

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION – LAW**

E. T. S., III,

Plaintiff,

vs.

C. S.,

Defendant.

No.: C-48-CV-2005-2186

OPINION OF THE COURT¹

Plaintiff is E. T. S., III (“Father”), who resides in Perkasie, Berks County, Pennsylvania. Defendant is C. S. (“Mother”), who resides in Nazareth, Northampton County, Pennsylvania. The parties are the parents of a minor child, S. J. S. (the “Child”), born on December 27, 2004. This matter is before the court on Father’s Petition for Contempt, Counter-Petition for Modification of Custody Order, and Motion for Reconsideration and Mother’s Petition for Modification of Custody Order. A non-jury trial was held on February 8, February 9, February 11, and February 22 of 2016.

¹ We previously entered an Order of Court concerning this matter on May 13, 2016. On May 25, 2016, Plaintiff E. T. S. III (“Father”) filed a Motion for Reconsideration of this court’s Order of Court of May 13, 2016 averring, in part, that he has returned to work and cannot begin his weekday custodial time at 3:30 p.m. In order to accommodate Father’s change in circumstance, we have granted Father’s Motion for Reconsideration, in part, by entering an Amended Order of Court on June 9, 2016 adjusting the start time of Father’s weekday custodial periods. See 42 Pa. C.S.A. § 5505 (stating that if no appeal has been filed, a court may modify an order within 30 days of its entry). This Opinion sets forth the reasons for the Order of Court entered on May 13, 2016 and for the Amended Order of Court entered on June 9, 2016.

Following the trial, the parties submitted proposed findings of fact and conclusions of law. The matter is now ready for disposition.

BACKGROUND

I. The Parties' Relationship

Mother and Father were married on December 31, 2003. See Notes of Testimony at 58, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Feb. 8, 2016) ("N.T. Feb. 8"). After the parties married, they lived together at 3876 Applebutter Road, Perkasie, Bucks County, Pennsylvania, ("Marital Home") until Mother moved out of the Marital Home in November of 2004. See *id.* at 57 -58. The Child was born on December 27, 2004, after the parties had separated. See *id.* at 57. The parties were divorced on December 31, 2007. See *id.* at 64.

II. The Initial Custody Litigation

On April 6, 2005, Father filed a complaint for custody of the Child. See Custody Complaint, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Apr. 6, 2005). On November 16, 2005, the parties appeared for a custody conference and agreed to a schedule regarding custody of the Child. See Order of Court, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Nov. 16, 2005) ("November 2005 Custody Order"). The crux of the November 2005 Custody Order provided that the parties would share legal custody of the Child, Mother would have physical custody of the child, and, following an eight week adjustment period, Father would have partial

physical custody of the Child from 5:00 p.m. until 7:00 p.m. every Tuesday and Thursday and on alternating weekends from 5:00 p.m. on Friday until 6:00 p.m. on Sunday. See November 2005 Custody Order; see also Notes of Testimony at 19, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Feb. 11, 2016) (“N.T. Feb. 11”). Additionally, the November 2005 Custody Order set forth a holiday custody schedule and mandated that the parties enroll in at least six co-parenting counseling sessions with David R. Weiskotten, Ph.D. See November 2005 Custody Order.

III. The Parties’ Second Custody Order

On August 18, 2006 and October 4, 2007, Father filed petitions to modify his periods of partial physical custody of the Child. See Petition to Modify Custody, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Aug. 18, 2006); Petition to Modify and Amend Previously Filed Petition for Modification and to Schedule a Custody Conference Pursuant to Local Rule N1915-1(14), *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Oct. 4, 2007). On December 6, 2007, pursuant to Father’s requests for modification, an order was entered altering Father’s mid-week custodial periods from 5:00 p.m. until 7:00 p.m. on Tuesdays and Thursdays to 5:00 p.m. until 8:00 p.m. on Wednesdays. See Order of Court at ¶¶ 4, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Dec. 6, 2007) (“December 2007 Custody Order”).

IV. The Parties' Third Custody Order

On July 13, 2010, pursuant to Father's filings, the parties appeared for another conference regarding custody of the Child. *See generally* Notes of Testimony, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Jul. 13, 2010) ("July 2010 Custody Order"). Following this conference, the parties agreed to alter the previous two custody orders with the following provisions: 1) Mother would retain primary physical custody of the Child pursuant to a five week rotating schedule during which Father would have physical custody of the Child on weekends one, two, and four, from 5:00 p.m. on Friday until 8:00 p.m. on Sunday; 2) Father would have a dinner visit from 5:00 p.m. until 8:00 p.m. every Wednesday; 3) the parties would share equally all of the Child's days off from school for Christmas and Easter Break; 4) the party having custody of the Child on the weekend prior to a Monday school holiday would retain physical custody of the Child through Monday evening; 5) the parties would observe the preferred babysitter rule, specifically applicable to Mother's professional development days; 6) Father's custodial weekends during the Child's summer vacation would occur from Thursday until Monday; and 7) each party would have three non-consecutive weeks of vacation with the Child. *See* July 2010 Custody Order; *see also* N.T. Feb. 11 at 29-31.

V. The Parties' Fourth Custody Order

On September 20, 2011, Father filed a petition alleging that Mother was not complying with the terms set forth in the July 2010 Order. See Petition for: (1) Contempt of Custody Order; (2) Special Relief; (3) Custody Evaluation; and (4) Counsel Fees, Costs and Expenses, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Sept. 20, 2011) ("Father's First Contempt Petition"). Specifically, Father alleged that Mother was disobeying both the shared legal custody provision and the physical custody provision of the order by unilaterally making decisions concerning the Child and altering the parties' custody schedule. See *generally* Father's First Contempt Petition. As a result of Mother's conduct, Father requested the court: 1) adjudicate Mother in contempt; 2) provide Father with physical custody of the Child on Mother's professional development days; 3) provide Father with additional custodial make-up time; 4) order Mother to attend psychotherapy focusing on the Child's relationship with Father; 5) order a custodial evaluation; and 6) award Father counsel fees in connection with his petition. See *generally* Father's First Contempt Petition.

Following a series of court-ordered custody evaluations, the parties entered into an agreed-upon interim order on June 19, 2012, pending the non-jury trial on Father's petition for contempt. See Order of Court, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Jun. 19, 2012) ("June 2012 Custody Order"); see *also* Order of Court, *S. v. S.*, No. C-48-CV-2005-2186

(C.P. Northampton Co. Nov. 15, 2011) ("November 2011 Order"). The June 2012 Custody Order altered Father's custodial periods and provided that Father would have physical custody of the Child three out of every four weekends, and one mid-week overnight visit during the week following Mother's custodial weekend. See June 2012 Custody Order. Father withdrew his first petition for contempt on April 4, 2013. See Praecipe for Withdrawal of Petition for: (1) Contempt of Custody Order; (2) Special Relief; (3) Custody Evaluation; and (4) Counsel Fees, Costs and Expenses, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Apr. 4, 2013).

VI. The Parties' Fifth Custody Order

On April 4, 2013, Father filed his second petition asserting that Mother was in contempt of the parties' custody orders. See *generally* Petition for: (1) Contempt of Custody Order; (2) Special Relief; and (3) Counsel Fees, Costs and Expenses, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Apr. 4, 2013). Father amended this petition on December 10, 2013. See *generally* Amended Petition for: (1) Contempt of Custody Order; (2) Special Relief; and (3) Counsel Fees, Costs and Expenses, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Dec. 10, 2013) ("Father's Second Contempt Petition"). Father restated all of Mother's alleged contemptuous actions from his first contempt petitions, and alleged that Mother was now disobeying the June 2012 Custody Order by continuing to unilaterally make decisions concerning the Child and alter the parties' physical custody

schedule of the Child. See Father's First Contempt Petition at ¶¶ 17, 22(a)-(m), 25(a)-(m); Father's Second Contempt Petition at ¶¶ 22(d),(e),(m),(n), 25(n)-(q). As a result, Father requested that the court adjudicate Mother in contempt, order Mother to pay Father's counsel fees incurred for preparing his petitions, and order that Mother undergo psychological testing. See *generally* Father's Second Contempt Petition.

