

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

F.I.R.,

Appellant

v.

E.R.R.

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1563 WDA 2013

Appeal from the Order dated August 29, 2013,
in the Court of Common Pleas of Butler County,
Civil Division, at No(s): FC 10-90410-C

BEFORE: BOWES, JENKINS, and FITZGERALD*, JJ.

MEMORANDUM BY JENKINS, J.:

FILED JULY 18, 2014

Appellant, F.I.R. ("Father"), appeals from the August 29, 2013 custody order awarding sole legal custody and primary physical custody of the parties' children, P.R. (born in November of 1997), R.R. (born in July of 1999), T.R. (born in December of 2000), and N.R. (born in September of 2003) (collectively "the Children")¹ to E.R.R. ("Mother"), and partial physical custody to Father in accordance with a schedule.² We affirm.

On June 1, 2010, Mother filed a complaint for divorce, and a final divorce decree has not been entered. On June 10, 2010, Father filed a complaint for custody alleging that Mother left the marital residence, took possession of the marital finances, and boarded a plane to the state of

* Former Justice specially assigned to the Superior Court.

¹ Mother and Father are parents to their emancipated children, Y.R. and J.R.

² **See** Child Custody Act, 23 Pa.C.S.A. §§ 5321-5340 ("Act").

Washington with the Children. That same day, the trial court directed Mother to return the Children to Butler County in Pennsylvania. On June 24, 2010, the trial court entered an order directing Mother and Father to have shared legal and physical custody of the Children.

On August 11, 2010, Mother filed an answer to Father's complaint for custody and filed a counterclaim for primary custody. Following a custody conciliation hearing, the trial court entered an order on August 17, 2010, directing Mother and Father to continue to share custody of the Children on a week-to-week basis, and directing Mother and Father to undergo custody evaluations with Dr. Bruce Chambers. During Dr. Chamber's initial custody evaluation in 2010-2011, he found the Children were well behaved and recommended that shared custody should continue.

On October 13, 2010, the trial court appointed a guardian *ad litem* for the Children. On September 30, 2011, the trial court directed Mother and Father to enroll in co-parenting counseling and to participate with the Children in family and individual counseling. On June 25, 2012, Mother and Father agreed to participate in Family Group Decision Making through Butler County Children and Youth Agency. On October 4, 2012, Mother filed a petition for special relief requesting that Mother, Father, and the Children should be re-evaluated by Dr. Bruce Chambers, and that a pretrial conference should be scheduled. On October 31, 2012, trial court directed Mother and Father to undergo custody re-evaluations with Dr. Chambers.

Dr. Chambers performed an updated evaluation in 2012-2013, and found that issues emerged with Children acting disrespectful to Mother and her inability to manage the Children. Dr. Chambers found that Children are disrespectful to Mother because Father lets the Children do as they please and tells the Children that Mother is the "bad parent". Dr. Chambers also stated that Father does take responsibility for the Children's behavioral problems, but Father blames Mother for the Children's rebellion. Dr. Chambers recommended that one parent should be awarded sole legal custody and primary physical custody because of Mother's and Father's differences in raising the Children and their inability to communicate. Dr. Chambers concluded that Mother is better suited to have primary custody because she is able to provide stability for the Children, and that she is more responsive in addressing the Children's behavioral and developmental needs.

On July 16, 2013, a custody trial commenced, which concluded on July 22, 2013. On August 29, 2013, the trial court awarded Mother sole legal custody and primary physical custody of the Children. On September 30, 2013, Father timely filed an appeal from the custody order entered on August 29, 2013, along with a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b). In his brief on appeal, Father raises the following issues:

1. Whether the [t]rial [c]ourt's [m]emorandum [o]pinion [and o]rder of [the trial c]ourt dated August 29, 2013, is supported by substantial evidence.

2. Whether the [t]rial [c]ourt committed an error of law and/or an Abuse of discretion in the issuance of [the] [m]emorandum [o]pinion [and o]rder of [the trial c]ourt dated August 29, 2013?

Father's Brief at 7.

