

JIMMY MELTON,
Plaintiff

v.

DANIELLE SLIGH,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA
:
: NO. 2011 CV 51 CU
:
: CIVIL ACTION – LAW
: IN CUSTODY

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2011 AUG 26 PM 1:19
DAUPHIN COUNTY
PENNSYLVANIA

MEMORANDUM OPINION

PROCEDURAL BACKGROUND

The instant matter was initiated on January 4, 2011 by the filing of a Complaint for Custody by Plaintiff Jimmy Melton (hereinafter "Father") naming Defendant Danielle Sligh (hereinafter "Mother"), and seeking shared legal and physical custody of Summar Nevaeh Melton (DOB: 5/21/10) (hereinafter "Summar" or "child"). The parties attended a custody conciliation conference on January 19, 2011 wherein the parties reached an agreement for shared legal and physical custody of Summar.¹

Prior to the commencement of the custody action, Mother filed a Petition for Protection from Abuse ("PFA") on December 20, 2010. A final order was entered on December 30, 2010 providing protection for Mother for three (3) years. On January 20, 2011, Father plead guilty to Indirect Criminal Contempt for a violation of the PFA. On June 16, 2011, Mother filed a Petition for Dismissal of Final Order, which was subsequently dismissed the same day.²

Mother filed a second Petition for PFA on August 23, 2011 seeking protection for herself and Summar, and a temporary order was subsequently granted. On August 26, 2011, the temporary order was amended to remove Summar as a protected party.

¹ See Order of January 21, 2011.

² See 2010 CV 15970 AB.

Following a hearing on September 29, 2011 before the Honorable Andrew H. Dowling, the PFA was dismissed.³

On October 7, 2011, Mother filed a Petition for Emergency Relief alleging Father was unable to care for the child, as well as a Petition for Modification of Custody. The same day, Father filed a Petition for Contempt. On October 10, 2011, Judge Dowling issued an Order temporarily amending the physical custody portion to a 50/50 schedule with dates of visitation to be worked out between the parties.⁴ As both parties failed to attend the custody conciliation conference, Father's Petition for Contempt was dismissed.

On January 9, 2012, Father filed an Emergency Petition for Special Relief alleging that Mother took off with the child without proper clothing or a stable place to reside, as well as a Petition for Modification of a Custody Order. On February 27, 2012, the parties filed a Custody Stipulation providing the parties shared legal and physical custody with Father having custody at least two (2) days per week.⁵ The Custody Stipulation was non-entertained by Court Administration due to a procedural defect. The parties attended a custody conciliation conference on August 24, 2012, but were unable to reach an agreement. On September 17, 2012, Father filed an Emergency Petition for Custody alleging Mother and her family members are alcoholics and have extensive criminal backgrounds, and that they are unable to properly care for the child. On October 31, 2012, the parties appeared for a pretrial conference before the

³ See 2011 CV 08235 AB.

⁴ See Order of October 10, 2011.

⁵ See Custody Stipulation of February 27, 2011.

Honorable Jeannine Turgeon and reached an agreement providing the parties shared legal and physical custody on a week-on, week-off basis.⁶

On March 29, 2013, Mother filed an Emergency Petition for Special Relief in Custody alleging Father was abusive towards her and the child, as well as a Petition for Modification of a Custody Order. On April 2, 2013, Judge Turgeon issued an Order transferring the case to Perry County at Mother's request. On May 18, 2013, the case was transferred back to Dauphin County since neither party nor the child resided in Perry County. On June 13, 2013, the parties attended a custody conciliation conference and reached an agreement providing the parties shared legal custody, with Mother having primary physical custody and Father having custody two (2) days a week. It further provided the parties shared physical custody on a week-on, week-off basis if Father relocated to Dauphin County.⁷

Mother filed a third Petition for PFA on March 31, 2014 seeking protection for herself and Summar, and a temporary order was subsequently granted prohibiting Father from having contact with Mother and the child. The petition alleged that the child told Mother that Father had put something in her butt. Mother took the child to the hospital for a safe examination. A referral was made to Dauphin County Children and Youth Services ("DCCYS") for alleged sexual abuse. Father was initially indicated as the perpetrator and a criminal investigation was opened. However, Father appealed, and due to Summar's young age and inability to testify, DCCYS did not contest the appeal. The "indicated" status was subsequently expunged. The criminal investigation was also dropped for the same reasons. After the criminal charges and DCCYS

⁶ See Order of October 31, 2012.