On December 16, 2013, the parties resolved Father's second amended petition for contempt with an agreed-upon order of court. See *generally* Transcript of Proceedings/Order of Court, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Dec. 16, 2013) ("December 2013 Custody Order").

The December 2013 Custody Order provided that:

- 1) Mother shall consult with Father prior to scheduling medical appointments;
- 2) Mother shall not schedule extracurricular activities that interfere with Father's physical custody of the Child without Father's consent;
- 3) neither party shall unilaterally alter the other parent's physical custody;
- 4) Father shall have the right of first refusal if Mother is not available to care for the Child for a period of six hours or more;
- 5) Father shall have custody of the Child on Mother's professional development days;
- 6) the Child shall be provided with a mobile telephone;
- 7) Father shall be entitled to five make-up custody days; and
- 8) further violations of the court orders shall be a basis for a change of legal or physical custody. See December 2013 Custody Order at 2-6.

VII. The Parties' Sixth Custody Order

In the fall of 2014, Father filed a third petition and a third amended petition asserting that Mother was in contempt of the December 2013 Order. *See generally* Father's Third Petition for: (1) Contempt of Custody Order; (2) Special Relief; and (3) Counsel Fees, Costs and Expenses, *See generally* Petition for: (1) Contempt of Custody Order; (2) Special Relief; and (3) Counsel Fees, Costs and Expenses, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Aug. 20, 2014); Father's Amended Third Petition for: (1) Contempt of Custody Order; (2) Special Relief; and (3) Counsel Fees, Costs and Expenses, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Oct. 21, 2014) ("Father's Third Contempt Petition"). Through his third amended petition, Father restated his claim that Mother was continuing to unilaterally make decisions for the Child and change the parties' custody schedule. *See generally* Father's Third Contempt Petition. Father requested: 1) an adjudication of contempt; 2) to schedule make-up days at his sole discretion; 3) make-up days for any missed time going forward; 4) custodial time on Mother's professional development days and any other school holidays not otherwise designated in court orders; 5) the parties have the Child return missed telephone calls from the out-of-custody parent within two hours; 6) the parties allow videoconferencing through Skype; 7) Mother undergo a psychological examination by Ronald Esteve, Ph.D.; 8) Mother pay Father's counsel fees and costs in connection with the contempt

petition; and 9) any further violations of the custody order be a basis for changing custody. *See generally* Father's Third Contempt Petition.

On June 19, 2015, the parties met with the custody conference officer concerning Father's third amended petition for contempt. *See generally* Order of Court, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Jun. 19, 2015) ("June 2015 Custody Order"). As a result of this conference, the parties entered into an agreed-upon order providing that: 1) the parties will comply with the court orders going forward; 2) Father was to receive an additional five days of summer vacation to be exercised within his weekend custodial periods; 3) both parties will have at least daily telephone contact with the Child; 4) both parties will allow and encourage videoconference calls with the Child; 5) Father will have physical custody of the Child on Mother's professional development days; 6) written agreements between the parties that are clear and unambiguous will be enforceable; and 7) willful noncompliance of any court order will be a basis for contempt sanctions. *See generally* June 2015 Custody Order.

VIII. The Current Litigation

On September 17, 2015, Father filed his fourth petition alleging that Mother was in contempt of the previous custody orders. *See generally* Father's Fourth Petition for: (1) Contempt of Custody Order; (2) Special Relief; and 3) Counsel Fees, Costs and Expenses, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Sept. 17, 2015) ("Father's Fourth

Contempt Petition"). Through his fourth contempt petition, Father asserted that Mother willfully refused to relinquish custody of the Child on August 24, 2015 for Father's third vacation week and that Mother does not make an effort to have the Child return Father's telephone calls within a reasonable period of time. See Father's Fourth Contempt Petition at ¶¶ 15-19.

Additionally, Father requested that the court order Mother to undergo psychological testing. See Father's Fourth Contempt Petition at ¶¶ 29.

Subsequently, on October 16, 2015, Mother filed a petition for modification of the previous custody orders. See *generally* Petition for Modification of Custody Order, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Oct. 16, 2015) ("Mother's Petition"). Through her petition, Mother asserted that the current custody schedule granting Father physical custody of the Child three out of every four weekends was excessive and that Father's inflexibility and unwillingness to adjust interferes with the Child's life and causes the Child undue stress. See *generally* Mother's Petition. On October 19, 2015, in response to Mother's petition, Father filed a counterclaim seeking primary physical custody of the Child. See Father's Answer and Counter-Petition to Mother's Petition for Modification of Custody Order, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Oct. 19, 2015). On December 22, 2015, Father agreed to withdraw his request to have Mother undergo psychological testing and the matter was placed on the

February 2016 Non-Jury Trial List. See Order of Court, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Dec. 22, 2015).

The matter was assigned to the Honorable Michael J. Koury, Jr. from the February Non-Jury List. Testimony was taken on February 8, 2016, February 9, 2016, February 11, 2016, and February 22, 2016. See *generally* N.T. Feb. 8; Notes of Testimony, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Feb. 9, 2016) ("N.T. Feb. 9"); N.T. Feb. 11; Notes of Testimony, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Feb. 22, 2016) ("N.T. Feb. 22"). Father, Mother, Dr. Robert Gordon, Dr. Arlene Ginsburg, Dr. Ronald J. Esteve, and the Child testified at the hearing. See *generally* N.T. Feb. 8; N.T. Feb. 9; N.T. Feb. 11; N.T. Feb. 22. At the conclusion of the hearing, the court set a schedule for the filing of proposed findings of fact and conclusions of law. See Order of Court dated February 23, 2016, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Feb. 23, 2016) ("Briefing Schedule"). Both parties submitted proposed findings of fact and legal briefs as directed. See *generally* Proposed Findings of Fact and Conclusions of Law of Defendant, *C. S., S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Apr. 4, 2016) ("Mother's Brief"); Father's Proposed Findings of Fact and Conclusions of Law, *S. v. S.*, No. C-48-CV-2005-6139 (C.P. Northampton Co. Apr. 4, 2016) ("Father's Brief").

A. The Parties' Employment and Availability for Child Care

Mother graduated from Moravian College in 1991 and earned her Master's degree in Education from Kutztown University in 2006. See N.T. Feb. 8 at 66. From 1996 until 2004, Mother held a position as a third grade teacher for the Central Bucks School District. See *id.* at 67; N.T. Feb. 11 at 9. Mother left her employment at the Central Bucks School District six days before the Child was born, and re-entered the work force in the fall of 2006 with a position as a Reading Specialist for Lower Nazareth Elementary School. See N.T. Feb. 8. at 68; N.T. Feb. 11 at 9. For the past ten years, Mother has been consistently employed as a Reading Specialist for Lower Nazareth Elementary School. See N.T. Feb. 8 at 66-68. Mother does not work during the summer and is therefore available to care for the Child full-time during the summer months. See N.T. Feb. 11 at 152.

