

M. SCOTT KILCOYNE, : IN THE COURT OF COMMON PLEAS OF
 : LYCOMING COUNTY, PENNSYLVANIA
 Plaintiff :
 :
 vs. : NO. 96-20,715
 :
 CHRISTINE L. (KILCOYNE) HELTON, : CIVIL ACTION - LAW
 : CUSTODY/VISITATION
 Defendant :

Date: July 24, 2001

CUSTODY ADJUDICATION OPINION

Before the Court for determination after trial is the Petition for Modification of Custody filed by Mother/Defendant, Christine L. Helton on July 14, 2000.

Findings of Fact and Discussion

Father is M. Scott Kilcoyne, who resides at Box 28, Picture Rocks, Pennsylvania with his parents, Eleanor Kilcoyne and Michael Kilcoyne.

Mother is Christine L. (Kilcoyne) Helton, who resides at 714 Chippewa Road, Muncy, Pennsylvania 17756, with her husband Ronald S. Helton and his nine-year-old daughter, Rebecca Helton.

The two Children involved in this suit are Wesley Kilcoyne (Wes), date of birth October 26, 1991, age 9, who has completed the third grade in school as of June 2001 and James Michael (Jamie), date of birth September 24, 1993, age 7, who has just completed the first grade.

After their marriage the parties lived in Picture Rocks, Lycoming County, together in the area. In early 1995 they and the Children moved to Germany where Mother was stationed while serving in the United States Army. The parties separated in December 1995. Father returned to the United States in April of 1996. He brought the Children back to the United States with him. In May 1996 he initiated a divorce complaint and a petition for custody. The divorce was eventually granted in June of 1997 by consent.

The custody action made its way through the Courts until, in December of 1996, following a trial before the Honorable Kenneth D. Brown, an Order was entered establishing the parties should share legal custody of the two Children but that Father would have primary physical custody and Mother to have partial custody each year from the first of July until school began and also for the month of December. The Order provided that the July time of partial custody with Mother could be exercised in Germany or wherever Mother would be stationed but that the December time should be with Mother having the Children in Pennsylvania; it also made provisions for sharing the Christmas holiday. The Order also provided that Mother could have an additional ten days of partial custody of the Children if she had military leave in the United States at other times throughout the year.

Judge Brown's Order and Opinion entered on December 23, 1996, noted that both Children were very young, both parents were capable individuals and found the best interests of the Children were served by their residing in Picture Rocks with their Father as their primary residence because of the stability this offered. Judge Brown found that the Children had lived most of their young lives in the area, except for nine months spent in Germany. The Children had acquired an acclimation and acquaintanceship with the extended family, especially the paternal grandparents. Father, more so than Mother, had served as the primary care provider for the Children in the past and some inappropriate behavior was displayed by the Children when they had been with Mother. At that trial Judge Brown's adjudication notes that Mother's sister and aunt both offered testimony that supported Father's greater care role and such was also consistent with time and effort that Mother devoted to serving her military obligations. Finally, Judge Brown noted the relationship of the parents was marked by suspicion and acrimony, which he attributed to the recent separation.

Subsequently, in the summer 1997 the Children went to Germany to be with their Mother as that Order provided. Mother, in the meantime, had met her current husband, Mr. Helton, and had begun to reside with him prior to July 1997. In July 1997 she sent Mr. Helton to pick up the Children. The Children had previously met Mr. Helton during the summer of 1996. Mother and Mr. Helton were married on August 29, 1997.

Mother returned to the United States in December 1997 and lived in the Williamsport area for a month and then in January 1998 moved to Maryland close to Washington, D.C. where her husband was stationed with the service.

Shortly after Mother had established a residence in Maryland a custody conference resulted in an Order of February 10, 1998 that modified the previous Order of Judge Brown of December 23, 1996. The February 1998 Order provided for Mother to have partial custody of the Children on alternating weekends from Friday after school until Sunday at 5:00 p.m. and during the summer time from Friday at noon until Sunday at 7:00 p.m. The Order provided for the sharing of the major holidays of Christmas, Easter and Thanksgiving and also provided that in the summer Mother would have physical custody of the Children from the second Saturday in July until seven days before the start of school.