⁷ See Order of June 13, 2013.

investigation were disposed of, a final hearing was held on Mother's Petition for PFA. Following a hearing, the PFA was dismissed on August 4, 2015.⁸ At the conclusion of the hearing, the parties agreed on the record to begin supervised visitation, and to allow Father to reunify with Summar since he had no contact with Summar for approximately sixteen (16) months.

On August 20, 2015, Mother filed a Petition for Modification of the Custody Order and requesting supervised visitation for Father. On October 29, 2015, Father filed a Petition for Contempt alleging that Mother refused to produce the child for Father's supervised visitation at the YWCA as previously agreed by the parties. The parties attended a custody conciliation conference on October 26, 2015, but they were unable to reach an agreement. On November 6, 2015, this Court held a hearing on the sole issue of Father's visitation. At the conclusion of the hearing, this Court entered an Interim Order striking the Order of June 13, 2013, and providing the parties shared physical custody on a week-on, week-off basis.⁹ Thereafter, a pretrial conference was scheduled for November 19, 2015.

The parties were unable to reach an agreement at the pretrial conference, and a second pretrial conference was scheduled for January 26, 2016. On January 26, 2016, Father filed an unopposed Motion for Continuance stating that the parties were cooperating and hopeful for a resolution. The Motion was granted and a second pretrial conference was scheduled for March 22, 2016. On March 21, 2016, Mother filed a Petition for a Continuance stating that counsel had just been retained, and that her new

⁸ See 2014 CV 02898 AB.

⁹ See Order of November 9, 2015.

counsel had a scheduling conflict. The Petition was granted, and the second pretrial conference was again continued until April 29, 2016.

At the pretrial conference, counsel agreed that the parties would undergo psychological evaluations in lieu of a full custody evaluation, and Mother would get an updated drug and alcohol evaluation. A custody hearing was scheduled for July 14, 2016. On June 30, 2016, Mother filed a Motion for Continuance of the custody hearing stating that Mother had not yet completed her psychological evaluation. The Motion was granted and the custody hearing was scheduled for August 18, 2016.

CUSTODY HEARING

On August 18, 2016, this Court conducted a custody hearing wherein Mother and Father, as well as their respective witnesses, appeared and testified. Mother was represented by Bryan Walk, Esquire, and Father was represented by Debra Mehaffie, Esquire.

Mother currently resides in a two (2) bedroom, one (1) bathroom apartment in Millersburg with Summar during her custodial periods. Her apartment is on the second (2nd) floor of a duplex, and Maternal Grandparents reside on the first (1st) floor. Summar has her own bedroom and there is a fenced-in backyard for her to play in. Mother is currently pregnant with her fourth (4th) child to her boyfriend Wayne Lukens (hereinafter "Mr. Lukens"). They are in the process of finding a larger home to purchase within the same school district. Mr. Lukens does not currently reside with Mother, but he does stay overnight occasionally.

After the 2014 PFA was dismissed, the parties agreed to begin supervised visitation for Father at the YWCA. Mother testified that the visits started shortly after the

dismissal. However, she unilaterally stopped taking the child to the visits due to concerns with the YWCA, such as pictures being taken and Father allegedly bringing a third party for a visit against the rules. Mother stated that she voiced these concerns to the YWCA staff, but never told Father. Father ended up driving to the YWCA for each visit thereafter only to have Mother not show up with the child. This led to a hearing on Father's Petition for Contempt. After the hearing, this Court ordered custody to return to a shared arrangement.

