IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL DIVISION

KARL W. ROLAPPE, :

Plaintiff :

 :

vs. : No. 07-3948

 :

DAWN J. ROLAPPE, now known as :

DAWN J. FERRANTE, :

Defendant :

Melissa T. Pavlack, Esquire Counsel for the Plaintiff

Holly A. Heintzelman, Esquire Counsel for the Defendant

Matika, J. – April , 2012

**MEMORANDUM OPINION**

 This is a child custody relocation case filed by the Defendant, Dawn J. Rolappe, now known as Dawn J. Ferrante. After careful review of the facts and the applicable law, including all factors espoused in 23 Pa. C.S.A. §5337(h), the request to relocate the children, Jack Rolappe and Karsten Rolappe, to California will be denied for the reasons stated herein.

**FACTUAL AND PROCEDURAL BACKGROUND**

 On or about January 9, 2008, an Order of Court was filed which incorporated an Agreement for Custody executed by Karl W. Rolappe, Plaintiff (hereinafter referred to as “Father”) and Dawn J. Rolappe, now known as Dawn J. Ferrante (hereinafter referred to as “Mother”). Said Order governed the custodial situation involving the parties’ children Jack Rolappe (D.O.B. 7/17/04) and Karsten Rolappe (D.O.B. 3/5/06).[[1]](#footnote-1)

 On or about January 26, 2012, Mother, through her counsel, Holly A. Heintzelman, Esquire, mailed to Father a copy of a notice of proposed relocation[[2]](#footnote-2) from Carbon County, Pennsylvania to Sebastopol, California, and it was her intent to request that the Court allow her to relocate with the children.[[3]](#footnote-3) This notice was mailed by certified mail[[4]](#footnote-4) to the Father on January 26, 2012 and the green receipt card evidencing receipt of this notice was signed by the Father on 1/30/12. This notice also had attached to it a “Counter-Affidavit Regarding Relocation”.[[5]](#footnote-5) On February 27, 2012, Father timely filed this Counter-Affidavit with the Court evidencing his objection to the relocation. The Court held hearings[[6]](#footnote-6) on this request for relocation and took testimony from both parties regarding their respective positions on the relocation request. Proposed Findings of Fact and Conclusions of Law with accompanying legal Memorandums have been filed as requested by this Court and this matter is now ripe for disposition.

**DISCUSSION**

 On January 24, 2011, a new law known as “The Child Custody Act” went into effect. Section 5337 governs requests for relocation and Section 5337(h) enumerates ten (10) factors that the Court must consider when ruling on a parent’s request to relocate with the children. 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. 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 children as shown 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.” G.D. v. M.P., 33 A3d 73, 81 (Pa. Super. 2011). As such, we will analyze the evidence in conjunction with each of these ten (10) factors to explain why relocation significantly impairs Father’s ability to exercise his custodial rights and also why such a relocation is not in the best interest of the children.

THE NATURE, QUALITY, EXTENT OF INVOLVEMENT AND DURATION OF THE CHILDREN’S RELATIONSHIP WITH THE PARTY PROPOSING to relocate and the non-locating party, siblings, and other significant persons in the children’s lives

 Since the entry of the Custody Order, both parties have been exercising physical custody on a 50/50 basis, with some deviations to those periods based on events in the parties’ lives. Mother testified that during the time the children are with her she spends some of that time doing a number of things with them, including assisting with homework, reading bedtime stories, going on hikes, riding bikes, taking them to “Robot” class, going to the movies and out to eat, sightseeing and the like. Mother also presented testimony through other witnesses that she and the children have a good relationship and there is positive interaction between her and the children.

 Mother also presented evidence that would suggest that the children, while moving away from a number of friends and relatives (primarily Father’s side of the family) in the Carbon County area, would get to know their Mother’s side of the family better, a side they only get to bond with several times per year.