The Order had other provisions including: directing that the Children be with Mother on Mother's Day and Father on Father's Day; the sharing of the Children's birthdays; Mother was granted additional times of partial custody as the parties could agree with Father being directed to not unreasonably withhold his consent to Mother's request for additional time; Mother was to provide transportation and the parties were directed not to discuss any custody issues through the Children but directly with each other and providing telephone access to the Children by each party. The Order also directed that when Mother had custody of the Children during the summer she should be sure they attended any Little League games.

Otherwise, the provisions of the 1996 Order were maintained, significantly that the parents shared legal custody. Mother continued to reside in Maryland until approximately May of 1999. In July of 1999 she, her husband and daughter moved to their current home.

Testimony in this current proceeding has established this prior Order appears to have served the needs of the parties and the interests of the Children well, for the most part. Some disputes arose from time to time when Mother would make a request for additional time with the Children. Mother asserts that less than 50 out of 100 of her requests for additional time were honored by Father. Father asserts he acquiesced to all reasonable requests for additional time made by Mother. Nevertheless, the Court finds the Children are well adjusted, pleasant to be around, lack discipline problems and are well liked by all those they have contact with, including school personnel and fellow students, neighbors and the extended families of both parents. The Court also finds, as did Judge Brown in 1996, both parents have the ability to be capable and good parents. In addition, this Court finds the Children have adequate love and attachment to both parents without any significant difference in their bond with either parent. This speaks well, overall, for the job both parents have done in carrying out their parental duties. Unfortunately, this Court also finds, as did Judge Brown, that the parents' relationship is filled with suspicion and acrimony for which there is no longer any reason or justification and we further find this hurtful attitude is now being recognized by the Children, particularly Wes. Both parents are at fault for these attitudes and also both are at fault for causing needless stress to the Children by pursuing this custody dispute.

The present dispute was initiated by Mother's Petition for Modification of Custody filed July 14, 2000 asserting that she should have primary physical custody of the Children because she, "can provide the most suitable stable environment to meet the physical and emotional needs of the minor Children." See, Paragraph 7, Petition for Modification of Custody filed July 14,2000. At a conference of August 10, 2000,

the February 10, 1998 Order was modified to provide that Mother should have partial custody of the Children each Wednesday from after school until 8:00 p.m. and the case was listed for trial.

Mother and Father appear to be approximately the same age and come from the same social-educational economic family background and are of the same race. Father does not profess to have any particular religious practices. Mother is protestant and attends an evangelical Pentecostal church.

Father is a part-time instructor at Penn College during the typical school year of late August through May. During the summer he works in outdoor construction-type employment. During the past school year he worked on Tuesdays and Thursdays leaving the home at approximately 6:00 a.m. and returning by 4:00 p.m. or sometimes 5:00 p.m. In the summertime he leaves earlier and may return later working Monday through Friday each week. Father's income from all of his employment is approximately \$25,000. He resides with his parents in their three-bedroom home. The two boys share one bedroom and utilize a single full-size bed.

Father has a relationship with a "girlfriend" LaVern Tarron. Interestingly enough this lady was not listed as a witness on Father's Pretrial Memorandum but was listed as a witness on Mother's and was called as a witness in Mother's case.

Father has known Ms. Tarron from working at Penn College for approximately three years and began dating her in May of 2000. Ms. Tarron has three Children, two girls, ages 9 and 10 and a boy, age 2. She was divorced in 1996. She resides currently in the Williamsport area along with a sister and sister's infant child and also a nephew. Father and Ms. Tarron assert they have no future plans because it is too early to determine what their future may be together. Ms. Tarron and her Children spend most weekends at Father's home;, however, she and Father share the same bedroom on those occasions. Ms.

Tarron and her Children are actively involved in the activities of Wes and Jamie on the weekends they are with their Father.

Father lives in the Hughesville School District. The Children take the school bus to school. They are usually awakened by their grandmother, Eleanor Kilcoyne, and she gets them onto the school bus and also greets them at the end of the school day and is basically in charge of the Children until Father gets home from work. There are days when Father is not teaching that he takes care of getting the Children up and off to school. Father and his Mother share meal and household obligations concerning the Children with his mother providing most of the laundry work and most of the meal preparation work.

