

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CARLEEN L. ECK,
Plaintiff

: NO. 97-20,486

vs.

: CIVIL ACTION - Law
Custody

DANIEL S. DIEHL,
Defendant

:

OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed this Court's Order of May 14, 1999, which determined the custody of the parties' two (2) minor children, Whitney Diehl, born August 1, 1988, and Brett Diehl, born June 27, 1993.

On June 24, 1999, the Court issued a 1925(B) Order requesting a concise statement of issues complained of from the Appellant. No statement has been filed; therefore, the Court will assume the Appellant does not feel that the findings are supported by the evidence, and limits its discussion to that assumption. At the time of the hearing, the parties had shared legal custody with mother having primary physical custody and father having partial custody on alternating weekends. Additionally, he had a period of partial custody each Wednesday from after work until 7:30 p.m.

On February 16, 1999, father filed a Petition asking that primary custody be transferred to him. Apparently, a substantial factor in father's filing of the Petition was a reaction to Whitney's expressing that she wished to spend more time with her father. The

question to be determined by the Court is whether the best interest of the children lie in disturbing the present status quo and transferring primary physical custody of the children to the father.

Testimony at trial established that both parents are caring and appropriate. Father is a man who sacrifices for his children, he provides for them well and is involved in their activities. Similarly, mother is involved with her children, provides for them as well as she possibly can and is very supportive of all of their activities. The strengths of these parents are reflected in the children who presented themselves as appropriate well-balanced children without any significant problems.

Both parties share the same shortcoming. They are absolutely unable to communicate with each other in a consistent and stable fashion. While the Court is not completely convinced of the source of the continued turmoil between the two parents, it appears that both parents have displayed an attitude of territoriality with respect to the times that each has with the children. This has been displayed at soccer games and other events where mother and father have both attended.

Father's strong point is that he is a very involved parent. He can also provide the children with a superior physical setting in the home, as he has a very nice house with a large yard in a rural area. Father's financial situation is stronger than mother's and can better provide the children with material items. He has for example, video games and a trampoline and has promised the children a trip to Disney World.

Mother is also devoted to the children. Moreover, she provides more structure to the children than father, which was supported by Whitney's testimony that she is more strict

in enforcing bed times, homework and viewing “R” rated movies. It is conceded by the Court that father’s relaxation of the rules may be a product of his partial custody and that he wishes to maximize the enjoyment his children have while in his company. However, mother has established a routine which seems very appropriate for children of these ages. Whitney indicated that if she were to violate some rule of the household, father’s punishment is easier to endure than mothers. This is not to suggest that mother’s punishment is overly severe. It simply appears that mother exercises a more consistent level of punishment.

In the Court’s conversation with Whitney, she expressed the desire to have the time split evenly. It would appear this idea was instilled in Whitney by a friend of hers, who was in a joint physical custody situation. While the Court is not completely familiar with the situation involving Whitney’s friend, it appears that her friend’s parents may be in the same school district and secondly, it is at least hopeful that they have some success in communicating with each other.

In the instant case, Whitney and Brett are in the Montoursville School District and their father lives in the East Lycoming School District. Transferring primary custody would obviously necessitate a change in schools. Further, because of the distance involved, a shared custody arrangement is rendered nearly impossible during the school year, and it is this Court’s view that a shared custody arrangement would require significantly increased cooperation between the parents, which is presently non-existent. Whitney has indicated that she likes the Montoursville School District and has established friendships and a routine in that school. She particularly enjoys cheerleading for which her squad has

received awards.

The Court in fashioning its Order sincerely believes that there is no reason not to cede to the children's wishes to spend more time with their father. Accordingly, the Court significantly increased the time for father with the children particularly during the summers which were split evenly.

Both parents are very capable of raising their children. After analysis of the strengths of each, the Court finds that the best interest of the children lie in remaining with the present status quo as far as primary custody with increased time granted to father.

Dated: _____

By The Court,

Dudley N. Anderson, Judge

cc: Joy McCoy, Esq.
Matt Patch, Esq.
Hon. Dudley N. Anderson