

Date 2/15/17 Initials DM

MICHELLE KAISER,
Plaintiff

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA

v.

: NO. 2016 CV 3466 CU

RICHARD L. KAISER, JR.,
Defendant

: CIVIL ACTION – LAW
: IN CUSTODY

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MEMORANDUM OPINION

The instant matter was initiated on May 5, 2016, upon the filing of a Complaint for Custody by Plaintiff Michelle Kaiser (hereinafter "Mother") naming Defendant Richard L. Kaiser, Jr. (hereinafter "Father"), and seeking primary physical custody of their minor children, M.K. (12/2009), E.K. (5/2014), and A.K. (6/2016)¹.

On May 20, 2016, Father filed a Counter-Affidavit Regarding Relocation objecting to Mother's proposed relocation, and requested a hearing prior to allowing the children to relocate. Father then filed a Notice of Proposed Relocation on May 26, 2016, requesting permission for the children to relocate to Waynesboro, Franklin County, Pennsylvania where he and paternal grandparents currently reside. Thereafter, Mother filed a Motion for Full Expedited Hearing on Relocation, as well as a Counter-Affidavit Regarding Relocating objecting to Father's proposed relocation. This Court scheduled a pretrial conference for June 13, 2016.

Prior to the filing of the Complaint, a referral for possible sexual abuse of the children was made to Dauphin County Children and Youth Services (hereinafter "DCCYS"). On April 14, 2016, DCCYS Caseworker Autumn Ricker (hereinafter "Caseworker Ricker") and Trooper Raschard Buie (hereinafter "Trooper Buie")

¹ A.K. was born during the pendency of this action. He was not originally named in the Complaint as it was filed prior to his birth.

interviewed Mother at her residence, who stated that she knew Father had been diagnosed with Obsessive Compulsive Disorder (hereinafter "OCD"), but after the birth of M.K. in 2009, Father began to act "very weird". In addition, she stated the following:

[T]hat as a result she became very concerned with [Father's] behavior and asked him what was going on. [Father] explained to her that his "OCD" was related to a sexual orientation that he has towards children. She stated that [Father] will often blurt aloud such phrases as, "No! No!" and "Stop It" to get "thoughts" out of his head. She stated that she was overly concerned but [Father] assured her that he had it "under control".

[Mother] stated that [Father] likes to "repeatedly" kiss their daughters on the lips. She stated that her father was visiting and observed [Father] give MCK a prolonged kiss which "freaked" her father out. She confronted [Father] after this incident and related to him that she was not comfortable with him kissing MCK & EK in this manner and [Father] stated, "it makes me feel good and I'm not stopping".

[Mother] stated that as recent as March 17th, 2016 [Father] was snuggling on the couch with EK in the living room and she heard "kissing noises" and came into the room to see what was going on. She began to feel awkward and uncomfortable and asked [Father] to stop. He refused and again stated, "it makes me feel good". He continued to do the lip kisses and she again asked him to stop and he again refused. She stayed in the living room to closely observe the situation. As [Father] continued to snuggle with their daughter on the couch he made the statement, "I'm becoming aroused sitting here with our daughter". [Father] asked her if he was "being bad". After this incident she feared for the safety and protection of her children as [Father] has never been "so blunt and bold in his description".

[Mother] stated that [Father] seeks validation for his feelings and behaviors and often asks her if he is doing something wrong or "am I ok?" She stated that she was not going to validate his feelings after this incident and stated, "Rick, only you know what you are feeling and thinking, so only you know if your behavior is inappropriate." [Father] became frustrated

and stated, "What", "I'm just asking for your support; I just need your support". She then picked up EK and put EK and MCK to bed for the night.

See Police Criminal Complaint, August 2, 2016, Incident Number PA16-104545.

That same day, Caseworker Ricker and Trooper Buie conducted a preliminary interview of Father wherein he stated the following:

He conducted a religious "mission" trip years ago and was informed that he could not "touch, put kids on laps, or show affection to children" as a rule while on the mission. He has had problems getting close to MCK and EK ever since the conclusion of his mission trip and only recently has he been able to establish a relationship with MCK and EK. [Father] stated that he may "bump" into MCK and because "it's his OCD" he then asks MCK if he "bumped" into her and apologizes.

... [Father] asked if he could "give the kids some candy" prior to him leaving the residence. [Trooper Buie and Caseworker Ricker] advised [Father] that he could give MCK and EK candy before leaving the residence. Upon, leaving the residence, [Father] stated to MCK, "give daddy a hug". As MCK approached [Father], [Trooper Buie] observed her to attempt to kiss [Father] on the lips and [Father] turned his head to the side and stated, "no honey on the cheek". MCK kissed [Father] on the cheek and [Father] subsequently left the residence.