Prior to the commencement of the custody hearing, DCCYS received another referral in May of 2016 alleging physical abuse of Summar by Father. The report was made two (2) days after Father's custodial period ended. Since Father was residing in Adams County at that time, the referral was transferred to Adams County Children and Youth Services ("ACCYS"). We heard testimony from Melissa Tolbert, the intake caseworker with ACCYS regarding this referral. Ms. Tolbert testified via telephone. She testified that DCCYS met with Mother and Summar, as well as took pictures of the alleged injuries, and then transferred the referral to ACCYS.

The allegation was that Father grabbed the child's leg because she would not get up leaving several bruises on the child's leg. There were also concerns with the home environment and where the child sleeps. Ms. Tolbert went to Father's home and found it to be appropriate with no safety concerns. All of the individuals in the home were cooperative. The referral was unfounded since the injury did not appear to be consistent with the allegation.

Mother testified that she did not make the referral to DCCYS in May of 2016. Rather, she took the child to the emergency room because the child appeared dirty and

there were bruises on her legs. DCCYS was contacted by the hospital. Mother stated that the child was not interviewed by DCCYS¹⁰ and that they only took her underwear as evidence. As stated above, the case was unfounded.

It is unclear to this Court whether or not Mother is employed. She testified that she received her Certified Nursing Assistant (“CNA”) certificate from the Harrisburg Area Community College (“HACC”) in 2006 and 2009. Mother also has criminal convictions for Driving Under the Influence – 2nd Offense (M1) in 2007, Retail Theft (M2) in 2014 and Theft by Unlawful Taking (M1 reduced from F2) in 2015. Mother also has two (2) older children – Daderienne and Desiree – who have been in the sole custody of their biological father, David Hartzell, Jr., since 2013.¹¹

Mother testified that she has been the primary caretaker for Summar since her birth, including when she and Father resided together. She has scheduled and transported Summar to all medical appointments and helps Summar with homework. Mother admitted to unilaterally enrolling Summar in the Millersburg School District for kindergarten because she believed, at the time, there was a PFA in place protecting Mother and child from Father. She also failed to include Father’s name on the emergency contact form for school, again stating that the PFA was in place. However, on cross-examination, Father introduced the emergency contact form as an exhibit. The form was signed on September 9, 2015, and the PFA was dismissed on August 15, 2015. Therefore, this Court considered Mother’s testimony on the issue not credible.

¹⁰ This testimony is inconsistent with the testimony of Ms. Tolbert who stated that Elaine Kintzer with DCCYS did interview Summar, as well as her own testimony stating that she was not present during the child’s interview.

¹¹ The custody case regarding Mother’s two (2) older children is in Perry County.

While Mother initially filed her Petition for Modification in August of 2015 requesting supervised visitation for Father, she is no longer making that request. Mother is now requesting primary physical custody, and for Summar to attend school at Lenkerville Elementary in the Millersburg School District.

Father currently resides in a four (4) bedroom, one (1) bathroom home in Aspers with his nephew, Alan Metzger, Alan's wife, Kayla Metzger, and their children, London and Alan Junior. He has been residing there for approximately one (1) year. The home is on a corner lot in a country setting with an unfinished basement. Summar shares a bedroom with her cousin, London, and they get along well. He plans on building a home within the Upper Adams School District within the next year. Father was previously employed full-time as a CDL driver for Pfizer, but was injured on the job approximately two (2) years ago, and has been collecting worker's compensation since then. He injured his left arm and has a total collapse of his left wrist. He is currently prescribed Vicodin, but only takes about ten (10) per month when needed.

On an average day, Father will prepare breakfast and lunch for Summar, often dining out for breakfast, and dinner is prepared by Kayla and Alan. Father and Summar do numerous activities together, such as swimming, fishing, and hiking, going to parks, movies, and church. They will often go to the home of a family friend, Jennifer Blanchard, to swim in her pool and to enjoy cookouts. Summar also enjoys playing with Mrs. Blanchard's grandchildren. Since November of 2015, Father has been transporting Summar weekly to Mother's home in Millersburg. On those trips, Father testified that he always tries to stop somewhere, either for food or a park, to break up the long drive.

Father is requesting primary physical custody and for Summar to attend school at Biglerville Elementary in the Upper Adams School District. Summar would catch the bus at 8:30 A.M., and school begins at 9:00 A.M. and ends at 3:35 P.M. Father would be home to make sure Summar gets safely on and off of the bus.

Summar is currently six (6) years old and will be starting the first (1st) grade. She attended kindergarten at Lenkerville Elementary in the Millersburg School District. Summar did well in kindergarten and has no medical or behavioral issues. Father stated that Summar began the year slow, but caught up with the other children by the end of the year. He is concerned that if both parents are not on top of school and homework, then it could make it worse for Summar. She also missed a significant number of days, and the parties do not agree on which parent had custody on the days that were missed. Mother contends that the missed days occurred primarily during Father's custodial time, and Father contends that only one (1) day was missed during his custodial time. Father also testified that Mother refused to sign the excuse note on her days, and he was forced to sign the notes. However, he would clarify on each note when it was Mother's custodial period.

DISCUSSION

Before this Court is Mother's Petition for Modification seeking primary physical custody of Summar. In addition to reviewing the record, we have heard testimony from all 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. 23 Pa.C.S.A. § 5328(a); see J.R.M. v. J.E.A., 33 A.2d 647, 652 (Pa. Super. 2011). At the conclusion of the hearing, the Court placed the factors and its reason for decision on the record before the parties.

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 interest of the minor child:

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JIMMY MELTON,
Plaintiff

v.

DANIELLE SLIGH,
Defendant

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ORDER FOR CUSTODY

AND NOW, this 26th day of August, 2016, after a careful review of the pleadings, testimony and evidence, and based upon the statutory factors, **IT IS HEREBY ORDERED**, in the best interest of Summar Nevaeh Melton (DOB: 5/21/10), as follows:

THIS ORDER SHALL REPLACE ALL PRIOR ORDERS

LEGAL CUSTODY

1. Father and Mother shall **share legal custody** of Summar. Legal custody is the right and responsibility to make major decisions concerning the child's health, medical, dental and orthodontic treatment, mental and emotional health treatment, education, and religious training. 23 Pa.C.S.A. § 5322. These legal custody decisions shall be made jointly by the parents after discussion and consultation with each other, with a view toward obtaining and following a harmonious parenting plan that is in the child's best interest.
 - A. Neither party shall impair the other party's rights to shared legal custody of the child. Neither party shall attempt to alienate the affections of the child from the other party.
 - B. The parties shall communicate with each other to coordinate appropriate disciplinary techniques for the child.
2. Absent an emergency situation, neither party shall obtain medical care and/or have an initial interview with any health caregiver without the participation of the other party.
3. If an emergency decision(s) must be made, the parent having physical custody of the child at the time of the emergency shall be permitted to make any immediate necessary decisions. However, that parent shall inform the other of the emergency

and consult with him or her as soon as possible and inform the other as to any medical treatment that the child received.

4. Any party granted shared legal custody has the right to access the child's medical, dental, religious and school records, the address of the child and any other related information in accordance with 23 Pa. C.S.A. § 5336(a).
 - A. All parties shall execute any and all legal authorizations so that the other party may obtain information from the child's school, physicians, dentists, orthodontists, counselors, psychologists, or other similar individual or entities concerning the child's progress and welfare.
 - B. Each party shall list the other as an emergency contact person on any school, doctor, counselor and other similar entities' records.
5. Each party shall provide the other with their current address, telephone number, and email address and provide the other parent complete updated information as soon as a change is made.

PHYSICAL CUSTODY¹²

6. School Year:

A. Father shall have **primary physical custody** of Summar.

B. Mother shall have **partial physical custody** as follows:

- (i) Every other weekend from Friday after school and/or activities until Sunday at 6:00 P.M. unless otherwise mutually agreed upon. This schedule shall commence with Mother having custody September 2, 2016.
- (ii) In the event there is an extended weekend, Mother shall have custody until 6:00 P.M. the evening before school is to resume.
- (iii) Any other time as the parties mutually agree.

7. Summer: The parties shall **share physical custody** of Summar on a week on, week off basis. Exchanges shall occur on Sundays at 6:00 P.M. commencing the Sunday after the last day of school and ending the Sunday prior to the first day of school.

¹² This schedule shall begin on August 28, 2016.

8. All custody exchanges shall occur at a place that is mutually agreeable between the parties. If the parties are unable to agree, then the exchange shall occur at the Squeaky Rail Diner in Enola, Pennsylvania.
 - A. When transporting Summar, both parents shall ensure that the vehicle is inspected, is in good working condition and the driver has car insurance, a valid driver's license and that Summar is appropriately restrained in accordance with the law based upon her age, height and weight.
9. Should either party have the child spend an overnight at a place other than their primary residence, the other party shall be given the address and telephone number where the child is spending the night. This provision does not apply to an overnight by a child over twelve (12) years of age with a friend with trustworthy parental supervision.
10. If the child is taking medication, an adequate supply of that medication, or prescription for that medication, shall be given to the other party at the custodial exchange.
11. Toys, clothes, etc. shall not become matters of contention between the parties as these generally are the child's property, not the parents', entitling the toys or clothes to be taken between each house by the child.
12. Should any party be hospitalized, institutionalized, incarcerated or otherwise be incapacitated/unavailable in excess of twenty-four (24) hours, the non-custodial parent shall be immediately notified and provided the first opportunity to assume physical custody of the child.
13. Both parties shall recognize the need to make changes to the physical custodial schedule from time to time.

HOLIDAYS

14. Easter: Easter Sunday shall be divided into two segments. **Segment A** shall be from 8:00 A.M. until 12:00 P.M. **Segment B** shall be from 12:00 P.M. until 6:00 P.M. Father shall always have Segment A and Mother shall always have Segment B.
15. Memorial Day, Independence Day, Labor Day: The parties shall alternate the holidays beginning with Father having custody for Labor Day 2016. Thereafter, Mother would have custody Memorial Day 2017, Father would have Independence Day 2017, and so on. The holiday period shall be from 9:00 A.M. until 7:00 P.M. the day of the holiday unless otherwise mutually agreed upon.

16. Thanksgiving: The parties shall alternate the Thanksgiving holiday with the custodial period from 9:00 A.M. until 7:00 P.M. on the day of the holiday unless otherwise mutually agreed upon.
- A. In *odd-numbered years*, Father shall have custody on Thanksgiving
 - B. In *even-numbered years*, Mother shall have custody on Thanksgiving.
17. Christmas: Christmas shall be divided into two segments. **Segment A** shall be from December 24 at 2:00 P.M. until December 25 at 2:00 P.M. **Segment B** shall be from December 25 at 2:00 P.M. until December 26 at 2:00 P.M.
- A. In *odd-numbered years*, Father shall have Segment A and Mother shall have Segment B.
 - B. In *even-numbered years*, Mother shall have Segment A and Father shall have Segment B.
18. New Year's Holiday: New Year's Holiday shall be divided into two segments. **Segment A** shall be from New Year's Eve at 2:00 P.M. until New Year's Day at 2:00 P.M. **Segment B** shall be from New Year's Day at 2:00 P.M. until January 2nd at 2:00 P.M.
- A. In *odd-numbered years*, Father shall have Segment A and Mother shall have Segment B.
 - B. In *even-numbered years*, Mother shall have Segment A and Father shall have Segment B.
19. Mother's Day and Father's Day: Mother shall have custody on Mother's Day and Father shall have custody on Father's Day. The custodial period shall be from 9:00 A.M. until 6:00 P.M. the day of the holiday.
- A. In the event that Mother's Day falls during Father's custodial period, Mother shall have custody from 9:00 A.M. until 6:00 P.M. the day of the holiday with Father's custodial period resuming immediately after.
 - B. In the event that Father's Day falls during Mother's custodial period, Father shall have custody from 9:00 A.M. until 6:00 P.M. the day of the holiday with Mother's custodial period resuming immediately after.
20. **The holiday schedule takes precedence over the regular custodial schedule.**

GENERAL CONDUCT

21. **Communication shall always take place directly between the parties without using the child as an intermediary.** The parties shall not encourage and shall discourage the child to report about the other.
- A. **Neither party shall discuss the custody issues directly with Summar or in Summar's presence.** Likewise, the parties shall ensure, to the extent possible, that other household members and/or household guests comply with these prohibitions.
22. Each party shall be entitled to reasonable **telephone, e-mail, or other electronic contact** with the child when the child is in the custody of the other party so long as the communication is not excessive in duration and does not unreasonably interfere/disrupt Summar's schedule with the other parent.
23. 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. The parties shall not consume alcoholic beverages to the point of **intoxication or mental impairment**.
- B. Neither party shall smoke **cigarettes or tobacco products** in the presence of the child or inside their residence or vehicle.
- C. The parties shall likewise assure, to the extent possible, that other household members and/or houseguests comply with these prohibitions.
24. The parties shall **refrain** from making **derogatory comments** about the other party in the presence of the child and to the extent possible shall prevent third parties from making such comments in the presence of the child or otherwise harass or interfere with the parties' periods of physical custody.
25. The child 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.
26. Parties shall permit and support the child'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.

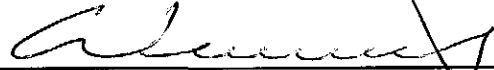
- A. The parties shall not alienate the affections of the child from the other party and the other party's extended family and shall make a conscious effort not to do so. To the extent possible, the parties shall prevent third parties from alienating the child's affections from the other party as well as the other party's extended family.
27. Each party shall promptly notify the other party of, and invite the other party to, **major events in the child's life**, 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 child is involved regardless of which parent then has custody.
28. The parties shall organize ways for the child 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 child wishes to engage.
 - B. The parties shall confer with each other before arranging regularly occurring activities for the child which might interfere with regular periods of custody.
 - C. During the times that the parties have physical custody of the child, each party will make certain that the child attends their scheduled activities and transport the child on time to and from said activities.
29. 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.

RELOCATION

30. No party shall **relocate** their residence if such relocation will significantly impair the ability of the non-relocating party to exercise his or her custodial rights unless (a) every person who has custodial rights to the child consents in writing or (b) 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.

BY THE COURT:



William T. Tully, J.

DISTRIBUTION:

Debra Mehaffie, Esquire, 2608 North 3rd Street, Harrisburg, PA 17110
Bryan Walk, Esquire, 523 Chocolate Avenue, Suite 1500, Hershey, PA 17033
Court Administration
FILE

EXHIBIT A

REQUIREMENTS REGARDING RELOCATION OF RESIDENCE

Relocation is defined as a move or change of residence that will significantly impair the ability of the non-relocating party to easily exercise periods of custody. **You cannot relocate with the child(ren) without following these procedures.** If contemplating such a move, you are *strongly* urged to seek the advice of an attorney to make sure that you are following the procedures. You are not permitted to relocate your residence without either:

- The consent of every individual who has custody rights to the child(ren) to the proposed relocation **OR**
- The court's approval of the proposed relocation.

NOTICE

1. The party proposing the relocation must notify every other party who has custody rights to the child(ren) of the proposed move. You must complete the attached "Notice of Proposed Relocation to Be Completed by Party Intending to Relocate" and send the notice to all other parties by certified mail, restricted delivery (addressee only), return receipt requested.
2. Notice must be given 60 days before the date of the proposed relocation **OR** 10 days after the date that the party knows about the relocation only if the individual did not know and could not have reasonably known about the relocation in time to comply with the 60 days notice or it is not reasonably possible to delay the date of relocation to comply with the 60 day notice.
3. You must include with this mailing the attached "**Counter-Affidavit Regarding Relocation**". The other parties must complete this form to indicate their position with regard to the proposed move.

WHAT DO(ES) THE OTHER PARTY(IES) DO WHEN THEY RECEIVE THE NOTICE AND COUNTER-AFFIDAVIT?

1. If you receive a notice of relocation and a counter-affidavit, and you object to the proposed relocation, you must complete the counter-affidavit. The non-relocating party must serve the counter-affidavit on the party proposing the change by certified mail, return receipt requested, restricted delivery (addressee only), or pursuant to Pa.R.C.P. No. 1930.4 within 30 days of receipt of the notice of proposed relocation. If there is an existing child custody case, the objecting party must also file the completed counter-affidavit with the Prothonotary's Office, Dauphin County Courthouse, 101 Market Street, Harrisburg, PA, within 30 days from the day you receive the notice and counter-affidavit.
2. If no objection to the proposed change of a child's residence is timely served after notice, the proposing party may change the residence of the child and this will not be considered a 'relocation' under the statute or rule.

WHAT DO I DO IF NO OBJECTION TO THE PROPOSED RELOCATION IS SERVED OR FILED?

If the party proposing relocation seeks an order of court, has served a notice of proposed relocation as required, has not received an objection to the move and seeks confirmation of the relocation, the party proposing the relocation shall file:

- A complaint for custody and a petition to confirm relocation when no custody case exists **OR**
- A petition to confirm relocation when there is an existing custody case **AND**
- A proposed order including the information set forth at 23 Pa.C.S. §5337(c)(3).

WHAT DO I DO IF A COUNTER-AFFIDAVIT IS SERVED ON THE PARTY SEEKING TO RELOCATE WHICH INDICATES THAT THE NON-RELOCATING PARTY OBJECTS EITHER TO THE PROPOSED RELOCATION OR TO THE MODIFICATION OF THE CUSTODY ORDER?

If the party proposing the relocation has received notice of objection to the proposed move after serving a notice of proposed relocation as required by 23 Pa.C.S. §5337 et seq., the party proposing relocation shall file:

- A complaint for custody or petition for modification as applicable;
- A copy of the notice of proposed relocation that was served on the non-relocating party;
- A copy of the counter-affidavit indicating objection to relocation; and
- A request for a hearing.

WHAT DO I DO IF THE RELOCATING PARTY HAS NOT DONE ANYTHING AFTER I SERVED THE OBJECTION TO PROPOSED RELOCATION ON THE RELOCATING PARTY?

If the non-relocating party has been served with a notice of proposed relocation and the party proposing relocation has not followed through with the procedure set forth above, the non-relocating party may file:

- A complaint for custody or petition for modification as applicable;
- A counter-affidavit as set forth in 23 Pa.C.S. §5337(d)(1) and
- A request for a hearing.

WHAT DO I DO IF THE NON-RELOCATING PARTY HAS NOT BEEN SERVED WITH A NOTICE OF PROPOSED RELOCATION AND SEEKS AN ORDER OF COURT PREVENTING RELOCATION?

If a non-relocating party has not been served with a Notice and seeks a court order preventing relocation, the non-relocating party shall file:

- A complaint for custody or petition for modification as applicable;
- A statement objecting to relocation; and
- A request for hearing.

 Plaintiff
 v.

 Defendant

: IN THE COURT OF COMMON PLEAS OF
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 :
 : NO. _____ CV _____ CU
 :
 :
 : CIVIL ACTION-IN CUSTODY

NOTICE OF PROPOSED RELOCATION TO BE COMPLETED BY PARTY INTENDING TO RELOCATE

You, _____, are hereby notified that _____ (Party Proposing Relocation) proposes to relocate with the following minor child(ren): _____

To object to the proposed relocation, you must complete the attached counter-affidavit and serve it on the other party by certified mail, return receipt requested, addressee only, or pursuant to Pa.R.C.P. No. 1930.4 within 30 days of receipt of this notice. If there is an existing child custody case, you also must file the counter-affidavit with the court in the Prothonotary's Office, Dauphin County Courthouse, 101 Market Street, Harrisburg, PA. If you do not object to the proposed relocation within 30 days, the party proposing relocation has the right to relocate and may petition the court to approve the proposed relocation and to modify any effective custody orders or agreements.

FAILURE TO OBJECT WITHIN 30 DAYS WILL PREVENT YOU FROM OBJECTING TO THE RELOCATION ABSENT EXIGENT CIRCUMSTANCES.

1. What is the address of the proposed new residence? _____
 Check here if the address is confidential pursuant to 23 Pa.C.S. §5336(b).
2. What is the mailing address of the proposed new residence? _____
 Check here if the address is confidential pursuant to 23 Pa.C.S. §5336(b).
3. What are the name(s) and age(s) of all individual(s) who will be living at this new residence? _____
 Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).
4. What is the home telephone number of the intended new residence? _____
 Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).
5. What is the name of the new school and the new school district that the child(ren) will attend after relocation?

 Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).
6. What is the date of the proposed relocation? _____
 Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).
7. What are the reasons for the proposed relocation? _____
 Check here if the information is confidential pursuant to 23 Pa.C.S. §5336(b) or (c).
8. How do you propose to change the custody schedule that is currently in effect? _____
9. Is there any other information that is relevant to the proposed relocation? _____
10. I have included a counter-affidavit that you can use to object to the proposed relocation.

WARNING TO NON-RELOCATING PARTY
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

DAUPHIN COUNTY LAWYER REFERRAL SERVICE
 213 North Front Street
 Harrisburg, PA 17101
 (717) 232-7536

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made are subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

 Date

 Signature

 Print Name

 Address

 Telephone Number

Plaintiff

v.

Defendant

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA
:
: NO. _____ CV _____ CU
:
:
: CIVIL ACTION-IN CUSTODY

COUNTER-AFFIDAVIT REGARDING RELOCATION

1. What are the names and ages of the child(ren) affected by the proposed relocation? _____
2. Where do this/these child(ren) currently reside? _____

I have received a notice of proposed relocation and (check all that apply):

- I do not object to the relocation
- I do not object to the modification of the custody order consistent with the proposal for modification set forth in the notice.
- I do not object to the relocation, but I do object to modification of the custody order.
- I plan to request that a hearing be scheduled by filing a request for hearing with the court:
 - a. Prior to allowing the child(ren) to relocate.
 - b. After the child(ren) relocate.
- I do object to the relocation.
- I do object to the modification of the custody order.
- I understand that in addition to objecting to the relocation or modification of the custody order above, I must serve this counter-affidavit on the other party by certified mail, return receipt requested, addressee only, or pursuant to Pa.R.C.P. No. 1930.4. If there is an existing custody case, I must file this counter-affidavit at the Prothonotary's Office, Dauphin County Courthouse, 101 Market Street, Harrisburg, PA. If I fail to do so within 30 days of my receipt of the proposed relocation notice, I understand I will not be able to object to the relocation at a later time.

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date

Signature

Print Name

Address

Telephone Number