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DAUPHIN COUNTY
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MALIKA THOMPSON, : IN THE COURT OF COMMON PLEAS
Plaintiff : OF DAUPHIN COUNTY,
 : PENNSYLVANIA
v. :
 : NO. 2016 CV 8688 CU
RASHAAN BLACK, :
Defendant : CIVIL ACTION – LAW
 : IN CUSTODY

OPINION

PROCEDURAL HISTORY and FACTUAL BACKGROUND

The instant matter was initiated on November 16, 2016 by the filing of a Complaint for Custody by Malika Thompson (hereinafter “Mother”) against Defendant Rashaan Black (hereinafter “Father”) and seeking sole primary physical and legal custody of their minor children S.B. (DOB: 09/2009) and A.B. (DOB: 07/2011) (hereinafter “minor children”). Following a December 19, 2016 custody conciliation, an Order was entered wherein the parties shared legal custody, with Mother having primary physical custody and Father having partial physical custody every weekend from Friday after school, or 4:00 p.m. if there is no school, until Sunday at 6:00 p.m..¹ Mother then filed a Petition to Modify Custody on January 19, 2017.²

¹ See Order of December 23, 2016.

² Mother did not specify what changes should be made to the custody Order, but rather, made allegations regarding Father.

A second custody conciliation was held on March 22, 2017, after which an Order was entered extending Father's custodial time from Friday afternoon through Monday morning.³ Mother filed a Petition for Protection from Abuse (hereinafter "PFA") on April 19, 2017.⁴ Father filed a Petition for Contempt on May 5, 2017 alleging Mother withheld custody of the minor children during his custodial time. A custody conciliation was scheduled for June 19, 2017. Because Mother failed to appear, the custody conciliation was re-scheduled for July 14, 2017. Mother failed to appear at the re-scheduled custody conciliation; Father then filed a Petition to Modify Custody on July 31, 2017. The Court scheduled a hearing on Father's Petition for Contempt and Modification, which was rescheduled and ultimately held on March 9, 2018.

CUSTODY HEARING

During the March 9, 2018 hearing both parties appeared and testified. Mother was represented by Gerald Robinson, Esquire, and Father was represented by Pamela Fleck, Esquire.

Father testified that he currently lives in Harrisburg with his grandparents. Although unemployed at the time of the hearing, he testified that he planned to start a

³ See Order of March 22, 2017.

⁴ The PFA was eventually dismissed.

part-time job at a laundromat where he would work a split shift from 12:00 p.m. to 3:00 p.m. and 8:00 p.m. to 11:00 p.m. He explained that this schedule would allow him to get the minor children to school and then off the bus after school. His grandparents would be home with the minor children during the evening.

Father stated that the minor children currently attend the Sylvan Heights Charter School. A.B. is in the 1st grade and enjoys fashion, dancing and anything "girly" and S.B. is in the 2nd grade and likes science. Father explained that a typical weekend with the minor children consists of staying at home and relaxing on Friday evening. On Saturday morning, Father enjoys cooking the minor children breakfast and then spending time visiting with his parents. Every Sunday includes family dinner at his grandparents' house where many extended family members convene.

Father testified that the communication between Mother and him is not good and that Mother often blocks his number so that he is unable to contact her. He stated that when he and Mother communicate she is often hostile and disrespectful towards him. Father testified that Mother discusses inappropriate issues with the minor children, including money and child support. He further testified that Mother often threatens him with "losing" the minor children. On one occasion, Mother did apologize in a text.

Father stated that Mother does not check the minor children's school folders during the week and that they frequently have missed homework assignments. Father wants a 2-2-3 custody schedule so that he has time with the minor children during the week to assist them with their homework and get them involved in extracurricular activities.

Father acknowledged that he has been arrested and gone to jail for "drug crimes." The last job he had was in 2016 when he worked at a bookstore. He stated that he gets assistance from his family, who are his "support system." This assistance includes money for food and clothes for the minor children, shelter, and childcare when needed. Although Father cannot drive, his grandfather provides transportation for the minor children and him.