 Father, likewise, has been intimately involved in the nurturing and upbringing of these children. He takes them to the playground, plays ball with them (and is also their baseball coach), rides bikes with them, takes them snow tubing, attends school functions, and is primarily responsible for taking the children to doctor’s appointments. The quality and quantity of his involvement was buttressed by a number of witnesses Father presented to show he has a good relationship with the children. He has been described as a “hands on” father, a devoted father who interacts well with his children, and a very loving father. Additionally, Mother’s father, Horace “Bud” Ferrante, testified and characterized the Father as a “great guy, good man, great Father to the children.” Finally, the Mother herself characterized Father’s relationship with the children as a “good” one.

 Father also testified and had his two sisters testify that they too have a good relationship with their nephews and see them at least weekly. Lastly, Father testified that he has approximately twenty (20) relatives living in the area, including the two sisters referenced above, the children’s maternal grandmother, and various uncles and cousins.

 There is no question in the Court’s mind that both parents love these children immensely and each have their own unique relationship with them. Additionally, the children have relationships with paternal family members which would be impacted should a move to California be permitted. While such a move to California would conceivably enhance the relationship with their “maternal” family, it would be at the expense of an already established relationship with the “paternal” family.

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

 Both children, Jack and Karsten, are still of tender years, 7 and 6, respectively. Any significant disruption in their lives could have a serious consequence on their physical, educational and emotional development.

 Mother testified that she has investigated a number of schools in and about the Sebastopol area. If granted the right to relocate the children, it was her intent to enroll them in a school known as the Gravenstein Union School District. In addition to the normal course of studies, this school has a program known as “ENRICH/Creative Arts Magnet/GATE Program. This program centers around teaching students more advanced creative arts classes (music, art, etc.) and supplements normal class time with field trips and other after school activities. This school also provides after school and before school care. While the benefit of such a school appears to enlarge the educational facet of the children’s upbringing, there is nothing in the record to suggest that the children’s current educational curriculum is failing them.[[7]](#footnote-7) Accordingly, making such an educational move does not automatically provide positive impact or support for the relocation.

 The Court, in camera, questioned the children about the proposed move to California. The Court found Jack to be more qualified and credible insofar as his and his brother’s knowledge of the proposed relocation, their relationship with their parents and how they felt about the move. While Karsten did not express much feeling about, knowledge of or a position regarding the proposed relocation, Jack was a different story. He provided the Court with positive feeling that he believed would result from the move, but was also concerned and guarded about the potential negative impacts. While he testified that he was looking forward to the prospects of a new school, living on an apple farm and bonding with his mother’s relatives, he also expressed reservations about the move due to the lack of contact with his friends and his cousins (on his Father’s side), and most important to the Court his concern that he won’t be seeing his Father as often as he does now. We believe that the emotional needs of a seven (7) year old child could be negatively impacted by a significant disruption in the physical relationship he currently enjoys with his Father. Clearly, the amount of time with Father would be severely limited by such a move.[[8]](#footnote-8)

 Such a move would likely provide more negative impact on the emotional and educational aspects of the children’s lives than positive impact.

The feasibility of preserving the relationship between the non-locating party and the children through suitable custody arrangements, considering the logistics and financial circumstances of the parties

 Any time a party files a petition for modification or a request to relocate it will undoubtedly affect the custodial rights of the non-moving party. Whether it is a request to eliminate weekday visits, increase weekend visits or request permission to relocate to another county or state, the issue that this Court must decide is to what extent the change will have on the relationship between the children and the non-moving parent and can that relationship be preserved in any way through suitable alternatives.

 In her testimony, Mother proposed that Father could still exercise partial custody over the summer months, major holidays and during any visits by Father to California. By numeric comparison, this would reduce Father’s physical custody from about one hundred and eighty (180) days to approximately less than one hundred (100) days (excluding Father’s visits to California). Additionally, the time Father would be spending with his children would be in “blocks of time” (as indicated, summer months and major holidays) as opposed to three or four days per week as the practice is now. Mother has proposed the use of “Skype” to supplement these periods of partial custody as a means of keeping in touch with the Father. However, to a child, nothing can replace the warmth and love of a gentle bedtime hug and kiss of a parent, something Skype cannot provide. When asked on cross-examination, Mother indicated that the same arrangement she proposed for father would be unacceptable to her should the tables be turned.