Mother is currently employed at the Muncy Prison as a part-time phlebotomist, working 15 hours a week (2 days), with a monthly income of approximately \$400-500. She and her husband and his 9-year old daughter, live in a four-bedroom house. Mr. Helton also works at the Muncy Prison, full time in administration, earning approximately \$25,000 annually. When Wes and Jamie are with Mother they share the same bedroom, each having their own twin bed. If Mother obtains primary physical custody of the Children she intends to give up work and remain at home with her husband, asserting they would be able to survive on his income. This home is in the Muncy School District. The Children would take a bus to the Muncy school similarly as they now take the bus to the Hughesville School District. Mother asserts she is willing to take the Children to their present school, Ferrell Elementary in the Hughesville School District as their home is about equal distance from the Muncy and Hughesville schools insofar as driving distance and time are concerned. However, if the Children were to be primarily with Mother and continue to attend the Hughesville school, they would be charged tuition of approximately \$1,800 per year each. This amount of tuition is not a realistic amount for either parent to pay.

The schooling of the Children, particularly Wes, was the center of much of the testimony in this case and Wes' poor performance at school became the gravamen of Mother's complaints at trial. Wes' failing school grades are the reason Mother believes she is best suited to be the primary physical custodian of the Children. Interesting enough, however, Mother's modification petition filed in July of 2000 made absolutely no assertions relating to Wes' school performance. The Court believes this is significant because from the testimony that has been introduced there is reason to believe Mother did not become particularly interested in his performance nor actually involved in school matters of the Children until after she filed the July 2000 petition. Mother asserts that Father has failed to keep her apprised and advised as to school activities. The testimony established that the school would have readily provided Mother any information she would have sought. Nevertheless, Mother continually asserted throughout the trial that Father had blocked and hindered her efforts to obtain information relating to the Children's school performance. At the same time Mother asserts she is active in school and in fact this year is listed as a grade parent at the Ferrell Elementary School for both boys. The testimony from the teachers, principal and secretary of the Ferrell Elementary School, however, established that Mother was not well known for frequenting the school. Father was much more involved in school activities and in Wes' needs at school during the last two years. The testimony also established that Mother did not actively pursue learning of how the Children were performing in school prior to the fall of 2000, after the custody petition had been initiated.

Wes' school performance is not good. There are many factors that figure into his school performance and there is no single, simple, explanatory reason for the cause or method or for the cure. In kindergarten and first grade Wesley showed no abnormal signs leading anyone to suspect a learning difficulty or disability, nor, did his grades show any significant shortcoming. He had a wandering attention and small stubborn streak but his grades were in the 80s for all subjects. He did receive Title One services

in the first grade and Father arranged for him to attend the summer enrichment program during July of 1999 to review vocabulary, phonics, grammar comprehensive and fluency in reading. For the first several sessions of that summer enrichment program Wes was in Father's custody. During several of the classes (approximately fifteen) Wes was in Mother's custody, but she only saw that he attended seven of those fifteen classes. This was despite the offer made by Father's parents to assist her in seeing that transportation was available for Wes to attend those classes and also despite the fact that she lived relatively close to the school. In second grade, however, while Wes was only absent for two days his report cards document that he had a great deal of difficulty in reading with a final reading grade of 39 (the Court notes that it is not exactly clear from the report card how this final grade was obtained, since the Court's calculation of the grade shown on the report cards would indicate an average of about 55, although certainly still failing). Wes' math grades were 76. He needed improvement in handwriting and English. In the second grade he had reading assistance, and it was noted that Wes seemed to be distracted and reluctant to do work.

It was also ascertained in October of 1999, when Wes was in the second grade, that he had a vision problem. The teachers made accommodations for the vision deficiency by seating him at the front of the class. Some at the school attributed Wes' poor performance in class to his poor vision problem. Follow-up testing as Wes began his third year indicated that the vision was not affecting his learning abilities but that in fact testing showed that he had a significant learning disability particularly putting into writing out his thoughts. An individual education plan (IEP) was then developed, with Wes getting special attention from the school as well as the services of the BLAST Intermediate Unit which provides special assistance for Children experiencing difficulties similar to Wes.

The school has now identified Wes as a special needs child for education purposes. His grades for the first two marking periods this third grade year have shown some improvement, with him

receiving a 67 in the first marking period and a 76 in the second marking period; likewise, English composition was a 64 in the first marking period and a 71 in the second. His math grade remains fairly consistent and comparable to the second grade school year at a 75 and 78.

