

MAURICE NORMAN,
Plaintiff

v.

EILEEN NORMAN,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA
:
: NO. 2012 CV 1174 DC
:
: CIVIL ACTION – LAW
: IN DIVORCE & CUSTODY

DAUPHIN COUNTY
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MEMORANDUM OPINION

PROCEDURAL HISTORY and FACTUAL BACKGROUND

On August 8, 2014, this Court held a custody hearing in the above-captioned matter, and issued a Memorandum Opinion on August 28, 2014. This Memorandum Opinion will address what has occurred related to custody in this action since that date.

Since 2014, it appears the parties have been involved in extensive litigation regarding their divorce which was handled by Divorce Master Cindy Conley, Esquire, and the Honorable Jeannine Turgeon.¹ A divorce decree was entered on April 25, 2016. On May 12, 2016, Defendant Eileen Norman (hereinafter "Mother") appealed the entry of the decree to the Superior Court of Pennsylvania. The appeal is currently pending.²

On June 23, 2016, Mother filed an Emergency Petition for Special Relief seeking to suspend Plaintiff Maurice Norman's (hereinafter "Father") periods of partial custody during the summer vacation. Mother alleged that the children's medical and behavioral issues worsened upon their return from Father's home in Washington after the summer of 2015. She alleged that Father is either unwilling or unable to provide the care and supervision necessary for the children's special needs. This Court denied the emergency petition on June 29, 2016.

¹ See Memorandum Opinion filed July 11, 2016 for a detailed description of what occurred during the divorce litigation.

² See 764 MDA 2016.

Mother filed a Petition for Modification of a Custody Order on July 13, 2016. The petition again alleges that Father is unwilling or unable to care for the children's special needs during his custodial periods. The parties have three (3) minor children – C.N. (DOB: 04/2001), N.N. (DOB: 06/2003), and Ch.N. (DOB: 11/2006) – and one (1) adult child who is not subject to this custody action. The current Custody Order provides Mother with primary physical custody subject to Father's periods of partial custody – seven (7) weeks during the summer vacation, part of winter break, and spring break every year. N.N. is diabetic which is controlled by insulin. Ch.N. is diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”) which causes behavioral issues. Mother alleges that the children's conditions worsened during summer 2015 while in Father's custody. She is requesting sole legal custody and to suspend or reduce Father's custodial periods.

The parties attended a custody conciliation conference on August 19, 2016, but were unable to reach an agreement. Thereafter, this Court scheduled a pretrial conference for November 15, 2016. Since the parties were unable to reach an agreement at the pretrial conference, a custody hearing was scheduled for March 9, 2017.

CUSTODY HEARING

On March 9, 2017, this Court conducted a custody hearing wherein Mother and Father, as well as their respective witnesses, appeared and testified.³ Mother was represented by Jeanne Costopoulos, Esquire, and Father was represented by Anthony McBeth, Esquire.

³ Father appeared by telephone as he was unable to fly to Pennsylvania to be in person. In addition, two (2) of Mother's witnesses and Father's witness also appeared by telephone.

Mother is primarily seeking to modify the current custodial arrangement because the children returned from Father's home in August 2015 and their medical conditions had worsened – C.N. gained weight, N.M.'s blood sugar levels skyrocketed, and Ch.N. did not take all of his medication. The children spent seven (7) weeks in Washington with Father during summer 2015. For the summer of 2016, the children only spent three (3) weeks with Father by agreement of the parties. Father did not provide information regarding the children's activities and education for summer 2016; therefore, Mother enrolled the children in activities in Pennsylvania. Father agreed to reduce his time for summer 2016 as he agreed the children should attend their activities. Admittedly, the children's medical conditions were fine upon their return in August 2016.

We heard testimony from Hannah Layton (Ch.N.'s special education teacher) and Dr. Deanne Dosnocht (children's pediatrician) on behalf of Mother. Ms. Layton has been the special education teacher for Ch.N. since approximately October 2016. He is currently in the fourth (4th) grade, and has an Individualized Education Plan ("IEP"). He has extreme difficulty engaging with other students or when he gets an answer wrong. If he gets an answer wrong, Ch.N. will cry, leave class, and occasionally throw things, and it is difficult to calm him down. Ms. Layton works on self-regulation strategies with Ch.N. in attempt to improve his classroom behavior. She testified that Ch.N. is doing well and there have been fewer incidents. However, he had difficulty returning to school after winter break 2016 and it took until approximately mid-February to reduce the number of incidents.

