

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

K.M., JR.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
R.R., and J.L. and D.R.	:	
	:	
Appellees	:	No. 1482 MDA 2012

Appeal from the Order entered on July 6, 2012,  
in the Court of Common Pleas of Luzerne County,  
Civil Division, No. 14640 1-22

BEFORE: MUNDY, OLSON, and STRASSBURGER\*, JJ.

CONCURRING STATEMENT BY STRASSBURGER, J.: Filed: March 8, 2013

I join the majority memorandum. I write separately only to point out my disagreement with the trial court’s characterization of Father’s argument regarding Great-Grandmother’s age and potential physical and health limitations as being “discriminatory.”<sup>1</sup> The statute provides that one factor a trial court must consider in awarding custody is “[t]he mental and physical condition of a party or member of a party’s household.” 23 Pa.C.S. § 5328(a)(15). Furthermore, in at least one prior case, this Court has considered the health limitations of the party seeking custody when making a custody determination. *See Vicki N. v. Josephine N.*, 649 A.2d 709 (Pa. Super. 1994).

---

<sup>1</sup> “The [c]ourt finds that the fourth matter complained of on appeal is discriminatory and is without merit.” Supplemental Memorandum Issued Pursuant to Pa.R.A.P. 1925(a), 9/5/12, at 10.

\* Retired Senior Judge assigned to the Superior Court.

