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JUSTIN A. MILLER,
Plaintiff

v.

BRANDI L. MILLER,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA
:
: NO. 2016 CV 2001 CU
:
: CIVIL ACTION – LAW
: IN CUSTODY

DAUPHIN COUNTY
PENNSYLVANIA
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MEMORANDUM OPINION

PROCEDURAL BACKGROUND

The instant action was initiated on March 9, 2016 by the filing of a *pro se* Emergency Petition for Special Relief, along with a Complaint for Custody by Plaintiff Justin A. Miller (hereinafter “Father”) naming Defendant Brandi L. Miller (hereinafter “Mother”), and seeking primary physical custody of their minor children, Blake Miller (DOB: 9/11/00), Victoria Miller (DOB: 2/4/02), Dakota Miller (DOB: 8/1/06), and Levi Miller (DOB: 8/30/11) (collectively “the children”). The Emergency Petition was subsequently denied. On March 15, 2016, Mother also filed a *pro se* Emergency Petition for Special Relief, as well as a Complaint for Custody at Docket Number 2016-CV-2140-CU. The Emergency Petition was subsequently denied. Due to Mother’s failure to file the proper filing fee, a judgment of *non pros* was entered against her. There have been no other docket entries on 2016-CV-2140-CU since.

The parties attended a custody conciliation conference on April 22, 2016, but were unable to reach an agreement. Thereafter, the case was assigned to this Court and a pretrial conference was scheduled for June 14, 2016. On May 20, 2016 Mother filed an unopposed Motion for Continuance of the pretrial conference. The Motion was granted and the pretrial conference rescheduled to July 12, 2016.

Father filed a second *pro se* Emergency Petition for Special Relief on May 26, 2016 alleging that Mother refused to seek mental health treatment for their daughter, Victoria. Based upon the vague allegations in the petition, this Court scheduled a hearing on Father's Emergency Petition. On June 2, 2016 this Court conducted an emergency hearing at which both parties were present and testified. At the conclusion of the testimony, the Court entered an Interim Order dismissing Father's Emergency Petition based upon Mother's agreement to seek therapeutic counseling for Victoria, memorialized the parties agreement that Father have sole physical custody of Blake, and Mother have sole physical custody of Victoria, as well as provided the parties shared physical custody of Dakota and Levi on a week-on, week-off basis.¹ Due to the emergency hearing, the pretrial conference was cancelled and a custody hearing was scheduled for August 2, 2016.

On June 20, 2016 Father filed a *pro se* Petition for Contempt alleging Mother refused to set-up a meeting with Father prior to the commencement of the week-on, week-off schedule, refused to respond to numerous phone calls regarding an exchange location, refused to provide her address, refused to provide verification of the babysitter's address, and also alleged that Mother is engaged in a criminal conspiracy to set up Paternal Grandfather to incur criminal charges.² Mother filed an Answer on June 21, 2016 denying all allegations. Father then filed an Amended Petition for Contempt on June 23, 2016, and an Answer and Counterclaim to Mother's Answer on June 27, 2016. On June 30, 2016, this Court entered an Order stating that Father's

¹ See Order of June 2, 2016.

² See Plaintiff's Petition for Contempt, June 20, 2016.

Amended Petition for Contempt and Mother's Counterclaim for Contempt would be addressed at the August 2, 2016 custody hearing.

On July 7, 2016, Mother filed a Motion for Continuance of the custody hearing stating that Mother's Pa. R.C.P. 1915.8 evaluation would not be completed in time for the hearing. The Motion was granted and the custody hearing was rescheduled to August 30, 2016.

Father filed a third *pro se* Emergency Petition for Special Relief on July 13, 2016, raising a number of allegations regarding Mother's boyfriend's conduct towards the children. These allegations were based upon what Dakota had allegedly told Father. The Emergency Petition was sent to Dauphin County Children and Youth Services ("DCCYS") to determine whether there had been an investigation into the allegations. On August 8, 2016, Father filed a Motion for Continuance of the custody hearing stating that the children's physiological [sic] evaluations would not be completed in time for the hearing. It is important to note that this Court did not Order the children to have a physiological evaluation nor a psychological evaluation (which is what this Court believes Father intended).