Ms. Layton testified Ch.N.'s IEP recommends a formal education setting during the summer vacation. Ms. Layton testified that there is a summer program at Ch.N.'s school

which is run by the same teachers who interact with him during the school year. However, she also testified that Ch.N. is not required to attend the program at his current school, and is willing to provide guidance and assistance if Father finds a similar program in Washington. Ms. Layton stated that she spoke with Father on or about March 1, 2017, and he requested information regarding Ch.N.'s IEP from her since he had not received it before. Father also provided his phone number to Ms. Layton, and requested hers so that they could remain in contact. She also discussed with Father self-regulating strategies and terms with which Ch.N is familiar. Father did not challenge or question the recommendation for a formal education program. Prior to that conversation, Ms. Layton had never spoken to Father.

Next, we heard testimony from Dr. Fosnocht, who has been the children's pediatrician since approximately 2014. She monitors C.N. for obesity and her high risk for diabetes. As of the custody hearing, C.N. had not been diagnosed with diabetes, however, there has been little change in her weight. She last saw C.N. on December 10, 2014. C.N. was seen by another doctor in her practice on March 7, 2016, and there was an appointment scheduled for March 29, 2017.

N.N. is monitored for diabetes as she is on insulin. Dr. Fosnocht testified that she had not seen N.N. since approximately August 2015 upon returning from Washington. At that time, her A1C levels worsened from May to September 2015. The A1C test measures the glucose in one's blood by assessing the amount of glycated hemoglobin. Dr. Fosnocht testified that A1C levels are "normal" around 6. The results of an A1C test are a reflection of estimated levels for approximately three (3) months prior. For example, if tested in August, the results would show a combined estimated average for May, June,

and July. N.N. was tested on March 3, 2015 with an A1C of 8.3. She was tested against on August 20, 2015 with an A1C of 13.3. Dr. Fosnocht testified that the 5 point increase in N.N.'s A1C levels are reflective of blood sugars being consistently elevated above 200, as well as poor diabetic control. Dr. Fosnocht did not have any measurements for summer 2016. However, she stressed that she is not an endocrinologist, and that N.N.'s endocrinologist may have measurements for that time period. If the numbers were alarming, Dr. Fosnocht testified that she would like to be notified, but it is possible that she would not be. N.N. was last seen by Dr. Fosnocht on April 20, 2016, and is not due to come in again until April 2017.

Dr. Fosnocht sees Ch.N. for his diagnosis of ADHD, as well as behavioral and educational issues. He was originally prescribed Adderall (20 mg), and his medication was recently changed in February. As for behavioral and educational issues, Dr. Fosnocht testified that Ch.N. has difficulty focusing and concentrating, is easily frustrated, and struggles with impulsivity. She recommended that Ch.N. continue his medication and obtain academic help during summer vacation. Ch.N. was last seen by Dr. Fosnocht on June 29, 2016, and was seen in February 2017 by another doctor.

Mother testified to a number of incidents which she believes shows Father does not make the children a priority. In approximately August or September 2014, N.N. was diagnosed with diabetes and insurance did not cover the cost of her medication. Mother called Father to see if he was able to provide any money to help with the costs. Father offered to provide his credit card number to the pharmacist over the phone, but the pharmacy refused. Mother then asked Father to leave work and send her money through Western Union and Father declined. She ended up borrowing money from a friend, and

testified that N.N. was upset that a man she just met paid for her medications and not Father. In a separate incident, Father spoke with Dr. Fosnocht who provided him information regarding the type of diabetes with which N.N. is diagnosed. Dr. Fosnocht had assumed Father relayed the information to Mother. When Mother found out that Father had not relayed the information, she told Father that if he communicated with Dr. Fosnocht again, he must tell her everything that was said, and if he is unwilling to do that, then to not communicate with the doctor.⁴ In January 2015, Father received the insurance statement which showed Ch.N. was prescribed Adderall. He called Mother and told her that she did not have the authority to put Ch.N. on medication without consulting him.