Father stated that Mother withheld the minor children from him from April through June, 2017 after she filed a PFA against him. He explained that during this time period he did not receive any information regarding the minor children from Mother.

Father testified he is willing to co-parent with Mother because it is in the best interests of the minor children. It is his belief that a 2-2-3 custody schedule would be beneficial because it would require less contact between the parties.

Mother testified that she currently lives with the minor children in Harrisburg but is in the process of moving. She is employed by the Mid-Town Scholar Bookstore and

works Monday through Friday and occasionally Saturday. Her hours are from 10:00 a.m. to 6:00 p.m., but her boss allows her to leave work at 3:50 p.m. to get the minor children from the school bus. Mother stated that she takes the minor children to her mother's house after getting them off the school bus, where they stay until she is done with work. She explained that an evening during the week includes preparing the minor children dinner while they do their homework and then getting ready for bedtime, which is between 8-8:30 p.m.

Mother testified that the minor children have missed school while in Father's custody and that he has failed to provide necessities like school uniforms and supplies in the past. Mother stated that she works hard to provide for the minor children and she does not have a support system like Father's to rely on for help, although her Mother helps with childcare.

Mother testified that the communication between the parents is not good and that they have difficulty co-parenting. She acknowledged blocking Father's telephone number and not discussing issues with him regarding the minor children while they are in her custody. Mother explained that while the minor children are in her custody she believes it is none of Father's business what is going on with them or what they are doing.

Mother testified that she filed a PFA against Father in April, 2017, but that it was ultimately dismissed. She acknowledged that there was a time period during which she did not allow Father to see the minor children. Mother testified that she did not realize that she could not keep the minor children from Father. Mother explained that in the past the parties attempted to use two separate intermediaries to assist with custody exchanges, but that there were problems and, ultimately, it did not work. Mother acknowledged that Father is agreeable to taking custody of the minor children during her custodial times if she has a conflict.

Mother objects to a 2-2-3 custody schedule with Father because she has no communication with the minor children while in Father's custody. It is Mother's position that such a schedule will create stress for the minor children. Mother contends that Father does not provide a stable environment or structure, and that illegal drugs are present in Father's home. Mother seeks to keep the current Order in effect, with the exception of being granted one weekend per month with the minor children.

DISCUSSION

Before this Court is Father's Petition for Modification of Custody seeking to change the current custody arrangement to a 2-2-3 custody schedule. Father has also filed a Petition for Contempt for time periods during which he alleges Mother intentionally

withheld custody of the minor children. In addition to reviewing the record, we have heard testimony from the parties. 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 child and another party.*

Both Mother and Father testified that they have a difficult time communicating with each other. However, Mother indicated that she has intentionally kept the minor children from Father in the past and blocks his number so he is unable to reach her or the minor children.

- (2) *The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an*

abused party and which party can better provide adequate physical safeguards and supervision of the child.

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

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

Mother testified that she works to provide food, shelter and clothing for the minor children. During the week she sees that they get to school, picks them up from school, cooks them meals and helps with their homework. Father testified that during his weekend custodial time he enjoys cooking for the minor children, doing homework and visiting with relatives. Father acknowledged that his family offers him support and assistance for the minor children in many ways.

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

Both Mother and Father testified to being involved in helping the minor children with their schoolwork. While Mother testified that the minor children missed school while in Father's custody, there was no evidence offered to verify her claim. She also claimed Father failed to have the children in school uniforms. Mother acknowledged she was in the process of moving from her Harrisburg residence to an apartment complex located in Camp Hill; however, those arrangements were not finalized.

(5) *The availability of extended family.*

Father gave extensive testimony regarding his extended family and what he refers to as his "support system." He lives with his grandparents, visits his parents with the minor children every weekend and has many nieces, nephews and cousins. Mother testified that while her mother does help watch the minor children after school, she does not have a support system like Father.

