NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37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

MEMORANDUM BY OLSON, J.: Filed: March 8, 2013

K.M., Jr. ("Father"), appeals from the final custody order entered July 6, 2012, which maintained shared legal and primary physical custody of Father's female child, J.M. (born in June of 2000) ("Child"), with Child's maternal great-grandmother, J.L. ("Great-Grandmother"), and denied Father's petition for primary physical custody and his petition to relocate Child. The trial court's order awarded Father partial physical custody in accordance with a schedule. The trial court also denied R.R.'s ("Mother's") petition for modification of custody.[1] We affirm.

On February 3, 2012, Father filed his petition and notice for relocation, seeking to relocate Child to Staten Island, New York, from Luzerne County,

[1] Mother did not file an appeal from the denial of her petition, nor is she a party to the present appeal by Father.

* Retired Senior Judge assigned to the Superior Court.

Pennsylvania. On that same date, he also filed a petition for primary custody, which the trial court considered a petition for modification of custody. In the petition for modification, Father sought primary physical custody of Child, with partial physical custody to Mother and Great-Grandmother. On February 8, 2012, Mother filed a petition for modification of custody order seeking primary physical custody of Child.

In an interim order dated March 30, 2012 and entered on April 2, 2012, the trial court adopted the existing custody order, entered in the State of New York, dated May 5, 2010. The existing custody order was entered based upon an agreement of Mother, Father, Great-Grandmother, paternal grandmother, D.R. ("Paternal Grandmother"), and counsel for Child. The order granted primary physical custody of Child to Great-Grandmother, who resided in Luzerne County, Pennsylvania, and visitation of Child on alternate weekends to Father and Paternal Grandmother, who resided together in the County of Richmond, State of New York. ***See*** Trial Court Supplemental Memorandum Issued Pursuant to Pa.R.A.P. 1925(a), 9/5/12, at 1.

The trial court held hearings on the petitions on April 16, 2012, and May 9, 2012.[2] The trial court made the following findings of fact from the testimony and other evidence at the hearings.

[2] In its opinion, the trial court noted that the matter was initially scheduled for trial to commence on March 1, 2012, before a Senior Judge, but was reassigned to Judge Jennifer L. Rogers when she assumed the bench, and a new trial date was scheduled. ***See*** Trial Court Opinion, 7/6/12, at 1 n.1.

> Father and Mother are the biological parents of [Child.] [J.L.] is the maternal great-grandmother of Child[,] and [D.R., "Paternal Grandmother"] is the paternal grandmother of [Child]. At one time, Mother and [Great-Grandmother] had also lived on Staten Island, New York. However, in May, 2009, [Great-Grandmother] moved to Luzerne County, PA with [Child]. While she is not involved in this action as a party, the maternal grandmother of [Child] also resides in Luzerne County.
>
> Father testified that he was sixteen (16) years of age when [Child] was born and that [Child] lived with Mother in Staten Island since the time of [Child's] birth until about the age of six (6) months, where after [sic] she lived predominantly with [Great-Grandmother]. He stated that [Great-Grandmother] obtained custody of [Child] via order of court. A review of the order docketed to No. V-2361-03/09C of the Family Court of the State of New York, County of Richmond, which was introduced and admitted as an exhibit in this case, confirms that an order was entered on or about May 5, 2010 which amended a prior order of court dated August 5, 2003.
>
> Within the aforesaid, May 5, 2010 order, which was predicated upon an agreement of the parties (Father, Mother, [Paternal Grandmother] and [Great-Grandmother]) in addition to one Jody Lynn Bahar, Esquire, counsel for [Child], it was determined that [Great-Grandmother] was awarded a "final order of custody["] and "the [Paternal Grandmother] and/or [Father], shall have alternate weekend visitation with [Child]." Significantly, this stipulated order was entered subsequent to [Great-Grandmother's] relocation from Staten Island to Pennsylvania in May, 2009.
>
> Via [a] November 16, 2011 order of the Family Court of the State of New York, County of Richmond, the court refused to exercise jurisdiction and the custody matter was dismissed as [Child][] had lived in Pennsylvania for over one (1) year.
>
> Thus, [Child] is currently in the primary physical custody of [Great-Grandmother], pursuant to not only the New York order, but also an interim order entered by the trial court, via a special master in custody, dated March 30, 2012, wherein the master adopted the prior New York order until trial in the case.