See Police Criminal Complaint, August 2, 2016, Incident Number PA16-104545. Father agreed to leave the marital residence and have no contact with the children for thirty (30) days pursuant to a safety plan which prevented the children from being placed in foster care. On April 18, 2016, the Honorable John F. Cherry confirmed the safety plan. On May 14, 2016, the safety plan expired without incident. After an investigation by DCCYS, which included an interview of M.K. at the Children's Resource Center that yielded no disclosures, the allegations were determined to be unfounded as of June 13, 2016.

Following the pretrial conference on June 13, 2016, the parties agreed that Father would undergo a § 5329 assessment, and Mother would complete the Minnesota Multiphasic Personality Inventory II ("MMPI-II"), both to be conducted by Laurie Pittman at Beacon Psychological. In addition, this Court ordered primary physical custody of the children remain with Mother, and permitted Father to have supervised visitation with the children at the YWCA, as well as visit with his newborn son in the hospital.² On July 12, 2016, Mother filed a Renewed Motion for Full Expedited Hearing on Relocation, and this Court subsequently scheduled a hearing for September 6, 2016.

On August 2, 2016, prior to the scheduled hearing, Mother filed a Petition to Modify Custody, as well as an Emergency Petition for Special Relief. The Emergency Petition stated that criminal charges were formally brought against Father on August 2, 2016, and requested Father's periods of supervised visitation be suspended pending resolution of the criminal charges.³ Despite the request, Father's periods of supervised visitation had yet to begin. Two days later, on August 4, 2016, Mother filed a Petition for Protection from Abuse ("PFA") raising the same allegations that were investigated and deemed unfounded by DCCYS, are currently being investigated by the Pennsylvania State Police, and that were raised as the basis for the Emergency Petition. A temporary protection order was granted protecting Mother and the three (3) minor children. Mother's Emergency Petition was subsequently denied by this Court on August 5, 2016. Since this

² See Order of June 13, 2016.

³ Father was originally charged with two (2) counts of Indecent Assault (M1), two (2) counts of Corruption of Minors (M1), and two (2) counts of Unlawful Contact With Minor – Sexual Offenses (F3). The two (2) counts of Unlawful Contact with Minor were subsequently withdrawn, and the remaining charges have been bound over for court. The case is currently scheduled for miscellaneous court on April 5, 2017 before the Honorable Scott A. Evans. CP-22-CR-6909-2016.

Court is assigned the custody action, we were also assigned the PFA action as the two are interrelated.

On August 16, 2016, Father filed a Petition for Special Relief stating that the parties attempted to begin supervised visitations at the YWCA, but were told that the YWCA could not facilitate visits for the family and were referred to two (2) other entities – Catholic Charities and Alternative Behavior Consultants (“ABC”) House. It further stated that Mother refused to agree on Catholic Charities, and requested an Order requiring Mother to make the children available for a minimum of two (2) supervised visits per week. Thereafter, this Court conducted a status conference on September 1, 2016 with counsel for the parties and subsequently ordered supervised visitation between Father and the children to occur at ABC House by agreement of the parties.⁴

On September 6, 2016, this Court conducted a PFA and relocation hearing in which both parties testified. In addition, we heard testimony from Christina Masser (M.K.’s kindergarten teacher), Trooper Buie, Caseworker Ricker, Dr. Laurie Pittman (forensic psychologist), Carla Sauer (principal at Halifax Elementary School), Dr. Dwayne Narayan (Father’s psychiatrist), Brian Gudmundson (Maternal Grandfather), Jenni Gudmundson (Maternal Aunt), and Kathryn DeGraffenried (Paternal Aunt). At the conclusion of the testimony pertinent to the allegations of abuse, this Court dismissed Mother’s PFA since adequate safety protocols were already in place and the PFA would serve no further purpose.

Dr. Laurie Pittman (hereinafter “Dr. Pittman”) is a forensic psychologist who conducted a risk assessment of Father, and a MMPI-II evaluation of Mother. While Dr.

⁴ See Order of September 1, 2016.

Pittman is a highly qualified and well-regarded professional in the area, her testimony in this particular case appears to this Court to be possibly biased. Mother and her family raised a concern about Father's potential hoarding and provided Dr. Pittman with several pictures from a trailer that the parties lived in between 2011 and 2013. (Notes of Testimony, Custody Hearing 9/6/16 (hereinafter "N.T. 9/6/16") at 89). Throughout her report of Father, Dr. Pittman repeatedly mentions the issue of hoarding when there does not appear to be a relevant context in which to mention it. For example, in reporting on her interview with Rebecca Kaiser (Paternal Aunt), she writes:

Rebecca also recalls on another occasion they went to the mall to purchase a pair of jeans for Rick, but Michelle reported, "No, I don't think we can do that today."

This evaluator realizes that what is not indicated here is Richard's compulsive spending on "toys" and other collections and that Michelle resents Richard not prioritizing the physical safety of the children given his hoarding.

