

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

J. M. W.	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
T. A.	:	
	:	
Appellant	:	No. 1089 MDA 2023

Appeal from the Order Entered July 5, 2023  
In the Court of Common Pleas of Lebanon County Civil Division at No(s):  
2020-20452

BEFORE: BOWES, J., LAZARUS, J., and STEVENS, P.J.E.\*

MEMORANDUM BY LAZARUS, J.:

**FILED: JANUARY 18, 2024**

T. A. (Mother) appeals from the order, entered in the Court of Common Pleas of Lebanon County, denying her petition for modification of custody. After review, we affirm based on the opinions, authored by the Honorable John C. Tywalk, filed on July 5, 2023 and September 1, 2023.

Mother and J. M. W. (Father) have shared legal and physical custody of their minor daughter (Child) (born 11/2017) since 2021. **See** Custody Order, 6/9/21. Since that time, the parties have shared physical custody on a four-week-on, four-week-off schedule because Mother was serving in the military and stationed in California. **See** Order, 6/10/21. Mother has since retired from the military and relocated to Connecticut, where her family resides.

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\* Former Justice specially assigned to the Superior Court.

On August 24, 2022, Mother sought modification of the custody order, seeking primary physical custody of Child during the school year. Mother, who is an American of Tibetan ancestry, explained that her main goal in seeking primary physical custody is to ensure that Child will be educated in Mother's Tibetan culture and religion. Mother stated that there is a large Tibetan community in Connecticut, and she wanted to enroll Child in a kindergarten in that area where Child could go to school with other children of Tibetan ancestry.

On March 16, 2023, the court held a hearing on Mother's petition. At the hearing, Mother, Father, and paternal grandmother testified.

Mother lives alone in a single-family home, which she owns, where Child has her own room. Mother lives close to family, including her mother and her brother, who live together. Maternal grandmother's boyfriend also lives there. **See** N.T. Custody Hearing, 3/16/23, at 8-12. Mother stated that it is "equally important" for Child to be exposed to both her Tibetan and Christian backgrounds. **Id.** at 30.

Mother works full time as a measurement technician for an energy company, from 7:00 a.m. to 2:30 p.m., Monday through Friday. Her work entails some travel, although she testified that 90% of her travel is about 20 minutes from her home. **Id.** at 15-16.

Father lives with his parents, both retired teachers, in a single-family home where Child has her own room and a playroom. **Id.** at 79-84. Father has a flexible work schedule, and he is able to work remotely. **Id.** at 79.

Paternal grandmother, who previously worked at the preschool that Child attended, is available to care for Child when Father is working, and to get Child on and off the school bus for kindergarten. *Id.* at 113-15, 165. Father's brother and sister-in-law, with whom both Father and Child share a close relationship, also live nearby; Father's sister-in-law who shares a love of horseback riding with Child and pays for Child's horseback riding lessons. *Id.* at 152-53.

The parties presented extensive testimony on the "cultural exposure" issue, as well as the relative merits of the school systems in both parties' school districts. Following the custody trial, the court gave the parties an opportunity to file briefs on the "cultural exposure" issue, *id.* at 187, and took the matter under advisement.

On July 5, 2023, the court denied Mother's request for modification and ordered the parties to continue their shared legal custody of Child, ordered Father have primary physical custody of Child and Mother have one weekend per month during the school year, and ordered Mother have primary physical custody of Child during summer. Mother appealed. She raises the following issues for our review:

1. Whether the trial court's conclusions were against the weight of the evidence presented through trial regarding custody factors four, five, ten, twelve, and sixteen.
2. Whether the evidence presented to the court was insufficient to support the decision arrived at by the trial court to give [Father] primary physical custody during the school year and [Mother] to have at least one weekend per month as the parties agree with primary custody during the

summer and [Father] having one weekend in June, one weekend in July, and one weekend in August.

Appellant's Brief, at 1-2.

