

**IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL ACTION**

D.H., Plaintiff)	
)	No. C-48-CV-2008-12809
v.)	
)	
N.P., Defendant)	
)	

DECISION

This matter is before the Court on "Plaintiff's Petition for Modification of Custody Order," filed on March 30, 2012, and "Defendant's Cross-Petition for Modification of Custody Order," filed on July 5, 2012. Testimony was taken on January 15, 2013, January 16, 2013, and February 8, 2013. On February 25, 2013, the Court entered an Order, pursuant to Pennsylvania Rule of Civil Procedure 1915.4(d), extending the time for rendering a decision to March 25, 2013. On February 27, 2013, before the Court could enter a final decision, Defendant N.P. ("Mother") filed an appeal to the Superior Court from an interlocutory Order of the Court, entered on January 15, 2013, and filed on February 8, 2013, which denied Mother's request for

paternity testing. The basis of Mother's request was her claim that her husband, J.P. ("Stepfather"), is the biological father of C.H. ("Child"), the child at issue in this case, rather than Plaintiff D.H. ("Father"). On April 15, 2013, the Court filed a Memorandum Opinion Pursuant to Pa.R.A.P. 1925(a). On May 15, 2013, Mother filed a praecipe discontinuing her appeal in the Superior Court. Because Mother's appeal had prevented the Court from issuing a timely decision, the Court, on the following day, placed this case onto the non-jury trial list for July 16, 2013, to receive evidence regarding any issues that had arisen since February 8, 2013, the date on which the record had previously been closed. Testimony was taken on July 16, 2013, and the matter is ready for disposition.

FINDINGS OF FACT

1. Father resides at 4884 Alder Drive, Walnutport, Northampton County, Pennsylvania.
2. Father was born on January 29, 1973, and he is forty years old.
3. Mother resides at 43 West Ridge Street, Lansford, Carbon County, Pennsylvania.¹
4. Mother was born on August 10, 1979, and she is thirty-four years old.

¹ At the time this action was commenced on December 5, 2008, by Father's "Petition for Custody," Mother was identified by Father as N.H. Mother's last name changed to P., by virtue of marriage, in May 2009. On July 16, 2013, by agreement of the parties, the Court ordered the caption to be amended to reflect Mother's current legal name. See Pa.R.C.P. No. 1018, Explanatory Comment.

5. Father and Mother are the parents of Child, who was born on February 22, 2007.

6. From the time Child was born until January 16, 2009, Mother had primary physical custody of Child, with Father having partial physical custody every other weekend.

7. Since January 16, 2009, Mother and Father have shared physical custody of Child, with custody being transferred on Fridays at 5:00 p.m.

8. Mother and Father were never married to each other.

9. Father resides with his fiancée, A.S.

10. Mother resides with her husband, Stepfather; her daughter, B.H., age sixteen; Stepfather's son, S.P., age fourteen; and Mother's son, N.H., age ten. Mother has another son, A.H., age twelve, who resides with the family on alternating weekends. Stepfather's other son, D.P., resides with the family on alternating weekends as well.

11. Mother and Stepfather have been married since May 2009. They have known each other since 2006.

12. Stepfather was born on September 11, 1971, and he is forty-one years old. He is employed as a maintenance mechanic by Mahoning Valley Country Club and earns \$1,280.00 bi-weekly.

13. Mother was never married to B.H.'s father, J.H.

14. Mother was married to A.H. and N.H.'s father, J.H., from 1998 to 2006.

15. J.H. has primary physical custody of A.H., with Mother having partial physical custody every other weekend.

16. Mother has primary physical custody of N.H., with J.H. having partial physical custody every other weekend.

17. Mother receives child support totaling \$300.00 per month. She does not receive support from Father and has never sought child support from him.

