

JAMES BUEHLER,
Plaintiff

vs.

MARY BASILE, formerly
MARY KAISER,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:
: NO. 91-21,885
:
: CIVIL ACTION - LAW
:
: CUSTODY/VISITATION/ADJUDICATION

DATE: JUNE 8, 2001

**ADJUDICATION, FINDINGS AND DISCUSSION IN SUPPORT
OF CUSTODY ORDER OF THIS DATE**

Background

The custody issues before the Court for determination arise based upon a petition filed by Mary (Kaiser) Basile (hereinafter referred to as “Mother”) on May 31, 2000 asking the Court to modify its prior Order of November 16, 1999, which granted James Buehler (hereinafter referred to as “Father”) primary physical custody of the child, Brook E. Buehler who is now eleven years of age. Brook’s date of birth is February 13, 1990. Mother’s modification petition requests that she be given sole legal custody and primary physical custody of Brook. Also at issue are petitions filed by each parent asserting the other is in contempt of the custody order.

The issues involving the care, custody and well being of Brook E. Buehler first arose when she was age 2. The details of the proceedings at that time are set forth in this Court’s Order of May 28, 1992.

[O]n November 19, 1991, the child's babysitter discovered that the child had several injuries to her buttocks. The babysitter reported her findings to the Lycoming County Children & Youth Services, because she suspected the child had been abused due to the severity of the injuries. The Children & Youth agency had the child examined at a hospital. The agency then placed the child in the custody of her father, James Buehler, without objection from her mother, Mary E. Kaiser.

The child's mother and father had never been married and had separated on about October 1, 1991. From about October 1, 1991, until November 19, 1991, the child had been in the primary custody of the mother and had resided with the mother and the mother's paramour, Jason Jean.

On December 13, 1991, action #91-21,839, by a Petition for Writ of Habeas Corpus, . . . the mother, [sought] the child's return to her custody. . . .

On December 23, 1991, the father filed a Petition for Custody to #91-21,885. . . .[the instant action]

On January 9, 1992, a Petition to declare Brook Buehler a dependent child was filed by the Lycoming County Children & Youth Services to #92-30,004.

. . . [T]he mother, Mary Kaiser, has been found by this Court to have been a perpetrator of abuse by omission [by an order of February 14, 1992 entered after a combined evidentiary hearing on all three cases. This finding was subsequently affirmed by the Pennsylvania Superior Court].

. . . A report has been received by the Family Court Hearing Officer from LaRue Montanye, D.Ed., dated May 12, 1992, indicating that mediation was attempted but was unsuccessful. In addition, the Court's Order of February 14, 1992, awards physical custody of the minor child to the father but makes no statement concerning legal custody.

The Order of February 14, 1992 granted Mother supervised visitation with the child. Mother was given supervised overnight visitation on alternate weekends by an Order filed June 22, 1992.

The case was then scheduled for a custody trial. At the pretrial conference of October 28, 1992 an agreement was reached and an order of that date was filed November 24, 1992. This order established the framework that has remained in effect until 1999. The parents agreed to shared legal custody with Father having primary physical custody of Brook.

Mother was granted partial physical custody every other weekend and at least one overnight each week. The Order also established a schedule of shared holidays. The Order maintained limited Children & Youth Services involvement including specifically that C&Y assure the parents exchanged necessary information and communicated as to Brook's needs, particularly as to medical care. The parties also agreed that when the parent with physical custody needed childcare for Brook, rather than obtaining a third party (excluding grandparents) the other parent would be contacted and utilized if available. Despite the comprehensiveness of this Order the litigation continued virtually uninterrupted.

Issues involving Father's availability to care for Brook due to his work schedule (*see* Order of February 23, 1993) and constant desire of Mother to obtain primary custody dominated the litigation (*see*, petition filed February 25, 1993). In addition, there was ongoing bickering over perceived failures of the other parent failing to live up to the terms or spirit of the controlling order. (*See*, Order filed March 8, 1993.) After mediation an agreed order was

filed on September 2, 1993 which provided Mother's physical custody would alternate every other week with Mother having custody one week from Thursday through Sunday and the following week Wednesday and Thursday.

Two additional custody orders by agreement were filed in 1995. The first related to transportation. The second is not available in the Court file but apparently adjusted Mother's physical custody time to be from Wednesday, rather than Thursday, through Sunday every other week.

Mother initiated a request to obtain primary physical custody on December 2, 1998, which eventually resulted in the filing of the presently governing November 16, 1999 Order.

The essential times of primary and partial physical custody and also shared legal custody of the November 16, 1999 Order were agreed to after several days of trial on August 25, 1999. The agreement was reached after Brook expressed in Chambers in front of her parents, their counsel and this Judge a desire to be primarily with Father during the school year and with each parent on an alternating week basis in the summer. During the school year Brook was to be with Mother every other week from Wednesday evening through Monday morning.

On August 23, 1999 the parents agreement was placed on record with the Court left to decide the remaining disputes concerning holidays, the beginning date of alternating weeks in the summer and the matter of who would care for Brook when a parent entitled to custody would be absent from the home. As the Court attempted to reach agreement between

counsel on these issues Father and stepmother inappropriately initiated at least three letters to this Judge and included two requests attributed to Brook asserting a desire to remain with her stepparents when a custodial parent was away from home and a desire that she not spend more than one week with each parent in the summer.

The Court's Order filed November 21, 1999 maintained the same framework as the October 28, 1992 Order (as it had been modified in 1995) with the addition of alternating physical custody weekly in the summer as the parents and Brook had all requested. This Court did direct, however, that Brook was to spend the first two weeks of school summer vacation with Mother and maintained the prior direction that a parent who was to be absent during times of physical custody in excess of 24 hours or need to use a third party babysitter for more than four hours.