The information obtained from the school both from testimony and exhibits is that Wes did not care for his second. grade teacher and did not want to attend school that year, yet he only had two absences despite it taking a great deal of effort on the part of his Father to see that he went to school. This speaks well for Father's commitment to Wes' schooling.

The Court cannot find that Wes' school difficulties are in any way attributable to his Father's parenting deficiencies. Similarly, there is no testimony to support a finding that a difference could be effected by having Wes change from the Hughesville School District to the Muncy School District. Both Districts utilize services recommended and provided through the BLAST Intermediate Unit. Both school programs have learning disability specialists and both can provide IEP plans for the child. In fact, the IEP plans are likely to be essentially similar. Certainly, Wes' learning disability could have been discovered earlier and been addressed more quickly in the second grade, however, it does not appear that the delay in identifying his disability has had any adverse impact upon him at this point nor that the delay could be attributable to any specific shortcoming of Father or the Hughesville School District.

Jamie does very well in school. There are no significant difficulties in Jamie's work, and he is generally considered an A-B student, although only having completed the first grade.

This evidence supports the finding that Father has an appropriate commitment to his Children's school needs and counters Mother's contention that Father lacks parenting skills and devotion in this regard. The Court is convinced that both Father and his parents, particularly the Grandmother, give full

and appropriate attention to Wes' school difficulties and encourage and work with him just as they do with Jamie.

In addition to Wes' school difficulties Mother asserts she is the best-suited parent to serve the Children's needs particularly as would relate to healthcare matters. In this regard Mother points to two significant items: first, Wes' eye problems and Father's inattentiveness thereto; second, Father's unwillingness to see that Jamie properly wore a cervical collar when his collarbone was broken in an accident that occurred in July 2000 at Mother's home when he was injured on a trampoline. Mother became aware of the problem with Wes' right eye when he failed a near-vision test in October 1999 and a report was sent from the school to her. See, Defendant's Exhibit No. 7. A follow-up evaluation by the school obtained through BLAST in a report dated November 29,2000 verified that the poor eyesight in Wes' right eye was not a basis for his poor work in school. See, Plaintiff's Exhibit 14. Mother asserts that thereafter she heard nothing until the summer of 2000 when she took Wes to the eye doctor at Wal-Mart because of a scratch he received on his eye and the doctor there noted a problem in ascertaining his vision correctly and requested that he be provided prior records. Mother tried to obtain those prior records from Pearl Vision and she asserts she was refused the records because Father prohibited her access. Mother asserts that Pearl did advise her of the fact their records show Wes to have been diagnosed with a severe problem by Dr. Bernstein's Office in February 2000 after he had been taken there by Father, with his right eye having a 20/400 best corrected vision due to a macular scar on the right eye. Pearl also told Mother a referral was made to Dr. Lightman, a specialist, who confirmed that there was nothing that could be done for treatment of the eye and that the cause of this significant visual handicap could not be readily ascertained.

Mother's complaint is that Father delayed from October of 1999 to February 2000 to obtain the follow-up treatment and diagnosis. Mother disregards that she had equal legal custody of Wes

and could have seen to his medical care and treatment. There is no testimony by either parent that they had any significant discussions about Wes' eye problem disclosed by the school exam in October of 1999, except for a brief conversation in which they discussed the report and Father attributed it to a "lazy eye" condition of which there was prior knowledge, apparently based upon eye exams at Pearl Vision in 1997. It is clear that Father did not do a further follow-up appointment with Dr. Lightman's office in May of 2000, he saying that there was no need for this since he had been told there was not anything that could be done to treat the condition and was convinced that opinion was correct.

The Court notes several things with respect to this testimony. Obviously, both parties through their counsel, consulted several medical experts in this regard and no testimony was forthcoming to say that either parent or medical practitioner was at fault in causing the macular scarring. There were many possible causes for this explanation including a birth defect as well as some type of injury or other disease. Secondly, it is also clear that Father chose not to tell Mother of the results of the February findings from Dr. Bernstine's office concerning Wes in which essentially Father was told the son would be permanently blind in the right eye. Father's attitude here is one of -- Mother doesn't ask, Father doesn't tell. Such an attitude and inaction on the part of Father might be viewed by some as being contemptuous of his obligations. Thirdly, despite Mother's legitimate complaints about Father's inaction and non-disclosure, there is no testimony whatsoever to establish Father was negligent in caring for Wes nor that any more prompt care or attention to Wes could have led to the discovery of the condition nor prevented it from occurring. Mother, since February 1998, has had regular every other weekend physical custody of the Child and also had an extensive period of time of custody during the summer prior to the time Wes' eye problem was first detected at school. She was just as inattentive to the Child's problems, if in fact they were exhibited, as anyone was.