See Plaintiff's Exhibit 4, Psychological Report of Richard (Rick) L. Kaiser, Jr., authored by Dr. Laurie Pittman, 6/30/2016 at p. 35. Later in the report, Dr. Pittman writes of Rebecca's recollection of meeting Maternal Grandfather on four (4) occasions. Immediately following the paragraph regarding Rebecca's impression of Maternal Grandfather, Dr. Pittman writes: "In the phone interviews with Michelle's father as well as Michelle's sister Jenni, they report of extreme discomfort for Richard's as well as his father's hoarding." See Psychological Report of Richard (Rick) L. Kaiser, Jr., authored by Dr. Laurie Pittman, 6/30/2016 at p. 36. Despite Dr. Pittman's apparent belief that the alleged hoarding creates a significant concern with Father's ability to have unsupervised contact with the children, as well as the safety of the children, Dr. Pittman admitted that

she did not question Father or his family about the alleged hoarding. (N.T. 9/6/16 at 103-104).

During our proceedings, Father and his family testified extensively about the hoarding allegations. Their testimony revealed that both Father and Mother had hoarding tendencies, and the pictures provided to Dr. Pittman conveniently did not depict Mother's portion of the clutter. The testimony also revealed that neither Father nor Mother were exceptional housekeepers, and the combination of the two is what led to the "deplorable" living conditions as described by Maternal Grandfather. (Notes of Testimony, Custody Hearing 1/6/17 (hereinafter "N.T. 1/6/17") at 115-16). In addition, the pictures provided to Dr. Pittman were taken after the parties moved from Virginia to Pennsylvania, and the parties were initially residing in Paternal Grandparents' home while the trailer was being finished for the parties. (N.T. 1/6/17 at 114). However, when Paternal Grandparents' asked the parties to contribute by taking on some of the household tasks, Mother adamantly refused and demanded that they leave Paternal Grandparent's home immediately and caused the parties to move into the trailer prematurely. (N.T. 1/6/17 at 114-15).

In addition, Dr. Pittman testified that she believes that Father's family were not truth-telling. (N.T. 9/6/16 at 89, 95). Her opinion is based on the fact that "they were not giving me the full picture of what was going on via the interactions that Michelle's Father was trying to have with Richard⁵, with Michelle. They had a tendency to provide a lot of

⁵ Dr. Pittman is referring to Father's statement that Maternal Grandfather is controlling and he had several conversations with Maternal Grandfather regarding money, and Maternal Grandfather's disappointment with Father for not earning enough money. In contrast, Maternal Grandfather stated to Dr. Pittman that he was merely concerned about the safety of the children due to the alleged hoarding, and attempts to discuss it with Father were unsuccessful. Notably, Maternal Grandfather testified that he never brought up the hoarding issue directly to Father because he wanted to respect their privacy. (N.T. 9/6/16 at 217).

indications of where I should be looking at Michelle, not at Richard Kaiser.” (N.T. 9/6/16 at 89). She further testified, “[n]obody talked about the hoarding. They talked about the father-in-law coming across as cold and as snobbish. They were not talking about the fact that Richard and Michelle first lived in a trailer without an operable stove.” (N.T. 9/6/16 at 96). As stated earlier, despite Dr. Pittman’s apparent fixation on the hoarding issue, and Father and his family’s failure to talk about it, Dr. Pittman failed to ask Father or any of his family members about the alleged allegations.

In contrast, Dr. Pittman believed Mother’s family was very truthful and forthcoming. This is troubling to the Court as the testimony in our proceedings revealed that Father’s family has always been extremely involved in caring for the minor children, and would frequently visit the parties wherever they were living. As Mother’s family primarily resides in Utah, Maternal Grandfather admitted that they would only visit the parties once or twice a year for approximately one (1) week at a time. (N.T. 9/6/16 at 199). Jenni Gudmundson (Maternal Aunt) also lives in Utah and stated that she visits approximately five (5) times a year, for a total of one hundred (100) days in the past ten (10) years. (N.T. 9/6/16 at 227, 233-34).

Despite Father’s family having more personal contact and observation of the parties and the minor children, Dr. Pittman dismissed their concerns of Mother because she felt they were not providing “the full picture”. Yet, she found that Mother’s family, who infrequently visited with the family and had minimal involvement with the minor children on those visits, was providing “the full picture”. Further, Dr. Pittman admitted that she asked Mother to respond to certain allegations that Father or his family reported.

Maternal Grandfather also admitted that he “suggested” to Father that Father needed to earn more money to “improve his lifestyle and also enhance his family’s.” (N.T. 9/6/16 at 216).

However, she did ask Father to respond to any of the allegations that Mother or her family reported, especially the allegations of hoarding and a show-and-tell incident at M.K.'s school – both of which Dr. Pittman found to be significant in her evaluation of Father. Accordingly, this Court finds Dr. Pittman's report to be disturbingly subjective. This Court's observation was ratified by Dr. Narayan's testimony where he challenged the methodology and conclusions of Dr. Pittman's report.