On December 14, 1999 following a conference between the parties in response to a Petition for Special Relief that had been filed by Mother on October 19, 1999, an Order was entered which directed Father to take the child to church services on each Sunday when he had custody and otherwise to cooperate with Mother in seeing that Brook completed classes necessary to join the church. That Order also recognized the need to have a further hearing on the matter. In lieu of the trial which was scheduled in response to that Order, an Order of March 23, 2000 was entered approving a Custody Agreement dated March 3, 2000, between the parties which permitted Mother to pick Brook up at Father's residence on Sundays before church when he had custody and further provide that Father would pick Brook up after church.

The March 3rd Agreement also provided that Mother's Wednesday night partial custody would be shortened by one hour the following Wednesday and also clarified that Mother was responsible to see that Brook attended Sunday School on the weekends that Mother had custody.

In the Petition to Modify Custody filed May 31st, Mother generally alleged significant changes of circumstances had occurred which mandate the existing custody Order be changed. Mother followed the modification petition with a Contempt Petition filed June 26, 2000 asserting Father was in contempt of the custody orders because he had failed to provide Mother with school records and papers. The Petition and testimony of Mother and asserts that Father had intentionally withheld documents relating to Brook's schoolwork from her.

On July 19, 2000 Father filed a Petition for Contempt asserting Mother had violated the custody order provisions that directed the parents to communicate directly with each other when any desire arose to modify the physical custody schedule because without such discussion or notification Mother had taken Brook to the psychologist, Dr. Dan Egli, for the purpose of obtaining a modification of the custody order.

On June 13th a preliminary conference was held on the modification petition. The Order of that date directed a pretrial conference be held on August 28, 2000. The June 13th Order noted Mother had taken Brook to Dr. Egli for an update of the prior psychological evaluation and directed Father to cooperate with Dr. Egli's evaluation process. It also permitted Father to obtain his own psychological evaluation. After the pretrial order was filed

August 31, 2000 directing the case be tried on December 28, 2000 before this Court and allocated one-half day for trial. Although not specifically referenced, it is this Court's understanding that everyone had agreed the contempt issues raised by each party as well as the custody issues would be determined at this trial.

On December 14, 2000 Father filed a cross-petition to modify the custody order seeking to change two provisions of the existing order, specifically: (1) to reduce Mother's physical custody of the two weeks immediately following the conclusion of the school year to one week, so as to commence the week-to-week summer vacation immediately at the conclusion of the school year; and (2) to eliminate the requirement that the parent with physical custody who was to be absent from the home contact the other parent to determine whether or not partial custody of the child should be given to the other parent during the absence of the custodial parent.

In accordance with the pretrial conference Order filed August 31, 2000, Father has filed Proposed Findings of Fact and Conclusions of Law. It does not appear that Mother has ever filed proposed findings or conclusions.

Unfortunately the trial of these proceedings could not be completed in the one-half day allotted for trial on December 8, 2000. Instead these proceedings have been the subject of hearings held on December 8, 11, 20 and 22, 2000 as well as February 16, 28 and March 1, 2000. Because of the protracted nature of the litigation this Court directed at the conclusion of closing arguments on March 1, 2000 that transcripts of the testimony of Dr. Egli

and the Child be prepared. The December 11, 2000 proceeding consisted of an interview of the child which was attended by counsel for the parents, Joy R. McCoy, Esquire for Father and William J. Miele, Esquire for Mother. Counsel and the parents agreed that no record would be made of the December 11th interview. In addition, the transcript of the testimony of Mother on December 20 and 22, 2000 has also been transcribed. The last of the transcripts was submitted to the Court on March 28, 2001 and at that time the Court contemplated (but unfortunately did not order) a completion of the transcription of all of the testimony in order to assist the Court in its decision. In May 2001 this case was mistakenly omitted from the Court's listing of deferred decisions. Appropriately, counsel on May 31, 2001 contacted the Court to remind us that a decision had not been issued and requested a decision be made at the earliest possible date.

Accordingly, the following findings will be made and an order will be entered based upon available transcripts as well as the Court's notes concerning the proceedings that were not transcribed.

Findings of Fact

1. Brook E. Buehler is 11 years of age having been born on February 13, 1990.
2. She is the daughter of Mary Kaiser Basile and James Buehler who have never been married to each other.

3. Brook has resided primarily in the physical custody of her father since November 1991 when she was twenty months old. Mother has had frequent and consistent contact and association with the child throughout her life. Specifically since 1999 Mother has exercised her physical custody rights, including during the school year, every other Wednesday from 5:30 p.m. until the following Monday at 7:45 a.m. the initial two weeks of the school summer vacation and alternating weeks during the remainder of school summer vacation. The parents have an equal sharing of all the holidays including an allowance for Halloween and the child's birthday.
4. Father has been married to Michelle Buehler for seven years. They reside at the Boston Cove development in Picture Rocks in a single-family home with their five-year old child, Fletch, and Brook.
5. Michelle Buehler has resided with Father and Brook for approximately eight years and has provided many parenting duties and obligations for Brooks over that period of time.
6. Michelle and Brook enjoy an excellent parent-child bond.
7. Mother has been married to Larry Basile for approximately 5 years. They had lived in Montoursville in 1999.

8. Mother and Mr. Basile purchased a single-family home in Hughesville as of February 2001.
9. The Basiles have a young daughter, Calli, age 5, and a son, Angelo, age 6 months.
10. Brook is in the fifth grade at the Farrell Elementary School in the East Lycoming School District which is located at Picture Rocks and will complete the sixth grade at that school next year. Thereafter she will attend Junior High School, which is located in Hughesville within a few blocks of her Mother's home. Brook does very well in school.
11. Father, stepmother and mother are all very active in Brook's school activities. Brook expresses a strong desire to remain in her current school.
12. Mother and husband and Father and wife all are loving people towards Brook and are individuals whom Brook also loves.
13. Dr. Dan Egli, the psychologist utilized in 1999 and 2000 as an impartial evaluator, has expressed an opinion that Larry Basile, as stepfather, plays an appropriate supportive role in Brook's life. He has also expressed the opinion that Michelle Buehler oversteps her boundaries as stepmother and assumes roles that an actual parent, specifically Father should be performing, particularly regarding the relationship between the two

households and the making of communications and decisions jointly between those households *See* generally, N.T. 12/8/2000, pp. 7-10, among many other references including the report of Dr. Egli dated October 16, 2000, Mother's Exhibit 1.