For spring break 2015, Father said that he could not afford to travel to Pennsylvania for his visitation. Mother sent him an email stating that she would ask her paramour to pay for his airline tickets. Father then told her that he would make arrangements, but would not tell her the exact date that he was coming in. N.N. then called Father to see when he would be arriving, and he told her that he just "got back on the road". Mother testified that N.N. was upset by the statement because she assumed he stopped somewhere first instead of coming straight to see them. As stated above, during the summer of 2015, Mother testified that Father took Ch.N. off of his Adderall medication, N.N. A1C levels increased, and that Father told her he would do what he wants. For winter break 2015, the children went to Washington to see Father and nothing was done regarding Ch.N.'s education.

In May or June of 2016, the parties' eldest son was graduating college in New York City and Father flew in for it. C.N. had a softball banquet on Saturday evening of that

⁴ Father testified that Mother told him he was interfering with her ability to care for N.N. by calling Dr. Fosnocht.

weekend and wanted Father to attend. Father said he was not able to make it because he was taking care of his parents while in New York City. He felt that it would be too much to drive to Harrisburg Saturday night just to turn around and drive back to New York City for the graduation on Sunday. Mother was upset that Father did not ask to meet halfway in order to see the children. Father testified that paternal grandparents were wheelchair bound that weekend, and relied upon him as their sole form of transportation and care. He said that when he explained this to C.N., she understood.

The children spent three (3) weeks with Father during the summer of 2016, and there were no major issues from that trip. As for summer of 2017, Mother testified that Father must send her information regarding the summer programs he intends to enroll the children in before she allows the children to visit Father in Washington. Based upon the above incidents, Mother is requesting to reduce Father's custodial periods and provide her sole legal custody.

We also heard testimony from Father who appeared via telephone as he was unable to travel from Washington for the hearing. With regard to Ch.N.'s behavioral and educational issues, Father testified that he was not made aware of the recommendation for a formal educational setting for summer 2015. Father was provided a workbook for Ch.N. to complete every day, as well as books to read. At the beginning of the summer, Ch.N. spent approximately forty-five (45) to sixty (60) minutes to complete one (1) page. Father then told Ch.N. that he was not allowed to play outside with his friends until he completed two (2) pages correctly. After that, Ch.N. became more focused and completed his assignments in fifteen (15) to twenty (20) minutes.

In addition, Father testified that the custody hearing was the first time that he heard that Ch.N. had so much difficulty with adjusting to school. He was aware that there were adjustment issues, but not the extent of those issues. Father also testified that during summer 2015, Ch.N. did not take his Adderall medication as he was supposed to. This did not cause great concern to Father because Ch.N. was acting normal, focused, and in control of himself. In addition, Ch.N. was disciplined and on task when completing his school work.

Although the children were admittedly not enrolled in any formal summer programs or camps during summer 2015, Father testified that the children did participate in other activities. Part of the reason was that the sports programs in Washington began before the children arrived. For example, N.N. sang with Father in the Praise Team at his church every Tuesday, and C.N. played softball.

Approximately two (2) weeks before the children were to fly to Washington for summer 2016, Father was made aware of the recommendation for formal education, and Mother told him Ch.N. had to remain in Pennsylvania for that. Father agreed that Ch.N. should attend summer school in Pennsylvania because he was under the assumption that it had to occur in Pennsylvania. Since he has contacted Ms. Layton and learned that Ch.N. could attend a formal education program in Washington, he testified that he would coordinate a program in Washington which would meet the recommendation.

In regard to N.N.'s diabetes and increased A1C levels in August 2015, Father stated that he does not know why her levels were so high. During their time in Washington, Father always cooked a protein for dinner (primarily chicken as he works at a chicken processing plant), along with a vegetable and starch. The vegetables were

given to Father weekly by a friend in Washington. In addition, he did lots of activities with the children, such as biking, hiking, playing softball at the park, etc. Further, Father pointed out that the A1C levels would be an average for a period of approximately thirteen (13) weeks) – six (6) weeks were spent with Mother and seven (7) weeks spent with Father. If he had known that her levels were high, or that there was a concern for her numbers, he would have taken N.N. to the doctor in Washington. Father is also diabetic and familiar with the disease.

Father testified that he is not always provided information regarding the children's education or medical records. He used to be able to see the children's grades online through the parent portal, but now he is locked out. He has contacted the school about it on a couple of occasions with no success. In addition, he is not copied on any emails from school regarding the children. Father testified that when Ch.N. was in kindergarten, he had all of the telephone numbers for Ch.N.'s teachers. When he moved to Washington, however, he stated Mother told the teachers not to contact him because he was no longer in Pennsylvania. Recently he called the school and spoke with the guidance counselor who helped him contact Ms. Layton. Now that he has Ms. Layton's direct phone number, he testified that he will maintain contact with her.