Initially, we observe that, as the custody hearings were held after January 24, 2011, the Child Custody Act ("Custody Act"), 23 Pa.C.S.A. §§ 5321 to 5340, 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)).

In **M.A.T. v. G.S.T.**, 989 A.2d 11 (Pa. Super. 2010) (*en banc*), we stated the following regarding an abuse of discretion standard.

Although we are given a broad power of review, we are constrained by an abuse of discretion standard when evaluating the court's order. An abuse of discretion is not merely an error of judgment, but if the court's judgment is manifestly unreasonable as shown by the evidence of record, discretion is abused. An abuse of discretion is also made out where it appears from a review of the record that there is no evidence to support the court's findings or that there is a capricious disbelief of evidence.

Id. at 18-19 (quotation and citations omitted).

With any custody case decided 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.

Section 5328 of the Act provides as follows.

§ 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. § 5328.³ **See *E.D. v. M.P.***, 33 A.3d 73, 80-81, n.2 (Pa. Super. 2011).

After a careful review of the entire record, including the notes of testimony, the applicable law, and the arguments of the parties, we conclude that the thorough opinion filed by the Honorable P.J. Thomas J. Doerr on August 29, 2013, addresses the issues raised by Father and supports the reasons for the trial court's decision to award sole legal custody and primary physical custody of the Children to Mother.⁴

Accordingly, we adopt the August 29, 2013 opinion of the trial court as our own.

Order affirmed.

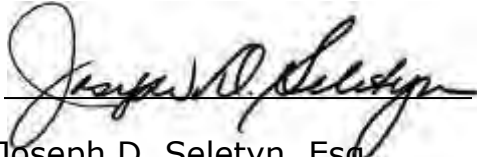
Justice Fitzgerald concurs in result.

³ Effective January 1, 2014, the statute was amended to include an additional factor at 23 Pa.C.S.A. § 5328(a)(2.1) (providing for consideration of child abuse and involvement with child protective services).

⁴ The opinion filed October 25, 2013 pursuant to Pa.R.A.P. 1925(a) relied on the August 29, 2013 order in making the custody determination.

J-S24025-14

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/18/2014

SEP 03 2013

7

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY,

FIR

[Redacted] Plaintiff,

ERR

[Redacted] Defendant.

F.C. No. 10-90410-C

Matthew E. Fischer
SEP 03 10 31 AM '13

Attorney for Plaintiff:
Attorney for Defendant:
Judge:
Date:

Matthew E. Fischer, Esq.
Heather M. Papp-Sicignano, Esq.
Thomas J. Doerr, P.J.
August 29, 2013

MEMORANDUM OPINION & ORDER OF COURT

Before the Court is the issue of Modification of a Custody Order in the above-captioned matter.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

The parties hereto, *FIR* [Redacted] ("Father") and *ERR* [Redacted] ("Mother"), are the parents of four minor children: [Redacted] (DOB 11/03/97), [Redacted] (DOB 07/03/99), [Redacted] (DOB 12/04/00), and [Redacted] (DOB 09/24/03). The parties are also the parents of two emancipated children, [Redacted]. *YJT* Mother filed a Complaint in Divorce on June 1, 2010. As the divorce action is pending a final decree has not been entered.

Father filed the initial Complaint for Custody on June 10, 2010, averring that Mother left the marital residence under the guise of taking the children swimming, took possession of marital finances, and boarded a plane to the state of Washington with the children.

Following the presentation of Father's Emergency Petition for Special Relief, the Court directed that Mother return the children to Butler County. At the time and place for a hearing on Father's Emergency Petition the parties agreed to a shared legal and physical custody arrangement.

On August 11, 2010, Mother filed an Answer to Father's Complaint for Custody along with her Counterclaim for Primary Custody. Following a Custody Conciliation the Court entered an Order on August 17, 2010, directing that the parties continue to share custody of the children on a week-to-week basis. The parties were also directed to undergo custody evaluations with Dr. Bruce Chambers.