> While [Paternal Grandmother] appears in the caption in the instant matter as a [d]efendant, her objective in this proceedings is aligned with her son, the [f]ather. Similarly, the interests of [d]efendant, [Great-Grandmother] and Mother are aligned, except for Mother's statement at trial that if the [trial court] will not consider maintaining the status quo, then she wishes to receive primary physical custody of [Child] pursuant to her petition.

Trial Court Opinion, 7/6/12, at 1-3.

In a final custody order entered on July 6, 2012, the trial court maintained shared legal and primary physical custody of Child to Great-Grandmother, and denied Father's petition for primary physical custody and his petition to relocate Child. The trial court's order awarded Father partial physical custody in accordance with a schedule.

On August 6, 2012, Father timely filed a notice of appeal, along with a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(b). In his brief on appeal, Father raises the following issues:

> 1. Did the [t]rial [c]ourt err in it's [sic] decision to grant primary physical custody of the minor child to Defendant, [Great-Grandmother], without first finding that [Great-Grandmother], the great-[g]randmother, a third party, had successfully rebutted the presumption that primary physical custody should be awarded to Father or Mother by clear and convincing evidence[?]
>
> 2. Did the [t]rial [c]ourt err in it's [sic] decision to grant primary physical custody of the minor child to Defendant, [Great-Grandmother], when it failed to properly account for the evidence produced at trial in it's [sic] 23 Pa.C.S.A. § 5328 analysis, which evidence clearly established that Plaintiff [Father] should exercise primary custody of his daughter[?]
>
> 3. Did the [t]rial [c]ourt err in not including in it's [sic] analysis the well[-]reasoned preference of the child, specifically that she

> wanted to live primarily with the father and relocate to New York[?]
>
> 4. Did the [t]rial [c]ourt err in not considering that the great[-][g]randmother is advanced in age with health problems and limitations that impact the care of the minor child[?]
>
> 5. Did the [t]rial [c]ourt fail to consider the actions of the great-[g]randmother in relocating the minor child in the middle of the night from New York to Pennsylvania without the [f]ather's agreement or notice[?]
>
> 6. Did the [t]rial [c]ourt err in not determining which factor favored which party, other than a brief discussion of the factors[?]

Father's Brief, at 3-5.

Initially, we observe that, as the custody hearing in this matter was held in May of 2012, the Custody Act ("Act") is applicable. ***C.R.F. v. S.E.F.***, 45 A.3d 441, 445 (Pa. Super. 2012) (holding that, if the custody evidentiary proceeding commences on or after the effective date of the Act, *i.e.*, January 24, 2011, the provisions of the Act apply).

In custody cases, our standard of review is as follows:

> In reviewing a custody order, our scope is of the broadest type and our standard is abuse of discretion. 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.

Id. at 443 (citation omitted).

We have stated:

> [t]he discretion that a trial court employs in custody matters should be accorded the utmost respect, given the special nature of the proceeding and the lasting impact the result will have on the lives of the parties concerned. Indeed, the knowledge gained by a trial court in observing witnesses in a custody proceeding cannot adequately be imparted to an appellate court by a printed record.

Ketterer v. Seifert, 902 A.2d 533, 540 (Pa. Super. 2006) (*quoting* ***Jackson v. Beck***, 858 A.2d 1250, 1254 (Pa. Super. 2004)).

With any custody case under the Act, the paramount concern is the best interests of the child. ***See*** 23 Pa.C.S.A. §§ 5328, 5338. Section 5338 of the Act provides that, upon petition, a trial court may modify a custody order if it serves the best interests of the child. 23 Pa.C.S.A. § 5338. In ***E.D. v. M.P.***, 33 A.3d 73, 79-80 (Pa. Super. 2011), this Court instructed that the "best interests of the child" analysis requires the trial court to conduct a consideration of all of the sixteen factors listed in Section 5328(a).