For summer 2017, Father testified that he will look into programs in Washington in which the children would be able to participate during the time they are there. In addition, he will contact Ms. Layton to ensure any educational programs in Washington comply with the requirements of Ch.N.'s school. He further stated that he will take N.N. to the doctor when she arrives, and before she departs Washington to measure her A1C levels in order to ensure that her levels remain normal.

We also heard testimony from Diane Tolliver, a friend of Father's in Washington. She stated that her son was friends with Father when they were younger, and they recently reconnected when Father moved to Washington. She lives approximately six (6) miles from Father's home, and assists Father in caring for the children when they are with him. Ms. Tolliver typically takes the children to the pool twice a week, occasionally to the beach, and delivers fresh vegetables from her Community Supported Agriculture ("CSA"). She interacts with the children approximately eight (8) to ten (10) hours per week in Washington. She is aware of Ch.N.'s conditions, and testified that he receives more than enough attention when he is there, and that she is able to redirect his behavior. She is also aware that N.N., as well as Father, have diabetes and testified that there is always healthy food in the home and Father is careful with what the children eat.

DISCUSSION

Before this Court is Mother's Petition for Modification of Custody seeking sole legal custody of the children, and to reduce Father's custodial period during the summer vacation. In addition to reviewing the record, we have heard testimony from all parties and their respective witnesses. We have weighed the evidence in light of the presumptions concerning primary physical custody and burdens that apply to each of the parties under the Child Custody Act. 23 Pa.C.S.A. § 5327(a)-(b).

Pursuant to the current Child Custody Act, before making any custodial award, the Court must determine "the best interests of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child," including the sixteen (16) statutorily defined factors. 23 Pa.C.S.A. § 5328(a); see J.R.M. v. J.E.A., 33 A.2d 647, 652 (Pa. Super. 2011).

CUSTODY FACTORS

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

Mother is requesting to reduce Father's custodial period during the summer vacation based upon her belief that following summer of 2015, the children's medical conditions worsened upon their return from Father's care. Father's custodial time during summer of 2016 was reduced to three (3) weeks because Mother enrolled the children in summer programs and activities in Harrisburg because Father apparently did not answer her in a timely manner. Father testified that he contacts C.N. and N.N. on their cell phones which appears to work well. He recently learned that Ch.N. now has a cell phone and Mother has refused to provide the number insisting that he contact Ch.N. through C.N.'s or N.N.'s cell phone.

- (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 children or an abused party and which party can better provide adequate physical safeguards and supervision of the children.*

There were no allegations of past or present abuse by either of the parties.

- (3) *The parental duties performed by each party on behalf of the children.*

As the primary custodian, Mother performs all of the parental duties for the children since Father has moved to Washington. She is actively involved in their education, and monitors the children's medical needs. Father testified that he cares for the children while they are in Washington. Admittedly, he does not take the children to any medical appointments unless there is an emergency. However, due to the concerns with N.N. A1C levels, Father testified that he would take her to the doctor to measure her levels upon her arrival to, and before her departure from Washington.

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

Ch.N. continues to struggle with behavioral and educational issues since Father has moved. However, Father testified that when Ch.N. is with him, he is focused, calm, and has little to no incidents. Ch.N. has an IEP with a recommendation for a formal educational program during the summer vacation. Father testified that he would work with Ms. Layton to find a program in Washington that complies with the IEP requirements.

(5) *The availability of extended family.*

Paternal Grandparents reside in Mississippi and travel to Washington during the summer to assist Father with caring for the children.

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

In addition to the three (3) minor children, the parties also have an adult son who recently graduated college in New York City. There was no direct testimony regarding the siblings relationships, however, it appears that the children get along well together.

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

Although all three (3) minor children were interviewed at the first custody hearing, only C.N. was present to be interviewed for the current custody hearing. As C.N. is now fifteen (15) years old (soon to be 16), this Court asked for her preference. C.N. stated that she loves spending time with her Father and wishes that she could see him more often. At the same time, she is now of an age where she desires to obtain summer employment, with the hope of keeping the same job during the school year. In addition to summer employment, C.N. stated that she would like to spend time in the summer with her friends

here in Harrisburg. As for her siblings, C.N. stated her belief that they would be okay if they were in Washington longer than she was.