In fact, it appears only when Wes was given a near vision test at school was his difficulty observed. He appears to have hid the difficulty well or at least adjusted to it. As an example, even though Doctors suggest he will have difficulty in playing sports, he professes a love for playing baseball and says he can adequately play the outfield, despite a lack of depth perception. The Court wishes that the attitude displayed by Wes in regard to his physical handicap and his determination to overcome this difficulty would be equally displayed by the parents in their handling of their relationships with each other and the Children.

Herein lies the difficulty of this case. Mother and Father are at odds and often are openly disrespectful of each other and determined to blame the other for anything that might seem to give them the upper hand leading to being awarded primary physical custody. Whether this is caused by spite, out of a desire to avoid paying child support,¹ or for whatever reason, it is obviously occurring. A prime example is Mother's assertions that she cannot get medical records because of Father's interference. The testimony demonstrates clearly this is not so and that the medical care providers were never appropriately asked by her, if ever asked, for the records.

Mother seizes on every opportunity to assert that Father is improperly parenting, and interfering with her access and relationship to the Children. An example of this relates to the injury received by Jamie in the summer of 2000. Mother did not explain whether or not she could be blamed for being inattentive when Jamie received the injury on the trampoline. As those injuries go, perhaps not, but again, perhaps yes. Nevertheless, Mother seizes on the fact she felt Jamie should remain in a cervical collar for a

¹ While Mother was in the service she paid child support through an allotment of \$410 a month. In November of 1997 Father filed a Petition asserting the allotment had stopped and he was owed over \$2,000 in arrears. Subsequently, by Order of January 27, 1998, a Domestic Relations action #97-21,557, Lycoming County Court of Common Pleas she was directed to pay child support in the amount of \$221.25 per month. This was based on a monthly income for Father of \$1,513 per month and for Mother of a full-time minimum wage earning capacity of \$750 per month. In August of 2000 Father filed a modification petition for the support order and on October 23, 2000 the modification request was rejected because a review of the parties' income showed little or no change from the date of the January 1998 Order.

prolonged period of time. This was despite medical clearance given to Jamie to stop wearing the cervical collar. Father, learning that there was no longer a medical need to wear the cervical collar, said that it should be removed. Mother insisted that she knew best and that it should not be. She probably took this position because Father was taking the opposite. Nevertheless, as can be seen clearly from Plaintiffs Exhibit 9, a letter from the Children's Hospital of Pittsburgh, dated October 5, 2000, the history of the cervical injury as such that sometime in September there was no need for the cervical collar to be worn. Mother persisted in an opposite vein without any apparent reason. This was so even in face of an expert from the University of Pennsylvania Medical Center, Dr. Marcato, in a September 21, 2000 letter, Plaintiffs Exhibit 8, recommending the cervical collar be removed. Mother offered no testimony to support that Jamie was displaying any particular difficulties that would indicate that the cervical collar should remain. Mother's testimony concerning the cervical collar is much the same as her testimony concerning other medical problems of the Children she attributes to Father, that is, it is without any factual basis whatsoever.

This is not to say Father does not have some shortcomings. Among these is the unrealistic relationship he asserts exists with his girlfriend. He clearly has a sexually intimate relationship with the girlfriend. She has become a significant figure in the Children's lives. Nevertheless, this has been done without any permanency planning or thought as to the future. Father also seems oblivious of the impact his openly illicit relationship may have upon the Children, as he shares the bedroom in his home with his girlfriend on a regular basis. At the same time Father shortsightedly has all of his girlfriend's children and his two Children just bunk out together on weekends. This simply will not work out in the long term. No serious alternatives have been considered by Father. It is clear with the number of people in the girlfriend's home that her place is not an adequate housing alternative. Father also continues to unrealistically expect

Wes and Jamie to indefinitely share the single bedroom in his home. There is some talk about how the home can be modified but no real plans exist to so do. Father has the capability of providing adequate accommodations for the Children but has failed to do so or to make plans for doing so in the future.