We review a trial court's determination in a custody case for an abuse of discretion, and our scope of review is broad. ***M.P. v. M.P.***, 54 A.3d 950, 953 (Pa. Super. 2012). Because we cannot make independent factual determinations, we must accept the trial court's findings that are supported by the evidence. ***Id.*** The trial judge's deductions or inferences from its factual findings, however, do not bind this Court. ***Id.*** We may reject the trial court's conclusions, but only if they involve an error of law or are unreasonable in light of its factual findings. ***Id. See also Smith v. Smith***, 281 A.3d 304 (Pa. Super. 2022). After our review, we find no abuse of discretion.

When a trial court orders a form of custody, the best interest of the child is paramount. ***J.R.M. v. J.E.A.***, 33 A.3d 647, 650 (Pa. Super. 2011). The trial court must consider the following factors when determining the child's best interest:

- (1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.
- (2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party[,] and which party can better provide adequate physical safeguards and supervision of the child.
- (3) The parental duties performed by each party on behalf of the child.
- (4) The need for stability and continuity in the child's education, family life and community life.
- (5) The availability of extended family.

- (6) The child's sibling relationships.
- (7) The well-reasoned preference of the child, based on the child's maturity and judgment.
- (8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.
- (9) Which party is more likely to maintain a loving, stable, consistent[,] and nurturing relationship with the child adequate for the child's emotional needs.
- (10) Which party is more likely to attend to the daily physical, emotional, developmental, educational[,] and special needs of the child.
- (11) The proximity of the residences of the parties.
- (12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.
- (13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.
- (14) The history of drug or alcohol abuse of a party or member of a party's household.
- (15) The mental and physical condition of a party or member of a party's household.
- (16) Any other relevant factor.

23 Pa.C.S.A. § 5328(a)(1-16).

Moreover, on issues of credibility and weight of the evidence, we defer to the findings of the trial court, which has had the opportunity to observe the proceedings and demeanor of the witnesses. ***R.M.G., Jr. v. F.M.G.***, 986 A.2d 1234, 1237 (Pa. Super. 2009). The parties cannot dictate the amount of weight the trial court places on evidence. Rather, the paramount concern of

the trial court is the best interest of the child. **Id.** Appellate interference is unwarranted if the trial court's consideration of the best interest of the child was careful and thorough, and we are unable to find any abuse of discretion. **Id.** The test is whether the evidence of record supports the trial court's conclusions. **Ketterer v. Seifert**, 902 A.2d 533, 539 (Pa. Super. 2006).

Here, Mother argues that she can provide a "more cultural and parochial educational environment than [Father]" and, thus, it is in Child's best interests for Mother to have primary physical custody during the school year. Appellant's Brief, at 3. She contends the trial court failed to properly weigh "how important proper exposure to learning one's culture, language, traditions, and holidays is on a consistent basis[.]" **Id.** at 4. Mother also argues that "culture/religion should be considered as a factor in determining the best interest of the Child[.]" noting that "Pennsylvania has not yet considered adding cultural and religious exposure/practice to the list of factors[.]" **Id.** at 16.

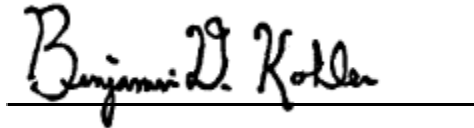
The trial court provided a detailed analysis of the custody factors in its decision, giving very careful consideration to Child's Tibetan heritage. **See** Trial Court Opinion, 7/3/23, at 8-23; **see also** Rule 1925(a) Opinion, 9/1/23. Though cultural and religious exposure/practice is not specifically set forth in the list of custody factors the court must consider prior to entering a custody order, we point out that subsection 5328(a)(16), "other relevant factors," a "catchall provision," is utilized by a party who presents considerations that he or she believes the court must analyze in determining a child's best interests.

**See D.K. v. S.P.K.**, 102 A.3d 467, 477 (Pa. Super. 2014 (“Trial courts should also consider those relevant factors of section 5337(h) that are not otherwise encompassed directly or implicitly by the section 5328(a) factors pursuant to the catchall provision of section 5328(a)(16).”); **see also M.J.M. v. M.L.G.**, 63 A.3d 331, 338 n.10 (“The complexity of the analysis is aptly captured by the Legislature’s painstaking listing of 15 mandatory considerations in 5328(a)(1)-(15) and the inclusion of a catchall “any other relevant factor” in 5328(a)(16).”). Here, the court provided a comprehensive evaluation of the cultural exposure concern under subsection 5328(a)(16). The court set forth each of the custody factors and explained in detail which factor favored which party.