Numerous petitions for Contempt and Special Relief have been presented to the Court in the custody matter, and many more in the divorce matter. On October 13, 2010, Nicola Henry-Taylor was appointed as Guardian Ad Litem ("GAL") for the minor children. On September 30, 2011, the parties were directed to enroll in co-parenting counseling, as well as participate with the children in family counseling and individual counseling. At the time and place for a review hearing on June 25, 2012, the parties agreed to participate in Family Group Decision Making through Butler County Children and Youth Agency. On October 31, 2012, the parties were directed to undergo custody reevaluations with Dr. Chambers.

In sum, over the past three years the parties have engaged in constant litigation and have rarely been able to accomplish minimal cooperation. The GAL has filed multiple Statements of Concern and Recommendations at times when the conflict has reached critical levels. The issues of contention have included: children refusing to follow the custody schedule, availability of phone contact with non-custodial parent, discussing adult custody

issues with children, school enrollment, discipline methods, allegations of abuse, and unilateral decisions regarding mental health treatment. Thus, the Court has become very familiar with the troublesome dynamics of the Rippee family.

A custody trial was held spanning five days and ending on July 22, 2013. At the conclusion of trial counsel was directed to submit Proposed Findings of Fact, whereupon the Court would take this matter under advisement. Following careful consideration of the testimony and documentary evidence presented at trial, this matter is now ripe for disposition.

LEGAL STANDARD

In all child custody cases a court's primary concern is the child's best interest. *Boyer v. Schake*, 799 A.2d 124, 127 (Pa. Super. 2002). This determination is to be made on a case by case basis. *Speck v. Spadafore*, 895 A.2d 606, 609 (Pa. Super. 2006). The custody court has the obligation to weigh all relevant factors that could affect the child's well being. *Dorsey v. Freeman*, 652 A.2d 352, 353 (Pa. Super. 1994). All other issues are deemed less important than the child's physical, intellectual, moral, and spiritual well-being. *Id.* Indeed, even the rights of natural parents are subordinate to the child's best interest. *Karner v. McMahon*, 640 A.2d 926, 932 (Pa. Super. 1994). 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. 23 Pa.C.S.A. § 5327(a).

Upon petition, a court may modify a custody order to serve the best interest of the child. 23 Pa.C.S.A. § 5338(a). 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).

After considering the factors set forth in Section 5328 the court may award any of the following types of custody if it is in the best interest of the child:

- (1) Shared physical custody.
- (2) Primary physical custody.
- (3) Partial physical custody.
- (4) Sole physical custody.
- (5) Supervised physical custody.
- (6) Shared legal custody.
- (7) Sole legal custody.

23 Pa.C.S.A. § 5323(a).

Physical Custody is "the actual physical possession and control of a child." 23 Pa.C.S.A. § 5322. Legal Custody is "the legal right to make major decisions affecting the best interest of a minor child, including, but not limited to, medical, religious and educational decisions." *Id.* With these principles of law established, the Court returns to the instant matter before it.

DISCUSSION

This case is exceptionally difficult because every available option to improve the children's current situation is far from ideal. Mother's environment is overly rigid, causing the children to rebel. Father's environment is overly lenient, resulting in the children feeling empowered to behave without accountability. The problems that have arisen with the children's behavior are caused by the inconsistencies between the parents' contrasting environments. Both parties are at fault for their inability to communicate and adapt their parenting styles to develop consistency between households. Upon careful consideration of the testimony presented at trial, it is the Court's conclusion that shared custody is presently not an option in this case. Therefore, one parent must be granted primary physical custody and sole legal custody of the children.

Court-appointed Custody Evaluator, Dr. Bruce Chambers, testified outlining his assessment of the case, which was similar to the Court's observations. It is well established that the Court is required to consider the opinions of experts, but it is not bound by these opinions and has a responsibility for making its own determinations. *Jacob v. Schultz-Jacob*, 923 A.2d 473 (Pa. Super. 2007). The Court need not accept the recommendation of a court-appointed expert. *Nomland v. Nomland*, 813 A.2d 850 (Pa. Super. 2002). Furthermore, the Court is not bound even by the uncontradicted recommendation of the evaluator. *King v. King*, 889 A.2d 630 (Pa. Super. 2005). The Court finds Dr. Chambers' testimony, report and recommendation to be credible and performed to a reasonable degree of psychological certainty. The Court has carefully weighed and considered the same in incorporating it into this decision.

