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DAUPHIN COUNTY
PENNSYLVANIA

RICHARD A. BEKELJA, JR., : IN THE COURT OF COMMON PLEAS
Plaintiff : OF DAUPHIN COUNTY,
 : PENNSYLVANIA
v. :
 : NO. 2013 CV 9593 CU
AMANDA ADAMS-MALSEED, :
Defendant : CIVIL ACTION – LAW
 : IN CUSTODY

MEMORANDUM OPINION

PROCEDURAL HISTORY and FACTUAL BACKGROUND

The instant matter was initiated on November 1, 2013 by the filing of a Complaint for Custody by Richard A. Bekelja, Jr. (hereinafter "Father") against Defendant Amanda Adams-Malseed (hereinafter "Mother") and seeking primary physical custody of C.A. (DOB: 5/2008) and A.A. (DOB: 1/2010) (hereinafter "minor children"). Following a December 11, 2013 custody conciliation, an Order was entered wherein the parties shared legal custody, with Mother having primary physical custody and Father having partial physical custody every Tuesday from 6:00 p.m. until the return of school/ daycare the following day and alternating weekends from Friday at 6:00 p.m. until Sunday at 6:00 p.m.

Mother filed an Emergency Petition for Special Relief in Custody (hereinafter "Emergency Petition") and a Petition to Modify Custody (hereinafter "Modification Petition") on July 22, 2015. The Modification Petition was subsequently dismissed based

on an agreement by the parties. Father then filed an Emergency Petition and Modification Petition on November 14, 2016. An Order was issued on November 15, 2016 directing Mother not to remove the children from Dauphin County.

Following a conciliation conference held on December 16, 2016, an Interim Order was issued granting Father additional custodial time. Father filed a second Emergency Petition on February 1, 2017 and in an Interim Order dated February 7, 2017, was awarded temporary primary physical custody, with Mother having weekend visitation. The parties were unable to reach an agreement regarding custody during a July 12, 2017 custody conciliation; therefore, a Pre-Trial Conference was scheduled. During the pre-Trial Conference Father made an oral motion for emergency relief.¹ Mother's partial custody rights were suspended on August 31, 2017.

A Custody Trial was held on October 26, 2017 before the Honorable Lori L. Serratelli.² A subsequent Order was issued directing Mother to have no contact with the minor children. She was also ordered to make an appointment with the minor children's therapist, enroll in parenting classes and undergo a drug and alcohol evaluation.

¹ Father's motion was based on a child line referral made by the minor children's therapist that Mother posed a potential risk of harm to the children based on her alcohol use.

² At this hearing Mother requested a continuance to get an attorney. Although the court had previously indicated that no further continuances would be granted, following Plaintiff's presentation of his case in chief, Judge Serratelli continued the matter to December 19, 2017 to allow Defendant to present her case in chief and cross examine Plaintiff's witnesses.

A second Custody Trial was scheduled for March 7, 2018. Based on a request for a continuance from Defendant's attorney, the trial was re-scheduled for April 5, 2018.

CUSTODY TRIAL

Both parties appeared and testified during the April 5, 2018 trial, which was a continuation of the initial trial from October. Father was represented by Stephanie DiVittore, Esquire, and Mother was represented by Josh Harshberger, Esquire.

Father testified³ that he has lived at his current address for the past five (5) years. He stated that he does not drink alcohol often but goes out occasionally with his fiancé to a local sports bar. When he and his fiancé go out, his parents watch the minor children. Father testified that since he has had primary custody of the minor children he has signed them up for extracurricular activities, specifically soccer and wrestling, and that they enjoy the activities. He explained that when Mother had weekend visitation with the minor children, she failed to take them to their activities because it was "her" time. Father testified that although the minor children state that they miss Mother, they do not ask to call or see her. However, Father believes that the minor children should have appropriate contact with Mother and he would allow telephone contact with her.

³ Father's testimony offered at the October 26, 2017 trial is incorporated herein. See N.T. 10/26/2017, pgs. 18-54.