After our thorough review of the record, the parties’ briefs, and the relevant law, we believe that President Judge C. Tylwalk carefully analyzed the statutory factors with respect to custody, and in particular, Mother’s plans to keep her Tibetan culture a priority in Child’s life. **See** 23 Pa.C.S.A. § 5328(a)(16) (other relevant factor). The court’s order reflects a meaningful consideration and accommodation of Mother’s wishes. We find no error or abuse of discretion in his determination. **See M.P., supra**. Accordingly, we affirm the trial court's order and direct the parties to attach copies of those opinions in the event of further proceedings.

Order affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.  
Prothonotary

Date: 1/18/2024



IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY,  
PENNSYLVANIA

CIVIL ACTION - FAMILY DIVISION

JC [REDACTED] M. W. [REDACTED],  
Plaintiff

v.

T. [REDACTED] A. [REDACTED],  
Defendant

NO. 2020-20452

2023 JUL -5 PM 1:49

ENTERED  
PROBATION OFFICE

APPEARANCES:

LOREEN M. BURKETT, ESQUIRE  
WEISS BURKETT, LLC

FOR PLAINTIFF

KELLI B. STATT, ESQUIRE  
STATT LAW, PLLC

FOR DEFENDANT

OPINION, TYLWALK, P.J., July 3, 2023.

JC [REDACTED] M. W. [REDACTED] ("Father") and T. [REDACTED] A. [REDACTED] ("Mother") are the parents of one minor daughter, Y.K.E.W., known as "E. [REDACTED]", born on November 1, 20[REDACTED]. Before us is Mother's petition to modify custody in which she seeks primary physical custody of E. [REDACTED] and relocation to the State of Connecticut. For the reasons that follow, we do not believe such a move would be in E. [REDACTED] interest, so the modification request will be DENIED.

The parties have had a somewhat stormy relationship, the background of which was related in our earlier Opinion in this case dated June 9, 2021. With regard to physical custody, we ultimately awarded shared custody to the parties, with the period being on a four-week-on, four-week-off basis in light of the fact that Mother was residing in the State of California. As we discovered with the filing of Mother's Petition for Modification, Mother relocated to the State of Connecticut and her circumstances there, of course, will now be part of what we consider in resolving her petition.

Mother currently lives in her own single-family residence and is there alone unless E is there with her during her period of partial custody. E has her own room and is in daycare while with Mother due to Mother's employment. Mother is a measurement technician with Embridge Energy Company, working full-time Monday through Friday from 7:30 a.m. until approximately 3:30 p.m. Mother travels a lot for her job, but 90% of the time is within 20 minutes of home. Mother usually gets E to daycare between 6:00 and 6:30 a.m., but sometimes must drop her off earlier if Mother has to travel a greater distance for her job. This is necessitated about two times per week. E is in a home daycare facility with six other children who are all younger than her.

Mother decided to move to Connecticut in March of 2022 and never consulted or talked with Father about her decision in advance. She only advised him of the move while she was on her way to Connecticut from California. She indicated she moved "because of family" and offered testimony about her desire to have her daughter exposed to Tibetan culture and the importance of that exposure to her.

The bulk of Mother's testimony focused on two issues, education and her desire to have E exposed to the Tibetan culture. Mother emphasized the importance of culture to her and her desire to ensure that her daughter is exposed to that culture, including its language, customs and religious holidays. She provided information about a Tibetan Monk program, indicating several monks were coming "in the summer" to the area where she lives but could provide no additional information as to exact dates, times or programming. She indicated she would provide the information to Father when she knew it. Despite her focus on the importance of the Tibetan culture, Mother acknowledged that both parental backgrounds are equally important to her daughter.

Mother related that Father does not agree with E attending school in Connecticut and she acknowledged that she had not looked into the school "much" and had not been to the proposed school that E would attend there.