We also heard testimony from Father's psychiatrist, Dr. Dwayne Narayan. Dr. Narayan is a general adult psychiatrist who specializes in the treatment of Obsessive-Compulsive Disorder ("OCD"), anxiety disorders, body image and eating disorders, depression, and bipolar disorder. He shared the same concerns as this Court with Dr. Pittman's methodology:

I find Dr. Pittman's report very difficult to follow. . . . [S]he does do a number of interviews or evaluations of people, and they are written as if it's just a running commentary . . . – she calls someone, they say all this stuff over the phone, she writes it down almost as if they're saying it, doesn't seem to be a question-and-answer like I would hope. And I'm not a forensic psychologist, but I would hope that anyone doing an evaluation would ask a question. Say, I wanted to get this information; what was their response to it? Really outlined in an organized way. Her presentation does not read like that. And then you get these bold-faced additions or comments refuting or adding some comment to a particular person's interview that had nothing to do with that interview. And, again, strictly speaking, you want to put the information that you're getting from the outside – you want to get your data in one section and then do a formulation, do an assessment of that data in another section so it's clear. . . . Get my data, synthesize it, present a conclusion. I'm not sure what she was doing with these interviews.

(N.T. 9/6/16 at 142-43).

As for his treatment of Father, Dr. Narayan first met him in 2002 and treated him for OCD and depression until 2003 when Dr. Narayan left that practice. Father began seeing Dr. Narayan again in 2016 after the allegations were made to DCCYS. Dr. Narayan provided the following explanation of OCD:

OCD is a psychiatric illness where one gets repetitive, intrusive thoughts that cause distress, that are not logical thoughts in the strict sense of the word, but they are thoughts that are extremely unlikely to happen. . . . The reaction to those thoughts is one of very, very high levels of anxiety or one trying to convince themselves that they're in their right mind, which is not particularly easy to do when you're in a heightened anxiety state. In order to soothe the anxiety, people go through what we call compulsive behaviors. Compulsive thinking, compulsive checking, compulsive cleaning. Some compulsions designed to reduce the anxiety brought on by these intrusive thoughts. And then what you see after that is a cycle of having more and more obsessive thoughts, thoughts they don't want to have, thoughts that – we call them ego-dystonicity. They're against their character, their beliefs. They do not make sense. They are thoughts that they don't want to have. They're fearful of even having the thoughts. And, again, that generates more of the compulsive behaviors trying to deal with that anxiety.

The only benefit of a compulsion is to lower the anxiety so that one can go on with a normal life. Unfortunately for people that suffer from the illness, they end up experiencing more and more obsessional thoughts each time they do a compulsion. So each time you have a compulsion, it drives the underlying obsession and keeping [sic] going and going.

(N.T. 9/6/16 at 126-27). With respect to Father's specific diagnosis of OCD, Dr. Narayan testified:

With his children, he would describe . . . that they would latch onto him, as all kids do. . . . [Y]ou're trying to put a kid to bed, and you give them a kiss good time, it's extremely common for kids just to say, well, I'm going to hold on. I don't want to go to sleep. I want to give you a longer kiss. Well, what that does for Richard is that it would trigger the worry of, well, first of all, it doesn't feel right. Every parent wants to put

their kid to bed and move on. And that is the reaction we would hope that he would have, the reaction that the rest of us would have. His brain then says, oh, – rather than having that feeling – oh, did I do something inappropriate? Did I feel something inappropriate? What – was I aroused? . . . And he will go right to the worst case scenario. Gosh, I had the sensation. I think I was aroused, but I'm not sure. Again, logically he knows he wasn't. He knows he's disgusted by any idea of having any sort of sexually inappropriate contact with a kid. He's very clear about that. But his worry side, it's very consistent with OCD. It's textbook.

(N.T. 9/6/16 at 132-33). This explanation tends to confirm Father's testimony regarding the March 17, 2016 incident:

First of all, there was never more than one kiss. Michelle and I were in the same room from the very beginning. . . . [E.K.] climbed up on the couch while Michelle and I were talking, hopped on my lap, wrapped her arms around my neck, and planted a big kiss on my lips. . . . You know, because we all kissed on the lips. We all did. [E.K.] didn't let go, and I started to become a little nervous. . . . So when [E.K.] climbed on my lap, I had a panic attack that maybe something was happening because maybe it was bad because we weren't allowed to have kids on our laps there. I froze. I looked at my wife, and I said – when [E.K.] wouldn't let go – I said, can you take her? And she glared at me and didn't take her. And I said, honey, can you take her? And she wouldn't take her. . . . I eventually pulled her arms off from around my neck and I sat her beside me. And I told Michelle that I had a fear that maybe I was become aroused. I never said I was, and, quite frankly, I wasn't. I never have ever been aroused by a child ever. But it's the fear of the possibility with OCD.

(N.T. 1/6/17 at 144-45). Dr. Narayan went on to explain that there is a zero likelihood that an individual diagnosed with OCD would ever act on their fear. (N.T. 9/6/16 at 129). Specifically, Dr. Narayan testified that he can say with reasonable medical certainty that Father would not harm his children in any way. (N.T. 9/6/16 at 138).