- (8) *The attempts of a parent to turn the children against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.*

There was no testimony that either parent attempted to turn one of the children against the other parent. However, Father raised concerns with his ability to obtain the cell phone number for Ch.N. in order to contact him. He primarily contacts C.N. and N.N. through their respective cell phones, and desires to do the same with Ch.N. According to Father, Mother refuses to provide the number and tells him to call one of the girls instead.

- (9) *Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the children adequate for the children's emotional needs.*

Both parents are capable of maintaining a positive relationship with the children.

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

Mother's primary concern is that Father is unable to provide for the children's educational and medical needs while in his care. She cites N.N.'s elevated A1C levels and Ch.N.'s difficulty transitioning back to school following their time with Father in summer 2015 as examples. With respect to Ch.N., there was testimony from his teacher that he has difficulty transitioning back to school following winter break when in the custody of Mother. It appears to this Court that Ch.N. has difficulty regardless of the length of time away from school, or which parent has custody. In addition, Father testified that he did not know the extent of Ch.N.'s difficulty with transitions until the custody hearing. He also recently learned of the recommendation that Ch.N. attend a formal education program during the

summer. Now that he is aware, he testified that he would work with Ms. Layton to find an acceptable program in Washington. With respect to N.N., Father stated that he will take her to the doctor upon her arrival and before her departure to measure her A1C levels to ensure they remain normal.

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

Father resides in Oak Harbor, Washington, and Mother resides in Harrisburg, Pennsylvania. The parties utilize air travel to transport the children between homes.

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

Both parties testified to their ability to make appropriate child care arrangements. C.N. and N.N. are both old enough that they do not require child care. Paternal Grandparents, as well as Ms. Tolliver, assist Father with child care during his custodial periods in Washington.

(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.*

The Court notes that the level of conflict has increased, rather than decreased, since the last custody hearing in 2014. This Court believes that is partially attributed to the fact that the parties divorce is pending appellate review, and has not been finalized. In addition, the lack of communication and co-parenting has caused increased conflict, as well as a decrease in trust. Medical and educational decisions were made without collaborating with the other parent.

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

There is no reported history of drug or alcohol abuse by either party.

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

There is no reported mental or physical condition of either party.

(16) *Any other relevant factor.*

No other significant factors were considered.

CONCLUSION

After consideration of the matter and based upon our review of the statutory factors, this Court issues the following **ORDER** which provides for custody in the best interest of the minor children:

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MAURICE NORMAN,
Plaintiff

v.

EILEEN NORMAN,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA
:
: NO. 2012 CV 1174 DC
:
: CIVIL ACTION – LAW
: IN DIVORCE & CUSTODY

ORDER FOR CUSTODY

AND NOW, this 31st day of March, 2017, after a careful review of the pleadings, testimony and evidence, and based upon the statutory factors, **IT IS HEREBY ORDERED**, in the best interest of C.N. (DOB: 04/2001), N.N. (DOB: 06/2003), and Ch.N. (DOB: 11/2006), as follows:

THIS ORDER SHALL REPLACE ALL PRIOR ORDERS

LEGAL CUSTODY

1. Father and Mother shall **share legal custody** of the children. All major legal decisions concerning the children, including, but not limited to, the children's health, medical, dental, mental health, education, and religious training shall be made jointly by the parties, after discussion and consultation with each other, with a view toward obtaining and following a harmonious parenting plan, not in their own individual best interests, but rather in the children's best interest. Neither party shall impair the other party's rights to shared legal custody of the children. Neither party shall attempt to alienate the affections of the children from the other party.
 - A. The parties shall communicate with each other to coordinate appropriate disciplinary techniques for the children.
 - B. Day to day decisions shall be the responsibility of the party then having physical custody. With regard to any emergency decisions that must be made, the party having physical custody of the children at the time of the emergency shall be permitted to make any immediate decisions necessitated thereby. However, that party shall inform the other of the emergency and consult with him or her as soon as possible.
 - C. **Absent an emergency, no party shall obtain medical care and/or have an initial interview with any health caregiver without the agreement of the other party.**

- D. All parties shall have the right to access the children's medical, dental, religious and school records, the address of the children and any other related information in accordance with 23 Pa. C.S.A. § 5336(a). All parties shall execute any and all legal authorizations so that the other party may obtain information from the children's school, physicians, dentists, orthodontists, counselors, psychologists, or other similar individual or entities concerning the children's progress and welfare.