She admitted she knew nothing about the school E would attend in Lebanon and indicated a general belief that Connecticut schools are better than Pennsylvania schools based on state averages. E would be in a public school to start, and the school is located approximately two minutes from Mother's home and about ten minutes from daycare. Mother's friend would have to pick E up from school on most days because of Mother's work schedule.

Mother detailed the difficulties there have been with Father for custody exchanges since she moved to Connecticut. The travel time between Mother's home and Father's home is somewhere between five and six hours, and on occasion, Mother has traveled by train to accommodate the exchanges. She acknowledged she has been habitually late for the exchanges, but claimed she has let Father know when that would be the case. The exchanges have not always occurred at the same location at either end, and it appears they may continue to be problematic moving forward.

Mother was aware of Father's concern about the pets in her home – one dog, two cats and a kitten - but denied that the cats are E's responsibility. She acknowledged that the dog was not "completely" housebroken but that she has "solved the problem" without being more specific. She admitted that even

though E. has her own room, E. likes to sleep with her and believes this is the case at Father's home as well.

In concluding her testimony, Mother admitted she knows nothing about the schools in Lebanon County and based her assessment of schools on national rankings which indicate Connecticut schools are "better". She did not research middle or high schools in Pennsylvania or Connecticut and related that she would go "halvesies" on private school if she and Father should decide to go in that direction.

Father testified that he has lived long-term with his parents in their home and has worked for almost three years at Warwood Gaming. He works Monday through Friday from 7:30 a.m. until 4:00 p.m. and can work remotely. The home is a single-family residence, and E. has her own room and "mostly" sleeps there, but it may take a few days for her to transition there after being with Mother.

Father related that he has felt things were more amicable with Mother when she lived in California and that he received no notice that Mother was relocating to Connecticut. He thought it would be easier with Mother in Connecticut, but that has not been the case because of issues with the custody exchanges. He testified that Mother picked Philadelphia as the exchange point to return E., but he drives all the way to Connecticut to return her. That has been

problematic at times because the exact location to drop her off is not consistent and sometimes he has had to backtrack to drop E. off at her grandmother's after he reaches Connecticut. Things have been a "little better" since December, but Mother has never indicated to him that she would bring E. all the way to his home in Lebanon County.

E. is currently in daycare three days a week. Father's mother drops her off and he picks her up at the end of the day. The preschool she attends is Special Friends Daycare, which has a curriculum and the classes are divided by age. E. is working on learning the alphabet and numbers and is learning to write her name. She has workbooks she completes, some of which Father sent to Mother but have never been returned to him. He does not believe Mother has the time, or makes the time to work on those with E.. He says his daughter has made friends and has been invited to birthday parties and playdates with other children from school.

Father testified that E. enjoys horseback riding and goes for lessons once a week where she is learning to ride and care for the animals. He believes this activity is a good thing for his daughter.

In discussing E.'s exposure to Tibetan culture and language, Father indicated he has no objection to her having such exposure and does not believe

that Mother's move to Connecticut was related to her desire to be close to the Tibetan community. When he and Mother were together, Mother did celebrate some of the Tibetan religious holidays, but it did not appear to him to be of overwhelming importance to her.

With regard to schooling, Father related that he saw the comparison documents, and he believes the Cornwall-Lebanon School District is superior to the Norwich District, particularly so in the middle and high school years. Father believes education should be primary. He agrees that the Tibetan language, culture and religion are important, but he wants E. to be in the educational school district. Father stated he would look into the presence of the Tibetan community in this area to ensure E.'s ongoing contact with that culture.

D. W., paternal grandmother, testified and confirmed much of Father's testimony. She works at the Special Friends Daycare where E. attends but is not E.'s teacher. She confirmed that she gets E. to daycare and also confirmed that when E. is not at daycare, she cares for her at her home. When E. and Father are at home together, his mother indicated that he performs the normal parental responsibilities for her. E. does have friends from school and does things outside the home with those friends. Mrs. W. was aware of some of the issues that have arisen during the exchanges and questions how

some of the Zoom calls with Eric occur. She believes there are issues in Mother's home with the animals that reside there. Grandmother related that Eric rarely speaks Tibetan and believes her son would attempt to make sure Eric is exposed to Tibetan culture if given the opportunity.