 It is obvious from the Mother’s proposal that Father’s periods of custody would not only be significantly impacted but also limited in time and frequency. The proposed alternative, while the only feasible alternative when exchanging custody from one coast to another, would not replace what Father presently exercises and therefore, his relationship would be impacted greatly. Further, from a logistic and financial standpoint, it would require Mother to either travel with the children (presumably via flying) or send the young children alone on the plane. Neither proposal appears logistically proper or emotionally feasible.

 Obviously, if Mother is not employed she could travel with the children and return to pick them up at the end of each extended period of custody with Father that she proposes. However, this then begs the question of “How she could afford it if unemployed.” Naturally, if employed,[[9]](#footnote-9) Mother would be in a better financial position to afford numerous plane tickets for numerous flights from coast-to-coast and could accompany the children. However, to pay for these tickets would partially impact the financial benefit of moving to California as suggested by Mother[[10]](#footnote-10). Based on the testimony presented, the Court is not convinced that, taking into consideration the financial impact or logistical effects of the move, it is feasible to preserve the Father’s relationship through suitable alternative arrangements such as proposed by Mother.

The children’s preferences, taking into consideration the age and maturity of the children

 As previously stated, the Court, with counsel, spoke to both children about the prospect of moving to California. While both children are quite young, they were able to communicate somewhat what they knew about California, how exciting it could be, but also what they would miss about Pennsylvania. No hard and fast preference was given by either child, but even if one had been made, we would be constrained to give it much weight due to the tender ages and lack of maturity of both children.

Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the children and the other party

 Both parents testified about how they each encourage the children to have a relationship with the other parent. This is evident by the 50/50 Custody Order. This is also evident by the absence of petitions for modifications or contempt.

 There was testimony from Father regarding a mold issue at Mother’s house which was ultimately rectified. Father was also concerned about the children going to the Mother’s residence during that period of time, which Mother looked at as an attempt by the Father to suggest to the children not to go there. Even if accepted as true, there was no evidence or indication of an established pattern of conduct to thwart Mother’s relationship with the children. In fact, there was no testimony that the custodial arrangements were ever interrupted during this mold issue time period.

 Conversely, Father had presented a number of “screen shots” of parts of text conversations with Mother which presumably and arguably are attempts by Mother to thwart or interfere in Father’s relationship with his children. Father argued that some of these messages were attempts by Mother to thwart the relationship or control the lives of the children to their Father’s detriment. The Court does not view them the same way and in fact, views these squibs as nothing more than a parent frustrated with dealing with the other parent and typing things before thinking them through. To the extent they were threats to impact the custodial situation there was no testimony that any such threat came to fruition. Again, the dockets in this case are devoid of any filings which would suggest Father took those things seriously.

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

 There is no doubt Mother’s move to California would be emotionally beneficial to her, as she was born and raised in California and the majority of her family is still there.[[11]](#footnote-11) She would be living rent free on her Aunt Karen McDonald’s apple orchard/farm, a living arrangement which would open an entirely new opportunity for her and the children, including a part time employment opportunity. Unfortunately, from an employment/income perspective, the move to the farm would not be significantly beneficial. It was a new venture for Mother and one that her aunt could only say “makes a little profit” for her. Further, at the start of the hearings Mother testified that she was anticipating a possible call regarding a great employment opportunity in California.[[12]](#footnote-12) That call never came, as there was no testimony from Mother that she has gotten the job. As a result, without more regarding employment, it cannot be said that the relocation would enhance the financial quality of Mother’s life by moving to California.

Whether the relocation will enhance the general quality of life for the children including, but not limited to, financial or emotional benefit or educational opportunity

 It’s human nature for young children to be excited about certain changes in their lives, particularly positive changes that have been promised or hyped up for them. The excitement from the anticipation of such a change is therefore expected. While in some instances change is good, it may also have its drawbacks. In the context of this custody case, both perspectives, good and bad, must be analyzed to determine the type of impact such a change or relocation will have on the children’s lives.

