IN THE COURT OF COMMON PLEAS OF SNYDER COUNTY, PENNSYLVANIA

NOAH DECAPRIA,	:	
	:	**No. FC 19-20548**
	:	
v.	:	**Custody**
	:	
FABIOLA TAMAYO,	:	
Appellant	:	
	:	**1925(a) Opinion**

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

This opinion is written in support of the Order dated November 26th, 2024. By way of background, Appellant filed a Petition for Special Relief on September 9th, 2023. By and through a court order dated October 12th, 2023, Appellant's Petition for special relief was converted to a Motion to Modify Custody. Additionally, that same ordered gave Mother primary custody of the children during the school year.

A custody trial was held on Mother's Petition on June 27th, 2024, July 2nd, 2024, July 25th, 2024, and July 30th, 2024. After the four days of testimony this Court ruled that Mother would continue to enjoy primary custody during the school year and Father would have custody every other weekend. During the non-school year Father would have custody of the children in the summer months subject to a two-week vacation period awarded to Mother.

Mother subsequently filed a Motion for Reconsideration asking for a number of provisions of the final custody order be revised. This Court expressly granted the reconsideration request and a hearing was held on October 28th, 2024. On November 26, 2024 this Court entered an order amending a number of provisions of its final custody order.

On December 27th, 2024, Mother filed her Notice of Appeal from the November 26th,

order. Included in her notice of appeal was her concise statement of maters complained of on appear pursuant to Pa. R.A.P. 1925(b). Appellant raises the following issue on appeal:

1. Whether the Trial Court made an error or law or exercised an abuse of discretion in failing to grant Defendant/Mother's request for a summer schedule (shared week on/week off or two weeks on/two weeks off then once summer camp commences at the end of July and practices commence immediately thereafter Monday at 2 PM through Friday at 11 AM with Defendant/Mother and Friday at 11 AM through Monday at 2 PM with Plaintiff/Father) that ensured the children will attend their respective summer camps for football and cheerleading and all practices for the same yet still provided nearly a shared physical custody summer schedule.

2. Whether the Trial Court made an error of law or exercised an abuse of discretion in awarding Plaintiff' Father custody of the subject children during the first and seconds weeks of August and thus subjecting the children to two and a half hour car ride from Plaintiff/Father's residence in Jersey Shore, PA to the children's cheerleading and football practice in Middletown, PA, the area of Defendant/Mother's residence, and then another tow and half hour car ride back to Plaintiff/Father's residence that same evening and several tines each week, whereas Defendant/Mother's proposed summer schedule would have obviated all this five-hour roundtrip travel for the children, by placing them in the custody of Defendant/Mother for the days/times of their practices during the week and then in the custody of Plaintiff/Father for extended weekends.

3. Whether the Trial Court made an error of law or exercised an abuse of discretion in ordering that the children are not required to attend "non-mandatory (i.e., pre-season) extracurricular activities during the summer" when the evidence proved that one child suffered from missing so many practices when in Plaintiff/Father's custody that he was not permitted to play the position of his and his coach's choice and the coaches for both children testified as to the importance of the children attending all camps and practices for the purposes of their safety and learning the necessary skills to succeed in their respective athletic activities.

4. Whether the Trial Court made an error of law or exercised an abuse of discretion in including contradictory language in its Amended Order, namely, the language in Section 11, paragraph here, sentence two, "once parties agree on an activity, both parties shall permit the children to attend practices and events concerning that activity," which language is in the best interest of the children and the language of Section 7H, sentence two, "Parties are not required to transport the children to any non-mandatory event, including but not limited to, non-mandatory pre-season extracurricular activities," which such language is not in the best interest of the children.

5. Whether the Trial Court made an error of law of exercised an abuse of discretion

in utilizing terms in the Order and Amended Order that are not used by the parties and relevant non-parties, are not defined or are unclear and are thus confusing, *inter alia*, mandatory and non-mandatory practices/extra-curricular activities, pre-season and regular season extracurricular activities and language such as" … practices that commence either the first or second week of August."

6. Whether the Trial Court made an error of law or exercised an abuse of discretion in failing to include language that is set forth in Section 3 of its Order, i.e., "However, each party shall be required to transport the children to mandatory) i.e., regular) practices that commence either the first or second week of August" – in its Amended Order considering the Trial Court likely intends for the Amended Order to be the operative, substantive order.

In reviewing a custody order, the Superior Court's scope is of the broadest type and the standard is abuse of discretion. The Superior Court has held:

> We must accept findings of the trial court that are supported by competent evidence of record, as our role does not include making independent factual determinations. In addition, with regard to issues of credibility and weight of the evidence, we must defer to the presiding trial judge who viewed and assessed the witnesses first-hand. However, we are not bound by the trial court's deductions or inferences from its factual findings. Ultimately, the test is whether the trial court's conclusions are unreasonable as shown by the evidence of record. We may reject the conclusions of the trial court only if they involve an error of law, or are unreasonable in light of the sustainable findings of the trial court.

M.J.M. v. M.L.G., 63 A.3d 331, 334 (Pa. Super. 2013).

All the issues Mother has raised on appeal relate to the issue surrounding the children's respective practices at the end of summer before the start of the school year. Ultimately, the amount of time at issue on this appeal is the first two weeks of August.

This Court heard testimony from both of the children's coaches regarding their attendance at practices. Both coaches testified about the importance of attending all practices and the football coach specifically testified that F.D. did not play his preferred position due in part to missing pre-season practices. With that said, he also testified that F.D. did not miss out on any playing time and did not suffer in that aspect for missing pre-season practices. Additionally, N.D.

did not suffer from missing any practices at the beginning of August as testified to by her coach. Other than F.D. not playing his preferred position this past year in football, the Court did not hear any other testimony regarding how the children suffer from missing the first two weeks of practice.

To the issue of travel time to and from pre-season practices when the children are in Father's custody, this Court included a provision that does not require either party to transport to any non-mandatory/pre-season practices. Therefore, avoiding any unnecessary lengthy travel by either party.

After hearing all the testimony provided at Trial and the Reconsideration hearing including speaking with the children, this Court believes that it is in best interest of the children at this point in time to spend the last two weeks of summer with their Father, rather than attending extra non-mandatory/pre-season practices.

For the forgoing reasons, the Court submits that it did not err and respectfully requests that the Order dated November 26th, 2024 be affirmed.

DATE: _____ By The Court,

_____
Ryan C Gardner, Judge

cc: Marc Scaringi, Esq.
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Superior Court (original & 1)
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