

Copies Distributed

Date 3/21/14

BRET MICHAEL STAUFFER,
Plaintiff

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA

v.

: NO. 2014 CV 1560

CARRIE ELLEN KLEINFELTER,
Defendant

: CIVIL ACTION – LAW
: IN CUSTODY

2017 MAR 21 PM 1:46
DAUPHIN COUNTY
PENNA
PROthonary

MEMORANDUM OPINION

PROCEDURAL BACKGROUND

The instant matter was initiated on February 25, 2014 by the filing of a Complaint for Custody by Plaintiff Bret Michael Stauffer (hereinafter "Father") naming Defendant Carrie Ellen Kleinfelter (hereinafter "Mother"), and seeking shared legal and physical custody of Deacon David Kleinfelter (DOB: 7/24/2013) (hereinafter "D.D.K." or "minor child"). The parties attended a custody conciliation conference on March 21, 2014 wherein they reached an agreement regarding custody of D.D.K. The agreement provided the parties shared legal custody, Mother with primary physical custody, and Father with partial physical custody on a ramp-up schedule.¹

Prior to the commencement of the custody action, Mother filed a Petition for Protection from Abuse ("PFA") on February 19, 2013. A final order was entered by agreement without an admission on March 4, 2013 providing protection for Mother and her two (2) minor children who are not subject to this custody action for two (2) years.² On August 12, 2013, Father plead guilty to Indirect Criminal Contempt for a violation of the PFA.³ The final order was amended on March 25, 2014 to allow peaceful contact between the parties regarding their minor child. On November 4, 2014, Father was found

¹ See Order of March 31, 2014.

² See 2013-CV-1415-AB.

³ Father was charged with an ICC for contacting Motion via telephone numerous times.

guilty of Indirect Criminal Contempt for a violation of the PFA. ⁴ The PFA expired on March 4, 2015 without further incident.

On August 5, 2014, Father filed a Petition for Special and Emergency Relief alleging Mother was struggling with substance abuse issues that interfered with her ability to properly care for D.D.K., as well as a Petition for Modification of a Custody Order. The petition for emergency relief further states that Mother had recently plead guilty to Public Drunkenness on May 9, 2014, and was charged with two (2) counts Driving Under the Influence of Controlled Substance and one (1) count Unlawful Possession of Drug Paraphernalia on June 10, 2014. Father's Petition was denied by the Honorable Bernard L. Coates, Jr., now deceased. The parties attended a custody conciliation conference on August 26, 2014, but were unable to reach an agreement. Thereafter, a pretrial conference was scheduled for October 13, 2014. The parties were unable to reach an agreement at the pretrial conference, and a second pretrial conference was scheduled for January 30, 2015. On December 12, 2014, counsel for Father filed a Praecipe to Withdraw the Petition for Modification filed on August 5, 2014. Based upon that filing, the second pretrial conference was cancelled.

On August 12, 2016, Father filed a Motion to Modify Custody and Petition for Contempt of Court. Father raises several issues in his motion, namely: (1) Mother is refusing to provide him custody during his custodial periods; (2) Mother refusing to share legal custody by failing to provide Father a copy of the child's social security card; (3) Mother smoking in front of the child; and (4) Mother overdosing on drugs in April/May of 2016. The parties attended a custody conciliation conference on September 28, 2016,

⁴ Father was charged with an ICC based upon Mother's statement that Father was on her property wanting to speak with her.

but were unable to reach a final agreement. However, in the interim, the parties agreed to share physical custody on a 2-2-5 schedule, i.e. Mother has physical custody from Wednesday through Friday, Father has physical custody Friday through Wednesday, Mother has physical custody Wednesday through Monday, and Father has physical custody Monday through Wednesday.⁵ Thereafter, a pretrial conference was scheduled for December 1, 2016. The parties were unable to reach an agreement at the pretrial conference, and a custody hearing was scheduled for March 7, 2017.

CUSTODY HEARING

On March 7, 2017, this Court conducted a custody hearing wherein Mother and Father, as well as their respective witnesses, appeared and testified. Mother was represented by Michael Trimmer, Esquire, and Father was represented by William Shreve, Esquire.