Dr. Chambers placed the difficulty of the instant matter in perspective by stating that,

in over five hundred cases in which he performed custody evaluations, this one is in the top five most unusual. Indeed, Dr. Chambers described this case as "nothing but unusual." However, Dr. Chambers also noted a classic pattern whereby the children align with the parent that is less strict and adopt that parent's beliefs. The Court concurs with Dr. Chambers that what is easier for the children is not always best.

Dr. Chambers noted the history of the parties' relationship in that they did not even remotely fit together from the very beginning, however, somehow mutual dysfunction brought them together. The disturbed marital dynamics played out through child rearing. Father was in the background and Mother ran the show in a very strict environment with liberal corporal punishment. Yet, there was no conflict in parenting styles because Father passively went along with Mother's structure. Prior to the parties' separation the children were developmentally on track because of this consistency.

Dr. Chambers' initial custody evaluation and report took place in 2010-2011. At that time he found the children to be polite and well behaved. Dr. Chambers' initial recommendation was that shared custody should continue. However, he observed red flags that the situation may go down hill because contrasting parenting styles may lead to problems.

Dr. Chambers performed updated evaluations in 2012-2013, and found that the situation had deteriorated rapidly. Issues emerged with the children acting disrespectful to Mother and her inability to manage them. Dr. Chambers attributes this to the difference in parenting styles. The children aligned with Father because his environment is easier. Active messages were related in Father's environment, whether intentional or unintentional. These messages included: discussing financial matters with the children, negative comments about

Mother, and reinforcing that Mother was the "bad parent."

Dr. Chambers noted significant deterioration of the children's functioning in the use of foul language and viewing age-inappropriate television in Father's environment. Dr. Chambers witnessed blatant profanity and disrespect towards Mother in his interview with Philomena. He cited corroborating sources who witnessed the children's disrespect for Mother, including the children's therapists, the GAL, and the staff of Specialty Outreach Services.

Dr. Chambers noted that Father did not acknowledge responsibility for the children's behavior, as Father felt that all the problems were the result of the children's rebellion against Mother's rigidity. Dr. Chambers described Mother as "authoritarian" and Father as "laissez-faire." It is Dr. Chambers' belief that the "authoritative" parenting style is most effective, in which the parent sets limits but gives the children some choices. He found that Mother has made more progress towards becoming authoritative than Father.

Dr. Chambers believes that the children are generalizing their disrespectful behavior towards Mother in that they now feel it is acceptable to treat anyone with disrespect. If the behaviors are not addressed immediately, Dr. Chambers is concerned that the children have no chance of properly functioning in life. However, Dr. Chambers noted that there is no magic bullet. The Court concurs with Dr. Chambers that the best case scenario may be mitigation of the damage that has already been done.

Dr. Chambers recommends that a primary parent needs to be chosen based upon the severity of the problems. He believes that Mother is better suited to be primary custodian because she is more responsive in attempting to address the children's behavior and developmental needs. Mother is also able to provide the stability that Father lacks. Dr.

Chambers found that the parties possess no ability to have a minimum level of communication. Thus, he recommends that Mother have sole legal custody to remove the obstacles caused by the parties' inability to communicate. The Court concurs with Dr. Chambers that one parent must be awarded primary physical and sole legal custody, as the parties have failed in their attempt at shared custody.