Father explained that Mother currently lives in a camper and, although he has never been inside of it, he does not believe it is an appropriate place for the minor children to live. Father testified that the last time the minor children saw Mother was the end of January, 2017, during a counseling session. He explained that although the counseling sessions helped the minor children, he had to cancel future appointments because his insurance would no longer pay for them and he could not afford to pay for them out of pocket. However, Father started a new job on March 8, 2018 and his new insurance coverage⁴ will cover future counseling sessions which he intends to schedule. Father explained that Mother attended two (2) out of three (3) counseling sessions that were scheduled.

Leslie P. Davis, LPC, testified⁵ that she counseled the minor children from March, 2017 through January, 2018, at which time the counseling was suspended because Father's insurance would no longer cover the visits. She explained that Mother attended two (2) sessions with the minor children, one on November 21, 2017 and the second on January 29, 2018. Ms. Davis testified that during the latter session, the minor children expressed concern about Mother's alcohol consumption. She explained that the group

⁴ Father testified that the new insurance coverage was scheduled to begin on April 1, 2018.

⁵ Ms. Davis previously offered testimony during the October 26, 2017 trial, which is incorporated herein. See N.T. 10/26/2017, pgs. 11-18.

counseling sessions with the minor children and Mother were helpful since Mother was absent from their lives for several months. She further stated that the minor children need stability in their lives, which was why she recommended guidelines, like supervised visitation and scheduled phone calls, for Mother's contact with the minor children. Ms. Davis recommended continued therapy with the minor children and Mother.

Mother testified that she works at Clark Distribution in Middletown and is being evicted from her current residence, which is why she and her husband plan to move into their camper. She explained that the camper is an appropriate place for the minor children to visit because it has a queen bed, bunk beds, electricity, running water, heat, air conditioning, a stove and a microwave. Mother testified that the camper is a temporary living situation, so she and her husband can save enough money to get a different residence. The camper is located at a campsite near Millerstown, Perry County.

Mother testified that she underwent a drug and alcohol evaluation and no treatment was recommended.⁶ She further testified that she learned techniques for appropriate communication and discipline from the nine (9) week parenting class she attended. Mother explained that she previously yelled "a lot" at the minor children.

⁶ Defendant's Exhibit 1.

Mother testified that she is willing to continue therapy with the minor children; however, she does not think she needs supervised visitation. She disagreed that she discussed inappropriate topics with the minor children when she had telephone contact with them. Mother does not believe the minor children are supervised properly when they are in Father's custody because they have suffered injuries while in his care. Mother acknowledged that she disparages Father on social media but said she would stop. Mother further testified that although she knows who the minor children's teachers are, she did not attend any school events over the past year. Mother testified that although the campsite where she will be residing is 45 minutes away, if awarded weekend visitation, she would take the minor children to their extracurricular activities.

DISCUSSION

Before this Court is Father's Modification Petition and Mother's suspension of custody rights. In addition to reviewing the record, we have heard testimony from the parties, their witnesses, and interviewed the minor children in camera. 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.3d 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.*

Father testified that although the minor children do not ask to see Mother, he believes that it is important for the minor children to have appropriate contact with Mother. Mother also testified that it is important for the minor children to have a good relationship with both parents.

- (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.*

During the trial, a concern was raised regarding a pending criminal charge against Mother's husband. Specifically, the police were called during an altercation between Mother and her husband, during which they were admittedly drinking, and he was subsequently charged with assault.

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

Father and his fiancée have been caring for the minor children and they seem to be doing quite well. Mother cared for the minor children for several years prior to the initiation of the custody actions filed in this matter which ultimately led to the suspension of her rights.

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

Father and his fiancé have provided a stable living environment for the minor children. They attend school and there was evidence that the minor children's grades have improved. Further, they are currently involved in extracurricular activities that they enjoy. Based on her current living situation, Mother is not in a position to provide stability for the minor children.