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

The minor children do not have siblings aside from each other.

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

This Court did not interview the children.

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

There was no testimony that either parent attempted to turn the minor children against the other parent. However, Mother testified that she filed a PFA petition against Father and intentionally withheld the minor children from Father during his custodial periods.

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

Both parents are capable of maintaining a positive relationship with the minor children.

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

Both parents are capable of caring for the minor children on a daily basis. Father testified that he wants more time with the minor children during the week to assist them with their homework and get them involved in extracurricular activities.

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

At the time of the custody hearing, the parties lived approximately five (5) blocks from each other. While Mother stated that she was moving to Camp Hill, there was no indication as to when that would occur. Mother stated that she was in contact with Father to discuss her potential move and Father expressed no concerns.

- (12) *Each party's availability to care for the children 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 children from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.*

Not only is there a lack of communication between the parties, there is a moderate level of conflict as well. Mother acknowledged blocking Father's telephone number and admitted that she does not think it is his business what she does with the minor children during her custodial time. Mother has also threatened Father that he will lose the minor children. Additionally, Mother testified that she would prefer to communicate with Father through the minor children to avoid having to communicate with him.

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

Father has a criminal history involving drug convictions and Mother contends that there are drugs in his home.

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

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

(16) *Any other relevant factor.*

No other significant factors were considered.

Conclusion

After consideration of the matter and based upon our review of the statutory factors, this Court issues the following **ORDER**⁵ which provides for custody in the best interests of the minor children:

(This space intentionally left blank.)

⁵ Although this Court finds that Mother was in contempt of the March 22, 2017 Order by intentionally withholding the minor children from Father during some of his custodial periods, no fine or other penalty shall be assessed against Mother.

MALIKA THOMPSON,	:	IN THE COURT OF COMMON PLEAS
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v.	:	
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RASHAAN BLACK,	:	
	Defendant :	CIVIL ACTION – LAW
	:	IN CUSTODY

ORDER FOR CUSTODY

AND NOW, this 27nd day of March, 2018, after a careful review of the pleadings, testimony and evidence, and based upon the statutory factors, **IT IS HEREBY ORDERED**, in the best interests of A.B (DOB: 7/12/2011) and S.B. (DOB: 9/9/2009), as follows:

THIS ORDER REPLACES ALL PRIOR ORDERS

LEGAL CUSTODY

1. Father and Mother shall **share legal custody** of the minor children. All major legal decisions concerning the children, including, but not limited to, the children's health, medical, dental, mental health, education, and religious training shall be made jointly by the parties, after discussion and consultation with each other, with a view toward obtaining and following a harmonious parenting plan, not in their own individual best interests, but rather *in the children's best interest*. 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 child from the other party.
 - A. The parties shall communicate with each other to coordinate appropriate disciplinary techniques for the minor children.

- B. Day to day decisions shall be the responsibility of the party then having physical custody. With regard to any emergency decisions that must be made, the party having physical custody of the minor children at the time of the emergency shall be permitted to make any immediate decisions necessitated thereby. However, that party shall inform the other of the emergency and consult with him or her as soon as possible.
- C. All parties shall have the right to access the minor children's medical, dental, religious and school records, the address of the children and any other related information in accordance with 23 Pa. C.S.A. § 5336(a). All parties shall execute any and all legal authorizations so that the other party may obtain information from the minor children's school, physicians, dentists, orthodontists, counselors, psychologists, or other similar individual or entities concerning the minor children's progress and welfare.
- D. Each parent shall list the other parent as an emergency contact person on any school, doctor, counselor and other similar entities' records.
- E. **Each parent shall provide the other parent with their current address, telephone number, e-mail address and provide updated information as soon as any change is made.**
- F. **Parents shall civilly and respectfully communicate about co-parenting legal custody issues.**
- G. When a parent is confronted with a situation regarding a legal custody issue (a major decision concerning one of the children's health, education or religious training), the parent agrees to do the following:
 - (i) Provide notice to the other parent describing the issue or the proposed plan of action as soon as possible but no later than 12 hours before the decision must be made.
 - (ii) Schedule a time to civilly, respectfully and objectively discuss the issue or the proposed plan of action.