In his first issue, Father argues that the trial court erred in awarding primary physical custody to Great-Grandmother. More specifically, Father contends the trial court erred by: (1) not applying a weighted best interest analysis, and (2) finding by clear and convincing evidence that Great-Grandmother had successfully rebutted the presumption that primary physical custody should be awarded to Father. Father primarily relies on ***K.B., II v. C.B.F.***, 833 A.2d 767 (Pa. Super. 2003), to support his

argument. Father argues that this Court found in ***K.B. II***, 833 A.2d at 775, "the Grandparent's visitation statute does not modify the common law presumption that parents have a prima facie right to custody of their child over third parties." Father's Brief, at 8. Father states in his brief that the Court in ***K.B. II*** found that the application of a weighted best interest analysis applies to grandparents seeking custody under Section 5313. [3]

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[3] Section 5313(b) formerly provided:

> **§ 5313. When grandparents may petition**
>
> (b) Physical and legal custody.—A grandparent has standing to bring a petition for physical and legal custody of a grandchild. If it is in the best interest of the child not to be in the custody of either parent and if it is in the best interest of the child to be in the custody of the grandparent, the court may award physical and legal custody to the grandparent. This subsection applies to a grandparent:
>
> (1) who has a genuine care and concern for the child;
>
> (2) whose relationship with the child began with the consent of a parent of the child or pursuant to an order of court; and
>
> (3) who for 12 months has assumed the role and responsibilities of the child's parent, providing for the physical, emotional and social needs of the child, or who assumes the responsibility for a child who has been determined to be a dependent child pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters) or who assumes responsibility for a child who is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or mental illness. The court may issue a temporary order pursuant to this section.

23 Pa.C.S.A. § 5313(b) (repealed).

In ***R.M. v. J.S.***, 20 A.3d 496, 512 (Pa. Super. 2011), we explained this Court's decision in ***K.B. II*** as follows:

> . . . [I]n ***K.B. II v. C.B.F.***, 833 A.2d 767 (Pa. Super. 2003), this Court has applied the holding in ***R.M. v. Baxter***[, 555 Pa. 619, 777 A.2d 446 (2001),] to a case involving a non-dependent child:
>
> > Following our careful reading of Section 5313(b), in light of our Supreme Court's holding in ***R.M. v. Baxter***, ***supra***, we are constrained to conclude that the statute confers automatic standing on any grandparent seeking physical and legal custody of his or her grandchildren, regardless of whether there has been a prior determination of unfitness by the parent or dependency of the child.
>
> ***Id.*** at 775. Our Supreme Court once again granted allowance of appeal to take another look [at] section 5313(b) in order to determine "[w]hether grandparents have standing to seek custody under 23 Pa.C.S. § 5313(b) absent a finding that the child is substantially at risk, or that the parent is unfit, or that the child is dependent." ***K.B. II v. C.B.F.***, 577 Pa. 135, 842 A.2d 917 (2004). The appeal was subsequently dismissed, however, as having been improvidently granted. ***K.B. II v. C.B.F.***, 584 Pa. 538, 885 A.2d 983 (2005).

R.M. v. J.S., 20 A.3d at 512.

In ***K.B. II***, this Court found that Section 5313 did not modify the common law presumption that parents have a right to custody over third parties, and that this presumption warranted application of a weighted best interest analysis to grandparents seeking custody from biological parents under Section 5313. ***See K.B. II***, 833 A.2d at 776. We concluded that the facts of ***K.B. II***, as found by the trial court, did not justify a change in full

physical custody of the subject child from the mother to the child's grandparents. Thus, we reversed and remanded. ***Id.*** at 778.