Father also improperly asserts that Jamie does not really want to spend time with Mother and cries and protests when the time comes for him to be going with her. This is not realistic and certainly not supported by Jamie's attitude towards his Mother as expressed in this Court's interview of the Children. Instead, the Court finds what typically happens is that the Children are purposefully engaged in some type of enjoyable activity with Father or more likely with Father's parents, Jamie's grandparents, at about the time Mother is to come to begin her time of physical custody. Obviously, a young child such as Jamie does not recognize that he should give up an instant pleasure of the activity he is engaged in in order to spend meaningful time with Mother and enjoy the pleasures of her company. There is no evidence that Father and his parents plan appropriately for transition at the time physical custody of Jamie will be transferred to Mother.

The Court believes the Children enjoy their time with their Mother and in fact need more time with their Mother than they currently have. This is evidenced by, among other testimony, the spontaneous statement to that effect offered by Wes in the Court's interview. Surely Father must be aware of this desire. While the Court can understand that many of Mother's requests for additional time with the Children may not be appropriate during the school year, it should be apparent to Father that Mother should be afforded significantly more time with the Children in the summer, especially on days she is not working and is readily accessible and available to the Children.

Therefore, the factors of future stability and facilitating contact with the other parent favor Mother. She also can point to having a better interest in the Children's religious education and training than

does Father although this is recent and minimal. Nevertheless, she cannot assert a greater moral stature when one looks at the beginning of her relationship with Mr. Helton and the way he was introduced into the lives of the Children at an earlier time.

Essentially, however, despite all the problems presented and contended by the parents the Children are doing well. The Children have a definite and strong bond with Father and his parents, which during the last five years has led to them having a stable and enjoyable life. Father, assisted to a great degree by his mother, has been the Children's primary caregiver during most of their lives to date. The Children are functioning as well as can be expected in their present school. The Children's observed wishes in this case are best expressed by Wes in that he is doing fine with Father but would like to have more time with Mother. This Court agrees. Accordingly, an Order will be entered providing the Children's legal and physical custody will be shared by both parents similar to the current custody order provisions but providing for mandated additional time of physical custody with Mother and mandated counseling for the parents.

CUSTODY/VISITATION ORDER

Background

After a custody trial and for the reasons set forth in the foregoing adjudication of this same date, the following Custody Order is entered.

ORDER

1. **Legal Custody.** The parents, Christine L. (Kilcoyne) Helton, hereinafter referred to as Mother and M. Scott Kilcoyne hereinafter referred to as Father, shall *share legal and physical custody* of their Children, Wesley Kilcoyne, date of birth October 26, 1991 and James Michael Kilcoyne, date of birth September 24, 1993.

2. **Physical Custody.** The Parents shall share physical custody of the Children on the following schedule:

(a) **During the School Year.** Beginning at 7:30 p.m. three days before the first day of the school year, the Children shall be in the physical custody of Father. Mother shall have physical custody of the Children in alternating weeks for an extended weekend, beginning with the second Thursday of the school year. The extended weekend shall start at the end of the school day, or at 4:00 p.m., if there is no school on that day; it shall extend until the following Monday at the end of the school day, or at 4:00 p.m. on that day if there is no school. In addition, Mother shall have physical custody of the Children on Thursdays in alternating weeks which do not start her extended weekend, from after school (or 4:00 p.m. on non-school days) until 7:30 p.m.

(b) **During the Non-School Year.** During the time of school summer vacation, beginning with the Thursday of the first extended weekend in which Mother would have physical custody under the schedule maintained through the school year, Mother shall have physical custody of the

Children from 9:00 a.m. that day (or after school if that is the last day of the school year) until 7:30 p.m. on the third day before the next school year begins. After Mother assumes custody for the school summer vacation, Father shall have physical custody of the Children for an extended weekend every third week thereafter, beginning with the third Thursday after Mother assumes physical custody at the end of the school year, starting at 5:00 p.m., until the next Monday at 7:30 p.m., except that if on that Monday Father works and Mother does not work, then Mother shall resume physical custody at 9:00 a.m. In addition, Father shall have physical custody of the Children one evening each week in the weeks between his weekends starting at 5:00 p.m. or the earlier end of his work day (but not before 1:00 p.m.) until 9:00 p.m.; the day shall be determined by agreement of the parents each week depending upon the personal activities of the parents and the Children for the week; however, if there is no agreement, the evening shall be on Thursday of each week.