Upon consideration of the factors provided in 23 Pa.C.S.A. § 5328(a), the Court finds as follows:

- (1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party:

Mother claims that she took off with the children to Washington at the time of separation to escape an abusive situation. She did not file a Protection from Abuse action at that time. Since that time Mother has been sufficient in permitting contact between Father and the children, subject to a Protection from Abuse action that she filed against Father on behalf of [REDACTED]

There have been issues with [REDACTED] refusing to go to Mother's house. Father claims that he encourages [REDACTED] to go, but he has not been sufficiently supportive of the children's contact with Mother. Father does not want to put pressure on [REDACTED] to go with Mother, but this demonstrates to the children a lack of support by Father for their relationship with Mother. An example of this is when T [REDACTED] handed Mother a contract purported to be written by T [REDACTED]. The contract contained conditions that Mother had to accept in order for [REDACTED] to go with her. Father was present when this occurred but was once again passive and unsupportive. It is Father's role to explain to [REDACTED] that such demands on Mother are

inappropriate and that T [REDACTED] does not dictate the conditions of the parent-child relationship.

(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:

In the year 2000 there were allegations of sexual abuse by Father towards [REDACTED] p
No criminal charges were filed. The state detectives were involved and determined that the allegations were unfounded. After the parties' separation Father was investigated again on similar allegations. The allegations were again determined to be unfounded. Upon a review of the record and consideration of the testimony presented, the Court finds that there has been no sexual abuse by Father.

Mother filed a Protection from Abuse action on behalf of T [REDACTED] against Father, claiming that Father told T [REDACTED] in anger that he was going to kill him. After the temporary Order was in effect for six months the matter was dismissed. The Court finds that much of the behavior that Mother perceives in Father as abusive is exaggerated. This appears to be part of Mother's personality to be fearful and paranoid.

(3) The parental duties performed by each party on behalf of the child:

Father works from home as an independent contractor for Westinghouse. He works from 8:00 a.m. until 5:00 p.m. in his home office and is able to keep an eye on the children. He makes the children breakfast in the morning. After school the children read or watch television until Father prepares dinner at 5:00 p.m. The children do their homework and are

in bed at 9:00 p.m. On the weekends the schedule is more "loose" and the older children stay up until midnight.

Mother raised the children as babies and Father participated more as they became toddlers. Mother has historically been the primary caregiver. The parties agreed when they were together that Father would work and Mother would stay home with the children. Mother also home-schooled the children for eight years. Mother continues to handle all of the children's doctor appointments.

Mother is currently working eight to twenty hours per week at Pier One. She is also taking classes in pursuit of an MBA degree. The children's grades began to deteriorate last year, so Mother implemented a homework hour after school. This has been effective and the children's grades have improved, although Mother's approach to the homework hour has been overly rigid. Mother also implemented a chore chart which has had a positive effect on the children's compliance.

The Court finds that there is some level of structure in Father's environment, but the difference between the parties' households is detrimental to the children. As the children need the consistency of one primary household, the Court finds that Mother is better suited to provide the discipline and structure that they need to overcome their behavioral issues.

(4) The need for stability and continuity in the child's education, family life and community life:

Father would prefer that the children to be raised in the Christian religion but he does not feel that the particular denomination is as important. Father now takes the children to church but he did not attend regularly when the parties were together. The children have rebelled against the Catholic Church as a result of Mother having forced her religious beliefs

upon them.

The children's activities are now limited to those available at school. They previously participated in after-school activities, but Father claims they are no longer interested. Father asserts that he does encourage other activities besides academics, but he doesn't want to force them. Mother explained that the children had to drop out of activities at Aquinas Academy when they transferred to public school, but she is encouraging them to become involved again. Mother provides transportation to activities during Father's custody time. Based upon the testimony presented, the Court finds that Mother is more likely to facilitate the children's involvement in activities.

(5) The availability of extended family:

Neither party has much extended family involvement. Mother's parents reside in the state of Washington and visit with the children once per year. Father's extended family resides in Idaho.

(6) The child's sibling relationships:

Father represented that the children interact well and are very close. Mother reports that the children have recently become more disrespectful to each other. She claims that the sibling relationships are deteriorating and they are violent beyond normal fighting. The Court notes that ^N [REDACTED] has expressed fear of violence from her brothers. Although the children reportedly behave better at Father's house, Father is also somewhat oblivious to the children's obvious behavioral issues that multiple witnesses have observed.