On August 18, 2016 after learning that DCCYS determined the allegations raised in Father's third (3rd) emergency petition were unfounded after an investigation, this Court denied Father's emergency petition. The same day, this Court denied Father's Motion for Continuance as the children's psychological or physiological evaluations were not necessary nor required by the court for the custody hearing.

CUSTODY HEARING

On August 30, 2016, this Court conducted a custody hearing at which both parties, and their respective witnesses, appeared and testified. Mother was represented by Diane Dils, Esquire, and Father represented himself. Since the parties' separation in March of 2016, the two (2) oldest children have aligned with the parent of the same gender – Victoria lives exclusively with Mother and Blake lives exclusively with Father. The parties agree to keep this arrangement, as neither one wants to force the children to visit with the other parent. Therefore, the primary focus of the custody hearing would be in the best interests of Dakota and Levi.

Father currently resides in Halifax with Paternal Grandparents and Blake, as well as Dakota and Levi every other week. He is unemployed and collects Social Security Disability Insurance ("SSDI") while awaiting hip and back surgery. Father believes that Mother and her friends brainwashed Victoria and turned her against him. Due to this belief, Father adamantly requested that Mother not be permitted to bring the children around her friends. Although not ordered by the Court, Mother was advised to not allow the children to be left unsupervised with her friends during the pendency of this action. Father testified that Mother repeatedly violated the order of this Court by allowing the children to be around her friends.

Prior to the separation, Father testified that he primarily cared for the children while Mother supported the family by working. He further testified that Mother was the disciplinarian and would occasionally yell at the children. He stated there was an incident once where Mother grabbed Victoria's hair and then smacked her in the face.

Similarly, during a hunting trip in January of 2016, Father admits that he also smacked Victoria in the face because she was allegedly yelling and pointing a rifle at him.

Father's concerns regarding Mother's care of the children stem from what the children allegedly tell him. It is Father's testimony that Dakota and Levi come home from Mother's home injured due to fighting one another, as well as other children. He further stated that Dakota told him that Mother's boyfriend walks around the house naked and has slept in Victoria's bed naked. Father also testified that Levi came back from Mother's home with burns once, and when confronted Mother said it was from a slide.

Following the parties' separation, Father unilaterally removed the children from the Upper Dauphin School District and enrolled them in the Halifax School District. From March until June of 2016, Blake missed eleven and a half (11 ½) days of school while in Father's care. Father testified that this was due to Blake's emotional state from what occurred in Upper Dauphin School District. Further, Father did not allow Mother to see Blake, Dakota and Levi from approximately March 10, 2016 until June 17, 2016. She repeatedly asked to see them for a few hours, but Father refused and told her he would only allow it if he supervised the visits.

In addition to his own testimony, Father presented the testimony of Dr. Timothy Zeiger, Roxann Shrawder, and Jim Weaver. Dr. Zeiger is a licensed psychologist who completed therapeutic evaluations of Dakota and Levi at Father's request. He did not do an evaluation of Blake because Father told him that Blake had been evaluated and was receiving services. Dr. Zeiger diagnosed Levi with adjustment disorder and Dakota with adjustment disorder and depression. Wraparound services were recommended for

both boys. Specifically, he recommended Levi engage in family based mental health therapy which is a thirty-two (32) week intensive program, and Dakota to have a mobile therapist. Dr. Zeiger strongly believes that the family dynamics and high level of conflict are a large part of the problem.

