

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

G.S.L., JR.

Appellant

v.

D.L.S.

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1486 MDA 2012

Appeal from the Order July 16, 2012
In the Court of Common Pleas of Susquehanna County
Civil Division at No(s): 1999-581-CP

BEFORE: BOWES, J., GANTMAN, J., and OLSON, J.

MEMORANDUM BY GANTMAN, J.:

Filed: March 6, 2013

Appellant, G.S.L., Jr. ("Father"), appeals from the order entered in the Susquehanna County Court of Common Pleas, which granted primary physical custody of the minor child, M.L. ("Child"), to Appellee, D.L.S. ("Mother"), subject to Father's periods of partial custody. We affirm.

In its opinions, the trial court fully and correctly set forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Father raises fifteen issues for our review:

WHETHER THIRD PARTIES MAY INTERFERE OR OBSTRUCT
A NATURAL PARENT'S RIGHT TO CUSTODY OF THEIR
[CHILD] WITHOUT INSTITUTING DEPENDENCY OR
CUSTODY PROCEEDINGS WITH A SHOWING THAT [CHILD]
IS NOT PROPERLY CARED FOR OR A NATURAL PARENT IS
UNFIT?

WHETHER THIRD PARTIES MAY PLACE THEMSELVES *IN LOCO PARENTIS* STATUS TO [CHILD] IN DEFIANCE OF A NATURAL PARENT'S WISHES AND THE PARENT/CHILD RELATIONSHIP?

WHETHER THE TRIAL COURT COMMITTED AN ERROR OF LAW OR ABUSED ITS DISCRETION IN AWARDING BOTH THIRD PARTIES AND NATURAL MOTHER PRIMARY PHYSICAL CUSTODY OF [CHILD] WHICH IS TO BE EXERCISED BY SUCH PARTIES CONCOMITANTLY?

WHETHER THE TRIAL COURT COMMITTED AN ERROR OF LAW OR ABUSED ITS DISCRETION IN FINDING NATURAL MOTHER HAD PRIMARY PHYSICAL CUSTODY OF [CHILD] WHEN MOTHER DID NOT AND CLEARLY RELINQUISHED HER CUSTODIAL RIGHTS TO [CHILD]?

WHETHER A NATURAL PARENT WHO IS CLEARLY UNFIT MAY RELINQUISH THEIR CUSTODY RIGHTS, AS WELL AS THE CUSTODY RIGHTS OF THE OTHER NATURAL PARENT, TO THIRD PARTIES OVER THAT NATURAL PARENT'S OBJECTION AND IN DEFIANCE OF THAT NATURAL PARENT'S WISHES?

WHETHER THE BURDEN OF PROOF IN A THIRD PARTY CUSTODY CLAIM RESTS WITH A NATURAL PARENT OR THIRD PARTIES?

WHETHER THE TRIAL COURT COMMITTED AN ERROR OF LAW AND ABUSED ITS DISCRETION IN APPLYING THE LONGSTANDING **GRUBER**¹ RELOCATION ANALYSIS WHEN NATURAL MOTHER RELINQUISHED HER CUSTODIAL RIGHTS TO [CHILD] AND NO FINDING WAS MADE [THAT] NATURAL FATHER IS UNFIT TO CARE OR PROMOTE THE BEST INTERESTS OF [CHILD]?

WHETHER THE TRIAL COURT COMMITTED AN ERROR OF LAW AND ABUSED ITS DISCRETION IN APPLYING THE NEW CUSTODY GUIDELINES PROMULGATED AND EFFECTIVE JANUARY 24, 2011, TO THIS CASE WHEN THE

¹ **Gruber v. Gruber**, 583 A.2d 434 (Pa.Super. 1990).

PETITION FOR MODIFICATION OF CUSTODY WAS FILED ON JANUARY 6, 2011?

WHETHER THE TRIAL COURT COMMITTED AN ERROR OF LAW AND ABUSED ITS DISCRETION IN DENYING NATURAL FATHER CUSTODY OF [CHILD] WHEN:

i. THE TRIAL COURT MADE NO SUBSTANTIAL FINDING NATURAL FATHER WAS UNFIT TO CARE FOR THE CHILD OR HE SUFFERED FROM SEVERE MENTAL OR MORAL TURPITUDE;

ii. MOTHER OF [CHILD] FLED WITH [CHILD] FOR A PERIOD OF SIX (6) YEARS IN DEROGATION OF AN ORDER FOR CUSTODY AND IN VIOLATION OF NATURAL FATHER'S PARENTAL RIGHTS TO [CHILD];

iii. MOTHER OF [CHILD] UNQUESTIONABLY FAILED AND WAS NO LONGER SERVING THE BEST INTERESTS OF [CHILD]; AND

iv. IT RELIED ON THE CREDIBILITY OF MOTHER OR THIRD PARTIES WHEN MOTHER DELIBERATELY DENIED NATURAL FATHER CUSTODY OF [CHILD] IN VIOLATION OF A COURT ORDER FOR CUSTODY FOR A PERIOD OF SIX (6) YEARS AND, THEREAFTER, RELINQUISHED HER PARENTAL RIGHTS TO THIRD PARTIES ONLY TO THE EXTENT OR CONTINGENCY THAT NATURAL FATHER WOULD NOT RECEIVE PRIMARY CUSTODY OF [CHILD]; THUS CONTINUING TO DEPRIVE NATURAL FATHER OF HIS PARENTAL RIGHTS TO [CHILD]?

WHETHER THE TRIAL COURT'S OPINION DENYING NATURAL FATHER PRIMARY CUSTODY OF [CHILD] WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND/OR IN THE BEST INTEREST OF THE CHILD?

WHETHER FATHER HAS A *PRIMA FACIE* RIGHT TO CUSTODY OVER THIRD PARTIES WHEN MOTHER RELINQUISHED HER CUSTODIAL RIGHTS AND THE BEST INTEREST OF [CHILD] IS NO LONGER BEING SERVED IN NATURAL MOTHER'S CUSTODY WHICH CAUSED NATURAL MOTHER TO RELINQUISH THOSE CUSTODIAL RIGHTS?

WHETHER THE TRIAL COURT COMMITTED AN ERROR OF LAW AND ABUSED ITS DISCRETION IN FINDING THIRD PARTIES WERE ONCE A PRIMARY CARETAKER TO [CHILD] WHEN NO EVIDENCE SUPPORTED SUCH A FINDING OF FACT?