(5) *The availability of extended family.*

No testimony was provided regarding Mother's extended family. Father testified that his parents watch the minor children on occasion.

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

Father has three (3) other children; however, there was minimal testimony regarding the extent of the relationship the minor children have with these siblings. Father acknowledged that his oldest child, who is in his 20's, has not seen the minor children in at least six (6) months, but prior to that he watched them occasionally.

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

The Court interviewed C.A. and A.A. and found them to be bright, friendly and intelligent children. They professed that they were happy living with Father, and expressed reservations about living in Mother's camper.

- (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 testimony that either parent attempted to turn the minor children against the other parent. Mother testified that she has disparaged Father on social media but indicated that she would stop.

- (9) *Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the children adequate for the children's emotional needs.*

Both parents are capable of maintaining a positive relationship with the minor children. Mother acknowledged that in the past she yelled at the minor children and did not discipline them appropriately, but she further stated that the parenting classes she attended taught her the skills necessary to become a better parent.

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

Father and his fiancée are currently attending to the minor children's daily needs. Mother provided for such needs in the past, and could be capable in the future, if she commits to providing a stable environment for the minor children.

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

Mother acknowledged that the camper where she will be residing for the foreseeable future is approximately forty-five (45) minutes away from Father.

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

Father testified to his ability to make appropriate child care arrangements, if necessary.

(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 children from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.*

There was a certain level of animosity towards Father as evidenced by Mother's social media posts; however, both parties indicated they could cooperate with each other for the benefit of the minor children.

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

Despite Mother's drug and alcohol evaluation indicating that no treatment was recommended, she has a history of significant alcohol use; so much so, that it was raised as a concern by one of the minor children during counseling sessions with Ms.

Davis, who then made a child line referral. There is also the additional issue of the pending criminal charges against Mother's current husband, which was, admittedly, the result of alcohol consumption.

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

There is no reported mental or physical condition of either party.

(16) *Any other relevant factor.*

No other significant factors were considered.

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 interests of the minor children:

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AMANDA ADAMS-MALSEED, :
Defendant : CIVIL ACTION – LAW
 : IN CUSTODY

ORDER FOR CUSTODY

AND NOW, this 19th day of April, 2018, after a careful review of the pleadings, testimony and evidence, and based upon the statutory factors, **IT IS HEREBY ORDERED**, in the best interests of C.A. (DOB: 5/2008) and A.A. (DOB: 1/2010), as follows:

THIS ORDER REPLACES ALL PRIOR ORDERS

LEGAL CUSTODY

1. Father and Mother shall **share legal custody** of the minor children. All major legal decisions concerning the minor children, including, but not limited to, the minor children'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 minor children's best interest*. Neither party shall impair the other party's rights to shared legal custody of the minor children. Neither party shall attempt to alienate the affections of the minor children from the other party.

- A. The parties shall communicate with each other to coordinate appropriate disciplinary techniques for the minor children.
- 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 minor children 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. All parties shall have the right to access the minor children's medical, dental, religious and school records, the address of the children 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 minor children's school, physicians, dentists, orthodontists, counselors, psychologists, or other similar individual or entities concerning the minor children's progress and welfare.
- D. Each parent shall list the other parent as an emergency contact person on any school, doctor, counselor and other similar entities' records.
- E. **Each parent shall provide the other parent with their current address, telephone number, e-mail address and provide updated information as soon as any change is made.**
- F. **Parents shall civilly and respectfully communicate about co-parenting legal custody issues.**
- G. When a parent is confronted with a situation regarding a legal custody issue (a major decision concerning one of the minor children's health, education or religious training), the parent agrees to do the following:
 - (i) Provide notice to the other parent describing the issue or the proposed plan of action as soon as possible but no later than 12 hours before the decision must be made.

- (ii) Schedule a time to civilly, respectfully and objectively discuss the issue or the proposed plan of action.