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

The Court interviewed the children in Chambers. As expected, the children generally expressed a preference for Father's environment, as it is easier and less strict. The children also generally expressed resentment that the Catholic religion has been forced upon them by Mother.

The Court is concerned that the children are not engaged in any activities, which would be a welcome distraction from the family conflict. The parties must support the children's interest in activities by providing regular transportation as much as practicable.

An incident was also mentioned where Mother fell down and told the children that they must say that Father pushed her. The Court finds the testimony of the children to be credible that Father did not push Mother. This is concerning to the Court and devalues Mother's credibility. Mother appears determined to perceive Father's actions as abusive. However, the Court does not perceive evidence in the children's behavior of Mother undermining their relationship with Father, as they do not speak negatively of him.

The Court finds that Mother's environment has been overly strict, causing the children to rebel. However, in light of the children's recent behavior, the structure which Mother provides compared to Father renders Mother's environment preferable to the Court. Mother must continue to work on the less rigid parenting methods that she has learned through counseling. If Mother continues to push too hard, the children will continue to rebel.

(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:

Father represented that the children ask him questions regarding the divorce proceedings, but he does not answer because of the Court Orders prohibiting the parties from

discussing adult issues with the children. However, the Court finds that there is an indication that Father has discussed finances relating to child support payments with the children. The exact level of Father's awareness and intent of his undermining of the children's relationship with Mother is unknown. Yet, it is clear that Father is not sufficiently supportive.

Father's behavior does not relieve Mother of responsibility, as she has undermined her relationship with the children through her overly rigid and inflexible approach. In addition, the Court finds that the baseless PFA action filed by Mother against Father on behalf of ~~the children~~ was not a reasonable safety measure necessary to protect the children 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:

The parenting styles of the parties are in stark contrast. Mother is autocratic and Father is more open to discussion. Father believes that the children do not respond as well to black-and-white rules as they get older, and that Mother's approach is not as well accepted. Father describes his style of discipline as "discussion based," which is "less corporal" than Mother's. Father takes away the children's television and video game privileges for discipline. Father explained that the older children reinforce the rules in his environment "like the Waltons." Father desires for the children's relationship with Mother to improve, but he wants Mother to change. Mother used to employ corporal punishment but has not done so since 2007.

Mother lamented that there has been a change in her relationship with the children. It used to be very loving but the children are now disrespectful to Mother. The first couple days after the children return from Father's custody are rough. They shove Mother and call

her names. Mother believes it is important that the children learn respect for authority because society is based upon rules. This is consistent with the testimony of Brenda Alter regarding the children's disrespect for adults, as well as Dr. Chambers' testimony regarding the need for the children to be able to function in society.

Mother also reported that the children have been exhibiting concerning behavior. They have been drawing and writing about disturbing subjects. They used to be modest but the boys and girls are now changing in front of each other and exhibiting overly sexualized behaviors.

The combination of the parties' contrasting styles is having a negative effect on the children. Father's lack of discipline has conveyed to the children that they need not fear consequences for their actions. Mother is not without fault, as her style has caused the children to rebel. At this point the children need to be reined in and Mother is more capable of doing that. Mother has demonstrated an effort to change while Father is content with the children's current behavior. The Court chooses Mother's disciplined approach over Father's laissez-faire approach in the hope that the children are able to get back on track developmentally.

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

Father does not think the children's therapy is effective and believes they are turned off by so much therapy. Based upon the families' current level of dysfunction, the Court finds that therapy is necessary. The Court believes that the transition to Mother having primary custody will require as much therapeutic assistance as possible. The Court finds that Mother is better able to respond to the children's mental health needs.

However, the Court notes that Father was not included in Mother's decision to admit ████████ to Western Psychiatric Hospital. Mother also did not tell Thomas that she was taking him there. Mother claims that it was an emergency situation as Thomas was threatening to kill himself.

Father believes the children are developing appropriately. In light of Dr. Chambers' testimony that the children's behavior has rapidly declined, the Court is concerned with Father's level of awareness regarding the children's development. Father represented that there are typically no issues with the children in Father's environment, and he would not change the way he raises them.