Father graduated from Temple University with a degree in marketing and a degree in business law. See N.T. Feb. 22 at 4. For the past twenty-five years, Father has held positions at several companies as a nursing home administrator. See *id.* at 126. From 2000 until 2005, Father was employed by HCR ManorCare in Allentown. See *id.* at 124-25. In 2005, Father left his position at HCR ManorCare and began to work for CareOne in New Jersey. See *id.* at 124-25. Father held his position at CareOne for a period of approximately six months. See *id.* After leaving his position at CareOne, Father worked at Broadway Healthcare in New Jersey for a period of

approximately one and a half to two years. *See id.* at 126. Father left Broadway Healthcare to work for Towne Manor East in Norristown, Pennsylvania. *See id.* at 127-128. Father remained with Towne Manor East for approximately two years, and then in 2008 he moved to a position with Attleboro in Langhorne, Pennsylvania. Father worked at Attleboro from 2008 until 2013, at which point he took short-term positions at ACTS Retirement, Guardian, and Compass Point. *See id.* at 127-28, 132. Most recently, from August to December of 2015, Father worked at Global Healthcare. *See id.* at 132. Father testified that he ceased working at Global Healthcare in December of 2015 because his contract expired, and that, as of the dates of the trial, he had not found new employment.² *See id.* at 124. However, Father testified that when he does work, his normal work hours are from 9:00 a.m. until 5:00 p.m. during the week. *See id.* at 128.

B. The Parties' Living Arrangements

Father still resides in the Marital Residence at 3876 Applebutter Road, Perkasie, Bucks County, Pennsylvania. *See* N.T. Feb. 8 at 57-58. Father has resided at that address since 2001. *See id.* Father was born in Doylestown, Bucks County, and he has always lived in Bucks County. *See* N.T. Feb 22 at 83-84. At the time of trial, Father indicated that he planned

^{2 2} At the hearing for Father's Motion for Reconsideration, Father's counsel indicated Father had gained employment since the time of the Non-Jury trial. However, this assertion is not currently of record so we cannot consider it in relation to the enumerated custody factors.

to reside in Bucks County for at least the remainder of the Child's childhood. *See id.* at 85.

Following the parties' separation, Mother moved thirty-eight miles away to her parents' ("Maternal Grandparents") residence at 148 Virginia Drive, Nazareth, Northampton County, Pennsylvania for approximately twenty-one months. *See* N.T. Feb. 8 at 58-59. In September of 2006, Mother purchased a home and moved with the Child to 38 Charles Avenue, Nazareth, Northampton County, Pennsylvania. *See id.* at 59; N.T. Feb. 11 at 6. While Mother and Child lived at the Charles Street address, Mother's brother, D. W. ("Maternal Uncle"), lived with Mother and the Child for a period of approximately two years. *See* N.T. Feb. 8 at 59. In July of 2015, following financial difficulties, Mother and the Child moved to a rented townhouse unit located at 3594 Penfield Way, Nazareth, Northampton County, Pennsylvania. *See id.* at 59-60; N.T. Feb. 11 at 6. The Child has her own bedroom for her exclusive use at Mother's residence. *See id.* at 61.

C. The Parties' Respective Parenting Roles

Since the Child's birth, Mother has consistently acted at the Child's primary physical caretaker. *See* N.T. Feb. 8 at 58-59, 65, 77-79. Mother wakes the Child up in the morning, gets her ready for school, and makes sure that she has everything she needs for the school day. *See id.* at 77. Mother closely tracks the Child's academic achievements, signs off on the Child's tests, and helps the Child with her homework at night. *See id.* at 68,

70. Mother is actively involved in many of the Child's extracurricular activities and at one point acted as a coach for the Child's cheerleading squad. See N.T. Feb. 9 at 192-93. Additionally, Mother is responsible for scheduling the Child's doctors' appointments, as Mother maintains Child under her insurance policy. See N.T. Feb. 11 at 34; N.T. Feb. 22 at 108, 131.

Father has proven to be capable of caring for the Child. See N.T. Feb. 22 at 85-108. During his custodial time, Father has enrolled the Child in church programs and extracurricular activities in Bucks County. See *id.* at 58-59, 89-90, 99-101, 104, 108. Father regularly takes the Child to church and is concerned with the Child's religious upbringing. See *id.* at 89-90, 99-101, 104, 108. While Father does not take the Child to doctors' appointments, Father testified Mother has in large part prevented him from participating in health care decisions regarding the Child. However, although Father testified that he would like to participate in the Child's medical appointments, Mother testified credibly that when she does inform Father of the Child's appointments, Father does not notify Mother if he is planning on attending an appointment. See N.T. Feb. 9 at 213-16. Additionally, both Father and Mother testified that Father involved himself in the Child's academics. See N.T. Feb. 8 at 70; N.T. Feb. 22 at 87, 90-91, 106-110. Father proposes that the Child attend Tohicken Middle School in Bucks County if he gained primary physical custody of the Child. Although, Father

found information regarding the school online, he did not speak to any administrators, teachers, or guidance counsellors concerning the Child's potential transition to the school. See N.T. Feb. 22 at 168.

D. The Parties' Extended Family

Mother's family is close-knit and frequently gathers for family functions, holidays, and other events. See N.T. Feb. 8 at 71. Mother's parents, Maternal Grandparents, live in Bushkill Township, approximately ten minutes away from Mother's residence. Additionally two of Mother's siblings, H. ("Maternal Aunt") and Maternal Uncle, live within five minutes of Mother's residence. See *id.* at 70-71. Mother testified that her family, including Maternal Grandparents, Maternal Aunt, and Maternal Uncle's son, are available to provide support in terms of transporting and caring for the Child when Mother is unavailable. See *id.* at 71-72. Further, Mother indicated that she has a support system in addition to her family to assist Mother with the Child. See *id.* at 77-78.

Father's family has resided in Bucks County for the past ten generations. See N.T. Feb. 22 at 84. Father's parents ("Paternal Grandparents") live in Doylestown, approximately ten minutes away from the Marital Residence. See *id.* at 103. Father testified that the Child is extremely close to her Paternal Grandparents and sees them almost every night that she is in Father's custody. See *id.* at 88, 103. In addition to Paternal Grandparents, Father's sister and her two children live near the

Marital Residence. *See id.* at 101. The Child has a close relationship with Father's great-aunt, R., and Father's niece. *See id.* at 93-104. Father testified that his extended family is available to help him care for the Child if Father needed assistance with the Child. *See id.* at 91-101.

E. The Child's Testimony

At the time of trial, the Child informed the court that she was eleven years old, and a fifth grade student at Nazareth Area Intermediate School. *See N.T. Feb. 8 at 19.* The Child appeared to understand the difference between telling the truth and telling a lie, and responded to all of the questions posed by the court in an intelligent and appropriate manner. *See id.* at 26-27. The Child indicated that her friends live in Nazareth and attend her school, and that she does not have any friends where Father lives. *See id.* at 21, 23-24.

When asked about her life, the Child indicated that she is not satisfied with the current custody schedule. *See id.* at 35. The Child reported that she would prefer to spend more time with Mother and reduce her time with Father from three to two weekends per month. *See id.* at 31,35-36. As the Child began to speak about wanting to spend less time with Father, the Child became distraught and cried throughout the rest of her testimony. *See id.* at 48. The Child explained that she wanted to reduce Father's weekend custodial periods because she wanted to be able to spend time with her friends and participate in activities in Nazareth. *See id.* at 46. The Child

indicated that she had not attempted to discuss her desire to spend more time in Nazareth with Father because she feared that Father would tell Father's family about her desire, and that they would treat her differently as a result. *See id.* at 45-46. Further, even if she discussed her desire with Father, the Child did not believe that Father would bring the Child to Nazareth on his custodial weekends because Father has stated to the Child that he does not get to spend as much time with the Child as he wished. *See id.* at 46-47.

Additionally, the Child indicated that Father speaks to her about his relationship with Mother one to two times per month. *See id.* at 47,50. The Child testified that Father has called Mother a liar, and does not seem to approve when Mother calls the Child during Father's custodial periods. *See id.* at 48-49. Ultimately, on a scale of one to ten with ten being the highest the Child could rank her desire to live with either party, the Child indicated that her desire to live with Mother ranked "eight," while her desire to live with Father ranked "three." *See id.* at 35.