WHETHER THE TRIAL COURT COMMITTED AN ERROR OF LAW AND ABUSED ITS DISCRETION BY REFUSING OR LIMITING NATURAL FATHER OR FIT PARENT'S CROSS-EXAMINATION OR THE OPPORTUNITY TO SUBMIT EVIDENCE AS TO THE THIRD PARTIES' TRACK RECORD REGARDING CUSTODY OF THE THIRD PARTIES' OWN CHILD(REN)?

WHETHER THE TRIAL COURT COMMITTED AN ERROR OF LAW AND ABUSED ITS DISCRETION IN FAILING TO AWARD NATURAL FATHER PRIMARY PHYSICAL CUSTODY OF [CHILD] WHEN:

- i. THE BEST INTEREST OF THE CHILD WAS NO LONGER OR EVER BEING SERVED IN THE CUSTODY OF NATURAL MOTHER;
- ii. NATURAL MOTHER RELINQUISHED HER PARENTAL RIGHTS TO THE CHILD;
- iii. NO EVIDENCE WAS PRESENTED THAT NATURAL FATHER WAS UNFIT NOR CAPABLE OF PROMOTING THE BEST INTEREST OF [CHILD] *I.E.* CARING...FOR [CHILD'S] PHYSICAL, MENTAL, EMOTIONAL, EDUCATIONAL AND/OR SPIRITUAL WELL-BEING; AND
- iv. THIRD PARTIES HAVE NOT MET OR PRODUCED A SCINTILLA OF EVIDENCE TO TIP THE SCALES OR THEIR BURDEN OF PROOF OVER A NATURAL PARENT'S *PRIMA FACIE* RIGHT TO CUSTODY OR NATURAL PARENT'S RIGHT TO RAISE THEIR CHILDREN AS THEY SEE FIT?

WHETHER THE TRIAL COURT SHOULD HAVE RECUSED ITSELF FROM THIS MATTER DUE TO IMPROPRIETY OR THE APPEARANCE OF IMPROPRIETY AND, AS SUCH, ABUSED

[ITS] DISCRETION AND COMMITTED AN ERROR OF LAW BY NOT DOING SO.^[2]

(Father's Brief at 7-9).

Our scope and standard of review of a custody order are as follows:

[T]he appellate court is not bound by the deductions or inferences made by the trial court from its findings of fact, nor must the reviewing court accept a finding that has no competent evidence to support it.... However, this broad scope of review does not vest in the reviewing court the duty or the privilege of making its own independent determination.... Thus, an appellate court is empowered to determine whether the trial court's incontrovertible factual findings support its factual conclusions, but it may not interfere with those conclusions unless they are unreasonable in view of the trial court's factual findings; and thus, represent a gross abuse of discretion.

R.M.G., Jr. v. F.M.G., 986 A.2d 1234, 1237 (Pa.Super. 2009) (quoting *Bovard v. Baker*, 775 A.2d 835, 838 (Pa.Super. 2001)). Moreover,

[T]he paramount concern in a child custody case is the best interests of the child, based on a consideration of all factors that legitimately affect the child's physical, intellectual, moral and spiritual wellbeing.

[O]n issues of credibility and weight of the evidence, we defer to the findings of the trial [court] who has had the opportunity to observe the proceedings and demeanor of the witnesses.

² To the extent Father now seeks to challenge the trial judge's failure to recuse himself, Father raised this issue for the first time in his appellate brief. Father did not assert this claim in his concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(a)(2)(i). Therefore, the claim is waived. *See Yates v. Yates*, 963 A.2d 535 (Pa.Super. 2008) (reiterating issues not raised in Rule 1925 statement are deemed waived for purposes of appellate review).

The parties cannot dictate the amount of weight the trial court places on evidence. Rather, the paramount concern of the trial court is the best interest of the child. Appellate interference is unwarranted if the trial court's consideration of the best interest of the child was careful and thorough, and we are unable to find any abuse of discretion.

R.M.G., Jr., supra at 1237 (internal citations omitted). The test is whether the evidence of record supports the trial court's conclusions. *Ketterer v. Seifert*, 902 A.2d 533, 539 (Pa.Super. 2006).

The new Child Custody Act, codified at Section 5328 on November 23, 2010 (effective January 24, 2011) provides:

§ 5328. Factors to consider when awarding custody

(a) Factors.—In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

- (1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.
- (2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.
- (3) The parental duties performed by each party on behalf of the child.
- (4) The need for stability and continuity in the child's education, family life and community life.
- (5) The availability of extended family.
- (6) The child's sibling relationships.

(7) The well-reasoned preference of the child, based on the child's maturity and judgment.

(8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.

(9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.

(11) The proximity of the residences of the parties.

(12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

(14) The history of drug or alcohol abuse of a party or member of a party's household.

(15) The mental and physical condition of a party or member of a party's household.

(16) Any other relevant factor.

23 Pa.C.S.A. § 5328(a). When deciding a petition to modify custody under the new Child Custody Act, the court should conduct a thorough analysis of the best interests of the child based on all of the Section 5328(a) factors.

E.D. v. M.P., 33 A.3d 73 (Pa.Super. 2011). ***See also J.R.M. v. J.E.A.***, 33

A.3d 647 (Pa.Super. 2011) (stating court must address relevant factors and conduct case-by-case analysis of what is in child's best interests).³

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinions of the Honorable Joseph F. Kameen, we conclude Father's issues merit no relief. The trial court opinions comprehensively discuss and properly dispose of the questions presented. (**See** Trial Court Opinion, filed September 6, 2012, at 6-11;⁴ Trial Court Opinion, filed July 16, 2012, at 6-15) (finding: issues regarding third party custody claims are irrelevant to order on appeal, which relates to custody dispute between Mother and Father only; court correctly applied provisions of new Child Custody Act; Mother demonstrated consistency in providing parenting and care for Child; despite Mother's shortcomings, she has