Subsequent to the decision in ***K.B. II***, the Act was adopted, and became effective in January of 2011, under which Section 5313(b) of the prior Child Custody Act was repealed. The provision of the new Act governing the standing of grandparents as opposed to a biological parent, is Section 5324, which provides as follows:

> **§ 5324. Standing for any form of physical custody or legal custody**
>
> The following individuals may file an action under this chapter for any form of physical custody or legal custody:
>
> (1) A parent of the child.
>
> (2) A person who stands in loco parentis to the child.
>
> (3) A grandparent of the child who is not in loco parentis to the child:
>
> (i) whose relationship with the child began either with the consent of a parent of the child or under a court order;
>
> (ii) who assumes or is willing to assume responsibility for the child; and
>
> (iii) when one of the following conditions is met:
>
> (A) the child has been determined to be a dependent child under 42 Pa.C.S. Ch. 63 (relating to juvenile matters);
>
> (B) the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; or

> (C) the child has, for a period of at least 12 consecutive months, resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case the action must be filed within six months after the removal of the child from the home.

23 Pa.C.S.A. § 5324.

Moreover, Section 5327 of the Act provides the following with regard to the presumption in cases concerning primary physical custody.

> **§ 5327. Presumption in cases concerning primary physical custody**
>
> **(a) Between parents.—**In any action regarding the custody of the child between the parents of the child, there shall be no presumption that custody should be awarded to a particular parent.
>
> **(b) Between a parent and third party.—**In any action regarding the custody of the child between a parent of the child and a nonparent, there shall be a presumption that custody shall be awarded to the parent. The presumption in favor of the parent may be rebutted by clear and convincing evidence.
>
> * * *

23 Pa.C.S.A. § 5327.

Here, the trial court found that Great-Grandmother had *in loco parentis* standing under Section 5324(2), and successfully rebutted the presumption under Section 5327 with clear and convincing evidence. The trial court explained its reasoning as follows:

> With respect to the first matter complained of on appeal, [the trial c]ourt found [Great-Grandmother] successfully

rebutted the presumption that primary physical custody should be awarded to Father or Mother by clear and convincing evidence. In order to satisfy the standard of "clear and convincing evidence", the court must find that the testimony or evidence is "clear, direct and convincing so as to enable the [c]ourt to come to a clear conviction, without hesitance, of the truth of the facts in issue". ***In re D.J.S.***, 737 A.2d 283 (1999).

In finding that [Great-Grandmother] met the standard of clear and convincing evidence[, the trial] court was guided by the statutorily imposed factors relating to custody of a child held by parents versus third parties. Pursuant to Title 23 Pa.C.S. § 5324(2), [Great-Grandmother] had standing to seek primary [physical] custody of the child if she stood *in loco parentis* to the child. This court was also guided by the factors relating to custody as set forth in 23 Pa.C.S. § 5328. It is clear that [Great-Grandmother] stood *in loco parentis* of [Child] since [C]hild's birth. [C]hild has always been in the primary care of [Great-Grandmother] since [C]hild was an infant. [C]hild is currently twelve (12) years old. Continued residence of children with one parent is a factor which may, in certain cases, be controlling. ***Stolarick v. Novak***, 401 Pa. Super. 171, 584 A.2d 1034 (1991). If in the past, the primary caretaker has tended to the child's physical needs by exhibiting love, affection, concern, tolerance, discipline, and a willingness to sacrifice, the court may determine that those qualities will continue. ***Stolarick***, at 1037. In addition, one substantial factor in awarding primary physical custody is the role that one parent has assumed as the primary caretaker of the child. ***Brooks v. Brooks***, 319 Pa. Super. 268, 466 A.2d 152, 156-157 (1983).

[Great-Grandmother] is the only primary caregiver that [C]hild has ever known since [C]hild's birth. [C]hild is now twelve (12) years old, and [C]hild has thrived in the care of [Great-Grandmother]. [Great-Grandmother] testified that she wakes up every morning at 4:00 a.m. When [C]hild wakes up in the morning, she makes her breakfast, and[,] at times, [C]hild and her siblings eat supper at her house. Since [C]hild has been in [Great-Grandmother's] care, [C]hild has thrived in her care by succeeding in school, being involved in the school chorus, band, and the drama club. [Great-Grandmother] also recognizes the significance of [C]hild being close to her mother and her siblings, thereby living in very close proximity to [M]other's home and permitting [C]hild to have daily contact with [M]other and her

> siblings. Also, [Great-Grandmother] accompanies [C]hild on a mass transit bus on alternating weekends, to insure that [C]hild has her visitations with [] Father in New York. Therefore, based on the factors enumerated in Title 23 Pa.C.S. § 5328, and based on [Great-Grandmother] being the primary caretaker of [C]hild since birth, [the trial c]ourt finds that [Great-Grandmother] rebutted the presumption of the Mother or Father having primary physical custody by clear and convincing evidence.