PHYSICAL CUSTODY

SCHOOL YEAR SCHEDULE:

2. Mother and Father shall **share physical custody** on a 2-2-3 schedule as follows:
 - A. Mother shall always have custody Monday through Wednesday. For custody purposes, the beginning of Mother's custody period shall be the beginning of the school day. If there is no school, Mother's custody period shall begin at 9:00 a.m.
 - B. Father shall always have custody Wednesday through Friday. For custody purposes, the beginning of Father's custody period shall be the beginning of the school day. If there is no school, Father's custody period shall begin at 9:00 a.m.
 - C. The party starting their custodial time shall get the minor children from the school bus.
 - D. The parties shall alternate the weekends from Friday, after school, through Monday at the beginning of school, or 9:00 a.m. if no school.
 - (i) **This schedule shall commence the week of Monday, April 2, 2018, with Mother having custody.**
 - (ii) **Accordingly, Mother shall get the minor children from the school bus on Monday afternoon and retain custody until Father's custodial period begins on Wednesday, April 4, 2018; Father will then get the minor children from the school bus that day.**
 - (iii) **Mother will then have custody for the weekend starting after school on Friday, April 6, 2018.**

SCHOOL SUMMER RECESS:

- E. During the school summer recess, the physical custody schedule will be as follows: The parties will alternate full weeks of custody. Exchanges will occur every Friday at 3:00 p.m. at the Family Dollar on 3rd Street in Harrisburg, or in any other mutually agreed upon location.

HOLIDAYS & VACATION

- 3. **The holiday schedule shall take priority over the regular custody schedule.** Unless otherwise agreed, the parents shall have physical custody of the minor children during holidays as follows:
- 4. Christmas: Christmas shall be divided into two segments. **Segment A** shall be from December 24 at 3:00 p.m. until December 25 at 3:00 p.m. **Segment B** shall be from December 25 from 3:00 p.m. until December 26 at 3:00 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.
- 5. Thanksgiving: Thanksgiving shall be divided into two segments. **Segment A** shall be 9:00 a.m. to 3:00 p.m. on Thanksgiving Day. **Segment B** shall be from 3:00 p.m. to 9:00 p.m. on Thanksgiving Day.
 - A. Mother shall always have segment A.
 - B. Father shall always have Segment B.
- 6. Easter: Easter Sunday shall be divided into two segments. **Segment A** shall be from 9:00 a.m. to 3:00 p.m. **Segment B** shall be from 3:00 p.m. to 9:00 p.m.
 - A. Mother shall always have Segment A.
 - B. Father shall always have Segment B.

7. Memorial Day: Memorial Day shall be divided into two segments. **Segment A** shall be from 9:00 a.m. to 3:00 p.m. **Segment B** shall be from 3:00 p.m. to 9:00 p.m.
 - A. Mother shall always have Segment A.
 - B. Father shall always have Segment B.
8. July 4th: July 4th shall be divided into two segments. **Segment A** shall be from 9:00 a.m. to 3:00 p.m. **Segment B** shall be from 3:00 p.m. to 9:00 p.m.
 - A. Mother shall always have Segment A.
 - B. Father shall always have Segment B.
9. Labor Day: Labor Day shall be divided into two segments. **Segment A** shall be from 9:00 a.m. to 3:00 p.m. **Segment B** shall be from 3:00 p.m. to 9:00 p.m.
 - A. Mother shall always have Segment A.
 - B. Father shall always have Segment B.
10. Mother's Day and Father's Day: Mother shall have custody on Mother's Day and Father shall have custody on Father's Day.
 - 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.