³ This Court has held that Section 5328 applies to cases where the evidentiary proceeding commences on or after the effective date of the recent Child Custody Act; the provisions of the new Act apply even if the request or petition for relief was filed prior to the effective date. **C.R.F. v. S.E.F.**, 45 A.3d 441 (Pa.Super. 2012). In other words, "it is the date of the commencement of the hearing that determines whether the [new] Act applies, not the date the petition or complaint was filed." **Id.** at 445. Instantly, the custody trial occurred on July 9, 2012, after the effective date of the new Act. Therefore, the new Act applied. **See id.**

⁴ The court suggests Father's notice of appeal, filed on August 16, 2012, was untimely. Although the docket entries list the filing date of the final custody order as July 16, 2012, the prothonotary time-stamped the order as "FILED" on July 17, 2012. Further, the prothonotary served Father with a copy of the order on July 17, 2012. Thus, Father timely filed the notice of appeal. **See In re L.M.**, 923 A.2d 505 (Pa.Super. 2007) (explaining order is not appealable until entered on docket with required notation that appropriate notice has been given).

exhibited higher level of concern for Child's physical, emotional, educational, medical, and social needs; Mother's decision to enter into temporary custody arrangement with paternal grandparents, allowing grandparents to provide for Child's custodial needs, evidences Mother's willingness to make appropriate adjustments in her own life to meet Child's needs; Father failed to present credible evidence to support his claim that granting legal or primary physical custody to him would serve Child's best interests; Father failed to present any evidence to justify relocating Child to Pittsburgh; best interests of Child dictate that Mother receive full legal and primary physical custody of Child with right to extend legal and temporary physical custody to paternal grandparents; Father shall receive partial physical custody, provided he completes reunification counseling with Child). Accordingly, we affirm on the basis of the trial court's opinions.

Order affirmed.

IN THE COURT OF COMMON PLEAS OF SUSQUEHANNA COUNTY, PENNA.
FAMILY DIVISION

G. S. L.
Plaintiff,

v.

D. L. S.
Defendant,

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NO. 1999 - 581 CP

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ORDER

AND NOW, this 16th day of July, 2012 upon consideration of the Plaintiff's Petition for Modification of Custody and following a full Hearing thereon, the Plaintiff's Petition for Primary Custody is DENIED and the Court hereby ADOPTS the following Custody Provisions.

This case presents a very unusual set of circumstances where Mother has primary physical custody of their 16 1/2 year old daughter pursuant to a Custody Order entered in 2006. Father had secondary physical custody of the child with scheduled visitation as set forth in that Order.

Both parents have had significant involvement in the Criminal Justice System with Father having served five (5) to ten (10) years in prison for Armed Robbery and also has had significant involvement with drugs including Court Ordered long term rehab in New Jersey in 2009 in lieu of criminal prosecution. Mother has also done eighteen (18) months in prison for Simple Assault and Harassment as well as having significant drug addiction issues also resulting in 5 terms in rehab.

The daughter ML was born in January 1996. Father was incarcerated from 1997 to 2003. Mother was incarcerated in 2004 into 2005. During Father's

incarceration, Mother had primary physical custody of the minor child. During Mother's period of incarceration, Father had primary physical custody of the minor child. In 2006, Mother again obtained primary physical custody of the minor child.

Testimony was presented from C. L., G. L.'s mother, that during the periods of time where G. L. had custody, C. L. was the primary caretaker of ML when Father would drop her off at C. L.'s residence early in the morning and pick up the child late that evening on his way home from work and/or school. Father did not agree with this statement but that testimony was more credible given all the facts of this case. This arrangement of custody with Father and C. L. ended in December, 2006, when Mother, following release from jail, regained custody.

It is interesting to note that the docket entries reveal very extensive litigation between the Father and Mother from 1999 to 2006 as the parties fought over custody and visitation during their periods of incarceration. However, from December 27, 2006 when Mother regained custody until January 5, 2011 no complaints, motions, or requests were raised with the Court. This period of time coincides with that period where Father was out of the child's life. In late 2010, claims for child support were raised by the paternal grandparents and that reinitiated the high level of litigation between the parties.

Despite having primary physical custody of ML since December 2006, Mother allows the paternal grandparents to exercise physical custody over the minor child due to the deteriorating relationship between Mother and the minor child. This arrangement

of custody to the paternal grandparents was made as a result of the request of the minor child and the agreement of the Mother in 2009.

This arrangement with the paternal grandparents has existed now for almost 2 ½ years. The minor child had a developing marijuana problem at approximately the time of the transfer to the grandparents' custody. The paternal grandfather, P.L., was also a Police Officer and he ended up having to cite the minor child for Possession of Marijuana. That action appears to have had a significant impact on the minor daughter's life. Her school grades have turned around significantly, she is doing much better educationally and socially and has worked her way out of the drug problem through counseling and a Consent Decree in the Juvenile Delinquency proceeding. Her school attendance and grades have improved substantially.

The Father has had very little involvement with his minor daughter's life and except for one evening when he saw his daughter at a dinner at his parents, he has had no visitation with her since December 2006.

Limited testimony was also presented regarding communications between Father and daughter with Father describing such communications as being "honest" and Mother describing those communications as volatile and upsetting to ML.

The child has grown up in Northeastern Pennsylvania for her entire life. She has extended family in that area including her Mother, maternal great-grandmother, maternal grandfather, uncles and a four (4) year old half-brother with whom she is great friends. In addition, her extended family includes the paternal grandparents and their family.

Even though the minor daughter resides with the paternal grandparents, she has regular visitation with her Mother and half-brother multiple times a week.

Father, in filing his Motion to Modify Custody, is seeking to obtain primary physical custody of ML and Court approval to relocate her to Pittsburgh, Pennsylvania. Father relocated to Pittsburgh in 2009 and has continued to reside there since that date. He is currently employed as a paralegal with a Pittsburgh law firm and he lives in a home with his current girlfriend and the girlfriend's minor child.

In May of 2011, as part of this custody proceeding, an agreement was entered into to provide for joint counseling for the minor child and Father to assist in reestablishing a parent-child relationship. While some efforts were made to arrange for such counseling, the joint counseling never occurred and the minor child participated in counseling of her own while Father participated in a psychiatric evaluation and counseling in Pittsburgh.

Based upon the testimony presented it is clear that the Mother and Father have a very bad and almost non-existent relationship. Certainly the relationship appears to be volatile and non-communicative and clearly does not have any basis upon which the Court could conclude that the parties are capable of communicating for the best interest of the minor child.

The minor child, ML, is now doing well in school, has a part-time job and has her physical, medical and dental needs properly met.

This custody proceeding was initiated by complaint in January of 2011 almost simultaneous with the paternal grandmother filing for child support against the natural parents to provide assistance in raising the child.

First, the Court notes that the Father is seeking a change in the primary physical custody of his minor daughter and simultaneously requesting relocation from Northeastern Pennsylvania to Pittsburgh but Father has not pled nor presented any evidence in support of his request for relocation. Further, the Court notes that both Plaintiff and Defendant are unrepresented in this proceeding. In addition, the Court notes that the minor daughter was present at the Hearing and the Court proposed to hear from the minor daughter regarding her preference in this matter. Neither parent called the daughter as a witness and the Father objected to the daughter's testimony on the basis of the fact that it would be "prejudicial" to him since he had no relationship with her and she would not want to move to Pittsburgh and live with him.

Initially, the Court would note that the Petition for Modification for Custody should be denied for failure of the Plaintiff to plead or present any evidence related to relocation or to provide any evidence related to the *Gruber* Factors. However, given the complicated nature of the various relationships between the parties, the existing Custody Order and the best interests of the minor child, the Court will address the remaining issues also raised in this proceeding.

Of significant import to the matter presently before the Court is a Stipulation and Order entered on June 28, 2011 which provided for an Agreement between the parties including *G.L.*, *D.S.* and *a.L.* that the Father, *G.L.* and the daughter, *ML* would participate in counseling for the purposes of reunification. It was anticipated at that point that the counseling would be provided by Ms. Pavlovich. Further it was agreed that the Father would travel to Ms. Pavlovich's office in Jermyn, PA periodically to participate in counseling sessions with his

daughter. However, evidence was ultimately presented that Ms. Pavlovich did not provide counseling involving minor children and that as a result alternate counseling would have to be arranged. No such counseling was ever arranged and the Father has not participated in any reunification counseling with his daughter.

However, in lieu of reunification counseling, Father participated in a psychiatric evaluation and counseling through Positive Pathways, a counseling operation in Pittsburgh, Pennsylvania. While this counseling may provide benefit to the Father, it has done nothing to assist in reunification with the daughter or to facilitate a proper parent-child relationship with his daughter.

Based upon all the evidence presented, this Court hereby ADOPTS the following Findings of Fact and Conclusions of Law related to this proceeding.

FINDINGS OF FACT

1. The Petitioner *G. L.* is the 34 year old father of the minor child, ML.
2. The Respondent *D. S.* is the 33 year old mother of the minor daughter, ML.
3. ML is the 16 ½ year old daughter of Petitioner and Respondent.
4. There currently exists a Custody Order dated December 27, 2006 which provides that Mother shall have primary physical custody of ML with partial custody and visitation granted to the Father on alternating weekends and certain holidays with two (2) weeks of vacation with the Father during summer vacation.
5. Mother and Father have a volatile relationship, have never been married, have serious criminal records which have resulted in incarceration that has interfered

with their ability to see their child and have experienced serious drug problems during their adult life.

6. Neither Mother nor Father have a good parent-child relationship with ML. In particular, the Court notes the following:

- a. Father has had no physical custody or visitation with ML since 2006;
- b. Father's limited communication with his daughter has resulted in upsetting communication by phone or text message;
- c. Mother and daughter's relationship broke down in 2009 around the same time that ML was found to be in possession of marijuana at school;
- d. Mother and ML had certain altercations that apparently led to allegations of abuse;
- e. As a result of this breakdown of the mother-daughter relationship, Mother entrusted daughter to the Father's parents, C.L. and P.L.

7. C.L. and P.L. have undertaken care of ML since 2010 and have maintained a very positive relationship with the young girl since that date.

8. ML has turned her life around as a result of this arrangement with her paternal grandparents as evidenced by her school grades, her school attendance and her overall lifestyle and performance being significantly improved.

9. Paternal grandmother, C.L. is a stay-at-home custodian of ML.

10. Paternal grandfather, P.L. is a Police Officer and former Chief of Police of Forest City.

11. The paternal grandparents exercise supervision of ML pursuant to a "temporary custody arrangement" between D, S, and the paternal grandparents.

12. The paternal grandparents have not requested a custody order granting them custody in this matter but rather acknowledge that they are third party custodians of ML pursuant to the desires of ML and the permission of D. S.

13. There does not appear to be any consent to the temporary custody arrangement having been executed or acknowledged by the natural father.

14. D, S, has consistent contact with ML often seeing her several times a week and having weekend visitation at her own home.

15. Mother also has another child from a different relationship and ML has a close relationship with this half-sibling.

16. ML has a fairly large extended family from both the maternal and paternal sides of the family in the area immediately surrounding Forest City and she has a good relationship with these family members.

17. The Custody Order of December 2006 is the operative document which is subject to this Petition to Modify.

18. Following the filing of the Petition to Modify, the Court Order of June 28, 2011 established a reunification plan that provided for joint counseling with Father and daughter.

19. Father has failed to participate in such counseling with ML.

20. Despite the fact that the paternal grandparents are the caretakers of the child, Father has had minimal contact with ML and does not have a good relationship with his parents.

21. Virtually no evidence was presented at the Custody Trial related to the "best interest" of ML.

22. No evidence was presented at the Custody Hearing related to the factors normally associated with relocation.

23. Father has failed to perform parental duties related to ML for the vast majority of her life as a result of (1) being incarcerated for in excess of 5 years shortly after ML was born and (2) having had virtually no contact with her since December 2006.

24. Father's Petition to Modify Custody was filed in January 2011 at the same time that the paternal grandparents were seeking child support to assist in providing for the needs of ML.

25. Reviewing the factors required under 23 Pa.C.S.A. §5328 regarding an award of custody, the Court concludes as follows:

a. Neither party is likely to encourage or permit contact between the child and the other party given the nature of the animosity between the parties and their inability or unwillingness to communicate or assist the other party;

b. Neither party has presented any evidence regarding their ability to provide adequate physical safeguards and supervision of the child with the exception of the decision of the custodial Mother to allow the paternal grandparents to provide care and supervision of the child. Natural Father is opposed to having the paternal grandparents provide care and supervision but he has failed to provide any evidence regarding his ability

or willingness to undertake the responsibility of care for the child. Further, natural Father has failed to participate in reunification counsel previously Ordered by the Court.

c. Mother has performed the parental duties related to the child on a much more consistent basis than Father and continues to exercise visitation with the child and performs parental duties for the child. Father has basically abandoned the child for the past 6 years.

d. The child is in need of stability and continuity in education, family and community life and has made significant progress over the past year and one-half in turning her life around.

e. The child has extended family members throughout the Forest City region for both paternal and maternal relatives and the child will benefit significantly therefrom. No evidence regarding any extended family in the Pittsburgh area has been presented.

f. ML has a good relationship with her half-sibling, Mother's other child, and preserving that relationship is of significant value to ML.

g. Father opposed the opportunity of the Court to hear the preference of the child based upon the fact that given his absence from the child's life for the past 5 ½ years, the child's expressed preference would be prejudicial to Father.

h. No specific evidence regarding intentional acts to alienate the child from the other parent have been presented however it is clear that no

attempt has been made by either parent to encourage or enhance the child's relationship with the other parent.

i. It is clear from the evidence that Mother is more likely to maintain a proper nurturing relationship with the child based upon her efforts in the past, her decision to benefit the child by entrusting her to the paternal grandparents and her willingness to maintain a consistent relationship with the child. Father's abandonment of the child for several years clearly evidences a lack of respect for the child's physical, educational, social, medical and emotional needs.

j. Evidence presented clearly indicates that Mother is more likely to attend to the needs of the child.

k. Given the fact that the Father currently resides in Pittsburgh and is seeking to relocate the child with him in Pittsburgh, clearly such relocation would disrupt the child's life and the child's ability to have contact with her mother, the paternal grandparents and extended family.

l. No evidence has been presented by the Father regarding any child care or supervision arrangements should the child reside with Father in Pittsburgh.

m. The level of conflict between the parties is such that it does not appear they would be capable of cooperating with one another for any purpose. The one concession made by Mother for reunification counseling with the Father was not followed through by the Father.

n. Both parties have a criminal offense history however none of those criminal offenses fall under the offenses set forth in 23 Pa.C.S.A. §5329 requiring an evaluation or counseling.

o. Both parties have a history of drug addiction and have participated in counseling and rehab, but no evidence was presented regarding the extent of counseling or rehab or the possible threat such prior addiction posed to the child as directed by 23 Pa.C.S.A. §5329; however, no evidence of any drug problems of the paternal grandparents was presented and as long as the current temporary custody arrangement continues, that arrangement significantly decreases the risk that the mother's prior addiction pose to ML.

p. Both parties appear to suffer from emotional conditions that have interfered with their ability to properly perform their parenting responsibilities however Mother has at least made an effort to fulfill those responsibilities despite her failure to successfully accomplish those duties at various times during the child's life.

CONCLUSIONS OF LAW

1. When evaluating a request for custody, a primary concern of the Court is the best interest of the minor child.

2. When evaluating the best interest of the minor child, the Court should address issues related to the child's physical, emotional, medical, educational, psychological, religious, and social needs.

3. When addressing the issues of primary physical custody between the parents, there is no presumption that custody should be awarded to any particular parent.

4. While a presumption exists in favor of a parent in matters involving custody proceedings between a parent and grandparent and specific criteria are set forth in 23 Pa.C.S.A. §5324, 5325, and 5327, these provisions do not apply here since this remains a custody proceeding between natural mother and natural father only.

5. Based upon the factors set forth in 23 Pa.C.S.A. §5328, Mother, *D.S.*, has demonstrated a higher level of consistency in providing proper parenting and care for ML. Further, Mother has remained a consistent parenting role in the life of her daughter. Further, Mother, despite her obvious shortcomings, has demonstrated a higher level of concern for ML as it relates to her physical, emotional, educational, medical and social needs.

6. Mother's decision to enter into a temporary custody arrangement with the paternal grandparents allowing the grandparents to provide for the custodial needs of ML evidences a recognition of the needs of ML and a willingness to make appropriate adjustments in her own life to meet those needs.

7. The best interests of the minor child dictate that Mother shall be granted full legal custody of the minor child with the right to extend legal custody to include the paternal grandparents who are taking care of the child's needs on a daily basis.

8. The best needs of the minor child provide that primary physical custody of ML shall be granted to the Mother, *D.S.*, with the right to extend temporary

physical custody to the paternal grandparents who presently provide for the needs of the child.

9. Partial physical custody of ML shall be granted to the Plaintiff, *G.L.*, provided Father participates in and completes reunification counseling with his minor daughter through appropriate counseling in the Forest City area. Pending successful completion of such counseling, Father's contact with the child shall be limited to contact during the counseling session or supervised physical custody at the paternal grandparents' home.

10. The best interests of the minor child also dictate that the parties shall take into consideration the desires of their minor child for contact with her parents, the paternal grandparents, and both the maternal and paternal extended families.

11. At the Custody Trial in this matter, Father has failed to present any credible evidence in support of his claim that the best interest of ML would be served by granting him legal or physical custody.

12. At the Custody Trial in this matter Father has presented no evidence in support of his claim that transfer of the child to his physical custody in Pittsburgh would be in the best interest of the child.

CUSTODY DETERMINATION

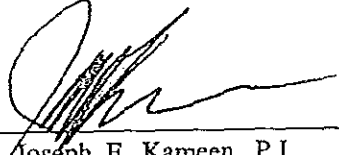
Sole Legal Custody is hereby GRANTED to *D.S.* ∴ Primary Physical Custody is GRANTED to *D.S.* Partial Physical Custody is GRANTED to *G.L.* provided *G.L.* participates in and successfully completes the unification counseling through an appropriate counseling service in Northeastern Pennsylvania. Pending participation in and successful completion of such reunification

counseling, Father's partial custody of the minor child shall be limited to periods of time involved in counseling or supervised physical custody in the presence of the paternal grandparents.

Except as provided above, Father shall not be entitled to any other visitation including weekend, holiday or summer vacation visitation. Father shall be entitled to telephone or other electronic contact with ML in an effort to establish a positive parenting relationship with her.

The standard General Principles of Custody attached hereto and incorporated herein shall become part of this Order and shall be as enforceable as any other provision of this Order.

BY THE COURT:



Hon. Joseph F. Kameen, P.J.
Specially Presiding

cc: G.S.L. Pro Se

D.L.S.
P.L. and C.L.

President Judge Kenneth W. Seamans, Susquehanna County
Court Administrator Samantha Venditti, Pike County

SUSQUEHANNA COUNTY
PIKE COUNTY
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PROHIBITED AREA

GENERAL PRINCIPLES OF CUSTODY

The parties shall carry out the day-to-day details of such legal and physical custody with the utmost good faith pursuant to all the following General Principles:

1. The best interests of the child shall be of paramount concern, independently as well as taking into account all the needs of the child.

2. Mother and Father shall endeavor to maintain open and amicable contacts with each other for all matters concerning the child.

3. Mother and Father shall give support to each other in their respective roles as parents and shall take into account the desire of the other parent for physical and emotional well being of the child, with a recognition that each Party's lifestyle may be different. To this end, both parties shall encourage a healthy relationship of the other parent with the child as one whom the child should love and respect.

4. Henceforth, neither Party shall take any action that could be reasonably construed to impair the rights of the other Party under this Order. Neither Party shall make or permit any other person to make any remarks or do anything that would be reasonably construed as derogatory or uncomplimentary to the other Party. Neither Party shall use the child as a messenger or a pawn for that party's own interest against the other parent. While in the presence of the child, neither Party shall engage in any conduct or activity that might endanger the child or be a bad example for the child. During each party's time of physical custody, that party shall not consume alcohol, any controlled substance or prescription medication to the extent that it interferes with their ability to properly oversee and care for the child.

5. The Parties shall communicate with one another concerning any parenting issues reasonably requiring consultation under the circumstances of the specific situation, taking into account that each parent wishes to fulfill his/her role as an equal parent. This shall include all matters substantially affecting each child's growth and development, including, but not limited to, education, choice of school, medical and dental treatment, religious and moral training as well as each child's respective athletic and extracurricular activities. Such consultations shall be aimed at reaching specific decisions in order to follow a harmonious policy for each child. Information and records with respect to such matters shall be shared freely.

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 or to the child.

6. Each Party shall allow the other to have reasonable telephone access with the child during his or her period of physical custody and during the child's normal waking hours, emergencies excepted. The child may initiate such telephone contact.

7. When the child is being transported by vehicle, the parent concerned shall be responsible to ensure that the child shall be transported by a licensed driver and in an insured and inspected vehicle with child restraints as required by law.

8. Day to day decisions of a routine nature will be the responsibility of the parent having physical custody at that time. With regard to any emergency decisions that must be made, the parent with whom the child concerned is physically residing at the time shall be permitted to make a decision necessitated by the emergency without

consulting the other parent in advance. Nevertheless, that parent shall inform the other of the emergency and consult with him/her as soon as possible.

9. The Parties shall cooperate with each other and with the child in order to facilitate the child's involvement in school, extra-curricular, community or social activities. The Party having custody of the child at the time of the activity shall be responsible for transportation to and from the activity unless otherwise agreed by the Parties.

10. Neither Party shall discuss with the child any proposed changes to custody arrangements that should reasonably be the subject of prior consultation with the other Party.

11. The Parties agree to keep each other advised at all times of their home and work addresses and telephone and cell phone numbers as well as their personal email address.

IN THE COURT OF COMMON PLEAS OF
SUSQUEHANNA COUNTY, PENNSYLVANIA
FAMILY DIVISION

G.S.L., Jr.,

Appellant,

vs.

D.L.S.,

Appellee

No. 1999-581 CP
No. 1486 MDA 2012

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FAMILY DIVISION

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OPINION SUBMITTED PURSUANT TO PENNSYLVANIA RULE OF APPELLATE
PROCEDURE 1925

AND NOW, this 4th day of September, 2012 after careful review of the record, we continue to stand by our decision and respectfully request the Superior Court to uphold our Order of July 16, 2012. This Court would also like to add, pursuant to Pennsylvania Rule of Appellate Procedure 1925, the following:

I. FACTUAL AND PROCEDURAL HISTORY

This appeal stems from a Motion for Modification of Custody. This case presents a very unusual set of circumstances. G.S.L. (hereinafter "Father" or "Appellant") and D.L.S (hereinafter "Mother") have a daughter, M.C.L., who was born in January 1996. Custody proceedings were first initiated in June 1999. Prior to the filing of the instant Petition, Mother had primary physical custody of their 16 ½ year old daughter pursuant to a Custody Order entered in 2006. Father had secondary physical custody of the child with scheduled visitation as set forth in that Order.

Both parties have had periods of primary physical custody of M.C.L. Appellant was incarcerated from 1997-2003 for armed robbery, during which time Mother had primary

physical custody. Mother was incarcerated in 2004 into 2005, during which Appellant had custody of M.C.L. By order dated December 27, 2006, Mother was awarded primary physical custody. Appellant has had little involvement with M.C.L. since that date and he has seen her once since then, at a dinner at Father's parents' house in December 2006. In 2009, Appellant moved to Pittsburgh, where he now lives with his girlfriend in her home along with her child. He has not exercised any periods of visitation either in Pittsburgh or at the minor child's residence. Mother, who has primary physical custody per the 2006 order, allows M.C.L.'s paternal grandparents, P.L. and C.L., to exercise actual physical custody over the minor child. This arrangement has been in place for roughly 2 ½ years.

From the date of the 2006 Custody Order, the docket is completely silent until Appellant filed the underlying Motion on January 6, 2011, on the heels of Appellant's mother raising claims for child support. In his Motion to Modify Existing Custody Arrangement, Father seeks primary physical custody. A hearing on Appellant's Motion was heard by this Court on July 9, 2012, in which both Mother and Father appeared *pro se*.

This Court heard from several witnesses and considered more than twenty-five exhibits tendered by Appellant. After the hearing, this Court issued an Order on July 16, 2012 denying Appellant's Petition. The Order provides that Mother retains primary physical custody and Appellant is granted partial physical custody, conditioned on his successful completion of unification counseling. Appellant filed a Notice of Appeal on August 16, 2012.

Pursuant to Pa.R.A.P. 1925(b), Appellant filed a Concise Statement of Matters Complained of on Appeal, in which he raised fourteen grounds for appeal:

- 1) Whether third parties may interfere or obstruct a natural parents rights to

custody of their children without instituting dependency or custody proceedings with a showing that child is not properly cared for or a natural parent is unfit.

2) Whether third parties may place themselves in loco parentis status to a child in defiance of a natural parent's wishes and the parent/child relationship.

3) Whether this Court erred and abused its discretion in awarding both third parties and natural mother primary physical custody of the child which is to be exercised concomitantly.

4) Whether this Court erred and abused its discretion in finding that mother has primary physical custody of the child when mother did not and clearly relinquished.

5) Whether a natural parent who is clearly unfit may relinquish their custody rights, as well as the custody rights of the other natural parent, to third parties, over that parent's objection and in defiance of that parent's wishes.

6) Whether the burden of proof in a third party custody claim rests with a natural parent or third parties.

7) Whether this Court erred and abused its discretion in applying the longstanding *Gruber* relocation analysis when natural mother relinquished her custodial rights to the child and no finding was made natural father is unfit to care or promote the best interests of the child.

8) Whether this Court erred and abused its discretion in applying the new custody guidelines promulgated and effective January 24, 2011, to this case when the petition for modification of custody was filed in January 7, 2011.

9) Whether this Court erred and abused its discretion in denying natural father custody of the child when:

A. the Trial Court made no substantial finding that natural father was unfit to care for the child or he suffered from severe mental or moral turpitude;

B. the mother of the child fled with the child for a period of six (6) years in derogation of an order for custody and in violation of natural father's parental rights to the child;

C. mother of the child unquestionably failed and was no longer serving the best interests of the child; and

D. it relied on the credibility of mother or third parties when mother deliberately denied natural father custody of the child in violation of a court order for custody for a period of six (6) years and thereafter relinquished her parental rights to third parties only to the extent or contingency that natural father would not receive primary custody of the child thus continuing to deprive natural father of his parental rights to the child.

10) Whether the Trial Court's opinion denying natural father primary custody of his child was supported by substantial evidence and/or in the best interest of the child.

11) Whether father has a prima facie right to custody over third parties when mother relinquished her custodial rights and the best interest of the child is no longer being served in natural mother's custody which caused natural mother to relinquish those custodial rights.

12) Whether this Court erred and abused its discretion in finding third parties were once a primary caretaker to the child when no evidence supported such a finding of fact.

13) Whether the Trial Court erred and abused its discretion in finding a 14 year old child, who is clearly under the age of majority or 18 years of age, may elect to reside

outside the custody of both parents and with third parties when only one natural parent (mother) is unfit to care for the child or the best interest of the child are no longer being served in the custody of the mother, the unfit parent? If so, did the Trial Court commit an error of law and abuse its discretion by refusing or limiting natural father or fit parent's cross-examination or the opportunity to submit evidence as to the third parties track record regarding custody of the third parties own child(ren)?

14) Whether this Court erred and abused its discretion in failing to award natural father primary physical custody of child in question when:

A. the best interest of the child was no longer or ever being served in the custody of natural mother,

B. natural mother relinquished her parental rights to the child,

C. no evidence was presented that natural father was unfit nor capable of promoting the best interest of the child I.E. caring or rearing the child's physical, mental, emotional, educational and/or spiritual well-being and,

D. third parties have not met or produced a scintilla of evidence to tip the scales or their burden of proof over a natural parents prima facie right to custody or natural parents right to raise their children as they see fit.

II. DISCUSSION

We first note that Appellant's appeal appears to be untimely. Pa. R.A.P. 903 provides the general rule that the notice of appeal shall be filed within 30 days after the entry of the order from which the appeal is taken. Appellant challenges the July 16, 2012 order with a notice of appeal filed in August, 16, which is clearly outside of the time frame allowed by Rule 903. The rule is clear and it is mandatory in its time limit. Appellant failed to satisfy it.

Accordingly, Father's untimely appeal must be quashed.

Appellant lists his issues for appeal in fourteen separate paragraphs. Several of the issues Appellant raises are duplicative and others are interrelated. To the extent it is practical, we will address issues raised together.

A. Issues relating to third party custody claims are irrelevant to the Order on appeal.

Appellant raises several issues relating to third parties. Specifically, he raises whether third parties may interfere with natural parents right in the absence of dependency or custody proceedings, whether third parties may place themselves in loco parentis status in defiance of a natural parent's wishes and the parent/child relationship and whom the burden of proof rests with in a third party custody claim. In raising these issues, Appellant neglects the fact that this is not a third party custody claim. The petition before this Court was a Motion to Modify Existing Custody Arrangement filed by the Appellant. In that motion, Appellant acknowledges that this Court issued an Order on December 27, 2006 in which primary physical custody was transferred to the natural mother. Appellant's Motion also acknowledges that paternal grandparents did not petition this court for custody. While the paternal grandparent have undertaken care of M.C.L. since 2010, there is no formal custody arrangement or order. Accordingly, the current custody order from 2006 is what Appellant seeks to modify. It provides for primary physical custody to natural mother and periods of visitation to Appellant on alternating weekends, certain holidays and two weeks during the summer months. Appellant has not exercised the visitation allowed by the 2006 order and now seeks primary custody.

A review of the docket and file makes it clear that no third party custody claim has been filed. Further, grandparents are not a party to this proceeding and are not seeking in

loco parentis or any custody action or involvement from this Court. The only indication of them being involved beyond their role as caregivers to M.C.L. was Appellant's Certificate of Service accompanying his Motion, in which he served the Motion on his parents but not the natural mother.

The Motion before the court was one for Modification of the 2006 custody order only. This is simply not a third party custody claim. Thus, any issues complained of on appeal relating to a third party custody claim cannot stem from the hearing on July 9, 2012 or the resulting custody Order. We decline to address issues outside of our July 16, 2012 order currently before the Superior Court.