Supplemental Memorandum Issued Pursuant to Pa.R.A.P. 1925(a), at 3-5 (record citations omitted).

Based on the trial court's analysis of Father's first issue, we find no abuse of the trial court's discretion in determining that Great-Grandmother had standing and successfully rebutted the presumption under Section 5327 that custody should be awarded to either parent.

In his second issue, Father asserts that the trial court erred in deciding to award primary physical custody to Great-Grandmother, because it failed to account properly for the evidence produced at the trial that established that Father should have primary physical custody in an application of Section 5328. In his sixth issue, Father argues that the trial court erred in failing to determine which of the factors under section 5328 favored which party, other than a brief discussion of the factors. ***See*** Father's Brief, at 7.

Father's second and sixth issues implicate the trial court's consideration of the Section 5328 factors in awarding primary physical custody to Great-Grandmother. The specific factors that a court must consider are listed at 23 Pa.C.S.A. § 5328(a)(1) – (16). ***See E.D.***, 33 A.3d

at 79-80 (holding that "best interests of the child" analysis requires consideration of all section 5328(a) factors).

The trial court explained its analysis as follows.

> With respect to the second and sixth matters complained of on appeal, the second matter pertains to [Father's] argument that the court did not properly account for the evidence produced at trial in its Title 23 Pa.C.S. § 5328 analysis. [The trial c]ourt [found] that it properly addressed each factor and, based on all of the applicable factors[,] found that [Great-Grandmother] should continue exercising primary physical custody of [C]hild. The factors were fully discussed in the [c]ourt's initial [m]emorandum which is attached hereto and made a part of this [s]upplemental [m]emorandum.
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> With respect to the sixth matter complained of on appeal, [Father] argues that the [trial c]ourt did not properly address which factor favored which party other than a brief discussion of the factors. Contrary to [Father's] contention, [the trial c]ourt properly addressed each factor. Some factors were discussed fully at length. Other factors were inapplicable. Some factors favored both parties, and other factors favored one party over the other. In the event [the trial c]ourt found that all the factors only favored [Great-Grandmother] then the [c]ourt would not have expanded Father's period of partial physical custody.
>
> The [c]ourt also specifically considered [C]hild's education in making its schedule for custody. One of the issues at trial was [C]hild missing a day of school on alternating Fridays since [Great-Grandmother] was responsible to transport [C]hild to New York on Fridays for Father's period of custody. Father was contending that [C]hild was failing English; however, her English grades were 84, 83, as reflected in her report card. N.T. 5/5/12, at 77, l.15-20; at 78, l.3-4. In order to insure that [C]hild does not miss any additional classes on Fridays, the [c]ourt entered an [o]rder requiring Father to pick up [C]hild on Fridays by 5:00 p.m. for his period of custody and for [Great-Grandmother] to pick up [C]hild on Sundays in New York.

Supplemental Memorandum Issued Pursuant to Pa.R.A.P. 1925(a), 9/5/12, at 5-6.

In ***E.D.***, this Court addressed an appeal by a mother from a custody order that granted the father primary physical custody of the parties' child and permission to relocate with the child. We held that the trial court must consider all of the factors set forth in Section 5337(h) of the new Child Custody Act, 23 Pa.C.S.A. § 5337(h), regarding relocation. We also addressed whether the trial court had failed to consider the factors set forth in Section 5328 regarding the custody award. After quoting the trial court's summary disposition of the issue, we instructed that, on remand, the trial court should conduct a thorough analysis based on the factors set forth in Section 5328(a). ***Id.*** at 82.