Father currently resides with Paternal Grandmother, Patricia Davis, in Middletown. He works full-time as a self-employed private contractor providing him the flexibility to make his own schedule. The parties currently operate on a 2-2-5 interim custodial schedule that was agreed upon at the conciliation conference. In addition, the interim order states that Paternal Grandmother cannot have unsupervised contact with the minor child. Father explained that at the conciliation conference, Mother expressed a concern for Paternal Grandmother caring for the minor child due to her health problems. He agreed to the provision with the understanding that Maternal Grandfather would also not care for the minor child because of his health concerns. However, the provision in the order on relates to Paternal Grandmother. Since then, Paternal Grandmother has been

⁵ See Interim Order of October 5, 2016.

cleared of all health issues and Father believes she is able and willing to provide child care for D.D.K. Due to the restriction in the interim order, Father stated that his work schedule has been difficult with the 2-2-5 custodial schedule because he has no one other than Paternal Grandmother to care for the child. Therefore, he is currently unable to work during his custodial periods.

Paternal Grandmother also testified at the custody hearing and stated that she is willing and able to provide childcare for D.D.K. while Father is working. She suffered a heart attack in 2014 and was placed on medical restrictions. She no longer has any restrictions as she has been cleared medically. She further stated that Father puts D.D.K. above everyone else and enjoy lots of activities together. D.D.K. and Paternal Grandmother have a good relationship, and she lets him know that he is loved. She enjoys spending time with D.D.K. as they like to do silly things together, such as learn nursery rhymes, cook, bake, etc. Paternal Grandmother also stated that she is present for a number of the custody exchanges, and D.D.K. always smells of smoke when he gets in their car.

The primary reason for filing the petition for modification is Father's belief that Mother is still struggling with her drug addiction, and his concern for the safety of D.D.K. while in Mother's care. While the parties were together, Mother confided in Father that she voluntarily checked herself into a rehabilitation program in the past. At that time, Father believed Mother was more likely to beat her addiction because she was helping herself. Although Father has never seen Mother do any illicit drugs, he is concerned due to her erratic behavior. For example, Father stated that he receives text messages from Mother during all hours of the day and night that do not appear to be meant for him. The

subject matter is typically peculiar and the messages riddled with spelling errors. Father assumes they are not meant for him because he does not understand them. He also does not know if Mother is aware that the text messages were sent to him. Father testified that there are times when he receives these text messages when D.D.K. is in her custody and he is concerned where the child may be.

In addition to the text messages, Mother relapsed on April 19, 2016 and was found unconscious on the side of a road. D.D.K. was being cared for by Maternal Grandparents at the time. Due to this incident, Dauphin County Children and Youth Services ("DCCYS") implemented a Safety Plan wherein Mother was not to have any unsupervised contact with her children for a period of sixty (60) days. Maternal Grandparents were to provide 24/7 supervision of Mother and her children. In addition, Mother entered a drug and alcohol treatment program at the Naaman Center.

Despite Mother's completion of drug and alcohol treatment programs, and her willingness to continue to seek treatment, Father is not convinced that Mother is stable. On March 6, 2017 at approximately 12:40 A.M., Father received a telephone call from Mother. Father was sleeping at the time and did not answer, therefore, Mother left a voicemail. Unbeknownst to Mother, she failed to hang up the phone after leaving the voicemail, and it continued to record her conversation. The voicemail was played during the custody hearing and was a bunch of rambling and slurred words that were hard to discern. This occurred during Mother's custodial period, and D.D.K. was being cared for by Maternal Grandmother.

Additionally, Father testified that D.D.K. regularly smells of cigarette smoke when he is picked up. He further stated that the cigarette smell lessened around the time of the

conciliation conference, however, it has since increased. On one occasion, D.D.K. had a urine saturated diaper. On another occasion, D.D.K. had an old gummy bear stuck to the inside of his shirt that appeared to have been there for at least a day.