PHYSICAL CUSTODY

2. Mother shall have **primary physical custody** of the minor children.
3. Father shall have **partial physical custody** of the minor children as follows:
 - A. During the summer school vacation from ten (10) days after the last day of school until ten (10) days prior to the start of the school year.
 - (i) Father shall ensure that the children are enrolled in remedial or enrichment academic programs, sports camps, music programs, or other special programs, as appropriate. **Father shall provide information on the programs in which he intends to enroll the children to Mother no later than May 31st each year.**
 - (ii) It is clear that C.N. does not desire, nor should she be compelled, to spend the entire summer in Washington. Due to her age, the parties shall be flexible and open to the desires of C.N. to obtain summer employment, as well as the ability to spend time with her friends in Harrisburg.
 - B. During the children's spring vacation from school. The children may travel to Father's home or Father may make other arrangements to be with the children elsewhere.
4. **Transportation costs shall be shared between the parties consistent with the current Domestic Relations Order.**

HOLIDAYS

5. Thanksgiving: The parties shall alternate the holiday. Father shall have custody in *even-numbered years*, and Mother shall have custody in *odd-numbered years*.
6. Christmas/Winter Break: Winter break shall be divided into two segments. **Segment A** shall be from the day after the children's last day of school until December 26th. **Segment B** shall be from December 26th until the day before school resumes.

- A. In *odd-numbered years*, Father shall have Segment A and Mother shall have Segment B.
 - B. In *even-numbered years*, Mother shall have Segment A and Father shall have Segment B.
7. **The holiday schedule shall take precedence over the regular custody schedule.**
8. The parties may revise this schedule upon mutual agreement and should be flexible for the sake of the children.

GENERAL CONDUCT

9. **Communication shall always take place directly between the parties without using the children as an intermediary.** The parties shall not encourage and shall discourage the children to report about the other.
10. Each party shall be entitled to reasonable **telephone, e-mail, or other electronic contact** with the children when the children are in the custody of the other party so long as the communication is not excessive in duration and does not unreasonably interfere/disrupt the children's schedule with the other parent.
11. During any period of custody or visitation, the parties shall **not** possess, use or be under the influence of **illegal controlled substances or abuse prescription medication**.
- A. The parties shall not consume alcoholic beverages to the point of **intoxication or mental impairment**.
 - B. Neither party shall smoke **cigarettes or tobacco products** in the presence of the children or inside their residence or vehicle.
 - C. The parties shall likewise assure, to the extent possible, that other household members and/or houseguests comply with these prohibitions.
12. The parties shall **refrain** from making **derogatory comments** about the other party in the presence of the children and to the extent possible shall prevent third parties from making such comments in the presence of the children or otherwise harass or interfere with the parties' periods of physical custody.
13. The children shall be protected by the parties from individuals with **poor character** (including, but not limited to, individuals involved with illegal activity, immoral or intemperate behavior, or violent propensities). The parties shall, to the extent possible, avoid contact with such individuals of poor character.

14. Parties shall permit and support the children's access to **family relationships and events** (funerals, reunions, graduations, etc.). Events will be accommodated by both parties with routine periods of physical custody resuming immediately after the event.
 - A. The parties shall not alienate the affections of the children from the other party and the other party's extended family and shall make a conscious effort not to do so. To the extent possible, the parties shall prevent third parties from alienating the children's affections from the other party as well as the other party's extended family.

15. Each party shall promptly notify the other party of, and invite the other party to, **major events in the children's lives**, including but not limited to graduations, award presentations, performances, academic and athletic competitions and similar extracurricular activities.
 - A. Either party may attend any school, camp, or other extracurricular activity in which the children are enrolled involved regardless of which parent then has custody.

16. The parties shall organize ways for the children to maintain their friendships, **extracurricular activities**, and other special interests, regardless of which parent has physical custody.
 - A. The parties shall honor and be supportive of the extracurricular activities in which the children wish to engage.

 - B. **The parties shall confer with each other before arranging regularly occurring activities for the children which might interfere with regular periods of custody.**

 - C. During the times that the parties have physical custody of the children, each party will make certain that the children attend their scheduled activities and transport the children on time to and from said activities.

17. Each party shall exercise care in responsibly choosing **child-care providers**. The telephone numbers and identity of any and all child-care providers shall be provided by the parties to each other.