Subsequently, in ***J.R.M. v. J.E.A.***, 33 A.3d 647, 652 (Pa. Super. 2011), this Court addressed an appeal by a father from an order awarding primary physical custody of the parties' child to the mother. We found that the trial court erred as a matter of law by basing its decision almost exclusively on the fact that the child was breastfeeding, and the parties' difficulty in communicating with each other. ***Id.***, 33 A.3d at 652. We found that the trial court failed to consider all of the factors required to be considered under Section 5328(a). Thus, the award was vacated and the case remanded with a caution that this Court could not make independent factual determinations. ***Id.***, 33 A.3d at 652, n.5.

After a careful review of the record in this matter, the briefs of the parties, and the controlling case law, we find that the trial court, in its opinion entered on July 6, 2012, did consider all of the factors under Section 5328(a). ***See E.D.***, 33 A.3d at 79-80 (holding that "best interests of the child" analysis requires consideration of all Section 5328(a) factors). Father is not satisfied with the weight the trial court afforded to each of the factors in rendering its custody decision. As the trial court's conclusions are not unreasonable as shown by the evidence of record, we may not disturb the trial court's custody decision. ***C.R.F.***, 45 A.3d at 443. Accordingly, we affirm the trial court's order as to issues two and six.

Next, we address Father's third issue, in which he argues that the trial court erred in not including in its analysis the well-reasoned preference of Child to live primarily with Father in New York. The seventh factor of the test set forth in Section 5328(a) is, "[t]he well-reasoned preference of the child, based on the child's maturity and judgment." 23 Pa.C.S.A. § 5328(a). This Court has stated that the weight to be given to a child's preference depends upon the maturity, reasoning, and intelligence of the child. ***Johns v. Cioci***, 865 A.2d 931, 937 (Pa. Super. 2004).

Here, the trial court stated the following with regard to its consideration of the preference of Child, who was almost twelve years old, under Section 5328(a)(7):

> [The trial c]ourt took great pleasure in meeting [C]hild and found her to be a positive, articulate, intelligent young lady who was well-groomed and happy.
>
> She indicated, *in camera*, that she enjoys attending Dallas Middle School and was able to name seven (7) friends in school without hesitation. She stated that she hopes to become a marine biologist and that she enjoys English and Science classes. She enjoys having "sleepovers" with her friends and participating in chorus, band and drama club.
>
> [C]hild stated that she loves to bowl and loves to go swimming in the summertime in Staten Island, in addition to going to Chuck E. Cheese Restaurant and bowling with her father. She stated that she has good friends in Staten Island, Samantha, Anthony and Trinity. She described Staten Island as "crowded" but stated that she enjoys being there because it was "more fun there" and there is a "big family" in Staten Island.
>
> She spoke favorably of her relationships with her siblings in Pennsylvania, especially her younger brother, [G]. She stated that she likes living with [Great-Grandmother], because she "always took care of me." She appeared to the court to be the kind of child who is readily adaptable and who is able to thrive in any given positive environment.

Trial Court Opinion, 7/6/12, at 12.

Further, in its supplemental memorandum issued pursuant to Pa.R.A.P. 1925(a), the trial court considered that Child had stated that she wished to live with Father in New York, but explained that it did not give that statement any weight, explaining as follows:

> With respect to the third matter complained of on appeal, the [c]ourt did consider the preference of [C]hild in this case. One of the main reasons that [C]hild wanted to live with [] Father was that [C]hild felt her weekends with [] Father are too brief due to taking the bus on Fridays and arriving late on Friday nights and then leaving on Sundays. When [C]hild was asked if her preference would change if she were given additional time with [] Father, [C]hild responded that she did not know.

(**Child's transcript**[,] N.T. 5/9/[12], at 20 l.6-25; at 21, l.23-25; at 22, l.1.[1]) Although [C]hild's preference is an important factor to be considered in a custody action, a child's express wishes are not controlling in a custody action. ***Cardamone v. Elshoff***, 659 A.2d 575 (Pa. Super. 1995)[.]

