January 31, 2023 hearing. (**See** N.T. Hearing, 1/31/23, at 22-41). After analyzing each factor, the court synthesized its reasoning when discussing factor sixteen, any other relevant factor. There, the court emphasized that Grandmother had engaged in a course of conduct that undermined Child's ability to assimilate into Mother's home:

The other concern that the court has is [Grandmother's] lack of self-awareness or lack of understanding as to the effect of her actions and her words on this child. I think everyone here acknowledges [that Mother] appreciates those six years that [Grandmother] essentially served as the child's primary caregiver, which is a lot of work. She was there on a day-to-day basis for whatever he needed, and I think that

was appreciated. But, I think there was evidence and in the testimony I saw several instances where [Grandmother] repeatedly just minimized and discounted the things she said to the child, which effectively sabotaged his transition to Mother's home. And I've already made reference in my reasoning as to some specific examples of that, telling the child, "I cry when you're not here." I find that statements like that put an emotional roadblock into transitioning into Mother's household.

And I would note that despite my various court orders, that [Grandmother] apparently continues to engage in a pattern of emotional manipulation designed to regain custody of the child. And I think that this was done most recently when she visited with [Child] the day before the January 23, 2023 meeting with the [GAL].⁷ And, I would note that on January 9, 2023 the mother filed a Petition for Contempt against [Grandmother] for conduct best described as alienation, which I think there was sufficient evidence of and was, as I said, further evidence that apparently it's continuing.

⁷ Earlier at the same hearing, the court received an oral report from the GAL. The GAL stated that she had met with Child. Although Mother brought Child to the meeting, Mother "willingly" left the room to allow the GAL to talk with Child privately. (N.T. Hearing, 1/31/23, at 7). Significantly, Child "stated that his grandmother told him to tell [the GAL] certain things." (*Id.*) Child consistently repeated, "And I'm supposed to tell you that I want to live with my grandmother." (*Id.* at 8). After the GAL calmed Child down, Child admitted that "his belly hurt" because "he was worried about talking" with the GAL. (*Id.* at 9). Thereafter, Child explained that he "was happy to live with his mom," but he "absolutely wanted to see his grandmother[.]" (*Id.*)

The GAL expressed additional concerns regarding Child's relationship with Grandmother. Child claimed that "there were no rules at his grandmother's house[.]" (*Id.* at 9-10). Child also knew "that if he asked his mother for something like a specific toy or video game and his mother said, no, he just knew that if he went to his grandmother that she would get that for him." (*Id.* at 10). Thus, while the GAL acknowledged that Child is "truly connected with his grandmother," she opined that Child's contact with Grandmother "should be very restrictive," or possibly supervised. (*Id.* at 12, 13).

So, for the reasons I've already stated, I do find that [Grandmother] is in contempt, but as it relates to that contempt finding, I'm going to refrain from issuing a sentence today other than a strong admonishment by the court, and that's in recognition of the fact of you have served as this child's primary caregiver for essentially six years prior to my awarding [Mother] primary physical custody. But I don't know how to be any more clear other than giving you clear strong words that this conduct must stop. If you continue you will emotionally harm this child and I wish to remind you that a future finding of contempt, of course after a full and fair hearing, if there's another finding of contempt, and I think your attorney can explain this a little bit further to you, but if a party violates my order I can fine you, I can put you in jail, I can put you on probation, and I can order you to pay costs and counsel fees. And actually I say this to both of you, I would encourage you both to give this child the gift of the two most important people in his life cooperating and getting along.

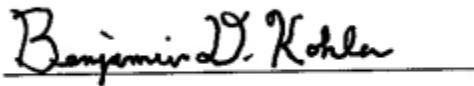
(**Id.** at 39-41). The court also concluded that Grandmother did not provide clear and convincing evidence to rebut the presumption that primary physical custody should be awarded to Mother. (**See** Trial Court Opinion at 8-9).

Although primary physical custody has now shifted to Mother, the court repeatedly recognized that it is in Child's best interests to continue a relationship with Grandmother. Thus, the court crafted a final custody order that carves out a meaningful period of partial custody for Grandmother. While Grandmother would have this Court reweigh the Section 5328(a) factors in her favor, the record supports the court's findings. Moreover, the findings are not the result of an error of law. Therefore, we decline Grandmother's invitation to reweigh the evidence. **See C.R.F. v. S.E.F.**, 45 A.3d 441, 443 (Pa.Super. 2012) (reiterating that where trial court's conclusions are

reasonable as shown by record evidence, and conclusions were not result of error of law, appellate court is bound by those conclusions). Additionally, this is a case where several witnesses provided ample testimony over the course of multiple, contentious custody hearings. We recognize that the court made first-hand observations of the parties spanning the course of these hearings, and we grant due deference to the conclusions based upon those observations. ***See E.B., supra.*** Accordingly, we affirm the order granting legal and primary physical custody of Child to Mother.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 1/19/2024