RELOCATION

18. No party shall **relocate** the child if such relocation will significantly impair the ability of the non-relocating party to exercise his or her custodial rights unless the other party consents in writing or the Court approves the proposed relocation.

- A. The party seeking relocation must follow the procedures required by 23 Pa.C.S.A. § 5337 as set forth in Exhibit A attached to this Order.
- B. The parties are always encouraged to relocate closer to each other's residences.

BY THE COURT:



William T. Tully, J.

DISTRIBUTION:

Anthony McBeth, Esquire, 4705 Duke Street, Harrisburg, PA 17109

Jeanne Costopoulos, Esquire, 5000 Ritter Road, Suite 202, Mechanicsburg, PA 17055

Court Administration

FILE

EXHIBIT A

REQUIREMENTS REGARDING RELOCATION OF RESIDENCE

Relocation is defined as a move or change of residence that will significantly impair the ability of the non-relocating party to easily exercise periods of custody. **You cannot relocate with the child(ren) without following these procedures.** If contemplating such a move, you are *strongly* urged to seek the advice of an attorney to make sure that you are following the procedures. You are not permitted to relocate your residence without either:

- The consent of every individual who has custody rights to the child(ren) to the proposed relocation **OR**
- The court's approval of the proposed relocation.

NOTICE

1. The party proposing the relocation must notify every other party who has custody rights to the child(ren) of the proposed move. You must complete the attached "Notice of Proposed Relocation to Be Completed by Party Intending to Relocate" and send the notice to all other parties by certified mail, restricted delivery (addressee only), return receipt requested.
2. Notice must be given 60 days before the date of the proposed relocation **OR** 10 days after the date that the party knows about the relocation only if the individual did not know and could not have reasonably known about the relocation in time to comply with the 60 days notice or it is not reasonably possible to delay the date of relocation to comply with the 60 day notice.
3. You **must** include with this mailing the attached "**Counter-Affidavit Regarding Relocation**". The other parties must complete this form to indicate their position with regard to the proposed move.

WHAT DO(ES) THE OTHER PARTY(IES) DO WHEN THEY RECEIVE THE NOTICE AND COUNTER-AFFIDAVIT?

1. If you receive a notice of relocation and a counter-affidavit, and you object to the proposed relocation, you must complete the counter-affidavit. The non-relocating party must serve the counter-affidavit on the party proposing the change by certified mail, return receipt requested, restricted delivery (addressee only), or pursuant to Pa.R.C.P. No. 1930.4 within 30 days of receipt of the notice of proposed relocation. If there is an existing child custody case, the objecting party must also file the completed counter-affidavit with the Prothonotary's Office, Dauphin County Courthouse, 101 Market Street, Harrisburg, PA, within 30 days from the day you receive the notice and counter-affidavit.
2. If no objection to the proposed change of a child's residence is timely served after notice, the proposing party may change the residence of the child and this will not be considered a 'relocation' under the statute or rule.

WHAT DO I DO IF NO OBJECTION TO THE PROPOSED RELOCATION IS SERVED OR FILED?

If the party proposing relocation seeks an order of court, has served a notice of proposed relocation as required, has not received an objection to the move and seeks confirmation of the relocation, the party proposing the relocation shall file:

- A complaint for custody and a petition to confirm relocation when no custody case exists **OR**
- A petition to confirm relocation when there is an existing custody case **AND**
- A proposed order including the information set forth at 23 Pa.C.S. §5337(c)(3).

WHAT DO I DO IF A COUNTER-AFFIDAVIT IS SERVED ON THE PARTY SEEKING TO RELOCATE WHICH INDICATES THAT THE NON-RELOCATING PARTY OBJECTS EITHER TO THE PROPOSED RELOCATION OR TO THE MODIFICATION OF THE CUSTODY ORDER?

If the party proposing the relocation has received notice of objection to the proposed move after serving a notice of proposed relocation as required by 23 Pa.C.S. §5337 et seq., the party proposing relocation shall file:

- A complaint for custody or petition for modification as applicable;
- A copy of the notice of proposed relocation that was served on the non-relocating party;
- A copy of the counter-affidavit indicating objection to relocation; and
- A request for a hearing.

WHAT DO I DO IF THE RELOCATING PARTY HAS NOT DONE ANYTHING AFTER I SERVED THE OBJECTION TO PROPOSED RELOCATION ON THE RELOCATING PARTY?