### **Legal Principles – Custody Factors**

The key to custody for most of the history of Pennsylvania jurisprudence has been “what is in the best interest” of the child or children with that determination left to the discretion of the trial judge. In 2010, Pennsylvania's General Assembly passed a comprehensive Custody Act that specified factors that a Court must consider in determining what is best for children. In pertinent part, that Custody Act states:

#### **§ 5328. Factors to consider when awarding custody.**

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

- (1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.
- (2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child



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

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

(3) 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

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<sup>1</sup> This factor was added in 2013.

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

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

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

(16) Any other relevant factor.

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

**23 Pa.C.S.A. §5328(a)-(b).**

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

We will now turn to a discussion of how each of these factors impacts on the current situation.

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

Based on the testimony we heard, we did not get the sense that either parent was in any way hindering the other parent's contacts with E. We believe this will continue to be the case. Therefore, 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.**

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

There is no history or suspicion of abuse. These factors are not relevant.

**(3) Parental duties performed by each party on behalf of the child.**

Both parents receive assistance from family members when E. is in their care, but both parties perform the bulk of parental duties personally when she is with them. This is a neutral factor.

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

Obviously, there is a need for stability in any child's life, and we are aware of how our decision on primary physical custody will impact on E.'s family life,

education and her community life. We were provided more testimony as to these things from Father's standpoint, but this factor currently carries little weight favoring either side.

**(5) The availability of extended family.**

Obviously, Father lives with his parents and E. has a close relationship with them. She also shares a close relationship with her Aunt Debbie and Uncle Matt. Maternal grandmother is also an active part of E.'s life in Connecticut and E. has contact with her uncle in Connecticut, who has a sexual assault charge in his past which does not cause Mother any concern. This fact does concern us, but we heard testimony that Mother rarely, if ever, leaves E. alone with any male, so perhaps that is why she has no concern. We believe this factor favors Father to a slight degree because of his living situation and his parents' daily interaction with E..

**(6) The child's sibling relationships.**

The parties have no other children, so this is not a relevant factor.

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

Due to the age of the child, she was not presented as a witness.

**(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.**

We did not see any attempts currently by either parent to turn E against the other. We did have concerns the last time this case was before us, but they have dissipated. This factor is neutral.

**(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.**

For Factors 9 and 10, we have no concerns about the ability of these parents to maintain a stable and loving relationship with their daughter at this time. In addition, we have no concerns about their ability to attend to her daily needs, be they physical, emotional or developmental, when she is in their care. E has no special needs and we believe her parents should continue to foster her interest in horseback riding and continue her exposure to the Tibetan culture and language. These factors are neutral but positive for both parents.

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

The distance between these parents has been problematic and becomes even more so now that Eve has reached school age. Even when Mother lived in California it was somewhat less problematic, despite the travel, but there is no easy way to deal with the school calendar issue. The distance involved mandates a more historically relevant schedule that involves one parent having primary physical custody, at least during the months of the school year.

Even the recent exchanges since Mother's move to Connecticut have been problematic, with blame being laid each way on occasion when there has been a problem with arranging the exchanges and particularly with Mother being on time. No easy answer is apparent, so this is a negative factor across the board.

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

Each of the parties have childcare arrangements in place, although, in our mind, Father's is preferable, because he is aided by the fact that he lives with his parents and they are the source of daycare for Eve in the home when it is needed. His parents are available almost universally to provide care for Eve if need be, and because of the residence situation, Eve has not had to be awakened at a very early hour to get her to daycare at a different site as she does at her mother's. With that being said, we found nothing inappropriate about Mother's

arrangements, but we are not certain what the school time situation will be in light of Mother's work schedule and the fact that we were lacking testimony about the specifics of the school day and how that would be managed if Mother had primary physical custody. This factor weighs decidedly in Father's favor.

**(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.**

Although these parents are not always on the same page, unlike many who appear before us, there does not seem to be a high level of conflict. There have been disputes and concerns raised, such as the pet situation at Mother's home and Father's trip to Disney without advance notice to Mother, but these have seemingly been overcome. We were concerned that Mother relocated to Connecticut without prior notice to Father, but he was amicable about it, and when she contacted him on her way east from California, he accommodated a visit with E . . .