18. Mother is pregnant with her and Stepfather's child. The baby is due November 25, 2013.

19. Stepfather was married to S.P. and D.P.'s mother, H.C., from 1998 to 2004. H.C. has primary physical custody of D.P. and partial physical custody of S.P., every other weekend. Stepfather has primary physical custody of S.P. and partial physical custody of D.P., every other weekend. Stepfather also has an eighteen-year old son from a relationship he had prior to his first marriage.

20. Stepfather owns the home ("Mother's home") where he and Mother have resided since October 2011.

21. Mother's home is the middle of three row homes and has three bedrooms on the second floor, two bedrooms on the third floor, and a bedroom in the basement.

22. Child has her own bedroom on the second floor of Mother's home.

23. Mother and Stepfather's bedroom is in the basement.

24. Child attends afternoon kindergarten at Panther Valley Elementary, which is located in Mother's school district, the Panther Valley School District. Child started school in August 2012.

25. The school district provides a tutor for Child, to assist her with learning letters.

26. Mother has attended a parent-teacher conference with Child's teacher.

27. While Child has been in Mother's custody, she has had one absence from school.

28. None of Mother's relatives live in Carbon County or Northampton County. Rather, Mother's parents and her brother live in Hazleton, Luzerne County.

29. A custody trial was scheduled on the non-jury list for the week of October 22, 2012.

30. On October 22, 2012, the trial was continued to December 18, 2012, because Stepfather needed to be evaluated, pursuant to 23 Pa.C.S.A. § 5329(c), as a result of his prior driving under the influence of alcohol convictions.

31. In granting the continuance, President Judge F.P. Kimberly McFadden also ordered Mother, Father, and Stepfather to undergo a drug test.

32. All three were drug-tested, and Mother and Stepfather tested positive for marijuana.

33. Mother admitted that she smoked marijuana with Stepfather on Friday, October 19, 2012, and that they smoke marijuana once in a while.

34. Mother has been diagnosed with bipolar disorder and has been prescribed Prozac for depression. She has been treated by a psychiatrist. Her most recent appointment with the psychiatrist was in March 2012.

35. When she was twenty-three years old, Mother spent eleven days in a psychiatric hospital.

36. Child has had lice several times in the months leading up to January 15, 2013, the start of the trial. The lice have originated from Mother's home.

37. Mother and Stepfather have told Child that Father is not her father and that they are going to change her last name.

38. Mother does not advise Father of the dates of Child's doctors' appointments prior to the appointments but, rather, advises him afterwards.

39. When she is at Mother's home, Child is bathed every other day.

40. Mother has sent Child to school with holes in her clothing, and both parties have exchanged Child in ill-fitting clothing so as to preserve their own set of clothing for Child.

41. Father has never accompanied Child to a doctor's appointment and was not even sure who Child's doctor is. Father does not ask Mother about Child's doctor visits.

42. Child has not been examined or treated by a dentist.

43. According to Mother, at the time she became pregnant with Child, Mother and Father were no longer in a relationship.

44. Mother claims that her relationship with Father ended shortly before she became pregnant with Child.

45. Nevertheless, the two lived together when Child was born, and Father was present at the hospital when Mother gave birth to Child.

46. At the hospital, Father acknowledged paternity, with Mother's consent, and is listed as Child's father on Child's birth certificate.

47. In 2008, Children and Youth placed Child in the custody of Father because Mother left Child, then one year old, alone in the care of her then-twelve-year-old daughter, B.H., while she was at work. At the time, Mother was an exotic dancer. B.H. accidentally locked herself out of the house while Child and two of Mother's younger children were inside, and a neighbor called police, who contacted Children and Youth. A subsequent inspection of Mother's home revealed asbestos, which had to be removed before Child was able to return.

48. Mother has a high school diploma.

49. While Mother told the custody evaluator that she was previously employed as a bartender, she actually worked as an exotic dancer for seven years. She was not employed at the time of trial.

50. Mother last worked at Edgemont Personal Care Home. She worked there for three weeks, leaving that employment in August 2012.