The primary form of treatment of OCD is cognitive behavioral psychotherapy which teaches you strategies to eliminate the compulsions, such as desensitization. (Id.) Dr. Narayan provided the following example of this type of treatment:

[S]omeone who has a fear of, say, stabbing me. A patient comes to my office. They said, "I just got this thought. It's not that I want to have it, but I worry that I might stab you." What we try to do is desensitize the thought, get them comfortable with the idea that the thought is error. . . .

But what someone with OCD might do is try any way possible to not touch a knife. So we would bring the knives into the therapy, and it is commonplace for us to have people imagine the knives on the table, and . . . get used to that. That will cause anxiety for them. If they tolerate that, we'll put knives on the table in real life and get them to sit there and say, well, now, where are your thoughts? You've having to learn to sit with those thoughts now. They will go away over time. They will desensitize. And once that happens, that fear is no longer there.

(N.T. 9/6/16 at 129-30). Although Dr. Narayan testified that Father was taught some of the techniques for treating OCD, he admitted that Father was not handling his OCD properly by asking Mother for reassurance for his behaviors. (N.T. 9/6/16 at 134). Each time that Father asked Mother for reassurance, it made him less secure the next time a thought would come up. (N.T. 9/6/16 at 135). Dr. Narayan testified that a spouse can only put up with so much of that type of coping mechanism before they say it is craziness. (N.T. 9/6/16 at 134). He stated that Father cannot continue to use reassurance as a way of dealing with his OCD, and that will be addressed in therapy. (N.T. 9/6/16 at 153). For Father, Dr. Narayan's treatment goal is for him to be comfortable appropriately kissing his children as a parent. (N.T. 9/6/16 at 135).

With respect to hoarding, Dr. Narayan testified that hoarding is a medical problem. (N.T. 9/6/16 at 139). However, it cannot be diagnosed without talking to the patient. (N.T.

9/6/16 at 141). He said it would be "difficult to diagnosis just based on a set of pictures without additional information." (Id.) Aside from talking to the patient, Dr. Narayan would also go and view the entire home and see where things are before making a diagnosis of hoarding. (Id.)

Since we were unable to complete the testimony on September 6, 2016, a second (2nd) day of the relocation hearing was scheduled for October 20, 2016. On October 11, 2016, Father filed a Motion for Continuance due to the preliminary hearing on his criminal being was continued until November. In addition, Father had only had one (1) supervised visit at that time and had hoped to have a few more visits prior to the next session of the relocation hearing. This Court granted Father's request, and the relocation hearing was continued until January 6, 2017.⁶

On November 30, 2016, Father filed a Petition for Special Relief and Request for Expedited Hearing alleging that Mother had unilaterally cancelled a number of supervised visits, and requesting an order requiring Mother to cooperate in ensuring the visits occur. Due to the contentious nature of this action, this Court scheduled an emergency hearing for December 9, 2016. At that hearing, we learned that Father had a total of three (3) supervised visits at ABC House – October 1, 14, and 29, 2016 – and all other visits were cancelled with no make-up days scheduled.⁷ At the conclusion of the hearing, the Court ordered supervised visitation to restart and to occur at least once every other week. It

⁶ Mother filed a Motion for Reconsideration of our order continuing the hearing due to the fact that she objected to the continuance and did not have an opportunity to respond pursuant to Pennsylvania Rule of Civil Procedure 208.3 and Dauphin County Local Rule 208.3(b). This Court denied Mother's request stating that Pennsylvania Rule of Civil Procedure 208.1(2)(iii) specifically states that the procedure for motions, contested or uncontested, does not apply to family law actions.

⁷ See discussions under factor 5 below.

was also ordered that a visit was to occur around the Christmas holiday, and that the Paternal Grandparents could attend.⁸

Our next hearing in this saga occurred on January 6, 2017, at which time we heard testimony from Robin Snyder (supervisor at ABC House), Mother (completion of her original testimony), James Stetler (Father's co-worker and friend), James Rea (Father's co-worker and friend), Rebecca Miller (Paternal Aunt), Richard Kaiser, Sr. (Paternal Grandfather), and Father. The final hearing occurred on January 19, 2017 at which time Father concluded his testimony and Mother was called for rebuttal.

DISCUSSION

Before this Court is Mother's Complaint for Custody and request to relocate the minor children to Utah, as well as Father's request to relocate the minor children to Franklin County, Pennsylvania. In addition to reviewing the record, we have heard testimony from both parties, and their respective witnesses. 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, and ten (10) relocation factors. 23 Pa.C.S.A. §§ 5328(a), 5337(g); see J.R.M. v. J.E.A., 33 A.2d 647, 652 (Pa. Super. 2011).

⁸ Testimony at the hearing revealed that Mother denied Paternal Grandparents supervised visitation at ABC House. (N.T. 12/9/16 at 54-55).

Due to Father's pending criminal charges and Mother's expressed intent to relocate to Utah, this Court has only considered the relocation factors.