Father has two (2) Driving Under the Influence (“DUI”) convictions – in 2006 and 2014. He testified that he has been sober since 2014 when he was incarcerated. Father remained incarcerated for one (1) year, to which he credits his continued sobriety. While incarcerated, he realized that D.D.K. is worth more to him than a few beers, and he does not want to jeopardize his relationship with his son.

Mother currently resides with Maternal Grandparents in Elizabethtown. She has three (3) minor children – D.D.K., the subject child, E.J.L. (DOB: 7/2010)⁶, and H.N. (DOB: 1/2005)⁷. She understands Father’s concern regarding her addiction issues, but believes there are other motivating factors, and raises her own concerns regarding Father’s anger issues. Mother testified that her addiction issues started with prescription medications and progressed into heroin use. She is diagnosed with anxiety, panic attacks, post-traumatic stress disorder (“PTSD”) and bipolar disorder. After approximately four (4) months of heroin use, Mother checked herself into Roxbury Treatment Center. She states that she was sober until her relapse in April of 2016.

With regard to the April 19, 2016 relapse, Mother testified that she was in a manic phase from not being on the right balance of prescription medications. An old friend contacted her and asked to hang out, and she agreed knowing that he had a history of selling drugs. He handed her the bag of heroin and she did it – she does not remember anything else. She awoke to medical personnel telling her that they were bringing her

⁶ E.J.L. is the subject of a custody action at docket 2011-CV-5629-CU.

⁷ H.N. is the subject of a custody action at docket 2005-CV-3064-CU.

back to life. Looking back, she believes there is a reason that she survived that overdose and it made her realize that her addiction had a negative effect on her children. After her relapse, Mother testified that she went above and beyond to seek treatment. She attended a drug and alcohol treatment program at the Naumann center, she acquired an intensive case manager at Keystone Services, and now attends church, bible study, and a recovery program through her church. Mother provided a certification of completion from the Naumann Center, and her intensive case manager testified on her behalf. However, Mother provided no documentation regarding the recovery program that she attends through her church.

After her relapse, Mother was drug tested frequently by DCCYS, Dauphin County Adult Probation, and the Naumann Center. Mother was charged with DUI – controlled substance in June of 2014, and entered the Accelerated Rehabilitative Disposition (“ARD”) program on January 22, 2016. As a result, she was placed on probation with the Dauphin County Adult Probation Office. Her probation officer, Todd Skoczynski, testified on her behalf at the custody hearing. He stated that Mother has taken responsibility for her mental health and addiction issues, and did not make excuses for her behavior. She also completed an intensive outpatient program at the Naumann Center, as well as the DUI conditions. He believes that Mother does not pose a safety threat to her children so long as she continues treatment. Mother was drug tested by probation a total of fourteen (14) times between January 2016 and January 2017 – twelve (12) negative, one (1)

positive for opiates⁸, and one (1) diluted⁹. The drug tests were performed at random, however, notice is given between two (2) to seven (7) days in advance.

We also heard testimony from Casey Genshic, Mother's intensive case manager at Keystone Services. As an intensive case manager, Ms. Genshic works with individuals with mental health diagnosis to assist in setting up services, i.e., psychiatric, housing, financial, etc. She meets with her clients in person every fourteen (14) days. Mother voluntarily sought her services in or around May 2016. She typically meets with Mother every two (2) weeks. On occasion, she will have a phone conference with Mother in lieu of a face-to-face- meeting.

With regard to the March 6, 2017 voicemail left on Father's phone, Mother testified that she was not under the influence of any drugs or alcohol when the call was placed. She went out with a friend, Josh Bernizer, to celebrate his birthday. He had rented a room for them at the Inn of the Dove in Harrisburg, and they spent the night talking and watching television. Mr. Bernizer testified that he did not observe Mother drinking alcohol or consume any illicit drugs. He stated that Mother was extremely upset when the voicemail was left and not intoxicated. Mother testified that she was upset because the person who left her unconscious on the side of the road on April 19, 2016 was messaging her through Facebook. Somehow she hit the button to call Father's phone and did not realize until she looked down at her phone. It is unclear to this Court why Mother did not immediately hang up when she realized the call was accidentally placed, or why she did not realize that the phone never hung up after she left the voicemail.