If the non-relocating party has been served with a notice of proposed relocation and the party proposing relocation has not followed through with the procedure set forth above, the non-relocating party may file:

- A complaint for custody or petition for modification as applicable;
- A counter-affidavit as set forth in 23 Pa.C.S. §5337(d)(1) and
- A request for a hearing.

WHAT DO I DO IF THE NON-RELOCATING PARTY HAS NOT BEEN SERVED WITH A NOTICE OF PROPOSED RELOCATION AND SEEKS AN ORDER OF COURT PREVENTING RELOCATION?

If a non-relocating party has not been served with a Notice and seeks a court order preventing relocation, the non-relocating party shall file:

- A complaint for custody or petition for modification as applicable;
- A statement objecting to relocation; and
- A request for hearing.

Plaintiff _____

v.

Defendant _____

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA
:
: NO. _____ CV _____ CU
:
: CIVIL ACTION-IN CUSTODY

NOTICE OF PROPOSED RELOCATION TO BE COMPLETED BY PARTY INTENDING TO RELOCATE

You, _____, are hereby notified that _____ (Party Proposing Relocation) proposes to relocate with the following minor child(ren): _____

To object to the proposed relocation, you must complete the attached counter-affidavit and serve it on the other party by certified mail, return receipt requested, addressee only, or pursuant to Pa.R.C.P. No. 1930.4 within 30 days of receipt of this notice. If there is an existing child custody case, you also must file the counter-affidavit with the court in the Prothonotary's Office, Dauphin County Courthouse, 101 Market Street, Harrisburg, PA. If you do not object to the proposed relocation within 30 days, the party proposing relocation has the right to relocate and may petition the court to approve the proposed relocation and to modify any effective custody orders or agreements.

FAILURE TO OBJECT WITHIN 30 DAYS WILL PREVENT YOU FROM OBJECTING TO THE RELOCATION ABSENT EXIGENT CIRCUMSTANCES.

1. What is the address of the proposed new residence? _____
 Check here if the address is confidential pursuant to 23 Pa.C.S. §5336(b).
2. What is the mailing address of the proposed new residence? _____
 Check here if the address is confidential pursuant to 23 Pa.C.S. §5336(b).
3. What are the name(s) and age(s) of all individual(s) who will be living at this new residence? _____
 Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).
4. What is the home telephone number of the intended new residence? _____
 Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).
5. What is the name of the new school and the new school district that the child(ren) will attend after relocation?

 Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).
6. What is the date of the proposed relocation? _____
 Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).
7. What are the reasons for the proposed relocation? _____
 Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).
8. How do you propose to change the custody schedule that is currently in effect? _____
9. Is there any other information that is relevant to the proposed relocation? _____
10. I have included a counter-affidavit that you can use to object to the proposed relocation.

WARNING TO NON-RELOCATING PARTY
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

DAUPHIN COUNTY LAWYER REFERRAL SERVICE
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made are subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date

Signature

Print Name

Address

Telephone Number

Plaintiff

v.

Defendant

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA
:
: NO. _____ CV _____ CU
:
:
: CIVIL ACTION-IN CUSTODY

COUNTER-AFFIDAVIT REGARDING RELOCATION

1. What are the names and ages of the child(ren) affected by the proposed relocation? _____
2. Where do this/these child(ren) currently reside? _____

I have received a notice of proposed relocation and (check all that apply):

- I do not object to the relocation
- I do not object to the modification of the custody order consistent with the proposal for modification set forth in the notice.
- I do not object to the relocation, but I do object to modification of the custody order.
- I plan to request that a hearing be scheduled by filing a request for hearing with the court:
 - a. Prior to allowing the child(ren) to relocate.
 - b. After the child(ren) relocate.
- I do object to the relocation.
- I do object to the modification of the custody order.
- I understand that in addition to objecting to the relocation or modification of the custody order above, I must serve this counter-affidavit on the other party by certified mail, return receipt requested, addressee only, or pursuant to Pa.R.C.P. No. 1930.4. If there is an existing custody case, I must file this counter-affidavit at the Prothonotary's Office, Dauphin County Courthouse, 101 Market Street, Harrisburg, PA. If I fail to do so within 30 days of my receipt of the proposed relocation notice, I understand I will not be able to object to the relocation at a later time.

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date

Signature

Print Name

Address

Telephone Number