

VALERIE M. KINNEY,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 94-21,311
	:	
ANTHONY W. PORTER, JR.,	:	
	:	
Defendant	:	PETITION FOR SPECIAL RELIEF

OPINION and ORDER

This Opinion and Order are issued in determination of the Father/Defendant's Petition for Special Relief filed May 31, 2000. By an Order entered on July 24, 2000, this Court denied the request for contempt made by the Defendant in that same petition and his initial contempt petition filed May 16, 2000 and also denied the Mother's counter petition for contempt filed July 6, 2000.

Father requests that under the shared legal custody provisions of the parties custody order while Mother has appropriately located to Hughesville that the child be continued in the Williamsport Area School District where she would be entering into the second grade at Stevens Elementary School. This Court denies Father's request.

Initially it must be noted that relocation analysis as provided by **Gruber v. Gruber**, 583 A.2d 434 (Pa.Super. 1990) does not apply. See **Zoccole v. Zoccole**, 751 A.2d 248 (Pa.Super. 2000). This Court must therefore determine the matter on the best interest of the child. Father asserts that the best interest is served by maintaining the child's status quo at the Stevens School. However, he introduced no testimony that the schooling to be undertaken at Hughesville would be inappropriate or contrary to the child's welfare.

Father did testify he had no problem with Mother's move to Hughesville. Father also stated in correspondence to Mother's counsel in May, after being advised by Mother's counsel of the intended move, that ". . . I have shared legal custody of Olivia and therefore oppose a transfer of school and any relocations of Olivia due to my visitation schedule." *See* Letter of Defendant, May 8, 2000, Exhibit B-3. Based upon Father's testimony, as well as this Court's interpretation of the context of his written response, Father's primary concern was an interruption of his visitation schedule. The visitation schedule enjoyed by Father will not be interrupted neither by Mother's move nor by child attending school in Hughesville.

Mother testified that child has quickly made friends in Hughesville. In this regard, the Court notes Mother moved to Hughesville in the month of May but continued the child in the Williamsport School District until school year was ended in June. Mother asserts that it is best for the child to attend school in the same place as the neighborhood playmates in Hughesville will be attending. In addition, the Day Care the child will be attending is carried on at the school and immediately available to the child. The child would be in the Day Care after school and perhaps at times during the summer with her school classmates. This Day Care program, while located at Hughesville, is the same Day Care program that the child attended in Williamsport, both being operated by the Williamsport YMCA providing the same advantages.

This Court must determine what is in the best interests of the child. Noting that the primary custodian parent's home is now in Hughesville and that participation in the nearby elementary school in Hughesville would be of obvious convenience and benefit to the primary custodial parent, we believe this to be a significant factor in the child's best interest. The

child's interests are also best served in the child attending the same school as the children in the neighborhood she has come to know. In addition, the elementary school in Hughesville is relatively close to her primary home. Attending school in Hughesville avoids the necessity of leaving that home earlier and returning later than if she would live in Williamsport. To attend school in Williamsport would add at least ½ hour at the beginning and end of her school day devoted solely to transportation. That additional transportation time is not in the child's best interest. In addition, this Court can ascertain no reason why the child would be adversely affected by changing the school.

Father has also raised an issue that the child will lose contact with her Williamsport school friends. The matter of her friends in Williamsport reduced itself to the fact that the child had two close friends in Williamsport at least one of who will still be continued. Accordingly, the following Order is entered.

ORDER

Father's request for special relief requiring that the child, Olivia be re-enrolled in the Williamsport Area School District for the ensuing school year is DENIED. The child may be appropriately enrolled in the Hughesville School District for the upcoming school year.

BY THE COURT:

William S. Kieser, Judge

cc: Court Administrator
G. Scott Gardner, Esquire
Janice R. Yaw, Esquire
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)