During [C]hild's *in camera* interview, [C]hild testified how much she enjoys seeing her siblings on a daily basis after school for a period of four (4) hours. [C]hild ate daily meals with her siblings and her mother[,] and testified how much she enjoyed playing with her younger sibling, [G.]. (**Child's transcript**, N.T. 5/9/12, at 6, l.1-25; at 33, l.11-15). In addition, [C]hild testified that she sleeps at [M]other's home on Fridays and at times her sister, [A.], sleeps at [Great-Grandmother's] home[,] which the child describes as "cool". (**Child's transcript**[,] N.T. 5/9/12, at 19, l.15-19; at 20, l.1)[.] [C]hild also has many friends at school and achieved second honors. N.T.[,] [5/9/12], at 6, l.10-15). Through living with [Great-Grandmother], [C]hild has immediate contact with [M]other and siblings on a daily basis which would be in [C]hild's best interest.

[C]hild has also been accustomed to a daily routine. [C]hild, [Great-Grandmother] and [] [M]other all consistently testified that [C]hild is present at [M]other's house from 3:00 p.m. until 7:00 p.m. daily. At [M]other's home, she eats supper daily with her three siblings and plays with them afterwards. N.T.[,] 5/9/12, at 4, l.1-8; at 72, l.1-12; **Child's transcript**[,] 5/9/12[,] at 6, l.1-25)[.] On Friday nights, when [C]hild is not in [] Father's custody, [C]hild sleeps at [M]other's home. [C]hild also testified that her sister[, A.], also sleeps at [Great-Grandmother's] home in [C]hild's room[,] and that she likes having her sister sleep over at her house. N.T.[,] 5/9/12[,] at 19, l.15-19; at 20 l.1)[.] The court "must give attention to the benefits of continuity and stability in custody arrangements and to the possibility of harm arising from disruption of long-standing patterns of care." ***Jackson v. Beck***, 858 A.2d 1250, 1252 (Pa. Super. 2004). [C]hild is thriving in her current environment and routine, and it would not be in [her] best interest to disrupt the continuity and stability for [C]hild.

[The trial court] cannot ignore the benefits that [C]hild is receiving by spending time with her brothers and sister every day for a period of four hours, in addition to spending an overnight with them on the weekends. Should [C]hild reside

> with [] Father, [C]hild will certainly be separated from her siblings and will not have the opportunity to maintain the close bond she has with her siblings. Sibling relationships must be considered and the impact that separation of siblings will have upon the best interests of the child.
>
> The Superior Court has previously explained the significance of sibling relationships as follows:
>
> > We have noted the significance of the relationships within a nuclear family, which sustain and nourish a child for a lifetime, but accomplish it day by day, hour by hour, indeed, minute by minute. 'As Jane Austen stated so eloquently, 'Children of the same family, the same blood, with the same associations and habits, have some means of enjoyment in their power, which no subsequent connection[s] can supply. . .' ***Speck v. Spadafore***, 895 A.2d 606 (Pa. Super. 2006).
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> ———————————————————————————
>
> [1] There are two transcripts in this case dated May 9, 2012, one of which consists exclusively of [C]hild's testimony.

Supplemental Memorandum Issued Pursuant to Pa.R.A.P. 1925(a), 9/5/12, at 6-8.

Father is not satisfied with the weight trial court afforded to each of the factors in rendering its custody decision. As the trial court's conclusions are not unreasonable as shown by the evidence of record, we may not disturb the trial court's custody decision. ***C.R.F.***, 45 A.3d at 443. Accordingly, we affirm the trial court's order as to issue three.

Next, we address Father's fourth issue, which is whether the trial court erred in not considering that Great-Grandmother is of an advanced age, and has health problems and limitations that impact on the care of Child. Father argues that the trial court should concern itself with Child's best interest. He

contends that Child's activity level is greater than that of Great-Grandmother, and that Great-Grandmother's inability to drive has an impact on Child's best interests. Father does not specify any other limitations on Great-Grandmother's ability to care for Child, and he does not specify any health limitations that would limit Great-Grandmother's care of Child.