GENERAL CONDUCT

11. While in Father's custody, the minor children shall have access to a cellular telephone, provided by Mother, which Mother can use to contact the minor children directly.
12. Communication regarding custody matters shall always take place directly between the parties without using the minor children as intermediaries. The parties shall not encourage and shall discourage the minor children to report about the other.
13. Each party shall be entitled to reasonable **telephone, e-mail, or other electronic contact** with the minor children when the children are in the custody of the other party so long as the communication is not excessive in duration and does not unreasonably interfere/disrupt the minor children's schedule with the other parent.
14. 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 minor children or inside the residence or vehicle.
 - C. The parties shall likewise assure, to the extent possible, that other household members and/or houseguests comply with these prohibitions.
15. The parties shall **refrain** from making **derogatory comments** about the other party in the presence of the minor children and, to the extent possible, shall prevent third parties from making such comments in the presence of the minor children or otherwise harass or interfere with the parties' periods of physical custody.
16. The minor children shall be protected by the parties from individuals with **poor character** (including, but not limited to, individuals involved with illegal activity,

immoral or intemperate behavior, or violent propensities). The parties shall, to the extent possible, avoid contact with such individuals of poor character.

17. Parties shall permit and support the minor children's access to **family relationships** and **events** (funerals, reunions, graduations, etc.). Events will be accommodated by both parties with routine periods of physical custody resuming immediately after the event.
 - A. The parties shall not alienate the affections of the minor children from the other party and the other party's extended family and shall make a conscious effort not to do so. To the extent possible, the parties shall prevent third parties from alienating the minor children's affections from the other party as well as the other party's extended family.

18. Each party shall promptly notify the other party of, and invite the other party to, **major events in the minor children's lives**, including but not limited to graduations, award presentations, performances, academic and athletic competitions and similar extracurricular activities.
 - A. Either party may attend any school, camp, or other extracurricular activity in which the minor children are enrolled or involved, regardless of which parent then has custody.

19. The parties shall organize ways for the minor children to maintain their friendships, extracurricular activities, and other special interests, regardless of which parent has physical custody.
 - A. The parties shall honor and be supportive of the extracurricular activities in which the minor children wish to engage.
 - B. The parties shall confer with each other before arranging regularly occurring activities for the minor children which might interfere with regular periods of custody.

- C. During the times that the parties have physical custody of the minor children, each party will make certain that the minor children attend the scheduled activity and transport them on time to and from said activity.
20. 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.
 21. Toys, clothes, sports equipment, cellphones, tablets or other portable electronic equipment, etc. shall not become matters of contention between the parents as these generally are the minor children's property, not the parents', entitling the toys or clothes, sports equipment, cellphones, tablets, etc. to be taken by the minor children and back with the minor children as reasonably appropriate.

RELOCATION

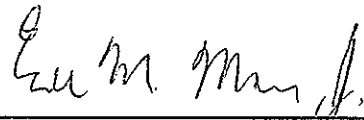
22. No party shall **relocate** the minor children if such relocation will significantly impair the ability of the non-relocating party to exercise his or her custodial rights, unless the other party consents in writing or the Court approves the proposed relocation.
 - A. The party seeking relocation must follow the procedures required by 23 Pa. C.S.A. § 5337 as set forth in Exhibit A attached to this Order.
 - B. The parties are always encouraged to relocate closer to each other's residences.

CONTEMPT

23. The custody schedule, rules of conduct and other provisions of this Court Order are binding on all parties. If a party does not follow any provision in this Order, that violation could become the subject of contempt proceedings before this Court punishable by any one or more of the following:
 - A. Imprisonment for a period of not more than six (6) months;
 - B. A fine up to \$500.00;

- C. An order for nonrenewal, suspension or denial of driver license operating privileges;
 - D. Payment of opposing party's attorney's fees and costs.
24. Contemptuous conduct may also constitute grounds for modification of the legal and physical custody provision contained in this Order.


BY THE COURT:



Edward M. Marsico, Jr., J.

MAR 22 2018

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



Prothonotary

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