

**IN THE COURT OF COMMON PLEAS OF YORK COUNTY,
PENNSYLVANIA
FAMILY DIVISION**

TINA ANDERSON,
Plaintiff

v.

RHETT ANDERSON,
Defendant

No. 2012-FC-001327-03

Action in Custody

APPEARANCES:

For Plaintiff:
For Defendant:

Andrew B. Brown, Esquire
Charles J. Hobbs, Esquire

ORDER OF CUSTODY

AND NOW, this 13th day of March, 2018, this Order is being entered as a result of a custody trial held before the undersigned on March 6th, 2018. This matter involves the custody of:

NAMES OF CHILDREN	AGE	D.O.B.
Joshua Devon Anderson.	12	2005
Riley Joseph Anderson	10	2007

The Court affirms the Custody Order Adopting Stipulation of Parties dated April 15th, 2013 as amended by the Order of Court dated December 9th, 2014, with the following addition:

1. The parties shall establish a parent account at www.OurFamilyWizard.com within 10 calendar days from the date of this Order by completing the online sign up process or calling the toll free number provided on the company's website. The parties

OFFICE OF PROTHONOTARY
2018 MAR 14 PM 3:50
JUDICIAL CENTER
YORK, PA

shall thereafter conduct all communications regarding shared parenting matters using the website's features. This provision shall remain in effect for no less than two years.

BY THE COURT,

A handwritten signature in black ink, appearing to read "J. Adams", is written over a horizontal line.

JOSEPH C. ADAMS, JUDGE

Dated: March 13th, 2017

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OPINION

This matter is before the Court on Defendant/Father's Petition for Modification of the Custody Order. Mother and Father have two children together, J.A. (YOB 2005) and R.A. (YOB 2007). Father seeks modification of the schedule to an alternating week arrangement. Father believes that this change would allow him to spend more uninterrupted time with the children and decrease direct interaction with Mother during custodial exchanges, which causes a great deal of conflict for the parties. Mother seeks a reduction in Father's physical custody rights and modification of the schedule to an alternating weekend arrangement. Mother believes Father's work schedule is disruptive to the children because it requires them to be woken up too early in the morning during the school week. Mother believes that this change would provide the children with additional stability and hopefully improve communication between the parties.

Father's Petition for Modification of the Custody Order was filed on November 8, 2017. Previously on October 17, Mother filed a petition for Contempt in which she alleged that Father was in violation of the Court Order's vacation and extracurricular activities provisions, utilizing the parties' eldest son as a conduit with Mother, and smoking in his vehicle with the children present. A Contempt Hearing has held on November 14, 2017, and Father was found in contempt for violating the Order's vacation provision.

A Conciliation Conference was held on November 28, 2017. An Interim Order for Custody, Pending Trial, was entered on December 4, 2017, affirming the prior Court Order entered on April 15, 2013, as modified by the Order of October 23, 2014, which provided for shared legal custody, primary physical custody for Mother, and substantial rights of partial custody for Father. A pretrial conference was held on January 23, 2018. The Court interviewed the children *in camera* on February 9, 2018, and a trial was held on March 6, 2018. At trial, the Court heard the testimony of both parties and two witnesses for Defendant Father, Kelly Birdsall and William Ilgenfritz. After careful review of the testimony and exhibits, this Opinion follows.

FACTORS

Pursuant to 23 Pa.C.S.A. § 5328, the Court shall determine the best interests of the children by considering all relevant factors, giving weighted consideration to those factors that affect the safety of the children, including the following:

- (1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.
- (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.
- (3) The parental duties performed by each party on behalf of the child.
- (4) The need for stability and continuity in the child's education, family life and community life.
- (5) The availability of extended family.
- (6) The child's sibling relationships.
- (7) The well-reasoned preference of the child, based on the child's maturity and judgment.
- (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.

- (9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.
- (10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.
- (11) The proximity of the residences of the parties.
- (12) Each party's availability to care for the child or 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.
- (14) The history of drug or alcohol abuse of a party or member of a party's household.
- (15) The mental and physical condition of a party or member of a party's household.
- (16) Any other relevant factor.