⁸ Mother tested positive for opiates on May 5, 2016 following her April 19, 2016 relapse. Mother states that the opiates were still in her system from the relapse which caused the positive result.

⁹ Probation Officer Skoczynski testified that the diluted result occurred on December 9, 2016 and Mother was retested on December 27, 2016 and was negative.

Despite Mother's recent struggles with her addiction issues, she is confident that she can assure the safety of D.D.K. while in her care. She stated that her relapse made her realize that she is still here for her children, she regularly attends church, she realizes that she needs to grow up, and she has a support team in place when she needs them.

Mother is concerned with the safety of the minor child while in Father's care due to his history of abuse and violence. When she was pregnant with D.D.K., Father smacked her on the head with a spoon, drug her outside by her nightshirt, and locked her outside with her lip bleeding because he found a spoon in her purse which he believed was for doing heroin. A final order was entered by agreement without an admission. Other incidents of abuse include Father locking her outside of the house while it was snowing, trapping her in the car while driving recklessly at fast speeds, dropping her off alongside of Route 230, violating the PFA by driving by her house, and Father being caught hiding under a neighbor's porch.

D.D.K. is a three and a half (3 ½) year old boy. He is not currently enrolled in any formal education program. However, Father testified that he would like to enroll D.D.K. in a preschool program at his church, St. Peter's Lutheran Church. The program is three (3) to four (4) hours a day for three (3) days a week. He and Mother have not communicated regarding a preschool program for D.D.K.

DISCUSSION

Before this Court is Father's Motion for Modification of a Custody Order and Petition for Contempt. 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 child and another party.*

Despite a few incidents wherein Mother refused Father's custodial period, both parties appear to generally encourage and permit frequent and continuing contact between the child and the other 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.*

Mother alleges past incidents of domestic violence by Father. She obtained a PFA against him in 2013, and Father was convicted of indirect criminal contempt on two (2) occasions. However, both incidents involved violation of the no contact provision of the PFA and did not involve any further physical violence. In addition, the child was never a protected party under the PFA.

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

Father testified that he is always there for D.D.K. during his custodial periods as he has not been working during those times. The child is not currently in preschool, therefore, Father and D.D.K. enjoy many activities during their time together, such as shooting rockets, flying kites, taking walks, etc. Mother testified that she is also always there for D.D.K. during her custodial periods, and has always been there for him since his birth. She and the child do several activities as well, such as riding bikes, going to the park, Hershey's Chocolate World, etc.

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

There was no significant testimony on this factor. However, the Court notes that Mother acknowledges that her addiction issues has had a negative effect on her oldest child, H.N. This Court is concerned that the minor child was in Mother's custodial care when she relapsed on April 19, 2016, and when she left a voicemail for Father on March 6, 2017. In addition, Father testified that D.D.K. is frequently in Mother's care when he receives random, erratic text messages from Mother. Due to D.D.K.'s young age, it does not appear these actions have had a negative effect on him yet. However, if this course of behavior continues, the Court is fearful that there will be negative consequences.

(5) *The availability of extended family.*

Mother resides with Maternal Grandparents, and Father resides with Paternal Grandmother. Both sets of grandparents are intimately involved in D.D.K.'s life, and he is obviously well loved.

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

D.D.K. has two half-siblings – H.N. and E.J.L. – who primarily reside with their biological fathers. It is not clear to this Court how often all three (3) children are simultaneously in Mother's custody.

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

This Court did not interview D.D.K. due to his young age.

(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.*

There was no significant testimony on this factor.

(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.*

While both parents have their faults, this Court believes Father is more likely to maintain a loving, stable, consistent and nurturing relationship with D.D.K. at this time. Mother has mental health and addiction issues that she needs to control before she is able to provide stability to D.D.K. There is no doubt that both parents love D.D.K. deeply. However, this Court is deeply concerned with the amount and combination of Mother's prescription medications.

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

There was no significant testimony on this factor.

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

Father resides in Middletown and Mother resides in Elizabethtown. They are approximately five (5) miles apart and requiring a fifteen (15) minute drive depending on traffic.