14. Dr. Egli also expressed the opinion that Michelle Buehler is too involved in school matters that relate to Brook and performs functions relating to school that would be better performed by Father. *See*, N.T. 12/8/2000, pp. 10-11.
15. Dr. Egli is of the opinion that the over involvement of Michelle Buehler in Brook's life potentially puts Brook in a situation where she may view her mother in a negative light and become alienated from her. *See*, N.T. 12/8/2000, pp. 8-11 and report of October 16, 2000.
16. There are many conflicts between the two households where Brook resides. The conflicts are especially strong when communications are attempted directly between Father and Mother. Father does not assume any responsibility for these conflicts.
17. At least until recently Michelle Buehler and Mother have had the ability to communicate frequently, courteously and reasonably and in fact amicably on many matters of importance in Brook's life.

18. Dr. Egli recommended in October/November 2000 to Michelle Buehler that she should step back from her involvement and permit Mr. Buehler to assume a more appropriate role in dealing with Mother. Dr. Egli was unable to express an opinion as to whether or not this is likely to occur. *See*, N.T. 12/8/2000, pp. 13-14. He had made similar suggestions in 1999.
19. The 1999 custody proceedings concluded with the parties reaching an agreement after Brook had given statements to the Court in the presence of Mother and Father that she would prefer to spend her school year living in Father's home but spending as much time as possible with Mother. Upon receiving that statement Mother conceded to Brook's wish in reaching the 1999 agreement as to custody evidenced by the November 16, 1999 Order concerning the issue of which parent should have primary physical custody.
20. Dr. Egli's testimony in 1999 was that Brook expressed a strong desire to have equal time with both parents. *See also*, Mother's Exhibit #2, (Dr. Egli's April 1999 Report) at pages 3 and 4.
21. Brook subsequently expressed in her 2000 meetings with Dr. Egli that at the hearing in August of 1999 she was misinformed by Father that Father and Mother had agreed she should live primarily with Father during the

school year and share the summer equally. These statements by Father were apparently made shortly before she met in Chambers with this Judge and the parents on August 31, 2000 and had prompted her to make that expression to the Court in front of her parents.

22. Dr. Egli stated Brook also expressed to him in 2000 that upon making the August 1999 statement of preferring to live with Father during the school year she immediately knew that something was wrong because of her Mother's reaction. According to Dr. Egli Brook feels her Father deceived her at that time. N.T., 12/8/2000, pp. 24-26.
23. In Dr. Egli's opinion, when Brook is at Mother's home Mother assumes primary responsibility and when Brook is at Father's home the primary responsibilities concerning Brook are shared with a "leaning" towards stepmother. N.T., 12/8/2000, p. 30. This opinion has been substantiated by the testimony found credible by the Court.
24. Dr. Egli found, and the Court agrees, that Brook has maturity beyond her age and has dealt with life to date in an excellent manner and has no apparent adverse character, personality, and educational or social problems. *See*, for example, N.T. 12/8/2000, pp. 32-33.
25. Brook does turn to her Mother for personal and emotional guidance and support much more so than she turns to her Father or to stepmother. *See*,

N.T. 12/8/2000, pp. 31-32, among other testimony considered by the Court including statements by all of the parties and Brook.

26. This Court finds Brook does have a tendency, as noted by Dr. Egli, to be concerned as to what her parents and stepparents think of her. Brook recognizes she will impact them to the extent she expresses a desire to have contact with them in a particular way or for a particular amount of time and is prone to make statements that she believes may be pleasing to them in order not to offend or hurt them. N.T., 12/8/2000, pp. 35-38.
27. Brook's anxiety concerning not offending parents as to her wishes as to where she spends her time result in her frequent statements when asked about with whom she would prefer to live or other preferences concerning custody she openly states "I don't know." *See*, N.T. 12/8/2000, pp. 56-59.
28. In essence Brook does not really want either parent to have more time or a better relationship to her or with her than the other.
29. Dr. Egli expressed the opinion, and this Court agrees, that Brook should not change schools at this time or for the sixth grade. N.T., 12/8/2000, pp. 38-39.

30. Dr. Egli recommended a shared custody arrangement with Brook alternating between the households on an appropriate rotating basis of week-to-week or once every two weeks.
31. Dr. Egli expressed a sentiment and opinion to the effect that the issue in the case was not the actual custody arrangement as any custody arrangement for Brook could be reasonable because of the “good” nature of the parents and the child. *See*, N.T., 12/8/2000, p. 62.
32. While Dr. Egli is of the opinion that the entry of stepmother, Michelle, into the picture with Mother and Father causes sparks to fly, the Court finds that Michelle’s presence has the effect of subduing these sparks and animosity between Father and Mother and particularly her influence encourages Father to be more cooperative and responsive.
33. Dr. Egli observed in August of 1999 that both parents were somewhat immature and needed to improve their stability over their prior history of impulsive behavior. He also recognized that in addition to stability, integrity and character were significant issues. Dr. Egli also found in 1999 that both parties had a history of making poor judgments dealing with authority and inter-personal relationships. He also found that Brook could manipulate Mother more than Father. *See*, Mother’s Exhibit 2., pp. 3-4.

34. Dr. Egli in 1999 had also found a need for Michelle to keep out of the middle of the relationship between the parents and to say no to being thrust into the position of resolving conflicts in order to increase the parent's skills, desire and ability to be more effective in their dealing with each other in making decisions in caring for Brook. He also noted they seemed to enjoy their anger at each other even though it would hurt Brook. *See, Mother's Exhibit 2., pp. 4-5.*
35. In 1999 this Court had received sufficient testimony so as to have come to an agreement with the opinions expressed by Dr. Egli, prior to the time that the resolution of the August 1999 trial occurred.
36. Dr. Egli's observations expressed in his testimony of December 2000 continue to be essentially the same and the Court agrees with these observations as having been established by the testimony by which the Court has received from the other witnesses in the case. The Court also finds that Michelle Buehler is now becoming more defensive in her role and while she continues to play a necessary role of calming the anger between Mother and Father she continues to interject herself in Brook's life in terms that at times can be negative, such as stating that they would move out of the East Lycoming School District should Mother purchase a residence in that school district.

37. Father and stepmother Michelle have exerted pressure on Brook to make statements to the effect there should be no change in the present custody arrangements.
38. Father has not made any good faith effort to become engaged in counseling or to seek resolution of the conflicted manner of the relationship that exists between he and Mother.
39. Mother has been primarily responsible to see that Brook has developed an appropriate religious life and faith with little encouragement given to Brook in this regard by Father.
40. Brook continues to express a strong desire to attend a day care during this school's vacation, and this expression is inconsistent with a desire that she spend time with her Mother.
41. In August 2000 Mother resigned from work due in part to the anticipated birth of Angelo to her and Mr. Basile, and also because of Mr. Basile had obtained additional income from his source of employment. Mother intends to refrain from employment and care for her children.
42. Mother's new home in Hughesville is two blocks from the Ashcar Elementary School, which Brook could attend should it be desired, it being in the same school district as the Farrell Elementary School. Mother's new home is also two blocks from the Junior and Senior High

School that Brook will attend beginning in the fall of 2002. Mother's new home is essentially the same distance from the Farrell Elementary School, which Brook attends as is Father's, that is, 2-3 miles.

43. In the summer of 2001 and Father's primary physical custody Brook attended the D&K Daycare program. At the present time, following the completion of the school day, Brook rides a school bus to the Hughesville High School and then walks two blocks to D&K Daycare until she is picked up between 3:30 and 5:00 p.m. by Father/Stepmother and/or Mother. Her younger stepbrother Fletch also goes to the D&K Daycare center with her. Plans of Father's household will be that when Father is working during the time he has physical custody during the summer Brook will attend the D&K Daycare. Brook expresses a desire to attend that daycare rather than to spend the time with Mother based upon her belief that she has at least one good friend who will attend that program and further that she enjoys the special field trips that are offered by the daycare during the summer months.
44. When Mother has physical custody of Brook daycare is not utilized.
45. Mother has requested that Brook be at her home whether after school or during the days in the summer rather than for Brook to attend the D&K daycare program. *See*, N.T. 12/20/2000, pp. 12-13.

46. Mother pays child support to Father in the amount of \$56 per week.
47. The work Mother previously had at the brokerage house paid her \$24,000 per year.
48. Solely from Mr. Basile's employment the household income for Mother is approximately \$65,000 per year.
49. Father is employed by Twin Hills Landscaping and essentially works there sporadically throughout the year and at best could be considered to have part-time employment. Twin Hills Landscaping is owned by his wife Michelle. The Court considers it to be a family-owned and run business despite the fact it is in stepmother's name only and that Father's name is not carried as an owner.
50. Father performs most of the physical labor and essential operations of the landscaping business and Michelle tends to the bookwork and does some weekend work at the landscaping business depending upon the season.
51. Michelle has full-time employment as a bookkeeper for a contractor, with an income of approximately \$40,000 per year.
52. The Twin Hills Landscaping business grosses \$105,000. Father asserts he is paid only a \$9,000 salary. The household does earn about \$26,000 from this business.

53. Father admits to full-time employment only from mid-April through June of each year.
54. Twin Hills Landscaping business is essentially closed from January through March and September through November, that is six months out of each year.
55. Father and stepmother failed to provide Mother consistent notices concerning Brook's school activities and programs despite this Mother attends most school functions to which parents are invited as do Father and stepmother.
56. Mother has been active as a grade parent for Brook as has Father.
57. Mother and Father have frequently feuded over any of the discretionary aspects of a governing custody order. For example, *see*, N.T. 12/20/2000, pp. 4-11; pp. 20-26; 29-32.
58. Mother has voluntarily sought parenting classes to attempt to correct parenting issues identified by Dr. Egli. When Brook is at her Mother's, Mother is the primary caregiver. When Brook is in Father's home, Father and stepmother are equal in care giving with Mother performing many of the supportive chores such as food preparation and laundry.
59. Brook is cared for well in the homes of both parents.

60. There are occasions when Brook is at the D&K daycare center that Father's job will permit him to quit early so he picks her up prior to the end of the day, but this is happenstance and only a few times each summer.
61. Mother is over jealous of the role Michelle plays with Brook and Brook recognizes and has advised Mother that she gets too jealous.
62. Mother disapproves Brook referring to Michelle as "Mom" other parent-type words when she is in Father's custody, although this is a very natural and appropriate reaction given the long-standing relationship that exists between Michelle and Brook.
63. Father personally confronts and belittles Mother concerning Mother's attitude and affection for Brook and is very reluctant to provide Mother any extra/discretionary time as provided by the Court Order.
64. Both homes provide an adequate place for Brook to live. The routine at both homes is very similar. All parents and stepparents are willing to assist Brook with her schoolwork and do so although Brook needs little help and does very little school work outside of school.
65. In both households the schedule varies as to which parent/stepparent will take Brook to school or pick her up at the end of the day depending upon personal schedules, needs and availability. Suitable transportation

arrangements are always made and the variation in the person dropping off or picking up Brook has little, if any, effect upon her well being.

66. The low level of communication and high level of anger between Father and Mother is really not affected by Michelle's involvement. Brook observes Father and Mother angrily talking to each other on the telephone and hanging up. Stepmother Michelle's involvement does help reduce the level of anger witnessed by Brook.
67. Both parents have good extended families and support systems that are meaningful to Brook.
68. Mother can tend to be overemotional around Brook, particularly if it is a matter that would seem to impact her custody and she does not hide her emotions or disappointment with Father very well.
69. Stepmother as well as Father does not like to deviate from exact terms of the Order and has been reluctant to encourage granting discretionary time to Mother.
70. Stepmother played an active role after the August 1999 Order was issued in discussing changes to that Order with Brook and actually suggested to Brook that certain provisions should be changed and engaged in inappropriate communications to the Court which the Court finally had to

reprimand the parties concerning *ex parte* off-record communications being made to the Court.

71. Despite interjecting herself into the relationship situation between Mother and Father and acting as a somewhat positive influence upon Father in communicating with Mother since August 1999 stepmother Michelle has not consistently communicated Brook's school activities to Mother. Father does not communicate any such matters to Mother and relies solely upon stepmother to do such communications. What few written communications there have been between Father's household to Mother's household essentially have all physically prepared by stepmother.
72. It is important to Brook to remain in Farrell Elementary School to complete her grade school education. This importance in Brook's mind and is also appropriate for her overall well being and adds a significant measure of stability to her life.
73. Brook is afraid her Mother seeks primary physical custody at this time so she would only be able to see her Father on weekends or on every other weekend.
74. Brook is not able to express whether she would or would not like to "flip-flop" between the parents' homes, that is to spend alternating

weeks, two weeks or alternating halves of the school year stating that she “I don’t know if I’d like or I don’t it I wouldn’t.” *See*, N.T. 2/28/2001 at p. 35.

75. Part of Brook’s concern is that she would miss vacations with parents, particularly Father if there is a change to the schedule and was able to show an attitude of comfort with a shared schedule when assured she would not miss vacations with either parent nor would she miss time with either set of grandparents if placed in an alternating physical schedule; this was voiced with a simple ok but her physical expression indicated satisfaction with that assurance. *See, Id* at 35-36. *See also*, N.T. 42-43.
76. Father and stepmother and Mother are very jealous of each other providing snacks for school.
77. Both parents have exercised some poor judgment in the types of movies and other activities that Brook is allowed to watch.
78. Mother’s direct statements as well as her emotional attitude and actions cause Brook to believe there are things which occur in Mother’s life she should not disclose to Father.
79. Brook has expressed a desire that she not be in Mother’s home for the first two weeks after the end of school because it takes her away from Father’s home for too long. Although expressed somewhat strongly by

Brook the Court distinctly had the impression in her approach to this subject that it was something that had been more prompted in her rather than her own idea and the thought that she be away from Father and 5-year old brother Fletch too long did not really seem sincere and appropriate with Brook's other approach to custody issues.

80. Brook also expressed a desire of not needing to go to the other parent's home when a parent who has physical custody overnight because of an interruption upon her and the good relationship she has with the stepparents. Her attitude and approach in discussing this subject was distinctly different than the approach she had to the two weeks at the beginning of school summer vacation and seems much more sincere and more aptly expressed by Brook.
81. Overall, Brook does not want to spend any less time with Mother than she does with Father.
82. Brook voices that she is very comfortable with the way the current schedule exists.
83. Brook's enthusiastic expressing to the Court of grasping the current schedule and adopting seems to be somewhat in a reaction that she fears she may be confined to weekend time only with Father and is in stark contrast to the testimony to Dr. Egli who notes a consistency in Brook

since 1999 through the fall of 2000 to the extent that she is equally comfortable and desires to be with both parents equally.

84. The Court believes that the animosity of Father to Mother in many respects has its roots in the initial situation which gave rise to Brook being placed with Father as an infant in November 1991. Specifically, the Court believes Father developed a resentment concerning Mother and the situation that arose to the child being abused and perhaps also continues to harbor some feelings of responsibility in that he was not more involved in the child's life prior to that time. Mother continues to have resentment concerning the aspect that the child was taken away from her at that time when she did not overtly commit any abuse against the child and perhaps continues to feel some guilt about the fact that her inaction led to the child being placed with Father. These initial feelings of animosity and resentment between the parties unfortunately continue to fuel the fire of anger that they continue to exhibit.
85. The anger and animosity between Father and Mother has a great potential of having an adverse impact upon Brook, regardless as to the custody arrangements that may be made particularly as she progresses into her teenage and junior high school years. *See*, N.T., 12/8/2000, pp. 32-33, among other testimony considered by the Court concerning the

dysfunctional relationship between the parties. The animosity between Father and Mother may have an adverse impact on Brook in a physical way as well as an emotional way. *See*, N.T., 12/8/2000, pp. 69-71, among others.

86. Despite the conflicts that exist between the parents they nevertheless, in total, have worked sufficiently together so as to make an environment in both homes that is suitable to Brook, has encouraged her development as an individual and have made a shared physical and legal custody arrangement workable and one that could succeed. *See*, N.T., 12/8/2000, pp. 78-80.
87. Brook does not desire a change that would give Mother primary physical custody over Father.
88. Brook has a desire to make both parents happy and will be happy when they are both happy. *See*, N.T. 2/28/01 at p. 30, among others.
89. In the opinion of Dr. Egli, Brook has no significant concerns of being hurt by any parent or stepparent nor does she doubt their love; she expresses no clinically significant level of anxiety that impairs her functioning in social or educational settings insofar as her relationship to her parents are concerned; however, Brook does demonstrate anxiety about the interaction of the parents. *See*, N.T. 12/8/2000, pp. 20-21.

90. The Court finds Brook has stress and anxiety and that this anxiety is not significantly attributable to actions of Michelle Buehler but rather to the spiteful, if not almost hatred level, that exists in the emotions and feelings between Mother and Father. The negative feelings are more overtly expressed by Father, but nevertheless, significantly exist and are expressed by both parents.
91. The Court finds Brook can be equally happy in the home of either Father and Mother as the primary physical custodian. She has a bond and a loving relationship with the members of the household of both parents. If at all possible, Brook would just as soon live the same amount of time in each home.
92. The Court also finds that Brook's best interest and welfare require a stable relationship with both be maintained which will enable her to engage in school and related activities, church functions and other activities which occur outside of the home.

Discussion

Brook Buehler is a bouncy, chirpy, cheerful and very appropriate 11-year old young lady. She does well in school, getting most of homework done at school or daycare and is very fond of the school she attends and the friends she has there with the school being one of the most stabilizing matters in her life, particularly in contrast to the unhealthily, argumentative

atmosphere that exists between the two households with whom she spends her time. Brook expresses a desire to keep the custody arrangement the way it is, but it is apparent to the Court that there is a significant amount of pressure exerted on Brook both overtly and non-overtly by Father and stepmother which impacts this expression. One of the things that appears to be in the back of Brook's mind and verbally expressed by her and again expressed as much in the way of her manner of expression as verbal is that a change in the current custody arrangement would affect the school she would attend. Brook did not enthusiastically endorse the Court's suggestion of various alternating custody for equal time sharing of physical custody time between Father and Mother during the school year. She did enthusiastically endorse that concept for the school summer vacation. This latter desire was even to the extent of not wanting to spend the initial two weeks of school summer vacation with Mother. This raises an inconsistency to the Court. We believe there is a real desire Brook has in wanting to be equally with each parent. This is substantiated by Dr. Egli. But yet, when given an opportunity to equalize it during the school year Brook was hesitant in adopting the same.

The Court is not satisfied with the thought of dropping the two weeks with Mother at the beginning of the school year was a product solely of Brook's thoughts as much as it would have been a thought implant by Father or stepmother.

Mother is overly jealous concerning the role of stepmother. This is unfortunate because there have been many occasions in the past when communications between Mother and stepmother went well. They had a good impact on Brook. Brook enjoyed seeing the

cooperation between Mother and stepmother and all people benefited. The psychologist has criticized stepmother quite severely for being overly involved in Brook's life. In addition, Brook is observing Mother's adverse reaction to the close relationship she has with stepmother. This obviously is causing anxiety in Brook's life. The fact is that Stepmother is essentially for all intents and purposes a second mother for Brook and she has effectively and appropriately acted in that role since Brook was three or four years of age.

The Court has also perceived a slight jealousy towards Mother's new infant child, Angelo on the part of Brook and perhaps little reluctance on Brook's part to be in Mother's home and competitive environment for Mother's attention and time.

The Court believes it has considered all the applicable factors in arriving at its decision in this case. Many of the factors are equally balanced or have no meaningful distinction. The parties' income, age, marital stability, standard of living, type of household, rules and conduct have little difference. The religious training and emphasis given in Brook's life weighs favorably for Mother. Although Father has had "primary" physical custody of Brook the amount of time Mother has had physical custody of Brook has been substantial and meaningful. Perhaps on a straight percentage basis 60-65% Brook has been in Father's physical custody and 35-40% Brook has been in Mother's physical custody. Brook has an excellent relationship to stepsiblings in both households. In both households parents have shortcomings. Both parents are not likely to foster any contact with Brook except as provided by the explicit terms of the Order. Both parents have from time to time, in relatively minor

ways, interfered with the other parent's custody rights. The advantage in this regard is that it appears that as a stepfather Mr. Basile has enjoyed a more appropriate expected stepparent role than has Michelle Buehler as stepmother. Nevertheless, there is no question that Michelle Buehler's early involvement in Brook's life for a substantial amount of time has been beneficial to Brook and has resulted in Brook having a bond that could only be described as a parent-child bond with Michelle Buehler.

In the past Michelle Buehler has been a positive influence on the relationship. Unfortunately, it appears that since 1999 rather than step back, perhaps feeling somewhat that her own role in the relationship with Brook is being threatened it appears that Michelle Buehler has continued to interject herself in the relational difficulties between Father and Mother. Brook has been noted by Dr. Egli as seeing that there is more discipline and perhaps consequences in Father's household than in Mother's. Brook gives a definite appearance of wanting to please both parents but fearing that Father and no doubt Michelle might act more adversely than Mother would act when and if Brook would openly state to all concerned that she has no real preference.

Brook's preference to be for the most part with Father during the school year, however, does have some rational basis in that Brook is concerned that any change might adversely affect her schooling. While this is an appropriate expression by Brook the fact is that the uncontradicted testimony of Brook is that she does so well in school without trying and needs very little assistance at home from anyone. Also, Brook's doing well in school has

occurred with Mother having Brook in her home every other week from Wednesday through Monday. It appears to the Court that there is little chance that Brook would suffer adversely at school if she alternates on an equal basis between the homes of the parents during the school year. Nevertheless, particularly as she gets older and more involved in school activities Brook will need a stable home environment from which to plan and carry on her activities. This will become especially important as she changes school at the beginning of 7th grade and enters junior high school.

With Mother having moved into the school district and now not being employed there is little reason why Brook cannot spend equal time in both homes during the upcoming 6th grade year providing she remains at the Farrell Elementary School, and there is no reason why she cannot do so. This will entail Mother seeing that she has transportation to the Farrell school in the morning, no doubt. However, Mother has been able to effectively do this quite often even when living 15 miles away and working so she should be able effectively do so now that she lives two miles away and is not working. In the evening after school Brook now rides into Hughesville and gets off the bus within two blocks of Mother's home regardless as to whether she would be living with Father or Mother.

The Court is of the concern that Stepmother has made statements so Brook is of the mind that if Mother moves into the school district (as she has) that Father and Stepmother will move out of the school district. This is unfortunate. It no doubt has a significant effect upon Brook wanting to say she believes things should be kept the same during the school in

order she can continue to attend the Farrell Elementary School, which is an overwhelming desire on her part.

In the summer, if the parties have a decent relationship, there are great opportunities for Brook to be either at Father's home or Mother's home as the circumstances would indicate could be in her best interest from time to time rather than on a fixed rotating schedule. This would be especially true as to Brook being at the daycare center while in Father's custody in the summer. While it may be yet appropriate in the upcoming summer for Brook to spend a fair amount of time there she is near the age where this would no longer be appropriate. The daycare center has an attraction for Brook because of some friends and field trips. Nevertheless, there are many days where these will not be strong factors in Brook attending daycare and it may be that she would be better off with her Mother and step-siblings. This could be especially attractive if from time to time her stepbrother, Fletch Buehler, could also be included in the activities of the Basile home. Such is feasible. In fact, despite the animosity, joint family activities have occurred from time to time in the past. Hopefully, at some point, perhaps being led by Brook, the families will be able to communicate in such a way that this is again possible.

The Court is satisfied that Brook has expressed to Dr. Egli a sincere desire to be equally with both parents. That is the overall effect of Brook's desires and wishes. For one thing for the Court to find otherwise it would mean that the Court would have to believe Dr.

Egli has some type of private agenda. The Court is satisfied he has no such private agenda or purpose but is sincerely concerned that Brook's welfare be asserted.

This Court has always cautiously approached the idea of a 50/50-shared physical custody relationship. In this case, however, it seems it is appropriate and worthwhile and entering into such a relationship as to physical custody between the parents may reduce the antagonism between the parents. (*See*, Testimony, Dr. Egli N.T. 12/8/00, pp. 78-80.) Both parents refuse to recognize that they are equally loved and desired by Brook. More importantly, they continue to fail to realize that most of all Brook desires they have an appropriate loving relationship with each other particularly regarding providing care and love to her. It is our desire that this adjudication may open their minds and hearts.

Accordingly, the custody order of this date will be entered.

BY THE COURT:

William S. Kieser, Judge

cc: Court Administrator
Joy R. McCoy, Esquire
William J. Miele, Esquire
Judges
Suzanne Lovecchio (Law Clerk)
Gary L. Weber, Esquire (Lycoming Reporter)

JAMES BUEHLER,

Plaintiff

vs.

MARY E. BASILE,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA

:
: CIVIL ACTION - LAW
: NO. 91-21,885

:
:
:
: CUSTODY/VISITATION

Date: June 8, 2001

CUSTODY ORDER

This Custody Order, in accordance with the Adjudication, Findings and Discussion, entered the same date, is as follows.

1. **Legal Custody.** The parents, Mary E. Basile (hereinafter referred to as "Mother") and James Buehler (hereinafter referred to as "Father") shall *share legal custody* of their child (hereinafter referred to as "Child") Brook E. Buehler, date of birth February 13, 1990.

2. **Physical Custody.** Father and Mother shall share *physical custody* of the Child as follows:

(a) **During the Non-School Year.** In the year 2001, Mother shall have physical custody from the day the school year ends at 3:30 p.m. until the second Sunday after the school year ends at 8:00 p.m. Thereafter, until the Sunday prior to the beginning of the ensuing school year, Mother shall have partial physical custody every other week, from 8:00 p.m. on Sunday until 8:00 p.m. the following Sunday (beginning the third Sunday after school

ends every other week from Sunday to Sunday at said times). Beginning in 2002, Father shall have physical custody from the day the school year ends at 3:30 p.m. until the second Sunday after the school year ends at 8:00 p.m. Thereafter, the parents shall alternate physical custody weekly during the summer school vacation exchanging custody at 8:00 p.m. each Sunday.

(b) **During the School Year.** Mother shall have physical custody of Brook from the first Sunday before school starts until the end of school on Friday of the first week of school. Thereafter, parents shall alternate physical custody of Brook on a weekly basis with Father assuming physical custody at the end of the school day on Friday of the first week of school and Mother assuming physical custody at the end of the school day on Friday of the second week. This shall continue throughout the school year 2001-2002.

Parents are directed to see that Brook attends the Farrell Elementary School throughout the 2001-2002 school year. They shall cooperate in making such transportation arrangements as may be necessary to see that this is done with a minimum disruption to Brook's life.

Beginning with the school year 2002-2003 Brook shall begin the school year in Father's physical custody, as of the Sunday before school starts; this shall continue through the first half of the school year. During this period of time Mother shall have physical custody of Brook every other Wednesday from after school until the following Monday at the time for the beginning of school. In the second half of the school year Mother shall have physical custody of Brook, provided however, that Father shall have physical custody of Brook every other Wednesday from after school until the following Monday at the time for the beginning of

school.

3. **Holiday Physical Custody**. On the following holidays physical custody of the Child shall be shared between the parents as indicated:

<i>Holiday</i>	<i>2000 and Even Years Thereafter</i>	<i>2001 and Odd Years Thereafter</i>	<i>Time for Exercise of Custody On the Holiday by the Parent Having Custody</i>
New Year's Day	Mother	Father	From 9:00 a.m. until 3:00 p.m.; the other parent from 3:00 p.m. until 9:00 p.m.
Easter	Mother	Father	From Easter Eve at 4:00 p.m. until noon Easter Day; the other parent from noon Easter Day until 9:00 p.m.
Memorial Day	Mother	Father	From 9:00 a.m. until 9:00 p.m.
July 4th	Father	Mother	From 9:00 a.m. until 9:00 p.m.
Labor Day	Mother	Father	From 9:00 a.m. until 9:00 p.m.
Thanksgiving	Mother	Father	From 9:00 a.m. to 3:00 p.m.; the other parent from 3:00 p.m. until 9:00 p.m.
Christmas	Father	Mother	From December 24th at 4:00 p.m. to noon on December 25 th ; the other parent from noon December 25 th until 9:00 p.m. on December 26 th
Mother's Day	Mother	Mother	From 9:00 a.m. until 9:00 p.m.
Father's Day	Father	Father	From 9:00 a.m. until 9:00 p.m.