The Court first considers which party is more likely to encourage and permit frequent and continuing contact between the children and the other party. Both parties testified that communication between them frequently escalates and has a tendency to become hostile and confrontational. Father testified that he encourages the children's relationship with their Mother, but that he believes the children communicate excessively with Mother when they are at Father's residence. He stated that he has, in the past, forbidden Joshua from bringing his cell phone with him from Mother's residence to Father's residence for this reason.

Also relevant to this factor is the testimony of the children. One of the children stated that Father has shown them text messages sent to him by Mother. The child expressed that neither he nor his brother wanted to see these messages. When asked by the Court if Mother engaged in the same behavior, the child stated that she did not and that Mother knows that the children do not want to be a part of the conflict between the parties. The Court finds this factor slightly favors Mother.

The Court also examines the present and past abuse committed by either 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. Per the parties' joint stipulation of facts, this factor is not at issue.

Next, the Court must consider the parental duties performed by each party on behalf of the children. Mother testified that she schedules and takes the children to

doctor's appointments, pays for their school lunches, purchases their clothes, school supplies, and all other basic needs. Mother believes that Father is not involved enough in the children's activities, stating that Father does not regularly attend or take active participation in the children's school functions. Father testified that before he and Mother separated, while Mother worked during the day, he was the primary caretaker to their eldest son Joshua. The Court finds this factor favors Mother.

The next factor for consideration is the need for stability and continuity in the children's education, family life, and community life. The parties have had the same custody arrangement for the last five years. Both children expressed a preference to keep the current schedule. The parties' youngest son Riley testified that he is acclimated to it. Per both parents' testimony, both children are doing well in school and excelling academically. However, Mother does not believe that the current schedule serves the children's best interests in terms of stability and continuity with regards to their educational pursuits. Mother believes that the children would benefit from longer, uninterrupted periods of time with her. Likewise, Father believes that the children would benefit from increased, uninterrupted time with him. Given that both children are acclimated to the schedule and doing very well in school, this factor weighs heavily in maintaining the existing custodial schedule.

The Court must next consider the availability of extended family. Mother testified that both of her parents passed away. Father testified that he has a strained relationship with his mother and that he recently reconnected with his Father, from whom he was also

estranged for a period of time. Mother testified that the children are close to their paternal grandparents who reside in Florida, and to Mother's niece and her children who reside in Camp Hill, Pennsylvania. In addition, the children occasionally see their maternal aunt and cousins. Mother testified that she tries to foster the relationship between the children and their paternal grandmother. The Court concludes that this factor favors Mother.

The Court also looks at the children's sibling relationships. The children have one half-brother from Father's previous relationship. Mother testified that he is an adult in his twenties and does not have any contact with the children. Accordingly, this factor is neutral.

The next factor to consider is the well-reasoned preference of the children based on the children's maturity and judgment. The Court had the opportunity to speak with the children, who are 12 and 10 years of age. As mentioned, the children expressed a preference for keeping the schedule as it is. Joshua testified that despite the distance between the parties' residences, the children wake up at the same time whether they are at Mother's or Father's residence. Accordingly, this factor favors the current custody arrangement.

The Court next looks to attempts by either parent to turn the children against the other. Both parties concede that they have difficulty communicating about the children and that they undergo a great deal of conflict during custodial exchanges. Father testified that Mother has an avatar image of him as a demon on her phone. Mother testified that Father makes disparaging remarks about Mother in front of the children. This testimony

was corroborated by the children. As referenced earlier, one of the children testified that his Father has tried to show the children text messages sent to him from their Mother, which made him uncomfortable. Mother added that because of Father making disparaging remarks about Mother in front of the children, one of the children's friends no longer wants to visit when they are staying at Father's residence. While the Court acknowledges that both parents have engaged in attempts to turn the children against the other party, the Court finds that this factor is neutral.

The Court must also consider which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the children adequate for the children's emotional needs. Mother testified that she believes Father does not participate enough in the children's school activities. Father testified that he is involved in the children's activities but that he believes Mother does not support his involvement in the children's activities. The Court finds this factor is neutral.