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

Both parents testified that they are home to care for the child during their respective custodial periods. In addition, Paternal Grandmother testified that she is medically cleared and able to care for the child if needed. Maternal Grandmother also testified that she cares for the child when Mother is not home.

(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.*

While the current level of conflict is relatively low, the parties struggle with co-parenting and have obvious communication issues. The parties primarily communicate via text message so as to avoid any allegations of what may or may not have been said.

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

Mother has a history of drug addiction that started with prescription medication and escalated to heroin. She completed a program at Roxbury Treatment Center prior to the parties meeting. On or about April 19, 2016, Mother relapsed and was found unconscious from an overdose on the side of the road. She then entered an intensive outpatient program at the Naumann Center, which she completed in November 2016. Mother maintains that she has been sober since then. However, this Court is not entirely

convinced after hearing the voicemail she left for Father two (2) days prior to our custody hearing.

Father has a history of alcohol abuse, and has had two (2) DUI convictions as a result. He testified that he has been sober since 2014 when he was incarcerated for approximately one (1) year. He further stated that the "forced sobriety" was extremely helpful in maintaining his sobriety.

(15) The mental and physical condition of a party or a member of a party's household. Mother is diagnosed with bipolar disorder, PTSD, and anxiety. She had a previous diagnosis of depression, which she states is no longer the case. She is currently prescribed Tegretol XR (200 mg twice a day), Klonopin (1 mg up to 4 times a day), Seroquel (400 mg at night), and Tranxene (300 mg at night). As noted above, this Court is concerned with the amount and combination of the prescription medications that Mother testified she is prescribed. This Court is also concerned that Mother has a dual diagnosis with bi-polar disorder and heroin addiction. Her likelihood of relapse is significant.

(16) Any other relevant factor.

After the record had been closed, this Court was made aware that Mother incurred new criminal charges six (6) days after our hearing – March 13, 2017. Those charges are: Intentional Possession of a Controlled Substance by a Person Not Registered, Possession of Marijuana, and Drug Paraphernalia. The Court acknowledges that this is merely a charge, and not a conviction. However, these charges coupled with Mother's testimony at the custody hearing that she has been sober since April 2016 undermine her credibility.

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 child:

(This space intentionally left blank.)

BRET MICHAEL STAUFFER, : IN THE COURT OF COMMON PLEAS OF
 Plaintiff : DAUPHIN COUNTY, PENNSYLVANIA
 :
 v. : NO. 2014 CV 1560
 :
 CARRIE ELLEN KLEINFELTER, : CIVIL ACTION – LAW
 Defendant : IN CUSTODY

2017 MAR 21 PM 1:11
 DAUPHIN COUNTY
 PENNA
 CLERK OF COURT

ORDER FOR CUSTODY

AND NOW, this 21st 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 D.D.K. (DOB: 7/2013), as follows:

THIS ORDER SHALL REPLACE ALL PRIOR ORDERS

LEGAL CUSTODY

1. Father and Mother shall **share legal custody** of the child. All major legal decisions concerning the child, including, but not limited to, the child’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 child’s best interest. Neither party shall impair the other party’s rights to shared legal custody of the child. Neither party shall attempt to alienate the affections of the child from the other party.
 - A. The parties shall communicate with each other to coordinate appropriate disciplinary techniques for the child. Neither party shall inflict corporal punishment with objects or on bare skin as a form of discipline.
 - 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 child 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 child's medical, dental, religious and school records, the address of the child 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 child's school, physicians, dentists, orthodontists, counselors, psychologists, or other similar individual or entities concerning the child's progress and welfare.

PHYSICAL CUSTODY

2. Father shall have **primary physical custody** of D.D.K.
- A. Father is permitted to enroll D.D.K. in a preschool or daycare program.
3. Mother shall have **partial physical custody** every other weekend from Friday at 8:30 A.M. until Sunday at 6:00 P.M.
- A. **Mother's custodial periods shall be supervised by Maternal Grandparents.**
4. Should either party have the child spend an overnight at a place other than their primary residence, the other party shall be given the address and telephone number where the child is spending the night.