F. Mother's Boyfriend

Mother is currently in a relationship with a man named J. E. ("Mr. E."). *See id.* at 80. Mother testified that she does not currently live with Mr. E. and that Mr. E. rents a home in Doylestown, Pennsylvania. *See id.* If Mother is visiting Mr. E. on a weekend during which Mother has physical custody of the Child, Mother and Mr. E. bring the Child to Mr. E.'s church in

Doylestown. See N.T. Feb. 8 at 79; N.T. Feb. 11 at 149. Additionally, Mother testified that she and the Child will spend the night at Mr. E.'s house if they are in Doylestown during Mother's custodial weekend. See N.T. Feb. 11 at 150. When the Child spends the night at Mr. E.'s house, she sleeps in the same room and in the same bed as Mr. E.'s thirteen year old daughter, L. See *id.* at 150-51.

G. Custody Evaluations

Following the Child's birth, the parties met with Dr. David Weiskotten for a few sessions of co-parent counseling. See N.T. Feb. 9 at 181. In 2005, the parties and their attorneys contacted Dr. Ronald Esteve ("Dr. Esteve") for what the official court record shows, and what Mother believed, was for the purpose of marriage counseling. See *id.* at 182-83; see also Order of Court, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Sept. 22, 2010) ("Sept. 2006 Order"). However, once Mother discovered that Father contacted Dr. Esteve for a custody evaluation, Mother cancelled her appointment with Dr. Esteve upon the advice of her attorney. See *id.* at 184-85. Father disputes Mother's version of events, and believes that the parties' attorneys and the custody master tampered with the official court record to change Dr. Esteve's agreed-upon role from that of custody evaluator, to that of marital therapist. See N.T. Feb. 22 at 154. Thereafter, Mother only participated in a brief telephone call with Dr.

Esteve. See N.T. Feb. 8 at 34, 184. Conversely, Father participated in a custody evaluation with Dr. Esteve in both 2005 and 2007. See *id.* at 12.

Due to his lack of contact with Mother, Dr. Esteve only testified as to Father's condition at the time Dr. Esteve evaluated him. See *id.* at 56, 74. Dr. Esteve reported when he initially met with Father in 2005, he observed a person with a relatively normal and healthy psychological profile, who had serious concerns about the parties' inability to co-parent and that he was being minimized in his Child's life. See N.T. Feb. 9 at 13, 18. Dr. Esteve's 2005 report was never completed due to his lack of contact with Mother. See *id.* at 42. In 2007, Father contacted and met with Dr. Esteve to complete the 2005 report. See *id.* Ultimately, Dr. Esteve admitted that because he has not updated the evaluation since 2007, and because people change over time, the information regarding Father in his 2007 report was stale. See *id.* at 44.

On January 13, 2006, Father filed a petition requesting that Mother undergo a psychological evaluation. See Petition for Psychological Examination Pursuant to Pennsylvania Rules of Civil Procedure 4010 and 1915.8, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Jan. 13, 2006). As a result of Father's request, the parties participated in a court-ordered psychological evaluation with Dr. Phillip Kinney ("Dr. Kinney") in the fall of 2006. See N.T. Feb. 22 at 185; see *also* Order of Court, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Sept. 22, 2006). Dr. Kinney's

report did not find any serious psychological pathology in either parent. See N.T. Feb. 22 at 133. However, Dr. Ginsburg testified that Dr. Kinney's report found that Father often attacked Mother in his e-mails, strongly believes that Mother has a mental pathology, and has clouded judgment about Mother's actions. See N.T. Feb. 9 at 135-36, 152.

In 2010 and in 2012, the parties and the Child attended a court-ordered series of evaluations by Dr. Arlene Ginsburg ("Dr. Ginsburg") for the purposes of obtaining an impartial custody evaluation. See Order of Court, *S. v. S.*, No. C-48-CV-2005-2186 (C.P. Northampton Co. Nov. 15, 2011); see also N.T. Feb. 9 at 79, 96, 188. Dr. Ginsburg testified that she had reviewed Dr. Kinney's report and mostly agreed with his findings. See *id.* at 135-36, 152. Additionally, Dr. Ginsburg administered MMPI-2 tests to both of the parties, in the belief that it is a useful tool for an overall custody evaluation. See *id.* at 130. From her direct observations, Dr. Ginsburg observed that the Child was equally close and attached to both parents. See *id.* at 97. Dr. Ginsburg opined that Mother had a very loving relationship with the Child, no psychopathy, and her parenting strengths included her efforts to teach the Child to read, and her commitment to giving the Child the best she could offer. See *id.* at 132. However, Dr. Ginsburg was concerned that Mother would have a difficult time trusting Father to take care of the Child, and that Mother did not completely understand the importance of Father in the Child's life. See *id.* at 97-99.

After meeting with Father, Dr. Ginsburg concluded that Father was a very loving parent, with no psychopathy, who encouraged the Child's relationship with her peers. *See id.* 99-100. However, Dr. Ginsburg was concerned that Father had trouble releasing things, particularly the idea that he was mistreated by the legal system, and that Mother suffered from a serious mental health problem. *See id.* at 133, 139. After evaluating both parties, Dr. Ginsburg concluded that Mother should remain the Child's primary physical custodian. *See id.* at 144. Additionally, Dr. Ginsburg testified that she believed that weekday dinner visits would be beneficial for the Child. *See id.* at 166. However, Dr. Ginsburg noted that Father was opposed to mid-week dinner visits because they would not take place at his house. *See id.* at 147. Ultimately, we note that due to the passage of time, Dr. Ginsburg testified that she cannot make any current recommendations regarding custody. *See id.* at 159.

Father retained Dr. Robert Gordon ("Dr. Gordon") to review the MMPI-2 tests of Father and Mother and the interpretations of the MMPI-2 tests that the previous evaluators drew from these tests. *See N.T.* Feb. 11 at 191, 217. Dr. Gordon reviewed the MMPI-2 tests Mother completed on December 5, 2006 and December 16, 2009, as well as the MMPI tests that Father completed on August 1, 2005, August 30, 2006, and January 26, 2009. *See id.* at 197, 201. Although Dr. Gordon never met with Mother or

her counsel, he concluded that Mother was coached by her former attorney to respond positively to the information in the MMPI testing. *See id.* at 216-17. Further, Dr. Gordon opined that some of Mother's testing data revealed that she had significant elevation in a scale called psychopathic deviant. *See id.* at 201. Ultimately, Dr. Gordon admitted that his analysis of the testing could not be considered an opinion about custody recommendations. *See id.* at 214.

H. Father's Allegations of Contempt

Father alleges that Mother continuously disobeys the custody orders. *See generally* Father's First Contempt Petition; Father's Second Contempt Petition; Father's Third Contempt Petition; Father's Fourth Contempt Petition. Specifically, Father alleged that Mother has violated the shared legal custody provision of the parties' custody orders by unilaterally; 1) enrolling the Child in Bible School; 2) enrolling the Child in an elementary school that was not the school in Mother's catchment area; 3) determining where the Child would go after school; 4) scheduling and attending doctor's appointments for the Child without Father's knowledge; and 5) determining that the Child would get her ears pierced. *See* N.T. Feb. 22 at 16-17, 19-22, 47-48, 68-70, 77-78, 80-83; *see also generally* Father's First Contempt Petition; Father's Second Contempt Petition; Father's Third Contempt Petition; Father's Fourth Contempt Petition. Further, Father testified that Mother enrolled the Child in dance classes, soccer, and cheerleading without

Father's consent, despite the fact that all three activities interfered with Father's custodial time. See N.T. Feb. 22 at 19-20, 28-31, 47-48. After these events, Father e-mailed Mother to no avail to request that she inform him before she made future decisions of these types. See *id.* at 16-17, 19-21.