B. This Court did not err in applying the new custody guidelines to this case.

Appellant argues that the new custody guidelines, which became effective on January 24, 2011, should not have applied to his Motion for Modification because it was filed on January 7, 2011. We disagree. The Superior Court has recently addressed this very issue in *C.R.F., III v. S.E.F.*, 45 A.3d 441 (Pa. Super. 2012). In *C.R.F., III*, mother filed a Petition to Modify Custody and for Relocation on July 6, 2010, before effective date of the new Child Custody Act. *Id.* at 442. The hearing on mother's Petition was held on April 7, 2011, after the effective state of the statute. *Id.* There, our Superior Court concluded that, "where the evidentiary proceeding commences on or after the effective date of the Act, the provisions of the Act apply even if the request or petition was filed prior to the effective date." *Id.* Here, just as in *C.R.F., III*, a motion was filed before the effective date of the Act and the hearing on the Petition was held after the effective date of the Act. In fact, in this case the hearing was held on July 9, 2012, after the Superior Court's clarifying ruling in *C.R.F., III*. and well over a year after the effective date of the Act. Therefore, this Court properly applied the new

Custody Act.

C. This Court properly considered the Motion to Modify Custody under 23 Pa. C.S. § 5328, rather than under the § 5327 regarding relocation.

Appellant next contends that this Court erred in applying the longstanding *Gruber* relocation analysis because the natural mother relinquished her custodial rights and no finding was made that father is unfit to care or promote the best interest of the child. Appellant seems to contend that it would be an error to apply the *Gruber* test because of the underlying facts of this case. We disagree. It would be inappropriate to apply the longstanding *Gruber* test because it has been replaced by the new Child Custody Act, specifically by 23 Pa. C.S. § 5337(h). Although the *Gruber* test has been incorporated into the ten factors enumerated in Section 5337(h); specifically, they are embodied in the third, sixth, seventh and eighth factors, a court with a Petition for Modification before it must still apply and address all ten factors. *C.R.F., III v. S.E.F.*, 45 A.3d 441, 446 (Pa. Super. 2012).

As we discussed in our July 16, 2012 Order, Appellant has not properly plead his relocation, as such we treated Appellant's Motion as a modification seeking primary physical custody. Appellant filed his Motion to Modify Existing Custody Arrangement on January 6, 2011. With any child custody case, the Courts of this Commonwealth have long stated that the paramount concern is the best interests of the child. *Landis v. Landis*, 869 A.2d 1003, 1011 (Pa. Super. 2005). Appellant failed to plead or present any information relating to the best interest of M.C.L. and how she would benefit from this relocation.

If Appellant's Petition were to be examined as a proposed relocation under § 5337 of the new Custody Act, the Petition is fatally deficient. Section § 5337(c) requires the

party proposing the relocation to notify every other individual who has custody rights to the child. Appellant Served P.L. and C.L. Mother, who has primary physical custody per court order, was not served with a copy of the Motion. Further, § 5337(c)(3), requires that the following information, if available, be included with the notice of proposed relocation:

- (i) The address of the intended new residence.
- (ii) The mailing address, if not the same as the address of the intended new residence.
- (iii) Names and ages of the individuals in the new residence, including individuals who intend to live in the new residence.
- (iv) The home telephone number of the intended new residence, if available.
- (v) The name of the new school district and school.
- (vi) The date of the proposed relocation.
- (vii) The reasons for the proposed relocation.
- (viii) A proposal for a revised custody schedule.
- (ix) Any other information which the party proposing the relocation deems appropriate.
- (x) A counter-affidavit as provided under subsection (d)(1) which can be used to object to the proposed relocation and the modification of a custody order.
- (xi) A warning to the nonrelocating party that if the nonrelocating party does not file with the court an objection to the proposed relocation within 30 days after receipt of the notice, that party shall be foreclosed from objecting to the relocation.

Appellant's Motion mentions relocation only once, in paragraph ten, where he states that he lives in Pittsburgh, Pennsylvania and can provide a stable living arrangement as he

rents a two bedroom apartment. The Petition fails to meet a single requirement outlined by the Act.

Regardless of which law governs the filing of the Motion itself, it is clear that the proceeding itself is governed by the new child custody act as discussed at length above. The thrust of his Motion and the hearing concerned primary physical custody. This Court considered the Motion as it was plead, a modification under 23 Pa. C.S. § 5338. Accordingly, this Court considered all of the factors outlined in §5328 and described this analysis in detail in our July 16, 2012 Order. We continue to stand by our decision.

D. This Court made a custody decision which comports with the Child Custody Act and is in the best interest of M.C.L.

Appellant's remaining issues complained of on appeal go to the merits of the ultimate custody determination. As we discussed above, because the hearing on Appellant's Petition took place over a year after the effective date of the new Custody Act, we applied the factors outlined in 23 Pa. C.S. § 5328. In this case, as with all child custody cases, the paramount concern is the best interest of the child. *C.E.K. v. K.E.M.*, 45 A.3d 417, 421 (Pa. Super. 2012). This standard requires a case-by-case assessment of all of the factors that may legitimately affect the "physical, intellectual, moral and spiritual well-being" of the child. *Id.* With M.C.L.'s best interest in mind, we considered whether to modify the existing custody arrangement.

This Court made its decision after hearing from several witnesses, including Mother, Father and the minor child's paternal grandmother, and considering dozens of exhibits offered by Appellant. The Court did not have the benefit of testimony of the minor child. Although Mother consented to questioning of the child by the Court as to her preferences, Father objected and would not consent, reasoning that "I think that

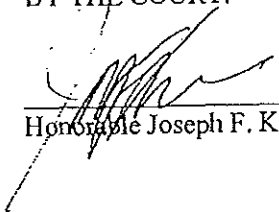
would be highly prejudicial to me.” Transcript at p. 136. In fact Appellant, as the moving party, presented very little evidence of what would be in the best interest of his daughter.

Following the July 9, 2012 hearing, this Court issued a fifteen (15) page order on July 16, 2012 detailing the specific reasons for the custody decision. Starting on page nine (9), the Order addressed each of the fifteen (15) factors laid out in 23 Pa. C.S. § 5238. We also reasoned that Mother has provided a higher level of consistency for M.C.L., who has improved her school performance and behavior after Mother extended temporary physical custody to the paternal grandparents. We appropriately applied the Child Custody Act and came to a well-reasoned decision which is in the best interest of the child and which is detailed in the July 16, 2012 Order. We continue to stand by our decision.

III. CONCLUSION

Because our decision was a sound application of the applicable law and supported by the facts, we respectfully request the Superior Court to uphold our Order of July 16, 2012.

BY THE COURT:


Honorable Joseph F. Kameen, P.J.

cc:

G. L. , Jr., *pro se*
D. L. S. , *pro se*
Court Administration

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