PHYSICAL CUSTODY

2. Father shall have **primary physical custody**.
 - A. Mother shall attend counseling with the minor children under the supervision and direction of Leslie Davis, LPC for approximately three (3) sessions.
 - B. Upon the completion of 3 counseling sessions, Mother shall have weekly visits with the minor children for no longer than four (4) hours. The day and time shall be agreed upon by the parties. These visits shall be scheduled for four (4) consecutive weeks. If a party cannot attend a scheduled visit, for a reason such as illness or other emergency, the party cancelling the visit must give at least two (2) hours notice to the other party. The cancelled visit must then be re-scheduled within twenty-four (24) hours.
 - C. Upon the completion of these 4 visits, Mother shall have visitation with the minor children every other weekend from Saturday at 4:00 p.m. until Sunday at 4:00 p.m. If Mother's custodial time coincides with the minor children's extracurricular activities, Mother **SHALL** be required to take the minor children to such activity.
 - D. Upon securing appropriate, permanent housing, Mother may contact this Court to schedule a status conference to request a modification of the current custodial schedule.
 - E. **Mother shall not consume alcoholic beverages during her custodial time with the minor children.**

GENERAL CONDUCT

3. Communication regarding custody matters shall always take place directly between the parties without using the minor children as intermediaries. The parties shall not encourage and, rather, discourage the minor children to report about the other.

4. Each party shall be entitled to reasonable **telephone, e-mail, or other electronic contact** with the minor children when the children are in the custody of the other party, so long as the communication is not excessive in duration and does not unreasonably interfere/disrupt the minor children's schedule with the other parent.
5. 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. Neither party shall smoke cigarettes or tobacco products in the presence of the minor children or inside the residence or vehicle.
 - B. The parties shall likewise assure, to the extent possible, that other household members and/or houseguests comply with these prohibitions.
6. The parties shall **refrain** from making **derogatory comments** about the other party in the presence of the minor children and, to the extent possible, shall prevent third parties from making such comments in the presence of the minor children or otherwise harass or interfere with the parties' periods of physical custody.
7. The minor children 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.
8. Parties shall permit and support the minor children'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 minor children 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 minor children's affections from the other party as well as the other party's extended family.

9. Each party shall promptly notify the other party of, and invite the other party to, **major events in the minor children's lives**, 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 minor children are enrolled or involved, regardless of which parent then has custody.
10. The parties shall organize ways for the minor children 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 minor children wish to engage.
 - B. The parties shall confer with each other before arranging regularly occurring activities for the minor children which might interfere with regular periods of custody.
 - C. During the times that the parties have physical custody of the minor children, each party will make certain that the minor children attend the scheduled activity and transport them on time to and from said activity.
11. 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.
12. Toys, clothes, sports equipment, cellphones, tablets or other portable electronic equipment, etc. shall not become matters of contention between the parents as these generally are the minor children's property, not the parents', entitling the toys or clothes, sports equipment, cellphones, tablets, etc. to be taken by the minor children and back with the minor children as reasonably appropriate.

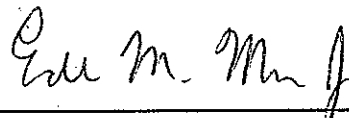
RELOCATION

13. No party shall **relocate** the minor children 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.

CONTEMPT

14. The custody schedule, rules of conduct and other provisions of this Court Order are binding on all parties. If a party does not follow any provision in this Order, that violation could become the subject of contempt proceedings before this Court punishable by any one or more of the following:
 - A. Imprisonment for a period of not more than six (6) months;
 - B. A fine up to \$500.00;
 - C. An order for nonrenewal, suspension or denial of driver license operating privileges;
 - D. Payment of opposing party's attorney's fees and costs.
15. Contemptuous conduct may also constitute grounds for modification of the legal and physical custody provision contained in this Order.

BY THE COURT:



Edward M. Marsico, Jr., J.

APR 19 2018

I hereby certify that the foregoing is a true and correct copy of the original filed.



Prothonotary

(DISTRIBUTION ON FOLLOWING PAGE)

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