In response to Father's allegations that Mother consistently violates the shared legal custody provisions of the custody orders, Mother testified that she makes an effort to keep Father involved in all issues regarding the Child. See N.T. Feb. 11 at 169. Mother claims that she informs Father of the Child's doctors' appointments whenever possible, but that sometimes she forgets to let Father know about routine appointments. See *id.* at 34. Further, even if Mother does inform Father about the Child's appointments, Mother testified that Father does not let her know if he will attend an appointment. See N.T. Feb. 9 at 213-16. Additionally, Mother claims that Father always knew about her plan to enroll the Child in a school other than the one covered by Mother's residence, because the plan was always for the Child to attend school where Mother worked. See N.T. Feb. 11 at 39-40. Finally, Mother testified that although Father insists that Mother obtain his consent before enrolling the Child in extracurricular activities, Father did not obtain Mother's consent before enrolling the Child in in a summer day camp with his church. See N.T. Feb. 11 at 100.

In addition to failing to obtain Father's consent before making decisions regarding the Child, Father testified regarding twenty-nine instances between July 2010 and January 2016 where Mother unilaterally changed the parties' custody schedule, or withheld custody of the Child from Father. See N.T. Feb 22 at 31-36, 38-41, 43; 61-65, 74-77, 79-80; see also generally Father's First Contempt Petition; Father's Second Contempt Petition; Father's Third Contempt Petition; Father's Fourth Contempt Petition.

Mother admits that she has not been completely compliant with the custody orders. See N.T. Feb. 11 at 177. However, Mother asserts that her failure to strictly adhere to the physical custody provisions of the custody order did not stem from a desire to minimize Father's time with the Child. See *id.* Instead, Mother claimed that she has altered the schedule in the past in what she believed was the Child's best interest, and that she does not always contact Father before adjusting the schedule because he is extremely inflexible. See *id.* at 71, 79, 178; N.T. Feb. 9 at 211. As an example of Father's inflexibility, Mother testified that she attempted to contact Father to switch weekend custodial periods when she registered the Child for cheerleading, but that Father refused to switch weekends or bring the Child to participate in cheerleading on the weekends in which he exercised physical custody. See N.T. Feb. 9 at 157, 194-94.

Mother claims that any time she alters the custody schedule, she offers Father make-up time or additional custodial time with the Child. See *id.* at 206. In fact, Mother credibly testified that she has informed Father that he is welcome to take the Child to dinner, to the mall, or help her do her homework any time during the week, but that Father has never taken advantage of Mother's offers. See N.T. Feb. 8 at 76. Finally, Mother believes that some of weekends that Father alleges Mother withheld custody of the Child were not willful disobedience of the court order on Mother's behalf, but rather stemmed from the ambiguity in the June 2012 Custody Order that does not specify which three weekends out of the month Father should have physical custody of the Child. See N.T. Feb. 8 at 72; see also June 2012 Custody Order.

Father believes that Mother is violating the custody orders by failing to have the Child promptly return Father's telephone calls. See N.T. Feb. 22 at 70-73. Father testified that throughout 2013, 2014, and the first half of 2015, the Child has frequently been unavailable when Father has called, and that he has had to e-mail Mother to request she have the Child return his telephone calls. See *id.* at 71. In 2014 alone, Father provided the court with twenty-six dates where he was not able to reach the Child, and where Mother failed to have the Child return Father's telephone calls. See *id.* at 72-73. However, Father testified that once the Child received an iPhone 4S

for Christmas in 2015, he has been able to contact the Child almost every day. See N.T. Feb. 8 at 83-85; N.T. Feb. 22 at 73.

I. Father's Allegations of Alienation

Father alleges that for the past eleven years, Mother has attempted to cut Father out of the Child's life. See Father's Brief at ¶ 13. Father alleges that Mother's attempts at alienation began before the Child's birth, when Mother moved out of the parties' marital home immediately before the Child was born. See N.T. Feb. 11 at 7-8; N.T. Feb. 22 at 5. At the time of the Child's birth, Father claims that Mother unilaterally named the Child S., even though the parties had previously agreed to name the Child Abigail. See N.T. Feb. 11 at 10-11; N.T. Feb. 22 at 6. Mother claims that she talked with Father about her desire to name the Child after her recently deceased grandmother, but that Father did not comment on her request. See N.T. Feb. 11 at 11. Further, Mother claims that Father had decided the Child's name if the Child had been a boy, without input from Mother. See N.T. Feb. 11 at 11.

Father contends that Mother had the Child baptized without telling Father that the baptism was taking place. See N.T. Feb. 22 at 6-7. In addition to failing to tell Father about the baptism, Father alleged that Mother choose a Moravian Church in which to baptize the Child, even though the parties had met in another church that Father had attended for 15 years. See *id.* Mother admits Father's contention but claims that she did not inform

Father of the Child's baptism because Mother knew of Father's antagonistic attitude and criticism of the Moravian faith. See N.T. Feb. 11 at 11.

Father contends that Mother has consistently tried to limit Father's custodial periods. Father alleges that Mother refused his repeated requests for unsupervised custody of the Child during the Child's first nine months of life. See N.T. Feb. 22 at 7-8, 180-181. Mother admits that she did not allow Father to take the Child out of Maternal Grandparents' residence, but contends that she did so because she was breast-feeding the Child and that Father was welcome to visit whenever he desired. See N.T. Feb. 11 at 12-13. Additionally, during this time period, Father testified that Mother refused to bring the Child to Bucks County to see Father or his family, despite the fact that Mother brought the Child to Wisconsin to see Mother's extended family. See N.T. Feb. 22 at 7-9. Mother admits that she did not bring the Child to Bucks County, but stated that Father did not request that Mother bring the Child to Bucks County. See N.T. Feb. 11 at 13-14. Finally, Father contends that Mother has attempted to minimize his importance in the Child's life by consistently litigating in order to reduce Father's custody, holiday, and vacation time. See N.T. Feb. 22 at 9-12.

I. Father's Allegation of a Corrupt Court System

In June of 2009, Father filed a petition with the Supreme Court of Pennsylvania requesting relief from the rulings of the Northampton County Court. See N.T. Feb. 22 at 146. Father testified that he filed this document

because he believed that various parties were delaying proceedings, suppressing evidence, and altering procedural history without concern for the Child's best interest. *See id.* at 149-150. Father believes that his actions in filing this petition resulted in his obtaining a custody conference and vacation time with the Child. *See id.* at 150. In 2010, Father testified that he believed that Mother's previous attorney coached her throughout her initial custody evaluation. *See id.* at 153. Additionally, in 2011, Father admitted that he wrote a letter to then President Judge McFadden, alleging that his attorney, Mother's previous attorney, and the custody master, changed Dr. Esteve's role in the official court record to that of marital therapist with the intent to deceive Father. *See id.* at 154.

DISCUSSION

I. Factors To Be Considered in Awarding Custody

"With any child custody case, this court has long stated that the paramount concern is the best interests of the child." *C.M.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.* (quoting *Landis v. Landis*, 869 A.2d 1003, 1011 (Pa. Super. 2005)). The Child Custody Act sets forth sixteen factors that the court must consider in determining the best interests of the child when awarding any form of custody. *See* 23 Pa.C.S.A. § 5328.

(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.

Id. In order to award shared physical custody, the court must find that there is a minimal degree of cooperation between the parties. See *B.C.S. v. J.A.S.*, 994 A.2d 600 (Pa. Super. 2010). The statute further provides that "[t]he court shall delineate the reasons for its decision on the record in open court or in a written opinion or order." 23 Pa.C.S.A. § 5328(d); accord *M.O. v. J.T.R.*, 85 A.3d 1058, 1062 (Pa. Super. 2014).

The court must now evaluate the parties' claims, giving consideration to the factors set forth in the Child Custody Act.