RELOCATION FACTORS

- (1) *The nature, quality, extent of involvement and duration of the children's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the children's lives.*

There is conflicting testimony regarding Father's involvement with the children during the parties' marriage. Mother testified that she primarily cared for the children, and Father only cared for the children while she was working. (N.T. 9/6/16 at 247). She further stated that Father had little interaction with the children as he did not help with meals, clean, change diapers, etc. because he would be tinkering with stuff in the garage, sleeping, or on his cell phone. (N.T. 9/6/16 at 249). However, Mother also testified that she and the children would visit Father at his second (2nd) job every night for dinner so that Father could tell the children good night. (N.T. 9/6/16 at 248). She testified that Father was never able to have a "normal" relationship with the children and she always acted as a go-between. (N.T. 1/6/17 at 74).

According to Father, when M.K. was first born the parties worked opposite shifts, therefore, both parties cared for M.K. (N.T. 1/6/17 at 138). He further testified that Mother always asked him to care for the children, and never voiced a concern with his ability to do so. (N.T. 1/6/17 at 139-41). He has attended school events and parent-teacher meetings for M.K., and he has taken both of the girls to the doctors on several occasions. (N.T. 1/6/17 at 151, 156-57).

Both parties admit that Paternal Grandparents, as well as Paternal Aunt (Mrs. Miller) and her daughter, Emily, have been a significant factor in the children's lives.

Paternal Grandparents and Mrs. Miller visited the parties approximately twice a month when they lived in Virginia. (N.T. 1/6/17 at 95-96, 112). When they moved to Pennsylvania, the parties resided on Paternal Grandparents' property. (N.T. 1/6/17 at 114). During that time, Paternal Grandparents babysat M.K. approximately six (6) times a week. (N.T. 1/6/17 at 116). In addition, Mrs. Miller visited approximately five (5) to six (6) times a week and helped with babysitting. (N.T. 1/6/17 at 94). When the parties moved to Halifax, Paternal Grandparents and Ms. Miller visited approximately two (2) to three (3) times a month. (N.T. 1/6/17 at 93, 118). Ms. Miller testified that Emily misses M.K. very much as Mother did not allow them to contact the children.⁹ (N.T. 1/6/17 at 107).

(2) The age, developmental stage, needs of the children and the likely impact the relocation will have on the children's physical, educational and emotional development, taking into consideration any special needs of the children.

The children are M.K. (age 7), E.K. (age 2 ½), and A.K. (age 7 months). The parties moved to Pennsylvania when M.K. was approximately two (2) years old, and have resided in Halifax since 2013. According to Maternal Grandfather's testimony, a relocation would be positive for the children because they would be removed from what he deems an unsafe environment (OCD and hoarding) and would live a "normal" life. (N.T. 9/6/16 at 212). Mother testified that she and the children would have a support network in Utah as she currently does not have one in Pennsylvania. (N.T. 1/6/17 at 75). The Court notes that the combined testimony of all the proceedings in this case indicate that Father's family did provide a support network for Mother in Pennsylvania, however, she elected to sever that relationship.

⁹ At our last hearing on January 19, 2017, Mother testified that she made efforts to contact Paternal Grandparents and Paternal Aunt after this Court admonished her for cutting off all contact.

There was no testimony provided as to what school district and school M.K. would be attend if permitted to relocate, and how that school compares to her current school. Mother did testify that her family would provide free daycare for E.K. and A.K. in Utah. (N.T. 9/6/16 at 250).

(3) *The feasibility of preserving the relationship between the nonrelocating party and the children through suitable custody arrangements, considering the logistics and financial circumstances of the parties.*

Mother testified that she does not believe Father's relationship with the children would be significantly impaired if she relocated to Utah. Specifically, she stated "[w]hether the supervision happens here or in Utah, it doesn't really matter. It's just a matter of location. I mean, he's got supervised visitation." (N.T. 1/6/17 at 72). However, she also admitted that neither she nor Father have the funds to fly to Utah regularly for the visitations to occur. (*Id.*) She stated that the Renaissance Child Visitation Center in Salt Lake City, Utah would provide supervised visits between Father and the children. (N.T. 1/6/17 at 49). The center is located about halfway between Ms. Degraffenried's (Paternal Aunt) home and Maternal Grandparents home – approximately an hour and a half (1 ½) drive. (N.T. 1/6/17 at 49-50). She testified that Father visits at least one (1) time a year, has work connections in Utah, and the Church headquarters is located in Utah. (*Id.*) She further testified that Father could visit any time in Utah so long as it does not interfere with M.K.'s school or extra-curricular activities. (N.T. 1/6/17 at 50).

Father is fearful that if Mother is permitted to relocate to Utah, the children will lose their father. He already has difficulty maintaining consistent supervised visitations in Pennsylvania, and is concerned about the logistics and feasibility of maintaining contact with the children if they are in Utah. Further, Mother has contacted the children's medical

providers in Pennsylvania and M.K.'s school to inform them not to release any information to Father without her consent.

