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Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

Robin K. Ridenour, Plaintiff
v. Derrick L. Diamond, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Civil Action No. 2021-880

HOLDING: The Court finds it is in the child’s best interests for Mother and Father to share legal custody of the child and to share physical custody of the child on a week on/ week off basis.

HEADNOTES

Child Custody – Grounds and Factors

1. The paramount concern of the trial court is the best interest of each child. *R.M.G., Jr. v. F.M.G.*, 986 A.2d 1234, 1237 (Pa. Super. 2009). Each case must be examined independently and individually, looking at factors that bear in the child’s well-being. *Saintz v. Rinker*, 902 A.2d 509, 512 (Pa. Super. 2006).
2. The Factors codified at 23 Pa.C.S. § 5328 are of utmost importance in the Court’s determination. A court must consider all of the § 5328(a) best interest factors when ordering any form of custody. *S.W.D. v. S.A.R.*, 96 A.3d 396, 401 (Pa. Super. 2014).
3. A trial court must apply the statutory custody factors and issue a written explanation of its decision when it orders any of the seven forms of custody provided for by the Child Custody Act. 23 Pa.C.S. § 5328(a).

Appearances:

Nathaniel F. Spang, Esquire *for Plaintiff*

Stephen Kulla, Esquire *for Defendant*

OPINION

Before Zook, J.

Before the Court is the custody of S.L.D. (15). A one-day trial was held on December 20, 2021. The matter is now ready for decision.

I. Procedural History

On March 30, 2021, Plaintiff (hereinafter “Mother”) filed a *Complaint for Custody* seeking primary physical custody of S.L.D. On April 22, 2021, Defendant (hereinafter “Father”) filed an *Answer to Complaint for Custody*. On May 6, 2021, the Court issued an *Order of Court and Directive for Conciliation*.

Mother and Father attended conciliation on June 3, 2021. On June

14, 2021, a *Report of Conciliator* was filed. The *Report* did not include a new custody order due to the continued disagreement between the parties.

On July 14, 2021, Mother filed a *Motion for Scheduling of a Pre-Trial Conference*. On July 16, 2021, the Court issued an *Order of Court* scheduling a Pre-Trial Conference for August 16, 2021. On August 11, 2021, Mother and Father filed their *Pre-Trial Memoranda*. On August 18, 2021, the Court issued a *Pre-Trial Conference Order* scheduling a custody trial for December 20, 2021.

II. Factual Background

Mother and Father are the natural parents of the minor child, S.L.D., age fifteen. Mother and Father were never married and separated approximately seven years ago.

S.L.D. currently attends school at Chambersburg Area Senior High School. S.L.D. is in tenth grade and currently has a B average in her classes. S.L.D. previously had difficulty in school that resulted in her failing classes and enrolling in summer school. S.L.D. enjoys history and is a member of the German Club.

Father lives alone in Chambersburg, Pennsylvania. S.L.D. has her own bedroom at Father's house. Father works in a support capacity for Keystone RV in State Line, Pennsylvania. Father works 40 hours a week and typically gets home from work around 5:00 p.m.

Mother lives in Chambersburg, Pennsylvania, with her fiancé, William Eckert, and two adult children. S.L.D. has her own bedroom at Mother's house. Mother works as a pharmacy technician in Hagerstown, Maryland. Mother gets home from work at 4:30 p.m. twice a week and 6:00 p.m. the remainder of her workweek. Mother and Eckert have been in a relationship for approximately five years. Eckert is a mechanic at Jamison Door Company in Hagerstown, Maryland.

III. Best Interests Analysis

“The paramount concern of the trial court is the best interest of the child.” *R.M.G., Jr. v. F.M.G.*, 986 A.2d 1234, 1237 (Pa. Super. 2009). Each case must be examined independently and individually, looking at factors that bear on the child's well-being. *Saintz v. Rinker*, 902 A.2d 509, 512 (Pa. Super. 2006)[.]

The factors codified at 23 Pa.C.S. § 5328 are of utmost import in the Court's determination. A court must “consider all of the § 5328(a) best interest factors when “ordering any form of custody.” *S.W.D. v. S.A.R.*, 96

A.3d 396, 401 (Pa. Super. 2014).

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

Although Father testified to encouraging contact between S.L.D. and Mother, he also testified to routinely taking S.L.D.'s cellphone away from her as a form of punishment without notifying Mother that she will not be able to contact S.L.D. on her cellphone, nor does he allow S.L.D. to use her cellphone to contact Mother during her punishment. Father further testified that Mother could contact him if she wanted to speak with S.L.D.; however, Father has previously blocked Mother from contacting him on his cellphone for a period of time. There was no evidence presented that Mother thwarts nor encourages contact between Father and S.L.D. This factor weighs in favor of Mother.

*(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

Neither party presented evidence of abuse by a party or member of their household. This factor does not weigh in favor of either party.