 Mother testified that should she be permitted to move the children to California, the educational opportunities for them would be greater than those here in Carbon County, Pennsylvania. She testified regarding a comparison of the Towamensing Elementary School, where the children are currently enrolled, to the Gravenstein School District where she anticipated enrolling them. It was her opinion that the Gravenstein School provided more opportunities for educational enrichment, including the ENRICH Program referred to earlier, more field trips, greater parental participation in these field trips, smaller class sizes, increased support personnel in the classroom, and an opportunity to learn Spanish. Mother also testified that the move would allow the children to be raised on an apple orchard/farm, which would provide them with greater opportunities to learn about farming. Mother also indicated that the “new area” would provide more cultural diversity for the children.

 On cross-examination, Mother admitted that some of the same variables which tipped the scale toward the Gravenstein School as opposed to the present school setting, were applicable, available or occurring here in Carbon County.[[13]](#footnote-13) Clearly, while expanding the opportunities for the children, the move to California does not provide the extent of enhancement from an educational standpoint that Mother would hope the Court would find.

 Additionally, as indicated earlier, the Court believes that to completely eliminate approximately nine (9) months of physical custody with Father during the school year, where he otherwise had three (3) to four (4) days per week, would have a detrimental effect on the emotional relationship between the children and Father, a situation this Court is not willing to create.

The reasons and motivation of each party for seeking or opposing the relocation

 Pursuant to §5337(i)(2) of the Act, “each party has the burden of establishing the integrity of that party’s motives in either seeking the relocation or seeking to prevent the relocation.” From the testimony presented, it appears that each party has a genuine motivation for seeking or opposing the relocation as the case may be.

 Mother testified extensively about her desire to move back home to be nearer her family in California. She also testified about her desire to seek better employment in a position that will allow her to advance herself, financially and otherwise. She further testified that she wanted her children to join her in an attempt to enhance the quality of their lives as well.

 Father testified that his motivation for opposing this relocation is mostly grounded in the effect it would have on his relationship with his children. Father also attempted to present evidence that Mother’s motives were more than identified above, but the Court does not give much weight to this evidence.

 With this being said, the Court is convinced that while the motivations of both parties to relocate or oppose relocation are just, the Father’s reasons serve the best interest of the children more so than the motivations of the Mother. The Father’s motives and reasons for opposing the relocation are a genuine attempt to maintain the continuity of his relationship with his children on an ongoing basis.

 As indicated throughout this Opinion, the consequence of such a move on the children is a priority concern of this Court and the Father’s motives in maintaining that constant relationship is a natural extension of the effect such a move would have on the emotional safety of the children.

The present and past abuse committed by a party or member of the party’s household and whether there is a continued risk of harm to the child or an abused party

 There was absolutely no testimony provided by either party suggesting any physical, emotional or mental abuse involving these parties, the children or members of the parties’ respective households.

Any other factor affecting the best interest of the child

 Throughout the course of the three (3) days of hearings in this matter, both parties presented substantial evidence regarding the children, themselves and family members. It was apparent from the testimony and acknowledged to a degree by the Mother that each party has an adequate support system here in Pennsylvania for the children. Father talked about the assistance he receives from his sisters and his uncle in raising the children. Mother also testified that, despite a hesitancy to trust people, she too has slowly built a support staff here in Carbon County to help with the children. A move to California will, according to Mother, still provide a familial support system to assist her with the children, however, with the exception of her Aunt Karen and a cousin, Jill Johnson, the majority of the support system is an hour away. Conversely, those who assist both parties now reside in the Carbon County area and have been providing this assistance for years.

 Lastly, the Court was impressed with both parties insofar as how they have been cooperating in their efforts to parent their children. Granted, this instant action may fracture those efforts, but it is important to note these efforts and how they impact on the best interest of the children.