The trial court explained its reasoning as follows:

> [The trial c]ourt finds that this specific argument is highly discriminatory and prejudicial to people who are older in age. [G]reat[-G]randmother is currently seventy-seven (77) years of age and she has been the primary care giver [sic] of [C]hild since [G]reat[-G]randmother was sixty[-]five (65) years of age. The age of the person does not make that person incapable of having primary physical custody. [] [G]reat[-G]randmother was of sound mind during the trial. There was no testimony to suggest that she has any health problems that impact negatively upon her ability to care for [C]hild. In fact, she testified that in the three years that she has resided in Pennsylvania, she was only sick once because she was out in the cold and rain during a flood. (N.T. at 122, l.10-22)[.] In fact, it is [] Father who has health problems. [] Father testified that he has diabetes and he uses an insulin pump, a fact which the [c]ourt did not take into consideration or construe against Father in the determination of primary custody. (N.T. 4/16/12, at 53, l.16-24).
>
> The only limitation [G]reat[-G]randmother has is that she does not drive. Although Father is able to drive, he consistently relied on his mother to pick up [C]hild. When his mother was not able to pick up [C]hild, he did not take the initiative to pick up [C]hild. For instance, when his mother was in Florida during Father's weekend of custody, Father chose not to exercise his weekend of custody with [C]hild. N.T. 5/9/12, at 125, l.20-25; at 126, l.1-2[.] When [Great-Grandmother] needs to transport [C]hild, she either takes the bus or has her daughter or her friend take her. Are we to start taking children away from their caregivers because their caregivers cannot drive? We live in an age where transportation is readily available for people who do not drive. Furthermore, some people are refusing to drive due to the cost of gas. Some people do not own cars. Does that

> mean they should not have children? [G]reat[-G]randmother's inability to drive does not have a negative impact on [C]hild. There is no case or statute that states that in order to have primary custody you need to be of a certain age and you need to know how to drive. 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 8-10.

As the trial court's conclusions are not unreasonable as shown by the evidence of record, we may not disturb the trial court's custody decision. ***C.R.F.***, 45 A.3d at 443. Accordingly, we affirm the trial court's order as to issue four.

Finally, we address Father's fifth issue, in which he contends that the trial court failed to consider the actions of Great-Grandmother in relocating Child in the middle of the night from New York to Pennsylvania without Father's agreement or giving him notice of the relocation. Father asserts that Great-Grandmother failed to consider Child's best interests when she moved Child first from New York to Kingston in Luzerne County, Pennsylvania, and then from Kingston to her present home in Dallas, Luzerne County. He claims that Great-Grandmother's actions were self-motivated.

The trial court analyzed the issue as follows.

> It is important to note that [G]reat[-G]randmother relocated to Pennsylvania without [] Father's agreement or without giving him notice. It is important to note that [] [G]reat[-G]randmother relocated to Pennsylvania with [] [C]hild in May of 2009. Subsequent to her relocation with [] [C]hild to

> Pennsylvania, [] Father entered into a written agreement in May of 2010 in which he consented to [] [G]reat[-G]randmother having primary physical custody of [] [C]hild in Pennsylvania. [] Father had an opportunity in May of 2010 to oppose [] [G]reat[-G]randmother's relocation to Pennsylvania. Rather than opposing the relocation, [] Father consented to the relocation by signing an agreement and consenting to [] [G]reat[-G]randmother remaining in Pennsylvania with primary physical custody of [] [C]hild.

Supplemental Memorandum Issued Pursuant to Pa.R.A.P. 1925(a), 9/5/12, at 10.

We agree with the trial court that, if Father had wished to oppose the relocations by Great-Grandmother from New York to Kingston, and from Kingston to Dallas, he should have done so at the proper time. Instead, he entered into a written agreement giving his consent to Great-Grandmother having custody of Child in Pennsylvania, after she relocated with Child to Luzerne County. To the extent that Father suggests a pattern of relocation on Great-Grandmother's part, he does not put forth any citation to any evidence in the record that Great-Grandmother plans a future move. If she does attempt to relocate, he will have the ability to oppose the relocation in accordance with Section 5337 of the Act.

As the trial court's conclusions are not unreasonable as shown by the evidence of record, we may not disturb the trial court's custody decision as to Father's fifth issue. ***C.R.F.***, 45 A.3d at 443. Accordingly, we affirm the order denying Father's petitions for modification of custody and relocation.

Order affirmed.

Strassburger, J. files a concurring statement.