Dr. Zeiger stated that Father told him that he had primary physical custody and that Mother only had visitation of the children every other weekend. The Court notes this is an incorrect statement of the Interim Order of June 2, 2016 providing the parties shared physical custody. Dr. Zeiger was also not informed that Father had unilaterally removed the children from Upper Dauphin School District and enrolled them into Halifax School District. He was informed by Father that Levi was having behavioral issues at home, such as hitting, tantrums, and banging his head on the wall. Due to Father's concerns, Dr. Zeiger spoke with a DCCYS caseworker about the allegations made against Mother. DCCYS informed him that it was their belief that the children were being coached, and that there were no real safety concerns at Mother's home. Based upon this information, Dr. Zeiger did not recommend suspending Mother's custodial periods. Further, he strongly believes that it is important for Mother to be involved in Dakota and Levi's therapy.

Roxann Shrawder is a mobile therapist employed by PhilHaven. She testified that services have been approved for Blake and Dakota, and that she met with Father to sign consent for treatment and releases. There has been no real therapeutic work for Dakota yet. However, she did meet with Blake, who expressed that he did not want to continue services because he was involved in extra-curricular activities and was worried the therapy would take time from them. Due to his age, it is Blake's decision to

terminate services. Ms. Shrawder was only provided contact information for Father and was given very little information about Mother. She also informed Father that it was important for Mother to be involved since they shared physical custody.

Mother currently resides in a three (3) bedroom, one and a half (1 ½) bath home in Gratz with her boyfriend, Timothy Pritchard, and Victoria, as well as Dakota and Levi every other week. Victoria has her own bedroom, and the boys share a bedroom. Due to fear of false allegations, Mother and Mr. Pritchard decided when they began their relationship to not allow Mr. Pritchard to have unsupervised contact with the children. She is employed full-time with the Army Depot in New Cumberland. Her work hours are typically from 6:00 A.M. until 2:30 P.M. However, she has the ability to work a flexible schedule if necessary. Father needs hip and back surgery because he has two (2) deteriorating discs and one (1) is slipping. He was prescribed oxytocin and oxycodone in the past, and Mother testified that he may be prescribed morphine now.

The parties separated on March 10, 2016, and on that day Mother went to reside with her friend, Nina Heck. Two weeks prior to the separation, Victoria had moved out of the martial home and into the home of Darlene Shaffer. When Father learned that Victoria was living with Ms. Shaffer, he threatened to take her. Victoria adamantly told Mother and Ms. Shaffer that she did not want to return to Father's home. Therefore, Mother temporarily moved Victoria into Ms. Heck's home as well.

Mother testified that Blake has a lot of anger towards her. He threatens to hit her, he does not listen to her, and the last time that they spoke was on March 10, 2016. In addition, she stated that Blake is short-tempered with Dakota and Levi, and that he would get rough with them. She is requesting reunification counseling with Blake if, and

when, he is ready to do so. Conversely, Mother testified that Father and Victoria have a volatile relationship. Mother encourages Victoria to at least text Father. However, at this point, Mother does not believe Father and Victoria will ever have a meaningful relationship again.

In addition to her own testimony, Mother presented the testimony of Mr. Pritchard, Trooper Christopher Wright, Principal Jared William Shade, DCCYS caseworker Autumn Ricker, and two personal friends, Nina Heck and Jessica Hartman. Mr. Pritchard is employed full-time as a handler at the Army Depot in New Cumberland. He denies the allegations against him – he never walked around the house naked, never threw a knife at Victoria, and never slept in Victoria's bed naked. However, those allegations have caused his relationship with the children to change, as well as put a damper on his relationship with Mother. During his custodial periods, his daughter typically sleeps in Victoria's room, and his son will share a bedroom with Dakota and Levi. He testified that the children get along well together and have formed bonds. Mr. Pritchard believes Mother is appropriate in parenting, and that he has never observed Mother hit any of the children.

Trooper Wright is employed with the Pennsylvania State Police ("PSP") in Lykens. He was involved in the investigation regarding the allegations against Mr. Pritchard. After speaking with the children, Trooper Wright determined it was not necessary to speak with Mr. Pritchard, and he closed the criminal investigation. He was also involved in the March incident between Blake and Steven Heck. While on the bus travelling for a wrestling match, Steven Heck showed Blake a nude picture of a female. When asked who it was, Steven Heck jokingly responded that it was Blake's sister,

Victoria. Presumably, Blake in turn told Father who then made the original complaint with PSP. It was subsequently learned that Steven Heck did not possess a nude photograph of Victoria, but had merely taken an image from the internet. Steven Heck was charged with Harassment for the incident. In addition, Trooper Wright testified that Father consistently calls the barracks, sometimes multiple times during the week, to either make a complaint or follow-up with an earlier complaint. Trooper Wright stated that his fellow troopers in the barracks believe this to be attention-seeking behavior.

