

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA**  
**CIVIL DIVISION**

J.R-P., :  
 :  
 Petitioner :  
 :  
 Vs. : No. 13-0325  
 :  
 W.M.P., :  
 :  
 Respondent :

**MEMORANDUM OPINION**

Matika, J. - January 8, 2014

This is a child custody relocation case filed by the Petitioner, J.R-P. After hearing and a careful review of facts and the applicable law, including all factors espoused in 23 Pa. C.S.A. §5337(h), the request to relocate the child, G.R-P. to Killeen, Texas will be denied for the reasons stated herein.

**FACTUAL AND PROCEDURAL BACKGROUND**

Petitioner, J.R-P. (hereinafter "Mother") resides at 716 North Street, Jim Thorpe, PA with the subject Child, G.R-P., (hereinafter "Child") (D.O.B. 9/20/08) along with her other child, K.C. (D.O.B. 8/26/03). She moved to Jim Thorpe in July 2013. Prior thereto, she resided in two other locations in Carbon County since moving here from Texas in 2009. Currently, Mother works for Michael's Distribution Center in a full-time clerical position earning \$12.91 per hour. While working, she

pays a friend to watch the children approximately \$300.00 per month. Sometimes her boyfriend watches them.

Mother was previously married to the Respondent, W.M.P. (hereinafter "Father"). They divorced in September, 2013. Father currently resides at 125 W. Railroad Street, Nesquehoning, PA. He is employed full-time at AutoZone Warehouse earning \$11.00 per hour. Father also resided in Texas while he serving in the military there, although he is from the Philadelphia area originally. His Mother, who he does not see often, still resides in the Philadelphia area. Since moving North, absent a period of residency in Maryland, Father likewise has been residing in the Carbon County area for a period of time.

At present, Father is enjoying a liberal partial custody schedule with the subject child, one that was recently modified by the parties and fashioned in such a way that it takes into consideration their respective work schedules. Father has custody of the child every week from Monday between 6:00 P.M. and 7:00 P.M. until Thursday at 7:30 P.M. He also has custody of the child every other weekend from Friday at 7:30 P.M. until Monday at 7:30 P.M.

Mother testified that if she were permitted to relocate the child to Texas, she proposed Father to get the summer period with the child, some holidays and any spring break from school.

During periods of partial custody, Father has taught the Child a number of lessons and has assisted him in attaining various goals in a young child's life, including how to ride a bike and how to tie his shoes.

On or about December 4, 2013, Petitioner filed a Notice of Proposed Relocation to move the Child with her to Killeen, Texas on or about January 5, 2014.<sup>1</sup> Simultaneously, she filed a Petition for Modification of the March 11, 2013 Custody Order. Presumably<sup>2</sup>, she served copies of both documents on Respondent as on December 9, 2013. Father filed a Counter-affidavit regarding Relocation in which he voiced his objection to the proposed relocation.<sup>3</sup>

At the hearing held on December 23, 2013, both parties provided testimony in favor of their respective positions on relocation.

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<sup>1</sup> At the hearing, when questioned about the firmness of her proposed relocation date, she indicated that this was a flexible date and that any move would not necessarily be occurring on that date.

<sup>2</sup> No certificate or affidavit of service was ever filed evidencing that the notice of proposed relocation was sent by certified mail to the Father pursuant to Pa.R.C.P. 1915.17(a), however, by virtue of Father filing his counter-affidavit, the Court can assume he received it in some fashion.

<sup>3</sup> The Court presumed either Father did not serve the Counter-affidavit on Mother in accordance with Pa.R.C.P. 1915.17(b) or Mother simply did not follow the requirements of Pa.R.C.P. 1915.17(f) insofar as requesting a hearing as the Court, concerned about the best interest of the subject child, scheduled it sua sponte.

## **DISCUSSION**

23 Pa.C.S.A. §5337 was enacted as part of the law known as "The Child Custody Act" to deal with the relocation of children. Subsection(h) of that statute enumerates ten (10) factors that the Court must consider when ruling on a parent's request to relocate child. Prior to the enactment of this new law, relocation requests were governed by the three-prong test set forth in *Gruber v. Gruber*, 583 A2d 434 (Pa. Super. Ct. 1990). The factors set forth in §5337(h) incorporate the *Gruber* factors, but also provide the Court with additional considerations in its analysis of a relocation case. Relocation is defined under the new Act as "[a] change in residence of the child which significantly impairs the ability of a non-relocating party to exercise custodial rights." 23 Pa. C.S.A. §5322(a). The burden of proof in a relocation case is statutorily defined as and placed on the party proposing the relocation and in so proving the relocating party must establish that the move will serve the best interest of the child pursuant to the factors outlined. 23 Pa. C.S.A. §5337(i)(2). "Section 5337(h) mandates that the trial court shall consider all of the factors listed therein, giving weighted consideration to those factors affecting the safety of the child." *E.D. v. M.P.*, 33 A.3d 73, 81 (Pa. Super. Ct. 2011). As such, the Court will analyze the evidence presented in this case in conjunction with

each of these ten (10) factors to explain why relocation significantly impairs Father's inability to exercise his custodial rights and also why such a relocation is not in the best interest of the Child, G.R-P.

THE NATURE, QUALITY, EXTENT OF INVOLVEMENT AND DURATION OF THE CHILD'S RELATIONSHIP WITH THE PARTY PROPOSING TO RELOCATE AND THE NON-LOCATING PARTY, SIBLINGS, AND OTHER SIGNIFICANT PERSONS IN THE CHILD'S LIFE

It appears from the testimony that the Child is involved with both parents spending almost an equal amount of time with each of them. Mother's proposed move would all but eliminate Father's weekly physical contact with the Child.