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

Although we do not find that either party is actively encouraging the Child to have a healthy relationship with the other parent, we find that Father is more likely to encourage and permit frequent and continuing contact between the Child and Mother. We agree with Dr. Ginsburg's observation that Mother does not seem to understand the importance of having Father involved in all important aspects of the Child's life. Mother

named the Child without Father's input, and had her baptized without informing Father. There have been numerous instances where Mother ignored the provisions of the custody orders and unilaterally altered the parties' custody schedules and made decisions for the Child. Additionally, prior to the Child receiving her own cellular telephone, Mother frequently failed to have the Child return Father's telephone calls. While we find that Mother may have believed she was making these decisions in the Child's best interests, Mother's actions ultimately resulted in Father's loss of a significant amount of custodial time with the Child.

However, while we do not find that Mother is likely to encourage communication between Father and the Child, we note that the Child testified credibly that Father often talks about the fact that Mother abandoned him, has told the Child that Mother is a liar, and seems upset when the Child talks to Mother during Father's custodial periods. Therefore, while we do believe that Father is more likely to encourage the Child to have a positive relationship with Mother, we find that this factor only slightly weighs in favor of Father.

(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.

While Father alleged that Mother's actions in alienating the Child from him constitute abuse, we do not agree. Neither party testified as to any instance of abuse. Thus, this factor is inapplicable.

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

Although the Child has lived with both parties since birth, Mother's parenting has been more extensive and consistent than Father's. Mother has been the Child's primary caretaker throughout her life. She wakes the Child up for school in the morning, makes sure the Child is prepared for school, helps her with her academic work and closely tracks her academic progress, takes her to her medical and dental appointments, and registers the Child for extracurricular activities. While Father performs many of the same tasks when the Child is in his custody, he does not dispute that he does not handle the Child's medical affairs. Although Father testified that he would be involved in the Child's healthcare if Mother informed him, he did not dispute Mother's assertion that when provided with information about upcoming appointments, he rarely if ever acknowledges that information and does not give Mother advance notice if he plans to attend an appointment. Further, while Father is involved in the Child's academics, he failed to perform adequate

research about the school he proposes the Child attend if he gained primary physical custody. Therefore, although both parties can undoubtedly perform the parental duties associated with raising the Child, we find that this factor weighs in favor of Mother.

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

For the most part, both Mother's and Father's home appear stable and predictable. Mother's home can be unpredictable in that she recently had to move as a result of financial difficulties and sometimes takes the Child to spend the night at Mr. Evans's house. Father's home can be unpredictable as Father frequently changes positions which results in a change in his commute and work time. However, the Child has lived primarily with Mother for her entire life; Mother has performed more extensive parenting duties than Father; and Mother's home is closer than Father's home to the Child's school. Thus, Mother's home offers greater stability and continuity in the Child's education, family life, and community life. Accordingly, this factor weighs in favor of Mother.

(5) The availability of extended family.

Both Mother and Father have extended family living nearby. Thus, this factor does not weigh in favor of either party.

(6) The child's sibling relationships.

The Child has no siblings. Thus, this factor is inapplicable.

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

The Child is eleven years old. She appeared to understand the significance of the court proceedings, and was able to present her opinion in a clear and direct manner. The Child testified that her preference is to spend the majority of her time with Mother, and spend every other weekend with Father. The Child clearly articulated that she would prefer this schedule because she wants to be able to participate in extracurricular activities and spend time with her friends. From prior experience, the Child indicated that she did not believe that Father would bring her to Nazareth on his custodial weekends. Additionally, the Child became very upset when asked if she told Father about her preference, as she believed Father would tell his family about her desire and that they would treat her differently as a result. Therefore, because the Child articulated clear, and legitimate reasons for preferring Mother as her primary caretaker, we find that this factor weighs in favor of Mother.

(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.

We find that both parents have shown poor judgment in their behavior towards the other party. Father has sometimes shown poor judgment by making negative comments about Mother to the Child. For example, Father tells the Child that Mother abandoned him and that

Mother is a liar. Mother has sometimes shown poor judgment by unilaterally making decisions concerning the Child or altering the custody schedule. For example, Mother unilaterally named the Child, had the Child baptized without Father's knowledge, and has consistently prevented Father from spending time with the Child. Although both parties have shown poor judgment, we do not believe that either party's actions amount to an attempt to turn the Child against the other party. Therefore, we find that this factor is neutral as between the parties.

(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.

It was apparent to the court that both Mother and Father love the Child and strive to make her happy. While Father does not have a stable career, it is evident that he has provided the Child with an extremely loving and stable home life. While Mother was forced to recently move and brings the Child to spend weekends with Mother's boyfriend, it is evident that Mother has a stable career and has attempted to make the Child's home life as stable as possible. We believe that both parties are likely to maintain a loving, stable, consistent, and nurturing relationship with the Child adequate for the Child's emotional needs. Therefore, we find that this factor is neutral as between the parties.

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

See factor three above.

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

Mother lives in Nazareth, Northampton County and Father lives in Perkasio, Bucks County. Although Father's home is not a great distance from Mother's home, Father does not live in the Child's current school district. Thus, this factor weights in favor of Mother.

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

As a school district employee, Mother has time to care for the Child as her work schedule closely aligns with the Child's school schedule. However, if there are times that Mother cannot care for the Child, Mother can rely on her extended family to care for the Child. As Father is currently unemployed, he is available to care for the Child.³ However, in the event Father gains employment outside the home, Father testified that he can rely on his extended family to help care for the Child. Neither party challenged the appropriateness of the other party's child-care arrangement. Therefore, we find this factor is neutral as between the parties.

³ As noted above, at the hearing for Father's Motion for Reconsideration, Father's counsel indicated that Father had gained employment since the time of the Non-Jury trial. However, this assertion is not currently of record so we cannot consider it in relation to the enumerated custody factors.

(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 level of conflict in this case is significant. Father presented evidence that Mother consistently makes decisions regarding the Child without Father's consent and unilaterally alters the parties' custody schedule. Mother testified credibly that Father can be inflexible. However, instead of attempting to compromise on situations with Father, Mother has taken it upon herself to decide what is best for the Child and implement it without Father's input.

Further, Father insists that Mother suffers from a serious psychopathy, and is incapable of co-parenting the Child with him. Mother believes that Father is obsessive and does not recognize the importance of Father in the Child's life. The court is concerned that both parties' distorted perception of the other party's behavior interferes with their ability to be objective about what is best for the Child. Both Mother and Father have little insight about how their own behavior may have contributed to the conflict between the parties. Father's insistence that Mother suffers from a serious psychopathy and belief that the Northampton County Court system is corrupt, and Mother's belief that she should make unilateral decisions concerning the Child, prevents both

parties from engaging in an objective give-and-take with the other party, a process essential to co-parenting.

As a general matter, high conflict cases are not well-suited for shared physical custody, which requires a higher degree of cooperation than a traditional arrangement in which one parent has primary physical custody and the other parent has partial physical custody. However, while we recognize that Mother and Father are not likely to co-parent without incident, we believe that the majority of the conflict in this case arises from ambiguities in the custody schedule. Father noted that Mother has unilaterally taken away his vacation time with the Child in the past. We fear that if we allow the parties to schedule three weeks of non-consecutive vacation with the other party, Mother will unilaterally change the custody schedule and Father will not receive his vacation time. Therefore, because a shared physical custody arrangement during a period of time when the Child does not have school will require less cooperation than a shared physical custody arrangement during the school year, we believe that it would be in the Child's best interest to give each party custody on a one-week-on, one-week-off schedule during the summer. This will remove any ambiguity in the custody schedule, and allow both parties to take a vacation with the Child during their summer custodial weeks. Thus, the court finds that this factor weighs in favor of a shared physical custody schedule in the summer

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

There was no testimony concerning drug or alcohol abuse by either Mother or Father. Thus, this factor is inapplicable.