Next, the Court considers which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the children. Mother testified that she schedules and takes the children to doctor's appointments, pays for their school lunches, purchases their clothes, school supplies, and all other basic needs. She also stated that she pays for and helps the children with all of their school projects. Mother testified that Father lacks meaningful involvement in the children's school activities, including parent-teacher conferences. Father testified that he tries to be as actively involved as possible in the children's school activities but that the conflict

between the parties and the current custody schedule makes it difficult for him to participate more. The Court finds that this factor favors Mother.

The Court next examines the proximity of the parties' residences. The parties have stipulated that they live approximately 17.9 miles and 26 minutes from each other. Mother testified that she believes the distance between Father's residence and the children's school is detrimental to the children because it results in them having to get up earlier on school days when they are at Father's residence. Father testified that the distance between his residence and the school is not an issue and presented the Court with a letter from the children's school district which states that the school district's transportation system begins transporting students starting at 6:20 a.m. Joshua testified that he and his brother wake up at the same time regardless of whose home they are in. Thus, the Court finds that this factor favors Father in his request for a shared physical custody arrangement.

The Court must also consider each party's availability to care for the children or ability to make appropriate child-care arrangements. The parties offered testimony about their work schedules. Father testified that his work schedule is flexible and that he is able to select the hours he works according to the custody schedule. When situations arise where he does have to work when the children are in his care, which Father indicated is rare, Father's girlfriend cares for the children. Mother employs a neighbor and the neighbor's grandson to babysit for the children when needed. Father testified that he would like the opportunity to care for the children when they are at Mother's residence

and she is at work. Mother testified that to do that would be burdensome to both her and the children. Accordingly, the Court finds that this factor is neutral.

The Court must next consider the level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. Mother and Father testified that the relationship between them is contentious and maintaining effective communication has been a sustained challenge. Mother testified that the effectiveness of their communication varies depending upon Father's mood, which she described as sometimes very good and other times very bad. Mother believes that they are not able to communicate effectively. Father testified that the parties communicate effectively during emergencies but concurred with Mother that generally, communication between the parties is an ongoing challenge for both of them. The parties offered as exhibits text messages sent between the parties which show a high level of conflict between the parties and difficulty in communicating with each other about the children. The text messages also show the usage of inappropriate language by both parties directed towards the other parent. The Court finds that this factor favors neither parent. However, due to the ongoing communication issues the Court will direct by separate Order that the parties communicate through Our Family Wizard.

The Court must also consider any history of drug or alcohol abuse of a party or member of a party's household. No testimony was presented on this factor. Accordingly the Court finds that this factor is neutral.

Next, the Court considers the mental and physical condition of a party or member of a party's household. Father testified that he sustained some hearing loss during his active duty service with the Marine Corps but that this does not have an effect on his ability to properly care for the children. Accordingly, the Court finds that this factor is neutral.

Next, the Court considers whether there has been CYF involvement with the family, which there has not been in this case. Thus, the Court finds this factor to be neutral.

Lastly, the Court considers any other factors that it may deem relevant in determining the best interest of the children. Mother filed a Petition for Contempt on November 14th, 2017, in which she asserted that Father had violated various provisions of the Custody Order. Father was held in contempt on November 14th, 2017, for violating the Order's vacation provision. The Court noted that this was Father's first contempt and ordered Father to pay a portion of Mother's counsel fees in the amount of \$750.00 within 45 days of the date of that Order. Following the hearing, Father, on his own accord, completed a 4-hour online conflict resolution course, proof of which he offered as an exhibit to the Court at trial.

CONCLUSION

Given the foregoing, the Court finds that it is in the best interest of the children for the parties to continue to share legal custody of the children, for Mother to retain primary physical custody subject to Father's rights of partial physical custody as provided

for under the existing orders. The testimony and exhibits offered by the parties show that under the current custody arrangement the children are excelling academically and are not having any problems. Despite the concerns expressed by Mother and Father, the Court finds that no evidence was presented to suggest that a change in custody is in the best interest of the children. Furthermore, the children indicated that they love both parents and expressed a preference for keeping the schedule as it is.

An Order will be entered in conformance with this Opinion.

BY THE COURT,



JOSEPH C. ADAMS, PRESIDENT JUDGE

Dated: March 14, 2018