From the testimony, both parents play an important role in the Child's life. The proposed move and times suggested for Father's partial custody would seriously and significantly impact and impair Father's regular and consistent involvement in and relationship with the Child.

THE AGE, DEVELOPMENTAL STAGE, NEEDS OF THE CHILD AND THE LIKELY IMPACT THE RELOCATION WILL HAVE ON THE CHILD'S PHYSICAL, EDUCATIONAL AND EMOTIONAL DEVELOPMENT, TAKING INTO CONSIDERATION ANY SPECIAL NEEDS OF THE CHILD

The Child is five (5) years old. No evidence was provided on this factor that would necessarily impact his development or needs of the Child. Since not yet in school, the move would not impact his education process as that aspect of his life has yet to begin. In fact, if allowed to move, Mother proposed to begin

the Child's education at Westwood Elementary in Killeen, Texas. No other testimony was presented that impacts this factor.

THE FEASIBILITY OF PRESERVING THE RELATIONSHIP BETWEEN THE NON-LOCATING PARTY AND THE CHILD THROUGH SUITABLE CUSTODY ARRANGEMENTS, CONSIDERING THE LOGISTICS AND FINANCIAL CIRCUMSTANCES OF THE PARTIES

Father's shared physical custody of the Child, tantamount to about 50 percent of the available custodial time, would and could not be preserved if the move was permitted as Mother's proposal would eliminate the significant weekly physical contact with the Father and limit it to a block of "summer time" consisting of approximately 11-12 weeks along with holiday time and spring break. Further, the distance would not allow for the continuity of this weekly physical contact unless the Child is exchanged weekly which would be cost prohibitive.

To alleviate this issue, Mother proposed to Father that he likewise relocate to this area and in fact suggested that her Mother offered to allow him to stay with her until he got on his feet. Father, being under no legal obligation to accept, refused this offer.

THE CHILD'S PREFERENCES, TAKING INTO CONSIDERATION THE AGE AND MATURITY OF THE CHILD

Due to the Child's age (5), he was not presented as a witness, therefore, no testimony was provided on this factor.

WHETHER THERE IS AN ESTABLISHED PATTERN OF CONDUCT OF EITHER PARTY TO PROMOTE OR THWART THE RELATIONSHIP OF THE CHILD AND THE OTHER PARTY

Likewise, there was no evidence presented on this factor.

WHETHER THE RELOCATION WILL ENHANCE THE GENERAL QUALITY OF LIFE FOR THE PARTY SEEKING THE RELOCATION INCLUDING, BUT NOT LIMITED TO, FINANCIAL OR EMOTIONAL BENEFIT OR EDUCATIONAL OPPORTUNITY

Mother testified that from an employment standpoint, the move would be beneficial to her as she would be retained with her current employer, but in a retail position as opposed to clerical, at a location only fifteen (15) miles from where she would reside. Further, she would eventually be able to purchase a home in this area of Texas as compared to renting in Jim Thorpe as she felt she could save money living with her Mother and while having her Mother provide alternate care for the Child at the daycare center where she is employed. While the daycare at which her mother is employed would be beneficial to her, financially it would not be, as the cost to enroll both children, with the family discount, would still be Forty Dollars (\$40.00) per week, per child. This amount is more than she is paying her friend to watch only the subject Child. Mother also testified that she would be able to complete her college degree at Central Texas Community College.

WHETHER THE RELOCATION WILL ENHANCE THE GENERAL QUALITY OF LIFE  
FOR THE CHILD INCLUDING, BUT NOT LIMITED TO, FINANCIAL OR  
EMOTIONAL BENEFIT OR EDUCATIONAL OPPORTUNITY

No testimony was presented as to how the proposed move would enhance the Child's quality of life.

THE REASONS AND MOTIVATION OF EACH PARTY FOR SEEKING OR OPPOSING  
THE RELOCATION

Mother's advancement in employment and opportunity to further her education, along with enhancing her opportunities to purchase a home as opposed to renting were reasons and motivations for moving the Child to Texas. She also testified that neither party has any family in the Carbon County area and that while the paternal Grandmother resides in the Philadelphia area, Father does not have much contact with her.

On the other hand, Father opposes the move primarily due to the impact on his relationship with the child. Father testified that he has been in the Child's life since birth and that he has had a significant involvement and positive effect on his upbringing.

Ultimately, while the Court finds that the reasons and motivations for and against the move are righteous, just and reasonable, it further finds that this factor weighs in Father's favor due to the significant impact the move would have on the Father-child relationship.



THE PRESENT AND PAST ABUSE COMMITTED BY A PARTY OR A MEMBER OF  
THE PARTY'S HOUSEHOLD AND WHETHER THERE IS A CONTINUED RISK OF  
HARM TO THE CHILD OR AN ABUSED PARTY

No testimony was presented on this factor.

ANY OTHER FACTOR AFFECTING THE BEST INTEREST OF THE CHILD

While there was other testimony presented in this case which does not otherwise fall into one of the other above enumerated factors, the Court finds that testimony to be so insignificant that it does not warrant discussion here nor did it impact this Court's ultimate decision.

Based on the foregoing the Court enters the following order:

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J.R-P.,	:	
	:	
Petitioner	:	
	:	
Vs.	:	No. 13-0325
	:	
W.M.P.,	:	
	:	
Respondent	:	

ORDER

AND NOW, this            day of January, 2014, after careful consideration of the testimony and evidence provided by the parties and after examining that testimony and the factors set forth in 23 Pa. C.S.A. §5337(h) and consistent with the attached opinion, it is hereby **ORDERED and DECREED** that the request of Petitioner, J.R-P., to relocate the minor child, G.R-P., with her to the State of Texas and the Petition for Modification are **DENIED.**

BY THE COURT:

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Joseph J. Matika, Judge