The Program Director of Specialty Outreach Services, Brenda Alter, testified regarding her in-home observations. During Ms. Alter's visit to Mother's home, she found the children to be very disrespectful and inappropriate. In contrast, Ms. Alter found the children to be very respectful and personable in Father's home. However, in Father's home Ms. Alter observed ^P ████████ and ^R ████████ laying on the couch embracing each other in a manner that she found concerning.

Ms. Alter did not find one household better than the other but noted that the children are absolutely affected by the differences. The Court notes that the children's poor behavior has been reported consistently across other environments except for Father's household, according to the testimony of the other witnesses at trial. The Court's conclusion is that the children's behavior is better at Father's household because they are permitted to do as they please, with the result being that they are unable to follow rules in other environments.

Testimony was presented regarding an incident where Mother took ^P ████████'s phone from her when she discovered disturbing text messages of a sexual nature from

P
~~was~~ to a recipient who Mother believed to be a twenty-two-year-old man. Father was unable to view the text messages because Mother erased them. Father discussed the incident with Philomena and was satisfied with her explanation. Father did not support Mother taking away her phone. Father stated that he would have supported discipline if it was warranted, but taking away ~~the~~^P ~~her~~^R phone was "mentally damaging."

Father has discussed with the children their use of inappropriate language, but the language has persisted. Father permits ~~the~~^R and ~~them~~^T to play the video game "Call of Duty," and feels the game is age appropriate. The game is rated for ages seventeen and older. The Court is familiar with Call of Duty and is concerned about the frequency of use that Father permits. The Court finds that the game is not appropriate for younger children.

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

The parties reside in close proximity in the same school district.

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

There does not appear to be any issues regarding child-care arrangements. Both parties are usually at home with the children. Mother has a support group of friends in the local area who help out with the children. Father does not have a support group and asks Mother for help at times.

(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:

The parties are unable to communicate at a minimal level. The parties attempted co-parenting counseling and Family Group Decision Making without success. Shared legal

custody is not possible at this time but the parties shall attempt to improve by continuing co-parenting counseling.

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

This factor is not an issue in this case.

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

There are no mental or physical health issues that significantly affect the parties' ability to parent. The parties and the children shall continue to participate in family counseling as previously directed.

(16) Any other relevant factor:

Pursuant to the Order of Court entered on May 10, 2013, the Court considered the issues raised in Mother's Motion for Contempt and Sanctions and took the matter under advisement pending the conclusion of testimony at the custody trial. Upon consideration of the testimony presented at trial, the Court does not find that sufficient evidence was presented on the allegations in Mother's Motion to support a finding that Father was in contempt of the Order of Court entered on August 17, 2010. Therefore, Mother's request for counsel fees is denied.

In addition, regarding Father's Motion to terminate GAL and Reimbursement of GAL fees, the Court finds that it is in the best interest of the children that the GAL remains representing the interests of the minor children. The children's transition to Mother's primary physical custody will likely be difficult, and the GAL will be crucial in providing representation for the children. The cost of the GAL shall be allocated equally between the parties.

CONCLUSION

The parties are unable to communicate at the minimum level necessary for shared legal custody at this time. If the parties improve their communication through co-parenting counseling, the Court will consider shared legal custody in the future. The Court is concerned with the children's deteriorating behavior and the undermining by Father of the children's relationship with Mother. Mother has demonstrated a willingness to correct some of the negative aspects of her parenting. Mother is also better able to provide the structure, discipline, and developmental needs of the children.

Having carefully weighed and considered the testimony and documentary evidence presented at trial, and upon a review of the record, and upon consideration of the factors as listed in 23 Pa.C.S.A. § 5328(a), and for the reasons as stated herein and on the record at trial, the Court finds that it is in the best interest of the children that Mother have sole legal custody and primary physical custody of the children, subject to Father's partial physical custody as provided in the following Order.

Accordingly, the Court enters the following Order: