

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

C.J.B.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
M.F.L.,	:	
	:	
Appellant	:	No. 1352 WDA 2012

Appeal from the Order August 16, 2012,
Court of Common Pleas, Allegheny County,
Civil at Division at No. FD 10-2285-016

BEFORE: DONOHUE, SHOGAN and WECHT, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: February 1, 2013

Appellant, M.F.L. ("Mother"), appeals from the trial court's August 16, 2012 order granting the petition of C.J.B. ("Father") to permit the parties' Children ("Children") to attend school in the Elizabeth Forward school district.

The trial court's opinion sets forth the following factual and procedural history:

[Father] and [Mother] are the parents of two minor children: [P.J.B., born 2005], and [J.R.B., born 2007]. [P.J.B.] is currently in first grade and [J.R.B.] is in kindergarten. Father is a special education teacher and principal's aide at Central Elementary School in the Elizabeth Forward School District.

On September 23, 2010, when both Children were in preschool, the parties executed a consent order granting Mother primary physical custody, with Father having partial custody every other weekend from Friday until Monday, alternating Mondays

overnight, and every Wednesday overnight. This is the current custody schedule. The parties were granted shared legal custody. The Order further provided that Children would continue to attend preschool at their current location, but that the parties would consider enrolling the Children in the Head Start program in the Elizabeth Forward School District once positions became available. At the time the Order was entered, the Children attended preschool in Hazelwood, which is where Mother was employed when the Children began attending school.

On March 24, 2011, Father presented a Petition for Special Relief requesting that the Children be enrolled in the preschool and kindergarten programs in the Elizabeth Forward School District for the 2011-2012 school year. Mother wanted the Children to continue to attend school in Hazelwood, which was approximately a forty minute commute from both parties' residences, but closer to Mother's place of employment. After a hearing, this Court issued Findings of Fact and an Order of Court permitting the Children to attend school in Elizabeth Forward. Although this Court's Order did not specify that the Children were to attend Central Elementary School, it was noted in the Findings of Fact that Father had arranged for [P.J.B.] to attend kindergarten at Central. (Findings of Fact, 4/19/11, Paragraph 10) ([J.R.B.] attended the preschool program in another building). Following the hearing, Mother moved to an area of Elizabeth Forward that 'fed' William Penn Elementary, and began the process of enrolling [P.J.B.] there. On August 24, 2011, Father presented a Petition for Special Relief, and an Order of Court was entered directing the parties to enroll [P.J.B.] in Central Elementary for the 2011-2012 school year.

At the April 19, 2011 hearing, Mother requested permission to enroll the Children in the Gateway School District for the 2012-2013 school year. The Court found that Mother's plans were too tenuous for the Court to entertain her request at that

time. (Findings of Fact, 4/19/11, at Paragraph 18). [...] Father presented a Petition for Special Relief alleging that he had recently learned that Mother moved to Woodland Hills School District and planned to enroll the Children there. He requested that the Children attend Elizabeth Forward pending further Order of Court.

A hearing on Father's Petition for Special Relief was held on August 8, 2012. The Court heard the testimony of Father, Mother, Mother's partner Emily Preis, and Susan Hetherington, principal at Central Elementary School. On August 16, 2012 this Court entered an Order granting Father's Petition for Special Relief and ordering, *inter alia*, that the Children attend school in the Elizabeth Forward School District.

Trial Court Opinion, 10/5/12, at 1-3.

Mother filed this timely appeal from the trial court's August 16, 2012 order. She raises two issues for our review:

- I. Did the lower court commit err [sic] as a matter of law and abuse its discretion in failing to consider the best interest of the children when it ordered that the minor children were to attend school in Father's school district, the Elizabeth Forward School District?
- II. Did the lower court err and abuse its discretion when it ordered that the children attend school in the Elizabeth Forward School District and not Mother's school district thus failing to consider Mother's role as a primary custodian and giving too much weight to Father's employment in the Elizabeth Forward School District?

Mother's Brief at 4. We will consider both issues together.

In a child custody proceeding, the court's primary concern is the best interests of the children involved. *J.R.M. v. J.M.*, 1 A.3d 902, 911 (Pa. Super. 2010). We analyze the trial court's order as follows:

In reviewing a custody order, our scope is of the broadest type and our standard is abuse of discretion. As with initial custody determinations, appellate review of modification orders is broad. Moreover: This Court 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, this Court must defer to the trial judge who presided over the proceedings and thus viewed 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 not interfere with the trial court's factual conclusions unless they are unreasonable in light of the factual findings, and thus represent a gross abuse of discretion.

Our Supreme Court has clarified that whether the standard of review is articulated as 'gross abuse of discretion' or simply 'abuse of discretion,' the test is the same: whether the trial court's conclusions are unreasonable based upon the evidence of record. The use of 'gross' is mere surplusage.

Fox v. Garzilli, 875 A.2d 1104, 1107-08 (Pa. Super. 2005) (internal citations and quotation marks omitted).

In *Fox*, the trial court denied the mother's petition to have the party's children attend school in the district of the mother's residence. *Id.* at 1105. The children had been attending school in the district of the father's

residence pending the outcome of an equitable distribution proceeding. *Id.* at 1106. After the equitable distribution concluded, the mother established her own residence and sought to have the children attend the local school because she had primary physical custody. *Id.* The mother's petition was in accord with an agreed upon custody order entered prior to the conclusion of the equitable distribution. *Id.* Driving the children to another school district would have impeded the mother's ability to attend school and get a job. *Id.* at 1109. Moreover, attending the mother's school district would enable the children to make friendships with other children in the neighborhood who attend the same school. *Id.* at 1110. This Court concluded that the trial court's denial of the mother's petition was unreasonable and unsupported by the evidence of record, and we reversed the order. *Id.* at 1110-11.

Mother relies on *Fox* in support of her argument for reversal here. Mother notes that she, like the mother in *Fox*, has primary physical custody of Children and that Children will benefit from attending school with other children in the neighborhood where they reside. Mother also argues that the trial court gave undue weight to Father's employment as a special education teacher in the Elizabeth Forward school district.

The record reveals that Father lives in the home the parties shared prior to their separation, and that he has been there since 2005. N.T., 8/8/12, at 20. Father testified that he has no plans to move out of the Elizabeth Forward district. *Id.* at 20. Mother, on the other hand, has moved

several times since the parties separated. *Id.* at 67. At one point, Mother requested permission to move to the Gateway school district, but she never carried out that plan. *Id.* In addition, Mother considered moving with the Children to New Mexico in pursuit of a romantic relationship that has since ended. *Id.* at 136-37. Mother has an 18-year-old son who attended five different school districts. *Id.* at 135-36. Mother testified that she does not plan to move from her current residence in the Woodland Hills district. *Id.* at 117. Mother has been in several relationships since the parties separated, including the one for which she considered moving to New Mexico. N.T., 8/8/12, at 68. The trial court noted its concern that Mother has no connection with Woodland Hills other than her current domestic partner. Trial Court Opinion, 10/5/12, at 6.

Concerning comparative quality of the school districts, the record reflects that Central Elementary School in Elizabeth Forward district is ranked seventh out of 1,651 elementary schools in Pennsylvania. N.T., 8/8/12, at 174. Mother did not introduce evidence of the quality of the Woodland Hills elementary school system, but conceded that Elizabeth Forward was “statistically [...] a better school.” *Id.* at 132. The Principal of Central Elementary School testified that Father would not teach any of Children’s classes, and that Father’s employment at Central would not pose any problems for the Children. *Id.* at 172-73.

Father has custody of Children six nights out of every 14. The trial court therefore observed that Children would have to make a 30 minute commute from Mother's residence to Elizabeth Forward three days per week. If Children attended the Woodland Hills school district, they would have the same commute in reverse two days per week. Thus, the trial court found the commuting logistics were not sufficient to preclude Children's attendance at Elizabeth Forward.

The trial court gave weight to Mother's status as primary physical custodian. Trial Court Opinion, 10/5/12, at 3-4. Furthermore, the trial court acknowledged that Mother's current relationship appears to be serious and committed, and that Mother's partner has been a positive influence on the Children. *Id.* at 5-6. The trial court concluded, however, that the potential for continuity in the Children's education was greater if they attended Elizabeth Forward, and that the evidence of record confirmed that Children would receive a good education in that district.

As set forth above, we are to defer to the trial court concerning the weight of the evidence, and we will reverse the trial court only if its conclusions are unreasonable in light of the evidence of record. *Fox*, 875 A.2d at 1107-08. The *Fox* Court reversed the trial court's order because the parties entered an agreement whereby the children would continue to attend school in the father's school district until mother established a place of residence. *Id.* at 1106. After the mother – the primary physical custodian –

established her residence, the children's continued attendance at school in the father's school district would have posed hardships for the mother and the children, whereas the children's attendance of school in the mother's district posed little if any hardship to the father. *Id.* at 1109-10. The present appeal is readily distinguishable from *Fox* as the record does not reflect any prior agreement of the parties, and the record does not support a conclusion that Children's attendance at Elizabeth Forward will pose a significant hardship on Mother. The quality of education at Elizabeth Forward and the greater potential for continuity in the Children's academic careers led the trial court to grant Father's petition. The evidence of record supports the trial court's decision, and we cannot conclude that the trial court acted unreasonably or abused its discretion in granting Father's petition. We therefore affirm the trial court's order.

Order affirmed.