

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

S.J.N.	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
W.A.N.,	:	
Appellant	:	
W.A.N,	:	
Appellant	:	
v.	:	
S.J.N.	:	No. 983 EDA 2013

Appeal from the Order Entered March 19, 2013
In the Court of Common Pleas of Carbon County
Domestic Relations at No. 12-0569 – 12-0143

BEFORE: BENDER, P.J., DONOHUE, J. AND MUSMANNO, J.

MEMORANDUM BY BENDER, P.J.: **FILED NOVEMBER 01, 2013**

W.A.N. ("Father") appeals from the March 19, 2013 order awarding Father and S.J.N. ("Mother") shared legal custody of M.S.N. and M.R.N. (both born in April of 2007) ("Children"), awarding Mother primary physical custody of the Children during the school year, and awarding shared physical custody on a week-on-week-off basis during the summer.¹ After review, we affirm.

Father raises the following issues for our review:

¹ This case also presents a relocation issue based upon evidence that was presented at trial. However, as noted by the trial court, no relocation petition was filed and Father did not formally raise any objections to

1. Did the Trial Court err in making the determination that it is in the best interest of the children that Mother be granted primary physical custody?
2. Did the Trial Court err in failing to properly apply the factors set forth in 23 Pa.C.S.A. [§] 5337(8) regarding relocation?

Father's brief at 4.

Our scope and standard of review are as follows:

[O]ur scope is of the broadest type and our standard is abuse of discretion. This Court must accept findings of the trial court that are supported by competent evidence of record, as our role does not include making independent factual determinations. In addition, with regard to issues of credibility and weight of the evidence, this Court must defer to the trial judge who presided over the proceedings and thus viewed the witnesses first hand. However, we are not bound by the trial court's deductions or inferences from its factual findings. Ultimately, the test is whether the trial court's conclusions are unreasonable as shown by the evidence of record. We may reject the conclusions of the trial court only if they involve an error of law, or are unreasonable in light of the sustainable findings of the trial court.

E.D. v. M.P., 33 A.3d 73, 76 (Pa. Super. 2011) (quoting ***A.D. v. M.A.B.***, 989 A.2d 32, 35-36 (Pa. Super. 2010)). Furthermore, we note that:

[t]he discretion that a trial court employs in custody matters should be accorded the utmost respect, given the special nature of the proceeding and the lasting impact the result will have on the lives of the parties concerned. Indeed, the knowledge gained by a trial court in observing witnesses in a custody proceeding cannot adequately be imparted to an appellate court by a printed record.

Mother's relocation until he filed his concise statement of errors complained of on appeal as required by Pa.R.A.P. 1925(a)(2).

Ketterer v. Seifert, 902 A.2d 533, 540 (Pa. Super. 2006) (quoting **Jackson v. Beck**, 858 A.2d 1250, 1254 (Pa. Super. 2004)).

A.H. v. C.M., 58 A.3d 823, 825 (Pa. Super. 2012).

The primary concern in any custody case is the best interests of the child. The best-interests standard, decided on a case-by-case basis, considers all factors that legitimately have an effect upon the child's physical, intellectual, moral, and spiritual well-being. **Saintz v. Rinker**, 902 A.2d 509, 512 (Pa. Super. 2006) (citing **Arnold v. Arnold**, 847 A.2d 674, 677 (Pa. Super. 2004)). Furthermore, we recognize that the recently enacted Child Custody Act (Act), 23 Pa.C.S. §§ 5321-5340, governs all proceedings commenced after January 24, 2011. The specific factors that a court must consider are listed at 23 Pa.C.S. § 5328(a)(1) – (16). **See E.D.**, 33 A.3d at 79-80 (holding that "best interests of the child" analysis requires consideration of all section 5328(a) factors). Additionally, 23 Pa.C.S. § 5337(h) provides a list of ten factors that a court must consider when a case involves a relocation.

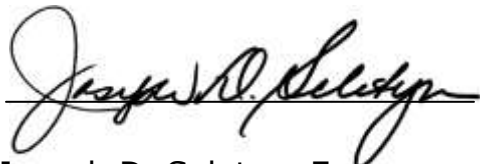
Here, in its opinion, the trial court set forth the procedural history of this case, noting that Mother and Father both testified at the custody trial held on February 20, 2013. The opinion also contains a review of all the factors listed in section 5328(a) and in section 5337 of the Act as they relate to the specific facts articulated by the witnesses and the conclusions the court reached in light of those findings of fact. Additionally, based on our

review of Father's brief, it appears that Father is requesting that this Court re-find and/or re-weigh the evidence. However, as stated above, our standard of review requires that we "accept findings of the trial court that are supported by competent evidence of record, as our role does not include making independent factual determinations." **C.R.F., III v. S.E.F.**, 45 A.3d 441, 443 (Pa. Super. 2012).

We have reviewed the certified record, including the transcript from the February 20, 2013 hearing, the briefs of the parties, the applicable law, and the thorough, well-reasoned 29-page opinion authored by the Honorable Joseph J. Matika of the Court of Common Pleas of Carbon County, dated May 9, 2013. We conclude that Judge Matika's extensive opinion properly disposes of the issues presented by Father in this appeal. Accordingly, we adopt the court's opinion as our own and affirm the custody/relocation order on that basis.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/1/2013