(c) **For the Remaining School Vacation Time of 2001.** (Under the previous Orders Mother has had alternating weekends and assumed physical custody on the second Saturday in July, the 14th, and is to continue in custody until seven days before the first day of school. The first day of school will be August 27, 2001.) The prior Orders are modified to provide that Mother shall have physical custody of the Children from this date until August 24th at 7:30 p.m. in accordance with subparagraph (a) above. Beginning the week of July 30th, Father may have custody one day every other week from 5:00 p.m. until 9:00 p.m.; the day shall be as determined by the parents, but if no agreement is reached, it shall occur on Tuesday, the 31st of July and Tuesday, the 14th of August. Father shall also have one weekend time of physical custody from Friday at 5:00 p.m. until Sunday at 9:00 p.m.; the weekend shall be as agreed upon by the parents but if not otherwise agreed upon it shall be on August 3rd, 4th, and

5th; except, if Mother has already made out-of-town vacation plans for that weekend then Father's weekend shall be either the weekend before or after at Father's selection.

3. **Holiday Physical Custody**. On the following holidays physical custody of the

Children shall be shared between the parents as indicated:

| <i>Holiday</i> | <i>2002 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> |
|----------------|---------------------------------------|--------------------------------------|---|
| Easter | Mother | Father | From Good Friday at noon until 7:30 p.m. Easter Day or if there is school the next day then until 4:00 p.m. |
| Memorial Day | Father | Mother | From noon the Friday before until 7:30 p.m. on Memorial Day |
| July 4th | Mother | Father | From noon July 3rd through 9:00 a.m. July 5th, which shall have preference over work vacation time or other summer custody of the other parent. |
| Labor Day | Father | Mother | From 9:00 a.m. on the Saturday before until 7:30 p.m. Labor Day |
| Thanksgiving | Mother | Father | From 9:00 a.m. to 9:00 p.m., on Thanksgiving Day. |
| Christmas | Mother | Mother | From December 25th at 5:00 p.m. to 5:00 p.m. two days before school resumes after the Christmas vacation. |
| Mother's Day | Mother | Mother | From the Saturday before Mother's Day at noon through 5:00 p.m. on Mother's Day |
| Father's Day | Father | Father | From the Saturday before Father's Day at noon through 5:00 p.m. on Father's Day |

The foregoing shall have preference over regular scheduled custody under paragraph #2, above, and our non-vacation custody under paragraph 9, below, without any make-up time of custody being given if a parent's usual time of custody is displaced by the Holiday Schedule.

4. **Transportation in Exchange of Physical Custody.** Transportation of the Children for purposes of exchange of physical custody shall be divided between the parties as they agree. Absent agreement the physical custody of the Children shall be exchanged at the designated times at the home where the Children have been, with the parent who is to assume physical custody picking up the Children at the stated time.

5. **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 physical custody on the immediately following day, the ending time of the physical custody shall be extended through an overnight period of time so as to extend into the following day and not interrupt such parent's period of time of physical custody.

6. **Telephone Contact.** Each parent shall have reasonable telephone contact with the Children when they are in the physical custody of the other parent. It is also specifically DIRECTED that the parent who does not have physical custody of the Children on a particular Sunday or Holiday shall have access to the Children by telephone for a period not to exceed a total of 15 minutes on each Sunday and Holiday evening at 8:00 p.m., except this provision shall not apply if the parent has actually enjoyed a physical custody on that particular day; if the time of 8:00 p.m. is not suitable to accommodate the plans of the in-custody parent for the Children an alternate time acceptable to the calling parent shall be agreed upon. The parent placing the telephone call shall pay for any telephone tolls involved.

7. **Obligations of Shared Legal Custody.** All decisions affecting the Children'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 Children's best interests.

Each parent shall keep the other informed of the progress of the Children'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 shall 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 Children.

With regard to any emergency decisions which must be made, the parent with whom the Children are in physical custody 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 Children, including the right to examine any documents concerning the Children or to receive copies of files or reports concerning the Children 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 Children. Each parent's name shall be listed with the school as the parent to be contacted in the event of an emergency and to be notified regarding school events. It will be the responsibility of a parent with

physical custody to provide the other parent with copies of report cards and all notifications of school conferences and events or other activities involving or concerning the Children or parental participation therein.

Neither parent shall schedule activities or appointments for the Children which would require the Children's attendance or participation at said activity or appointment during a time when the Children is scheduled to be in the physical custody of the other parent, without that parent's express prior approval.

8. **General Parental Obligations.** Each party shall make reasonable efforts to adjust their work schedules to provide them the maximum time possible with the Children during their time of physical custody.

The parents shall endeavor to avoid the use of day care and other child care facilities but instead utilize grandparents, the other parent and other relatives for purposes of providing child care when they are necessarily absent for work or other purposes during a time they are in physical custody of the Children. The parents shall provide each other with the names, addresses and phone numbers of the child care provider each intends to use and reasonable notice in advance as to when a Children will be receiving such care. Where a third-party child care provider, particularly a public or semi-public facility is used, the parties shall consult as to the appropriate facility and shall choose one that is mutually convenient to the needs of each parent as would relate to the parent delivering or picking up the child from such facility.

While in the presence of the Children, neither parent shall make, or permit any other person to make, any remarks nor do anything which 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 Children should respect and love.

It shall be the obligation of each parent to make the Children available to the other in accordance with the physical custody schedule and to encourage and cause the Children 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 Children as a messenger. Furthermore, neither parent shall discuss with the Children 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 Children 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 Children. Neither parent shall now allow the use of alcohol or drugs to impair their judgment or ability to perform parental functions.

9. **Work Vacation With the Children.** The parties shall endeavor to arrange for their summer work vacations to occur during the time in which they are entitled to actual physical custody; however, the Court directs that where this is not possible, the parties shall cooperate in arranging a

mutually acceptable schedule to accommodate the vacation planning of the respective parents, with the intent being that the Children's time shall be in the physical custody of a parent during the parent's work vacation. Beginning in 2002 each parent may have work vacation custody for a period of up to 14 days in a calendar year; the time may be exercised consecutively or non-consecutively; this time shall preferably be during school summer vacation but also when school is in session, if the school is willing to excuse the Children from school. As much notice as possible of the intended time of this vacation physical custody shall be given, but not less than thirty days notice may be required, provided that times to be scheduled in June, July and August shall be noticed by May 1st of each year. In the event of conflict, Mother shall have preference in even-numbered years and Father shall have preference in odd-numbered years. A parent's normal time of physical custody shall be included in the fourteen days of work vacation custody. To the extent that exercise of physical custody under this paragraph denies the other parent of a scheduled weekend time of physical custody, the parent denied custody shall be provided a make-up weekend time as soon as reasonably possible, with the denied parent having preference in selection of make-up time in the event of disagreement.

10. **Parental Obligations as to Counseling, Parental Training.** Each party hereto, shall initiate Family Therapy counseling for both parents, and as needed, the Children and other adults residing in their households; the counseling shall endeavor to end the acrimonious suspicion that exists between the parents and equip them to effectively co-parent the Children in a cooperative fashion. Counsel for the parties shall consult to agree upon names of recommended counselors and therapists who are capable of providing the recommended programs. Counsel shall then agree as to which counselors/therapists to use and shall refer their clients to those programs. If counsel cannot agree within a

week thereafter, the Court will hold a telephone conference to determine the appropriate programs, counselors/therapists.

The expenses of the counseling, to the extent not covered by insurance or third-party payments, shall be divided between the parents in the same ratio in which their child support obligation is established from time to time and each parent's share shall be paid to the provider as the same becomes due.

The parents shall use reasonable efforts to assure the involvement of any additional individuals in the programs as may be recommended by the counselor/therapist from time to time.

The parents and Children shall carry out the suggestions and recommendations of the programs to the utmost best of their ability. The failure to timely initiate and carry out the recommendations of the programs or the leaving of the programs against the recommendation of the provider, may constitute a contempt of this Order.

The counselors/therapists shall report to the parties and this Court any non-attendance/cooperation in the counseling program. The parties shall execute appropriate releases to allow the counselor/therapist to fully discuss the information in their files with the program providers and also to allow the providers to verify to either party the compliance or non-compliance of anyone subject to this Order.

BY THE COURT:

William S. Kieser, Judge