 There was testimony that, despite the parties’ separation and subsequent divorce, they did, for a period of time, reside together, for among other reasons, the joint raising and nurturing of the children. Later, despite the parties eventually taking up separate households, they still did things jointly for the children. There was testimony that the parties would still go on “family vacations” together, and celebrate children’s birthdays and holidays together. This is not common in today’s society of divorce and separation. The parties are commended for their ability to do this and the Court hopes that they could continue to do this as it clearly is in the best interest of the children. Permitting Mother to relocate the children would in all likelihood end this cooperative effort between the parties.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL DIVISION

KARL W. ROLAPPE, :

Plaintiff :

 :

vs. : No. 07-3948

 :

DAWN J. ROLAPPE, now known as :

DAWN J. FERRANTE, :

Defendant :

Melissa T. Pavlack, Esquire Counsel for the Plaintiff

Holly A. Heintzelman, Esquire Counsel for the Defendant

ORDER

 **AND NOW**, this 20th day of April, 2012, after a careful examination of the testimony and evidence provided by all of the witnesses presented by both parties and after applying the factors as set forth in 23 Pa. C.S.A. §5337(h), it is hereby **ORDERED** and **DECREED** that the request of Defendant, Dawn J. Rolappe, now known as Dawn J. Ferrante, to relocate the minor children, Jack Rolappe and Karsten Rolappe, with her to the State of California is **DENIED**.

 BY THE COURT:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Joseph J. Matika, Judge

1. This Order provided for a 50/50 split in the primary custody of the children between both parties. As testified to at the hearing, this Order was never modified by further Order of Court, however, the parties on numerous occasions “tweaked” the Order to accommodate their respective schedules and other situations which arose over the years involving themselves and the children, all of which appeared to be in the best interests of the children. [↑](#footnote-ref-1)
2. As required by 23 Pa. C.S.A. §5337(c). [↑](#footnote-ref-2)
3. According to the notice sent by Mother, her intended date of relocation was April 5, 2012. [↑](#footnote-ref-3)
4. As required by 23 Pa. C.S.A. §5337(c)(2)(i). [↑](#footnote-ref-4)
5. As required by 23 Pa. C.S.A. §5337(c)(3)(x). [↑](#footnote-ref-5)
6. Evidence was taken on three (3) separate dates of 3/30/12, 4/2/12 and 4/5/12. [↑](#footnote-ref-6)
7. Mother did testify that in a comparison of the Gravenstein School and the children’s current school (Towamensing Elementary) it was her opinion that Towamensing Elementary was inferior to Gravenstein. However, she never produced any evidence to suggest that the children’s education was such that a change was required or even how a change would create a better learning environment for them. [↑](#footnote-ref-7)
8. This will be more developed in the discussion of the next factor. [↑](#footnote-ref-8)
9. At the start of the hearing Mother testified that she was waiting for a prospective employer to contact her as to whether or not she “got the job”. After all evidence and testimony was presented, there was no indication that she in fact got the job. This factor will be further addressed in this Opinion at a later point. [↑](#footnote-ref-9)
10. For purposes of explanation, had the Court allowed the relocation and the Court approved Mother’s proposal for Father’s periods of custody during the summer and major holidays, the Court would have assessed the costs to transport the children to and from Pennsylvania on the Mother as it was her request which precipitated the change in circumstances. [↑](#footnote-ref-10)
11. Mother testified that there were approximately a dozen or so family members in California within an approximately one (1) hour drive from where she proposes to move to, not including the aunt whose farm she intends to live on. [↑](#footnote-ref-11)
12. Mother currently works as the Carbon County Economic Development Director, earning approximately $40,000.00/year. There is no room for advancement in this position. The position Mother hoped to get in California was expected to pay at least $67,000.00 with room for advancement. However, there was no job offer forthcoming by the close of the testimony. Even had Mother been offered this employment, due to the weight of the other factors, it still would not have been sufficient to allow the relocation. [↑](#footnote-ref-12)
13. Mother admitted that while field trips are available, she could not participate due to the nature and manner in which parents are allowed to go. She also acknowledged the availability of cultural diversity in this area (Philadelphia, New York, etc.), the opportunity to learn Spanish (albeit at a later age), that there are apple orchards/farms located locally but never visited and that there is available for the children in school a “gifted program” for students otherwise excelling in school. [↑](#footnote-ref-13)