HOLIDAYS

5. Easter, Memorial Day, Independence Day, Labor Day, and Thanksgiving: The parties shall alternate the holidays beginning with Father having custody for Easter 2017. Thereafter, Mother would have custody Memorial Day 2017, Father would have Independence Day 2017, and so on. The holiday period shall be from 9:00 A.M. until 7:00 P.M. the day of the holiday unless otherwise mutually agreed upon.
6. Christmas: Christmas shall be divided into two segments. **Segment A** shall be from December 24 at 2:00 P.M. until December 25 at 2:00 P.M. **Segment B** shall be from December 25 at 2:00 P.M. until December 26 at 2:00 P.M.
- A. In *odd-numbered years*, Mother shall have Segment A and Father shall have Segment B.
- B. In *even-numbered years*, Father shall have Segment A and Mother shall have Segment B.
7. Mother's Day and Father's Day: Mother shall have custody on Mother's Day and Father shall have custody on Father's Day. The holiday period shall be from 9:00 A.M. until 7:00 P.M. the day of the holiday unless otherwise mutually agreed upon.

A. In the event that Mother's Day falls during Father's custodial period, Mother shall have custody from 9:00 A.M. until 6:00 P.M. the day of the holiday with Father's custodial period resuming immediately after.

B. In the event that Father's Day falls during Mother's custodial period, Father shall have custody from 9:00 A.M. until 6:00 P.M. the day of the holiday with Mother's custodial period resuming immediately after.

8. **The holiday schedule shall take precedence over the regular custody schedule.**

9. The parties may revise this schedule upon mutual agreement and should be flexible for the sake of the child.

GENERAL CONDUCT

10. **Communication shall always take place directly between the parties without using the child as an intermediary.** The parties shall not encourage and shall discourage the child to report about the other.

11. Each party shall be entitled to reasonable **telephone, e-mail, or other electronic contact** with the child when the child is in the custody of the other party so long as the communication is not excessive in duration and does not unreasonably interfere/disrupt the child's schedule with the other parent.

12. 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 child 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.

D. If either party suspects the other of using illegal drugs or abusing prescription medication or having other addiction issues, either party may request the other to provide a drug screen test from a certified drug testing facility upon written request. The requested party shall report to the testing facility within twenty-four hours of the request. Should the twenty-four hour time frame not be met, the requested party shall provide a hair follicle sample to the facility within forty-eight hours of the initial request. Should the test come back negative,

the requesting party shall be responsible for the cost. Should the test come back positive, the requested party shall be responsible for the cost. Both parties shall sign releases necessary to provide the other with the test results. **The failing party's subsequent custodial periods shall be supervised until written agreement of the parties or until further Order of Court.**

13. The parties shall **refrain** from making **derogatory comments** about the other party in the presence of the child and to the extent possible shall prevent third parties from making such comments in the presence of the child or otherwise harass or interfere with the parties' periods of physical custody.
14. The child 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.
15. Parties shall permit and support the child'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 child 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 child's affections from the other party as well as the other party's extended family.
16. Each party shall promptly notify the other party of, and invite the other party to, **major events in the child's life**, 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 child is involved regardless of which parent then has custody.
17. The parties shall organize ways for the child 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 child wishes to engage.
 - B. The parties shall confer with each other before arranging regularly occurring activities for the child which might interfere with regular periods of custody.

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

18. 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.

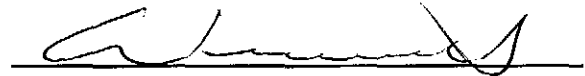
RELOCATION

19. 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:

William Shreve, Esquire, 3618 N. 6th Street, P.O. Box 5292, Harrisburg, PA 17110

Michael Trimmer, Esquire, 5425 Jonestown Road, Harrisburg, PA 17112

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 _____ : IN THE COURT OF COMMON PLEAS OF
 : DAUPHIN COUNTY, PENNSYLVANIA
 :
 v. : NO. _____ CV _____ CU
 :
 :
 Defendant _____ : 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