4. a. **The Child's Birthday**. The parent out of custody shall have partial physical custody of the Child for two hours on the Child's birthday; the parents shall cooperate in the birthday schedule.

b. **Halloween, October 31st**. The custody shall be with the parent who has custody based upon other provisions of this Order; however, the other parent shall be given

either October 30th or November 1st (as requested by the other parent) from 5:30 to 9:00 p.m. to celebrate Holloween.

5. **Summer Vacation.** If either parent takes vacation during the summer months, they will use best efforts to take vacation during their week of custody. If a vacation is taken during any part of the other parent's week, make up time of physical custody shall be provided for the other parent. The parents shall exchange vacation schedules at the earliest opportunity but not later than June 1st of each year.

Each parent may take a week's vacation during the school year and if it happens to conflict with the other parent's custody time, make up time shall be provided. Both parents will cooperate to make the Child available, when reasonable, for the Child to vacation with either the paternal or maternal grandparents. If either set of grandparents takes the Child on vacation which results in the other parent losing custody, such parent shall be given make up time.

6. **Transportation in Exchange of Physical Custody.** Transportation of the Child for purposes of exchange of physical custody shall be divided between the parties as they agree and the point of exchange of the Child for physical custody purposes shall be at a location as the parties may agree from time to time. Absent agreement the physical custody of the Child shall be exchanged at the designated times at the home of the parent who is to receive custody by the other parent delivering the Child to that home.

7. **Extensions of Times of Partial Physical Custody.** In the event that any period of a parent's physical custody is scheduled to end on a specific day which would be

followed by the same parent beginning another time of partial physical custody on the immediately following day, the ending time of the physical custody shall be extended through the overnight period of time so as to extend into the following day and not interrupt such parent's period of time of physical custody.

8. **Telephone Contact**. Each parent shall have reasonable telephone contact with the Child when they are in the physical custody of the other parent.

9. **Obligations of Shared Legal Custody**. All decisions affecting the Child's best interests, including, but not limited to, medical and dental treatment, religious, education, day care, and similar other social/community activities shall be considered major decisions. The parents shall consult with each other with a view towards obtaining and following a harmonious policy in jointly making such decisions in the Child's best interests.

Each parent shall keep the other informed of the progress of the Child's health, education, religious and social matters of significance. Neither parent shall impair the other parent's right to shared legal custody of the child. Each parent agrees to give support to the other in the role as parent and to take into account the wishes of the other for the well being of the Child.

With regard to any emergency decisions which must be made, the parent with whom the Child are physically residing at the time shall be permitted to make the decision necessitated by the emergency without consulting the other parent in advance; however, that

parent shall inform the other of the emergency and consult with the other parent as soon as possible.

Day-to-day decisions of a routine nature will be the responsibility of the parent having physical custody at that time.

Each parent shall be entitled to complete and full information from any hospital, doctor, dentist, psychiatrist, psychologist or medical care provider, any education or religious institution, teacher or other person, entity or authority having information about or authority over the Child, including the right to examine any documents concerning the Child or to receive copies of files or reports concerning the Child which any parent may have the right to examine or receive. Such documents include, but are not limited to, medical records, psychiatric records, academic records, school report cards, birth certificates or other governmental records.

Both parents may and are encouraged to attend school conferences and other activities of the Child. Either parent may be listed with the school as the primary parent to be contacted in the event of an emergency and to be notified regarding school events; the other parent shall be listed as an alternate. However, it will be the responsibility of each parent to provide the other with copies of report cards and all notifications of school conferences and events.

Neither parent shall schedule activities or appointments for the Child which would require the Child's attendance or participation at said activity or appointment during a

time when the Child is scheduled to be in the physical custody of the other parent, without that parent's express prior approval. Both parents shall cooperate to see the Child does attend all activities that the Child is required to attend by school or other authority and activities the parents have agreed are in the Child's best interests.

10. **General Parental Obligations.** While in the presence of the Child, neither parent shall make, or permit any other person to make, any remarks nor does anything that could in any way be construed as derogatory or uncomplimentary to the other parent. It shall be the express duty of each parent to uphold the other parent as one whom the Child should respect and love.

It shall be the obligation of each parent to make the Child available to the other in accordance with the physical custody schedule and to encourage and cause the Child to participate in the plan hereby ordered.

Each parent shall have the duty to notify the other of any event or activity that could reasonably be expected to be of significant concern to the other parent.

The parents shall communicate directly with one another concerning any parenting issue requiring consultation and agreement and regarding any proposed modifications to the physical custody schedule which may, from time to time, become necessary and shall specifically not use the Child as a messenger. Furthermore, neither parent shall initiate discussions with the Child of any proposed changes to the physical custody schedule or any

other issue requiring consultation and agreement between the parents, prior to discussing the matter with the other parent and making a good faith effort to reaching an agreement.

Both parents shall be cooperative with each other in all communications and shall encourage ongoing contact between the Child and the other parent. Each parent will provide the other parent with the location and phone number of their respective residences and in the event that during the period of having physical custody a parent plans to be away from that residence over night reasonable notice thereof shall be given to the other parent including a manner of contacting in the event of emergencies.

Neither parent shall abuse alcohol or drugs; while in actual physical custody of the Child. Neither parent shall allow the use of alcohol or drugs to impair their judgment or ability to perform parental functions.

11. **Counseling**. The parents/stepparents and Brook shall continue in family counseling.

BY THE COURT,

William S. Kieser

cc: Janice R. Yaw, Esquire
William J. Miele, Esquire
Mary E. Basile
755 Broad Street; Montoursville, PA 17754
James Buehler
P. O. Box 359, Boston Cove; Picture Rocks, PA 17762