There have been some issues with regard to clear communication about the travel for exchanges, but we believe this can be overcome by a more direct spelling out of when and where the exchanges will occur. Although the parties

disagree as to where their daughter should live and attend school, there was not a high level of conflict about the issue – merely a need to have it resolved by someone since they cannot resolve it on their own.

We are pleased to note that we believe these parents can cooperate without the high level of conflict we see in many other cases. They are not perfect by any means, but we are relieved this fact is not of major impact.

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

There is no history of drug or alcohol abuse by either party. This factor is not relevant.

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

We have no concerns about the mental or physical condition of either party or their household. This is another factor not relevant to our determination.

**(16) Any other relevant factor.**

The “any other relevant factor” aspect of this case actually embodies two important, but distinct issues – where E. should be educated and the impact of Mother’s cultural background and the exposure of E. to that culture. Although Mother testified as to her beliefs about the quality of education available to E.



in Connecticut, her opinions were based on statewide statistics discovered on the internet leading her to conclude that the school E. . would attend in Connecticut would be better than the elementary school in the Cornwall-Lebanon School District. She reached this conclusion without ever visiting the school E. . would attend and acknowledged that she knew nothing about the school E. . would attend in Lebanon County.

Based on the Exhibits admitted at trial, comparing the elementary schools shows a clear positive for South Lebanon Elementary. Veterans' Memorial School, the school E. . would attend in Connecticut, had a summary rating of "below average" in three relevant areas – test scores, student progress and equity. Although South Lebanon Elementary was also rated "below average" in student programs, its test scores rating was "average" and the individual test scores in Math, English and Science range from 56% to 81% - all in excess of the state average.

Veterans' Memorial did not fair so well. The test scores in the three areas were Math 21%, English 13% and Science 22%, far below the statewide averages for Connecticut, which were 43%, 49% and 50% in the respective categories. These scores suggest that at the elementary level, South Lebanon Elementary is far superior to Veterans' Memorial.

In another Exhibit where a more direct comparison of the schools was made, overall, South Lebanon was ranked number 811 of 2,549 schools in Pennsylvania, putting it in the top 50%, while Veterans' Memorial ranked number 721 of 940 schools in Connecticut, putting it in the bottom 50%. These rankings were reflected consistently in the test scores achieved at each school.

There were also Exhibits (GreatSchools printouts) which provided school comparisons for the middle schools and high schools involved. At the middle school level, the Cornwall-Lebanon School District scored above average on both test scores and student progress, while Kelly Middle School was rated "below average" in each of these categories. Cedar Crest Middle School exceeded the statewide average in English, Math and Science tests. The Kelly Middle School test scores fell below the state average in Connecticut by nearly 50%.

Although the high school ratings were not as disparate, Cedar Crest High School was rated "above average" in student progress and college readiness with 61% of the graduates pursuing college or vocational school beyond high school. The test scores for Biology, Algebra and English were all in excess of the state average.

Norwich Technical High School scored average in college readiness with no score given for student progress. Only 33% of the graduates are pursuing college

or vocational school, a rate one-half of the current rate for students in Connecticut. No information was provided to show how the school compared to other Connecticut schools in Biology, Algebra and English.

We realize these are just numbers, but we do believe they represent an attempt to objectively look at the overall quality of the two schools for comparison purposes. It is clear to us, at least as far as elementary education goes, the Cornwall-Lebanon School District provides the far greater opportunity, which is borne out in the middle and high school comparisons as well.

We also realize that school involves much more than academics, including socialization and the ability to participate in extracurricular activities, sports, music, art and the like. No testimony was presented as to this issue as it applies to either school district. If we looked strictly at the academic data, the Cornwall-Lebanon School District wins out.

The second major issue presented during trial was Mother's desire to ensure that E. is exposed to her Tibetan heritage. This would include exposure to the language, customs and traditions, as well as religious holidays. Both parties provided memoranda dealing with the importance of religion in the determination of custody disputes. We understand the importance of this issue

to Mother and to E , but we do not believe that ensuring cultural awareness should be the overarching deciding factor in most cases, including this one.