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

While Father presented testimony that Mother suffered from a serious psychopathy in the form of Dr. Kinney's reports, Dr. Ginsburg's report and testimony, Dr. Esteve's report and testimony, and Dr. Gordon's report, we find that Mother's test results on which these reports rely are too remote in time to weigh in favor of either party in this custody determination. Therefore, because Father did not present any current evidence that Mother suffers from a serious psychopathy, we do not believe that there was any testimony that either Mother or Father has any physical or mental condition that would affect the custody determination. Thus, this factor is inapplicable.

II. Balancing the Factors

The court finds, on balance, the factors weigh in favor of primary physical custody with Mother during the school year. Although the Child has lived with both parties since birth, Mother has been the Child's primary caretaker since birth, the Child testified that it is her desire to live primarily with Mother, Mother has been primarily responsible for the Child's healthcare decisions, Mother lives in the Child's current school

district, and keeping primary physical custody of the Child with Mother will provide stability and continuity in the Child's education, family life, and community life. Thus, during the school year, Mother's home will provide greater stability and a better environment than Father's.

On the other hand, the court finds that the factors weigh in favor of a shared physical custody arrangement during the summer. Mother has routinely and cavalierly disregarded the custody schedule when she does not believe it is in the Child's best interest. Mother has demonstrated that she will take any ambiguity in the custody schedule and use it to her advantage. We believe that allowing the parties to agree upon three weeks during the summer will give Mother the opportunity to deprive Father of additional custodial time. As an attempt to avoid this situation, we believe that a shared physical custody schedule during the summer, on a one-week-on, one-week-off, basis will give both parties the opportunity to take vacation with the Child. Therefore, because both parents have demonstrated that they love the Child and are adequately equipped to care for the Child, we find that a shared physical custody schedule during the summer is in the Child's best interests.

BY THE COURT

MICHAEL J. KOURY, JR., J.

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION – LAW**

E. T. S., III,

Plaintiff,

vs.

C. S.,

Defendant.

No.: C-48-CV-2005-2186

ORDER OF COURT¹

AND NOW, this 9th day of June, 2016, upon consideration of the Petition for Contempt, Counter-Petition for Modification of Custody Order, and Motion for Reconsideration filed by Plaintiff E. T. S., III (“Father”) against Defendant C. S. (“Mother”), and the Petition for Modification of Custody Order filed by Mother against Father, concerning the parties’ minor child, S. S., born on December 27, 2004 (the “Child”), the non-jury trial held

¹ This Order amends the previous Order of Court entered on May 13, 2016. On May 13, 2016 Plaintiff E. T. S. III, (“Father”) filed a Motion for Reconsideration requesting that the court amend its Order of Court to provide that: “(a) Father’s Wednesday and Friday custodial periods shall begin at 5:00 p.m.; (b) Mother shall be responsible for transporting the Child to Father’s home for the start of Father’s custodial periods; (c) that Father’s Wednesday custodial periods shall end with Father returning the Child to school on Thursday morning; and (d) the parties shall equally share the Child’s days off from school for Christmas break and spring break.” Father’s Motion for Reconsideration of May 13, 2016 Final Order of Court in Custody, S. v. S., No. C-48-CV-2005-2186 (C.P. Northampton Co. May 25, 2016). While we did not find merit to all of Father’s arguments, we are entering an Amended Order of Court to adjust the start time of Father’s weekday custodial periods. See 42 Pa. C.S.A. § 5505 (stating that if no appeal has been filed, a court may modify an order within 30 days of its entry).

on February 8, February 9, February 11, and February of 2016, and the parties' post-trial memoranda, it is hereby **ORDERED** and **DECREED** that:

1. **Contempt.** Father's petition for contempt is **GRANTED**. Mother is hereby found in willful contempt of the June 29, 2012 and June 19, 2015 Orders of Court. Mother is hereby **ORDERED** to pay Father the sum of \$500 for contempt and \$1,500 in attorney's fees, for a total of \$2,000. Mother shall make this payment within thirty days from the filing date of this Order by sending a check to the law office of Father's counsel, Stephen J. Anderer, Esquire. In the event that either party is found to be in willful contempt of this Order, the party found in contempt shall pay the other party a minimum sum of \$1,000 for contempt and a minimum sum of \$1,000 for attorney's fees, for a total of \$2,000.
2. **Legal Custody.** Mother and Father shall have shared legal custody of the Child. "Legal Custody" shall be defined as the right to make major decisions affecting the best interests of the Child, including, but not limited to, medical, religious, and educational issues and issues concerning school-related extracurricular activities. Major decisions concerning such issues shall be made by the parties jointly, after good-faith consultation and consideration of each other's views, with the goal of developing and adhering to a harmonious policy in the best interest of the Child. Each of the

parties shall have an equal and independent right to receive all documents and information typically provided to parents by the Child's doctors, dentists, mental health professionals, counselors, child care providers, and schools, including, but not limited to diagnoses, instructions, health and safety information, and notices and schedules concerning school events and programs, parent-teacher conferences, and school-related extracurricular activities. If one party receives documents or information from any of the above providers, that party shall promptly forward a copy of the documents or information to the other party or take any steps necessary to permit the other party to receive such documents or information directly.

3. **Physical Custody during the School Year.** During the school year, Mother shall have primary physical custody of the Child subject to Father's periods of partial physical custody. During the school year, Father shall have physical custody of the Child every other Friday at 5:00 p.m. through Monday morning until school begins (or 9:00 a.m. when there is no school), and every Wednesday from 5:00 p.m. until Wednesday evening at 8:00 p.m.
4. **Physical Custody during Summer Vacation.** During the Child's summer vacation, Mother and Father shall have shared physical custody on a rotating, one-week-on, one-week-off schedule, with

custody exchanges to occur at 7:00 p.m. on each Sunday. Father shall receive physical custody the first week of the Child's summer vacation, commencing at 7:00 p.m. on the first Sunday following the Child's last day of the school.

5. **Holidays.** Holidays shall be shared as the parties may agree. If the parties cannot agree, they shall observe the following holiday schedule, which shall prevail over all other periods of physical custody:

- a. **New Year's Eve/New Year's Morning.** When New Year's Day occurs in an even-numbered year, Mother shall have custody of the Child from 12:00 p.m. on New Year's Eve until 12:00 p.m. on New Year's Day. When New Year's Day occurs in an odd-numbered year, Father shall have custody of the Child from 12:00 p.m. on New Year's Eve until 12:00 p.m. on New Year's Day.
- b. **New Year's Day.** When New Year's Day occurs in an even-numbered year, Father shall have custody of the Child from 12:00 p.m. until 8:00 p.m. on New Year's Day. When New Year's Day occurs in an odd-numbered year, Mother shall have custody of the Child from 12:00 p.m. until 8:00 p.m. on New Year's Day.

- c. **Easter Eve/Easter Morning.** From 12:00 p.m. on the Saturday before Easter Sunday to 12:00 p.m. on Easter Sunday. In even-numbered years, Father shall have custody of the Child. In odd-numbered years, Mother shall have custody of the Child.
- d. **Easter Day/Easter Monday.** From 12:00 p.m. on Easter Sunday until 12:00 p.m. on the Monday following Easter. In even numbered-years, Mother shall have custody of the Child. In odd-numbered years, Father shall have custody of the Child.
- e. **Mother's Day.** From 9:00 a.m. until 8:00 p.m. Mother shall have custody of the Child.
- f. **Memorial Day.** From 9:00 a.m. until 8:00 p.m. In even-numbered years, Mother shall have custody of the Child. In odd-numbered years, Father shall have custody of the Child.
- g. **Father's Day.** From 9:00 a.m. until 8:00 p.m. Father shall have custody of the Child.
- h. **Fourth of July.** From 9:00 a.m. until 8:00 p.m. In even-numbered years, Father shall have custody of the Child. In odd-numbered years, Mother shall have custody of the Child.