(4) The children's preference, taking into consideration the age and maturity of the children.

By agreement this Court did not interview the children because of their young age.

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

There was significant testimony indicating that Mother is attempting to thwart Father's relationship with the children. Mother first asked Father to relocate as a family to Utah beginning on or about May 2015. (N.T. 1/6/17 at 51, 142). Father testified that Mother expressed a strong desire to return to Utah because she wanted Father to make more money and live in a bigger home. (N.T. 1/6/17 at 142). Father did not want to move because they had just purchased a home, he was happy with his job, and they had already moved four (4) times during their marriage. (N.T. 1/6/17 at 142-43). Mother became upset, and according to Father, the request to move to Utah became a constant issue between the parties. (N.T. 1/6/17 at 143). Despite Mother's testimony that she had been afraid of Father for a number of years during their marriage, she admitted that she never told anyone about her alleged fear until after Father said "no" to moving to Utah during an argument on or about March 13, 2016. (N.T. 9/6/16 at 54-55). The DCCYS investigation, which was subsequently unfounded, and the criminal charges were brought solely based upon Mother's perception of the March 17, 2016 incident (i.e., there were no disclosures made by a child, there was no physical evidence, and no actual observed criminal acts).

Further, Mother sent Father the following text message on May 10, 2016:

I know that spending time with our son in the hospital is important to you and having your family there as well. I also know that being apart [sic] of naming him is important to you too. If you want to have these opportunities then I need you to sign the relocation paperwork because that is what is important to me. If you sign it then I won't have a need for either vehicle and you will get to keep them, otherwise I will try and get the truck because it's more reliable. The choice is yours. This is [sic] relocation is the most important thing to me and my ability to move forward. Please make this easy for both of us.

See N.T. 1/6/17 at 65-66; see also Defendant's Exhibit 21. Father did not comply with Mother's demands and as a result, neither Father nor his family were permitted in the hospital when A.K. was born, and Father did not have a say in naming their son. (N.T. 1/6/17 at 66-67).

In addition, Father was court-ordered to have supervised visitation with the minor children on June 13, 2016 at the YWCA.¹⁰ Unfortunately, we learned at the pretrial conference on September 1, 2016, that the YWCA initially agreed to offer supervised visitations to the family. However, when they learned of the nature of Father's criminal charges, they declined to offer their services. The parties then tried Catholic Charities, who again initially agreed to offer their services, but once they learned of the nature of Father's charges they declined. Therefore, on September 1, 2016, we issued another Order providing Father with supervised visitations at ABC House in Carlisle.¹¹ Despite being permitted to have supervised visitation as early as June 13, 2016, Father did not have his first supervised visitation until October 1, 2016.

¹⁰ See Order of June 13, 2016.

¹¹ The Court notes that there is no fee for supervised visitation at either the YWCA or Catholic Charities, but there is a fee for ABC House.

Prior to the first visit, Mother emailed ABC House to inform them of certain behaviors to look for in Father during the supervised visitation sessions. (Notes of Testimony, Special Relief Hearing, 12/9/16 (hereinafter "N.T. 12/9/16") at 32). According to Mother, ABC House agreed to intervene and document if and when the enumerated behaviors occurred. (N.T. 12/9/16 at 33). Following the first visit, Mother exchanged letters with Kim Sweger, Executive Director of ABC House, regarding her complaints about ABC House staff and their failure to comply with the rules.¹² According to Mother, ABC House staff repeatedly pressured the girls into visiting with Father after expressing discomfort in seeing him. (N.T. 12/9/16 at 35). Further, Mother felt that she had observed some of the enumerated behaviors in Father and was upset that ABC House did not document them. (N.T. 12/9/16 at 37-38).

According to Robin Snyder, the supervisor at ABC House, the first three (3) visits – October 1, 15, and 29 – went well and there was no violations of the visitation center rules or Mother's list of enumerated behaviors. (N.T. 1/6/17 at 12-13). The next visit was not until December 16, 2016, after our special relief hearing. Mother cancelled the November 12, 2016 visit with no reason given. (N.T. 1/6/17 at 16). Father subsequently learned that Mother cancelled because she did not have gas money. (N.T. 12/9/16 at 21). That visit was rescheduled to November 19, 2016, but was also cancelled by Mother because A.K. and E.K. were allegedly sick. (N.T. 12/9/16 at 20, N.T. 1/6/17 at 16). Father subsequently learned that despite the November 19th visit being cancelled, the children attended church the following day. (N.T. 12/9/16 at 20).

¹² See Father's Petition for Special Relief and Expedited Hearing, 11/30/16, Exhibits B, C, and D.