*(2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).*³

No evidence was presented that Child Protective Services, or any other agency, has been involved with the parties. This factor does not weigh in favor of either party.

*(3) The parental duties performed by each party on behalf of the child.*⁴

Both parties are fully capable of taking care of S.L.D. Since separation, both have provided food, clothing, shelter, and other needs. This factor does not weigh in favor of either party.

(4) The need for stability and continuity in the child's

1 23 Pa.C.S. § 5328(a)(1)

2 23 Pa.C.S. § 5328(a)(2)

3 23 Pa.C.S. § 5328(a)(2.1)

4 23 Pa.C.S. § 5328(a)(3)

*education, family life, and community life.*⁵

Mother and Father both reside in Chambersburg, Pennsylvania. The parties live a few minutes' drive apart. Therefore, S.L.D. has continued stability and continuity in her education, family, and community life in both households. Both parents reside in the same school district. This factor does not weigh in favor of either party.

*(5) The availability of extended family.*⁶

Limited evidence was presented regarding the parties' extended family. Mother did not present evidence regarding extended family members. Father presented evidence that his parents live in Welsh Run, Pennsylvania, and he sees them approximately 3-4 times a month. This factor weighs in favor of Father.

*(6) The child's sibling relationships.*⁷

S.L.D. has two half-siblings on Mother's side who live in Mother's household. S.L.D. has a traditional sibling relationship with both half-siblings. She confides in them and enjoys spending time with them both.

S.L.D. also has two half-siblings on Father's side. One half-sibling lives in Philadelphia, Pennsylvania, and the other lives in Mercersburg, Pennsylvania. S.L.D. only sees these half-siblings on holidays and does not have a particularly close relationship with either of them. This factor weighs in favor of Mother.

*(7) The well-reasoned preference of the child, based on the child's maturity and judgment.*⁸

The Court held an *in camera* interview of S.L.D. with counsel present. She expressed a clear desire to live primarily with Mother. However, S.L.D. could not provide the Court with concrete reasons why.

The Court is required to consider a child's **well-reasoned** preference based on their maturity and judgment, pursuant to 23 Pa.C.S. § 5328(a)(7). S.L.D. stated she feels more comfortable at Mother's house, but she did not provide a specific reason or reasons why she feels more comfortable at Mother's house as opposed to Father's. The only reason S.L.D. provided is because Father's house is "too quiet" and "boring." The Court finds S.L.D.'s preference to live with Mother understandable, but not well-reasoned. S.L.D. could not articulate why living with Mother primarily would benefit her nor

5 23 Pa.C.S. § 5328(a)(4)

6 23 Pa.C.S. § 5328(a)(5)

7 23 Pa.C.S. § 5328(a)(6)

8 23 Pa.C.S. § 5328(a)(7)

could she explain why Father's home is not her ideal living arrangement, aside from calling his home quiet and boring. Additionally, no evidence was presented that S.L.D. discussed her feelings with Father in an attempt to alleviate her concerns. For these reasons, this factor weighs slightly in favor of Mother.

(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

Neither party presented evidence that either party is trying to turn S.L.D. against the other. This factor does not weigh in favor of either party.

(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

Both parties love and care for S.L.D. Both care and provide for her emotional needs. This factor does not weigh in favor of either party.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational, and special needs of the child.¹¹

Both parties have the means and capabilities to attend to S.L.D.'s daily needs. This factor does not weigh in favor of either party.

(11) The proximity of the residences of the parties.¹²

Both parties live in Chambersburg, Pennsylvania. Transportation does not seem to be an issue. This factor does not weigh in favor of either party.

(12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.¹³

Both parties are available to care for the children. If either party is unavailable, both parties can make appropriate child-care arrangements, to the extent it is still required at S.L.D.'s age. This factor does not weigh in favor of either party.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one

9 23 Pa.C.S. § 5328(a)(8)

10 23 Pa.C.S. § 5328(a)(9)

11 23 Pa.C.S. § 5328(a)(10)

12 23 Pa.C.S. § 5328(a)(11)

13 23 Pa.C.S. § 5328(a)(12)

*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

There is conflict between the parties, which impairs their ability to co-parent. Mother and Father do not communicate well and often do not communicate at all. Mother and Father do not appear to discuss healthcare, dental, or educational decisions concerning S.L.D. Mother and Father cannot put their contentious relationship aside to co-parent effectively. S.L.D. suffers as a result; having a full and reasonable communication between her parents would only benefit her long-term success. Therefore, this factor does not weigh in favor of either party.

*(14) The history of drug or alcohol abuse of a party or member of a party's household.*¹⁵

No evidence was produced that either party has abused drugs or alcohol. This factor does not weigh in favor of either party.

*(15) The mental and physical condition of a party or member of a party's household.*¹⁶

No evidence was presented that any member of either party's household suffers from a mental or physical condition that jeopardizes the children's well-being. This factor does not weigh in favor of either party.

*(16) Any other relevant factor.*¹⁷

The Court has considered all relevant factors.

IV. Conclusions

When weighed appropriately, the Court finds the best interest factors are closely balanced. Both parties can adequately care for and love S.L.D. and want what is best for her.

It is clear the nature of the conflict between the parties that has led to this matter coming before the Court. Father's "my way or the highway" attitude is extremely detrimental to adequate co-parenting. Father is completely unwilling to surrender any control or be flexible to Mother's reasonable requests for custody time with S.L.D.¹⁸ Father testified to only discussing the parties' current custody schedule with S.L.D. and never with

¹⁴ 23 Pa.C.S. § 5328(a)(13)

¹⁵ 23 Pa.C.S. § 5328(a)(14)

¹⁶ 23 Pa.C.S. § 5328(a)(15)

¹⁷ 23 Pa.C.S. § 5328(a)(16)

¹⁸ By way of example, see Pl.'s Ex. 4, 5, and 8.

Mother. When Mother asked Father for the custody schedule to change, Father “did not see a benefit to that” and would not rationally consider Mother’s requests. Father has been the master of ceremonies for the custody schedule since the parties separated, with little to no regard for Mother’s desire or what is in S.L.D.’s best interests.

The Court does not find Mother without fault when it comes to the parties’ conflict. It is unclear to the Court why Mother did not bring this matter before the Court much earlier if she was having such significant lack of co-parenting from Father. Mother testified to raising her concerns about the custody schedule with Father and that Father was not receptive to altering the schedule. However, Mother continued to follow Father’s misguided lead instead of turning to the Court for assistance. Her duty to vindicate S.L.D.’s best interests is higher than her duty to “go along to get along” with Father. If Father is unreasonable, then he will answer to the Court; however, only Mother can invoke the Court’s authority in that event.

Co-parenting needs to be a give and take between the parents, with due regard for each parent’s relationship with S.L.D. The parties need to learn to put their conflict with each other aside in order to communicate and cooperate for the sake of S.L.D.’s growth and development, *i.e.*, her best interests. Father and Mother have unique and individual parenting styles, and they need to learn to respect the other’s style. S.L.D. will only benefit from being exposed regularly and continually to both parenting styles and seeing her parents learn to co-parent together.

An appropriate order follows.

ORDER

NOW, this 4th day of January, 2022, on the forgoing *Opinion*, **IT IS HEREBY ORDERED** as follows:

1. The Plaintiff (Mother) and the Defendant (Father) shall share legal custody of S.L.D.;
2. Mother and Father shall share physical custody of S.L.D. on a week on/week off basis;
3. Unless otherwise agreed, exchanges of physical custody shall occur on Fridays at 6:00 p.m.;
4. Unless otherwise agreed, exchanges of physical custody shall occur at the parties’ residences, with the party ending their period of physical custody providing transportation;

5. Notwithstanding paragraph 2 above, and unless otherwise agreed:
- a. Mother's Day/Father's Day: the party whose relationship to S.L.D. is being celebrated shall have physical custody from 9:00 a.m. until 9:00 p.m.;
 - b. Thanksgiving Break: in odd-numbered years, Mother shall have physical custody from the Wednesday before Thanksgiving Day until the Friday after Thanksgiving Day at 6:00 p.m. Father shall have physical custody from the Friday after Thanksgiving Day at 6:00 p.m. until Sunday at 6:00 p.m.; in odd-numbered years, these periods of physical custody shall reverse between the parties;
 - c. Christmas Break: in odd-numbered years, Father shall have physical custody from 6:00 p.m. on the last day of school until December 28 at 6:00 p.m. Mother shall have physical custody from December 28 at 6:00 p.m. until school resumes in January; in even-numbered years, these periods of physical custody shall reverse between the parties;
 - d. Vacations: the parties shall take any family vacations with S.L.D. during their regular weekly period of physical custody under paragraph 2 above; unless otherwise agreed, any such vacation shall occur during S.L.D.'s summer break from school;
6. Unless accompanied by the party with physical custody, if S.L.D. is to spend one or more overnight periods away from a party's residence, the party with physical custody shall provide relevant information to the other party including, but not limited to, the date(s), locations, contact information, and persons to be present with S.L.D. while away; this information shall be provided in a timely fashion in advance;
7. Neither party shall be permitted to relocate the residence of the child to significantly impair the ability of another person to exercise custody UNLESS every individual who has custody rights to the child consents to the proposed relocation OR the Court approves the proposed relocation. A person proposing to relocate MUST comply with the notice requirements pursuant to 23 Pa.C.S. § 5323 (c) and 5337 (c).
8. The Prothonotary shall provide notice of this judgment in accordance with Pa.R.C.P. 236.