Father indicated he believes that E 's exposure to Tibetan culture is a good thing but also believes that Mother's relocation to Connecticut was not related to a desire to be with the Tibetan community there. This was confirmed by what she said in her Petition for Modification. He related that during their time together Mother recognized and celebrated Tibetan religious holidays and the Tibetan New Year, and although he believes exposure to the culture and religion for E is important, education should be primary. He believes the Cornwall-Lebanon School District provides a superior product, and he wants her in the best environment and believes that is the Cornwall-Lebanon School District.

Father acknowledged that E 's maternal grandmother is a continuing source of exposure for E to the Tibetan culture and customs and believes there is a larger concentration of those of Tibetan heritage in the area in Connecticut where Mother lives. He indicated a belief that South Lebanon Elementary has a religious exception for absences and that E 's absence from school for Tibetan religious holidays, to be observed with Mother in Connecticut, would be honored by the District. Although this is his belief, there was no confirmation of this fact from the District.

It was clear to us that Mother's main focus at trial was to convince us that the importance of exposure to Tibetan culture was so paramount for E. that that factor should guide our decision on primary physical custody. Although Mother provided testimony about how the exposure was being handled, she was lacking in details that supported why she should be granted primary physical custody for that purpose. She mentioned some specific religious holidays and the Tibetan New Year as being significant and talked about the Tibetan Monk program, but provided no specific dates, times or programming for it. Ironically, Mother did not testify that she moved to Connecticut so that she could be closer to the Tibetan community there – she said she moved because of her family. E. currently is receiving language and cultural education from a high school student two hours per week on a Thursday and a Sunday. We did not see why this could not continue under some different schedule in the future.

As we read through the memos provided by counsel, we were struck by the fact that cultural accommodation has been much more of a factor in custody disputes than we realized. We believe it is important for E. to be exposed to her Tibetan heritage, but she also has an American heritage that cannot, and should not, be ignored.

In one of the articles provided by Mother's attorney, "Blending Cultures and Religions", written by a Howard University School of Law professor, it is noted that "neither the parent nor the child's religious practices should be considered in custody proceedings, unless those practices severely and almost certainly harm the child or the religious practice 'has been a significant part of the child's life.'" (at page 41). We obviously do not believe there would be any harm to E. if she is exposed to Tibetan religious practices, although we are not convinced, based on the testimony, that these practices have been a significant part of her life in the past.

With regard to E.'s exposure to Tibetan language and culture, we believe that exposure will be a positive thing for her. Clearly, her maternal grandmother is a follower of these traditions, but we are not sure of the extent of Mother's adherence, except for observance of religious holidays and the Tibetan New Year. Any Order we structure should allow for the ongoing exposure of E. to her cultural heritage.

Like Father, we are unaware of the extent of any Tibetan community near to Lebanon County, but an investigation should be conducted to determine if one exists and how it can be accessed locally to aid in E.'s exposure to that culture. We have considered the importance of ongoing exposure to her Tibetan heritage and will attempt to ensure that that exposure continues.

With all of this being said, we believe primary physical custody should be with Father during the school year, with generous opportunities for Mother to have contact with Eyle, realizing the impact of distance on those opportunities. Summertime custody will be primarily with Mother, and our hope is, in keeping with her desires, she will maximize Eyle's contact with Tibetan culture and her Tibetan heritage during that time. We also believe an accommodation should be made, if possible, to ensure that Eyle can spend major Tibetan religious holidays and the Tibetan New Year with Mother. With these thoughts in mind, we have attempted to construct an order which satisfies these goals.

Due to the distance between the parties, it is impractical to establish the typical holiday custody schedule, especially as to those holidays that fall during the school year. Due to Mother's focus on exposing Eyle to the Tibetan culture, we are not sure how important these traditional holidays are to her, in fact, we would believe that a typical "Christmas", as we might think of it, is not celebrated in that culture or religion, nor is Thanksgiving. We do realize the importance of the Tibetan New Year and other religious holidays to Mother based on her testimony. Accordingly, we will not be including the typical holiday schedule of custody in our Order.