The next visit was scheduled for November 26, 2016. That visit was also cancelled by Mother because she had a prior commitment with her sister in Virginia.¹³ (N.T. 12/9/16 at 55; N.T. 1/6/17 at 17). Robin asked Mother if she would make the visit up, and Mother responded that she was unavailable. (N.T. 1/6/17 at 17). The December 3, 2016 visit was cancelled because the children were allegedly sick again. (Id.) The next visit was December 16, 2016, but it was cut short due to an accident which caused Mother to arrive late. (Id.) On December 24, 2016, Paternal Grandparents accompanied Father for a Christmas visit with the children.¹⁴ (N.T. 1/6/17 at 18). At the January 6, 2017 hearing, it was learned that no further visits were scheduled because Mother wanted to await the outcome of that hearing. (N.T. 1/6/17 at 20). At the final hearing on January 19, 2017, we learned that Father had two (2) more visits – January 7 and 17 – which also went well.

Mother also ceased all communication between the children and Father's family from April 2016 until January 2017 when this Court admonished Mother on the record for cutting off the children's access to extended family, specifically Father's family.

(6) *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 the quality of her life would be enhanced if permitted to relocate to Mendon, Utah. (N.T. 9/6/16 at 249-50). Mother is currently unemployed and receiving child and spousal support from Father. She stated that it would be financially burdensome for her to remain in Pennsylvania because if she were to find employment,

¹³ The November 26 visit was scheduled in October, but Mother did not inform Robin at that time that she had a prior commitment. (N.T. 1/6/17 at 17).

¹⁴ Paternal Grandparents were required to apply for supervised visitation and to pay the \$65 fee. (N.T. 1/6/17 at 18). They had previously applied for visitation at the end of October, but Mother refused. (N.T. 1/6/17 at 18-19).

at most she would be paid is \$14 an hour. (N.T. 9/6/16 at 250-52). When factoring in childcare costs, her income, and support payments, she would not have enough total income to cover all of the necessary expenses, such as the mortgage, utilities and groceries. (N.T. 9/6/16 at 252-53). In addition, she testified that she would not be able to afford to return to school if she remains in Pennsylvania¹⁵, nor would she be able to afford the childcare costs. (N.T. 9/6/16 at 254).

If permitted to relocate to Utah, Mother would live rent free with Maternal Grandparents while she finished her nursing degree. (N.T. 9/6/16 at 253). Once she obtained a nursing degree, then she would be able to work part-time for \$33 an hour in Cash County Utah. (N.T. 9/6/16 at 253). In addition, Mother would have the benefit of emotional support in Utah as she needs to undergo extensive trauma therapy due to the nature of the marriage and how things have evolved. (N.T. 9/6/16 at 254). She testified that she would not be able to find childcare in order to attend the trauma sessions in Pennsylvania, and even if she did, once the therapy was completed she would return to her life and not have the benefit of Maternal Grandmother to give her a hug or watch the children while she meditates. (N.T. 9/6/16 at 254-55).

(7) 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.

There was little significant testimony on this factor. Mother did not provide any information on which school district and the specific school M.K. would attend if permitted to relocate. E.K. and A.K. are not school aged yet. Mother did testify that she would be

¹⁵ This Court is at somewhat of a loss as to how Mother would be able to afford school in Utah, but not in Pennsylvania. However, we can surmise that Maternal Grandparents would only pay for Mother to return to school in Utah, but not Pennsylvania.

able to provide for the children better emotionally, physically and spiritually in Utah. (N.T. 1/6/17 at 75-76). Aside from a few vague statements, there was no testimony or evidence that would show that a relocation would enhance the general quality of life for the children. However, relocation would further isolate the children from Father and Father's family.

(8) The reasons and motivation of each party for seeking or opposing the relocation.

Mother testified that her reasons for moving are to be closer to her family, financial stability, and an opportunity to gain an education. (N.T. 9/6/16 at 249-51). However, the testimony revealed that despite the financial ability to do so, Maternal Grandparents only visited once or twice a year and had minimal involvement with the children during those visits. (N.T. 1/6/17 at 150). Father's family appears to have extensive involvement in the upbringing of the children. While it is true that a relocation to Utah would be closer to Mother's family, it would be a significant distance away from Father's family in Pennsylvania.

Additionally, Father testified that Mother had always told him she had a better relationship with her parents when she lived far away from them. (N.T. 1/6/17 at 149-50). He also disputes the fact that Mother would not be able to obtain a nursing degree if she remained in Pennsylvania. There are several colleges in the Harrisburg area, as well as in Franklin County, that offer programs for nursing degrees, such as Penn State University (Middletown), Messiah College, Harrisburg Area Community College, Drexel University (Chambersburg), and Wilson College. (N.T. 1/6/17 at 159-60). Father adamantly opposes Mother's relocation to Utah because he is fearful that she will succeed in completely cutting him out of the children's lives.

(9) *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 children or an abused party.*

Mother alleges that Father was emotional and sexually abusive towards her throughout the marriage. Father adamantly disputes the allegation and testified that both he and Mother initiated any intimate contact between them. Mother further alleges that Father is a risk of harm to the children due to his OCD and her belief that it is related to Father's sexual attraction to minors. This Court previously addressed this factor.

(10) *Any other factor affecting the best interest of the children.*

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**:

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