- i. **Labor Day.** From 9:00 a.m. until 8:00 p.m. In even-numbered years, Mother shall have custody of the Child. In odd-numbered years, Father shall have custody of the Child.
- j. **Thanksgiving Day.** From 4:00 p.m. on the day before Thanksgiving until 12:00 p.m. on the day after Thanksgiving. In even-numbered years, Father shall have custody of the Child. In odd-numbered years, Mother shall have custody of the Child.
- k. **Thanksgiving Weekend.** From 12:00 p.m. on the day after Thanksgiving until 6:00 p.m. on the Sunday after Thanksgiving. In even-numbered years, Mother shall have custody of the Child. In odd-numbered years, Father shall have custody of the Child.
- l. **Christmas Eve/Christmas Morning.** From 12:00 p.m. on December 24 until 12:00 p.m. on December 25. In even-numbered years, Father shall have custody of the Child. In odd-numbered years, Mother shall have custody of the Child.
- m. **Christmas Day/Morning After Christmas.** From 12:00 p.m. on December 25 until 12:00 p.m. on December 26. In even-numbered years, Mother shall have custody of

the Child. In odd-numbered years, Father shall have custody of the Child.

- n. **Child's Birthday.** The out-of-custody parent shall have custody of the Child on her birthday from 9:00 a.m. until 2:00 p.m. or at such other times as the parties may agree.

6. **Transportation.** On Father's custodial weekends during the school year, Mother shall transport the Child to Father's residence at 5:00 p.m. on Friday and Father shall transport the Child to the Child's school on Monday morning (or Mother's residence, in the event there is no school). On Father's Wednesday dinner visits, Father shall retrieve the Child from Mother's residence at 5:00 p.m. and return the Child to Mother's residence at 8:00 p.m. During the Child's summer vacation, or in the event the Child does not have school during either party's custodial time, the party receiving custody shall provide transportation for the exchange. The place for custody exchanges can be set as the parties may agree.

7. **The Child's Personal Possessions.** The Child's personal possessions, such as clothes, shoes, equipment, electronics, and personal care items, are the personal property of the Child. The Child shall have reasonable freedom as to the home at which personal possessions are kept. The Child may leave possessions at either party's home subject to rebalancing of the items at

reasonable intervals. Each party shall ensure that the Child has an adequate supply of clothing, shoes, and personal care items at that party's home in order to avoid the necessity for daily or weekly exchanges of such items between homes.

8. **Telephone Contact.** The Child shall retain her cellular telephone that she shall be permitted to communicate with the out-of-custody party. Each parent shall be responsible for ensuring that the Child's cellular telephone is charged and properly cared for while the Child is in that party's custody. The in-custody party shall ensure that daily FaceTime telephone calls are placed between the Child and the out-of-custody party and shall ensure privacy for such FaceTime telephone calls. If the Child is unavailable when the out-of-custody party places a telephone call, the in-custody party shall be responsible for having the Child return the call within a reasonable period of time on the same day. The Child shall not be prevented from telephoning or placing a FaceTime telephone call to the out-of-custody party.
9. **Medical and Dental Appointments.** Each party shall have the right to participate in all appointments and telephone calls with one of the Child's current or prospective medical and dental providers. Except in the case of an emergency, to the extent reasonably feasible, before scheduling such an appointment, the scheduling

party shall confer in good faith with the other party concerning the appointment date and the reasons for the appointment. If the parties cannot agree on an appointment date, the scheduling party shall provide at least two weeks notice to the other party of the scheduled appointments with the Child's medical and dental providers. After any such appointment or telephone call in which one of the parties did not participate, the party who participated shall promptly provide the other party with pertinent information within two hours and engage in free communication about the appointment or telephone call. Any written, email, or voice communications sent to or received from any of the Child's current or prospective medical or dental providers, including reports, diagnoses, opinions, prescriptions, instructions, updates, and bills, shall be provided promptly to the other party within twenty-four hours of receipt.

10. **Urgent Care.** If the Child suffers an injury or has a medical emergency, the in-custody party shall immediately notify (by telephone call) the other party. If either party seeks medical treatment for the Child, the transporting party shall immediately notify (by telephone call) the other party of the name and location of the facility to which the Child is being taken.

11. **Activities.** Neither party shall enroll the Child in an activity that interferes with the other party's periods of physical custody without the other party's written consent. Neither party shall unreasonably withhold consent to enrollment in an activity. Each party shall keep the other advised of scheduling and contact information for the Child's agreed-upon activities, and each party shall have the right to attend and participate in such activities during the other party's custodial time. Unless the parties otherwise agree in writing, each party shall ensure that during that party's custodial time, the Child attends all games, practices, classes, camps, rehearsals, and other events associated with the Child's agreed-upon activities, regardless of the location of the event. When the Child is attending an activity, both parents shall be permitted to have contact with the Child at the activity, regardless of which party has custody at that time.
12. **Contact Information.** Each party shall keep the other informed of his or her current and complete contact information, including home and business street addresses; home and business email addresses; and home, business, and cellular telephone numbers. Each party shall promptly notify the other party of any changes in contact information.

13. **Communication Between the Parties.** The parties shall communicate with each other regarding the Child's physical and emotional needs, medications, and daily routines. Each party shall check his or her voice, text, and email messages at least once per day, and promptly respond within twenty-four hours to any communication from the other party concerning the Child. Neither party shall allow third parties to interfere in their communications concerning parenting issues. Neither party shall use the Child as an intermediary for communications concerning parenting issues. Neither party shall discuss the custody litigation with the Child. The parties shall not engage in arguments or confrontational conversations in the presence or hearing of the Child. All contacts between the parties and their family members and companions that occur in the presence or hearing of the Child shall be polite, civil, and respectful. It is understood and agreed that a party's cooperation and diligence in communicating with the other party, both verbally and in writing, is essential to effective co-parenting and shall be an important factor in the court's future custody determinations.

14. **Nondisparagement.** Each party shall encourage the Child to love and respect the other party and that party's family members. Neither party shall make, or permit anyone else to make, negative

comments about the other party or his or her family members in the presence or hearing of the Child or in any circumstance that may lead to repetition of such comments to the Child, such as, for example, by posting the comments on social media. Neither party shall say or do anything to alienate the Child from the other party or his or her family members, either directly or indirectly, by any pretense or ploy whatsoever.

15. **Corporal Punishment.** Neither party shall use corporal punishment as a form of discipline. Neither party shall allow a family member or third party to use corporal punishment as a form of discipline.
16. **Travel.** If either party plans to have the Child away from home overnight during that party's periods of physical custody, that party shall provide the other party with at least two days' notice of the itinerary, setting forth the locations to which the Child will be traveling, the address and telephone number of each location, and the dates when the Child will be in each location. The traveling party shall promptly notify the other party of any changes in the itinerary or contact information.
17. **Modification.** The parties shall be free to modify the terms of this order by agreement. Each party shall accommodate reasonable requests for modification that are in the Child's best interests. **Any**

modification to the terms of this Order shall be in writing and must be signed by both parties.

18. **Jurisdiction.** The Northampton County Court of Common Pleas shall retain jurisdiction of this custody matter until jurisdiction is relinquished by further order of court.
19. **Further Petitions.** Before either party files a further petition for relief from the court, that party shall make every reasonable good faith effort to resolve the dispute with the other party without resorting to litigation. Such efforts shall be documented through written or electronic communications. If the parties are unable to resolve the dispute and one party files a petition for relief from the court, the filing party shall specifically identify the written or electronic communications reflecting that party's previous efforts to resolve the dispute.

NOTICE: Change of Residence or Relocation: Before a party may relocate the Child or change the residence of the Child in a manner which significantly impairs the ability of other individuals with custody rights to the Child to exercise those rights, the party must comply with the requirements and obligations of Pennsylvania's Child Custody Law set forth in 23 Pa.C.S.A. § 5337.

BY THE COURT:

/s/ Michael J. Koury, Jr.

MICHAEL J. KOURY, JR., J.