Principal Shade is the principal at Upper Dauphin Middle School and was also involved in the March incident with Steven Heck. Principal Shade stated that Father went to the wrestling coach's home at 9:00 P.M. the night of the incident to discuss what occurred on the bus. The coach reported the incident to the Athletic Director ("AD"), and Principal Shade assisted the AD in the investigation and determined that since the photograph was not of Victoria, there would be no discipline imposed by the school district. Father was not satisfied with the school district's decision; therefore, he went to the superintendent. Principal Shade testified that this is not the first time that this has happened since Father will typically go over his head to the superintendent if Father is not satisfied with the actions the school district takes. In addition, Father has spoken to Principal Shade numerous times about non-school issues. Principal Shade stated that he always tries to steer the conversation back to Victoria when it occurs. He reported that Father has also called the school's guidance counselor numerous times.

Autumn Ricker is a caseworker with DCCYS. Her first involvement with the family occurred on March 15, 2016. The allegation involved an injury which occurred during an altercation between Father and Victoria during a hunting trip over the winter.

That allegation was unfounded. Her second contact was in July of 2016 regarding allegations against Mr. Pritchard. Ms. Ricker interviewed Victoria who stated that she does not even sleep in her bedroom, but sleeps in the living room instead. She also interviewed Dakota who denied the allegations. She interviewed Levi with Father present and Levi needed to be prompted by Father to answer the questions. Ms. Ricker interviewed Levi again during Mother's custodial period and his story changed. Levi told Ms. Ricker that Father told him to tell her things, and then said that he made it up, and then said that Blake told him to make the allegations. Ms. Ricker conducted a home check of Mother's home and determined that there were no safety concerns with the home or with Mr. Pritchard. In sum, Ms. Ricker believes there is a lot of confusion due to the separation – the children are confused by the change of parental roles and switching between homes. She feels the children are struggling with the separation.

Ms. Heck and Ms. Harman are personal friends of Mother's and have known her and Father for approximately three (3) years. Both testified that they had been friends with Father, as well, prior to the separation. Ms. Heck denies saying anything to the children in an attempt to alienate them from Father. In addition, Ms. Heck has permitted Mr. Pritchard to care for her children, and she does not have any concerns for her children while in his care. Ms. Hartman testified that she had been friends with Mother and Father while they were together, but started to distance herself because of Father's conduct. Ms. Hartman witnessed Father being removed from a bar because he was dancing with other women. She has also witnessed Father make demeaning comments about Mother in front of the children.

DISCUSSION

Before this Court is Father's Complaint for Custody seeking primary physical custody of Dakota and Levi. 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).

CUSTODY FACTORS

- (1) *Which party is more likely to encourage and permit frequent and continuing contact between the children and another party.*

After the parties' separation, Father unilaterally removed Blake and Dakota from Upper Dauphin School District and enrolled them in Halifax School District. In addition, Father refused to allow Mother to have contact with Blake, Dakota and Levi from March 10, 2016 until June 17, 2016.

- (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 children or an abused party and which party can better provide adequate physical safeguards and supervision of the children.*

There were no substantiated allegations of past or present abuse by either of the parties.

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

During the marriage, Mother worked while Father stayed home with the children. Father testified that he performed all parental duties while Mother worked. Mother testified that Father was supposed to care for the children, but in fact Father made the older children care for the younger children.

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

There is a significant need for stability in the children's lives as their lives have been turned upside-down since the parties separated in March of 2016. Dr. Zeiger and Ms. Ricker testified that Dakota and Levi's issues primarily stem from parental conflict. In addition, the separation has caused a lot of confusion with Dakota and Levi as they are being shuffled between homes, and are being told by Father that they are not supposed to be doing certain things on Mother's time. Further, Father completely uprooted the children during the middle of the school year and transferred them to a different school district.

(5) *The availability of extended family.*

Father resides with Paternal Grandparents and testified that they assist in childcare. However, Mother testified that Paternal Grandfather tends to be volatile and is abusive towards Paternal Grandmother. Paternal Uncle (Mr. Weaver) also resides in the area and assists Father in caring for the children.

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

It appears Victoria and Blake no longer communicate with one another as Victoria lives with Mother and Blake lives with Father. Dakota and Levi are well bonded and get

along well. Victoria is well bonded with Dakota and Levi and she appears to watch out for them. Blake will occasionally fight with Dakota and Levi, but generally they get along well.

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

The Court met with Blake, Victoria and Dakota. Victoria stated a clear preference to continue to exclusively reside with Mother. Her preference appears to be well-reasoned. Blake stated a clear preference to continue to exclusively reside with Father. However, his testimony was closely aligned with Father's testimony, but this Court is not confident that his preference is well-reasoned. Dakota did not state a preference and appears to care deeply for both parents.

- (8) *The attempts of a parent to turn the children against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.*

Father alleges that Mother and her friends have turned Victoria against him. After interviewing Victoria, however, this Court does not believe she was influenced in any significant way. While Mother does not allege that Father has turned Blake against Victoria, it is apparent to the Court that Father has been discussing the custody and divorce issues extensively with Blake. This Court, as well as Ms. Ricker, is concerned that Levi is being pressured to make allegations against Mother and her boyfriend. There are also concerns that Father questions Dakota and Levi about their time at Mother's home.

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

Both parents are capable of maintaining a positive relationship with Dakota and Levi so long as the parties do not place them in the middle of the conflict. Mother is capable of maintaining a positive relationship with Victoria, and Father is capable of maintaining a positive relationship with Blake.

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

Mother is capable of attending to the daily needs of Victoria, and Father is capable of attending to the daily needs of Blake. With respect to Dakota and Levi, this Court is concerned that Father does not attend to the daily needs of the children during his custodial time.

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

Father currently resides in Halifax and Mother currently resides in Gratz. The parties are approximately thirteen (13) miles apart with an estimated travel time of twenty-five (25) minutes.

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

Both parties testified to their ability to make appropriate child care arrangements.

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

There is a high level of conflict between the parties as the separation is still new which is causing the children to experience transitional issues. There is not a lot of trust or

civility between the parties, and this has caused the older children to align with the parent of the same gender. The animosity and conflict need to be ratcheted back.

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

There is no reported history of drug or alcohol abuse by either party.

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

Father is disabled and collects disability insurance. He was injured around 2000 and Mother testified that he has two (2) deteriorating discs and one (1) slipped disc. He needs to have hip and back surgery, but Father stated he has to wait until he is fifty (50) to undergo the hip surgery. Mother also stated that he was prescribed oxytocin and oxycodone, and may be prescribed morphine.

(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 interest of the minor children:

JUSTIN A. MILLER,
Plaintiff

v.

BRANDI L. MILLER,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA
:
: NO. 2016 CV 2001 CU
:
: CIVIL ACTION – LAW
: IN CUSTODY

ORDER FOR CUSTODY

AND NOW, this 20th day of September, 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 Blake Miller (DOB: 9/11/00), Victoria Miller (DOB: 2/4/02), Dakota Miller (DOB: 8/1/06), and Levi Miller (DOB: 8/30/11), as follows:

THIS ORDER SHALL REPLACE ALL PRIOR ORDERS

LEGAL CUSTODY

1. Father shall have **sole legal custody** of Blake.
2. Mother shall have **sole legal custody** of Victoria.
3. Father and Mother shall **share legal custody** of Dakota and Levi. Legal custody is the right and responsibility to make major decisions concerning the children'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 children's best interest.
 - A. Neither party shall impair the other party's rights to shared legal custody of the children. Neither party shall attempt to alienate the affections of the children from the other party.
 - B. The parties shall communicate with each other to coordinate appropriate disciplinary techniques for the children.
4. 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.

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5. If an emergency decision(s) must be made, the parent having physical custody of the children 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 children receive.
6. Any party granted shared legal custody has the right to access the 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).
 - A. All parties shall execute any and all legal authorizations so that the other party may obtain information from the children's school, physicians, dentists, orthodontists, counselors, psychologists, or other similar individual or entities concerning the children'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.
7. 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 CUSTODY

8. Father shall have **sole physical custody** of Blake.
9. Mother shall have **sole physical custody** of Victoria.
10. School Year:
 - A. Mother shall have **primary physical custody** of Dakota and Levi.
 - B. Father 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 Father having custody the weekend of September 30 to October 2, 2016.
 - (ii) In the event there is an extended weekend, Father shall have custody until 6:00 P.M. the evening before school is to resume.
 - (iii) Any other time as the parties mutually agree.

11. Summer: The parties shall **share physical custody** of Dakota and Levi on a week on, week off basis. Exchanges shall occur on Fridays at 5:00 P.M. commencing the Friday after the last day of school and ending the Friday prior to the first day of school.
12. All custody exchanges shall occur at a place that is mutually agreeable between the parties.
 - A. When transporting Dakota and Levi, 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 the children are appropriately restrained in accordance with the law based upon their age, height and weight.
13. If the children are taking medication, an adequate supply of that medication, or prescription for that medication, shall be given to the other party at the custodial exchange.
14. Toys, clothes, etc. shall not become matters of contention between the parties as these generally are the children's property, not the parents', entitling the toys or clothes to be taken between each house by the children.
15. 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 children.
16. Both parties shall recognize the need to make changes to the physical custodial schedule from time to time.

HOLIDAYS³

17. Easter, Memorial Day, Independence Day, and Labor Day: The parties shall alternate the holidays beginning with Father having custody for Easter 2017. 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.
18. 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

³ The holiday schedule is applicable to Dakota and Levi only.

- B. In *even-numbered years*, Mother shall have custody on Thanksgiving.
19. 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*, Mother shall have Segment A and Father shall have Segment B.
- B. In *even-numbered years*, Father shall have Segment A and Mother shall have Segment B.
20. 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.
21. **The holiday schedule takes precedence over the regular custodial schedule.**

GENERAL CONDUCT

22. **Communication shall always take place directly between the parties without using the children as an intermediary.** The parties shall not encourage and shall discourage the children to report about the other.
- A. **Neither party shall discuss the custody issues directly with the children or in the children's presence.** Likewise, the parties shall ensure, to the extent possible, that other household members and/or household guests comply with these prohibitions.
23. Each party shall be entitled to reasonable **telephone, e-mail, or other electronic contact** with the children when the children are in the custody of the other party.
24. 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.
25. The parties shall **refrain** from making **derogatory comments** about the other party in the presence of the children and to the extent possible shall prevent third parties from making such comments in the presence of the children or otherwise harass or interfere with the parties' periods of physical custody.
26. The 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.
27. Parties shall permit and support the 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 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 children's affections from the other party as well as the other party's extended family.
28. Each party shall promptly notify the other party of, and invite the other party to, **major events in the 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 children are involved regardless of which parent then has custody.
29. The parties shall organize ways for the 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 child wishes to engage.
 - B. The parties shall confer with each other before arranging regularly occurring activities for the children which might interfere with regular periods of custody.
 - C. During the times that the parties have physical custody of the children, each party will make certain that the children attend their scheduled activities and transport the children on time to and from said activities.
30. 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

31. 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:

Diane Dils, Esquire, 1400 North 2nd Street, Harrisburg, PA 17102
Justin A. Miller, 578 Wolf Hole Road, Halifax, PA 17032
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
: DAUPHIN COUNTY, PENNSYLVANIA
:
: 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