51. At the time of trial, Mother testified that she was applying for food stamps and medical assistance and that she intends to seek part-time employment.

52. Stepfather does not have health insurance as a benefit of his employment.

53. Mother and Father communicate via text messages, which Father sends and receives through A.R. While Mother testified that this was a court-ordered requirement, there is no such court order.

54. Stepfather has known Child since birth and has treated her like a daughter. Child calls him "Daddy."

55. Mother and Stepfather like to take Child to the beach, and they also enjoy swimming and fishing with her.

56. Mother takes Child to a Jehovah's Witnesses' church on Thursdays and Sundays when Child is in her custody.

57. Stepfather's driver's license has been revoked, and he has not had a driver's license since 1999.

58. Nevertheless, Stepfather drove to Father's home on February 15, 2013, to pick up Child at a custody exchange, which caused an argument between Stepfather, Mother, and A.R.

59. Stepfather has been convicted of driving under the influence of alcohol twice. He has also been convicted of possession of LSD.

60. Because of his prior criminal convictions, in January 2013, Stepfather was evaluated by Terrence P. Brennan, M.A., pursuant to 23 Pa.C.S.A. § 5329(c), for the purpose of determining whether he posed a threat to Child and whether counseling was necessary.

61. During that evaluation, Stepfather told Mr. Brennan that he smoked marijuana on New Year's Eve in 2012.

62. In any event, Mr. Brennan concluded that Stepfather does not present "any threat to the children in his life." (Def.'s Ex. A.)

63. Father and A.R. have been together for approximately five and one-half years.

64. Father has no children other than Child. A.R. does not have any children.

65. On direct examination, A.R. testified that she and Father own the home ("Father's home") in which they reside. On cross-examination, A.R. admitted that she actually owns the home with her father. Father has resided at the home for approximately three years.

66. Father's home is a three-bedroom farmhouse on ten acres and includes a horse barn.

67. Father and A.R. have riding horses on the property.

68. When Child is with Father, she enjoys horseback riding.

69. Child has been riding horses since she was a toddler.

70. Child has her own bedroom at Father's home.

71. Father has never been married. A.R. was married once previously.

72. When Child is not in school and Father is working, A.R. is Child's primary caretaker.

73. A.R. transports Child to school when she is in Father's custody. Child's school is fifteen miles from Father's home.

74. If Child were to reside primarily with Father, she would be enrolled in Lehigh Township Elementary School, which is approximately two miles from Father's home.

75. While in Father's custody, Child was absent from school on five occasions.

76. According to A.R., she has an excellent relationship with Child.

77. Father also has an excellent relationship with Child.

78. Father works Monday through Friday. At the time of the trial in January 2013, Father left for work between 6:30 and 7:00 a.m. and returned at approximately 5:30 p.m. His hours have since changed, and he

now works from 5:00 a.m. until 1:30 p.m., Monday through Friday. He leaves for work between 4:15 and 4:30 a.m. and returns home by 2:00 p.m. At his new hours, Father is available to pick Child up from school and have dinner with her.

79. Both Father and Mother assist Child with schoolwork and read with her.

80. Father and A.R. have three dogs, and Child enjoys playing with them and caring for them.

81. In addition to horseback riding, Father, A.R., and Child enjoy hiking, camping, fishing, bowling, and games.

82. Father and A.R. share the housework, including cooking, cleaning, and caring for Child.

83. Father and A.R. became engaged in December 2011. While during the trial in January 2013, they testified that they planned on getting married in the spring of this year, the Court did not find that testimony to be credible. When the Court heard additional testimony on July 16, 2013, Father and A.R. were not yet married.

84. A.R. is unemployed and collects disability for a knee injury.

85. When she is with Father, Child goes to bed between 9:00 and 9:30 p.m.

86. Father and A.R. do not attend church with Child.

87. Father and Mother live approximately forty-five minutes from each other, by car.

88. Child calls A.R. "Bebaw," "Mom," or "Mommy."

89. Child calls Father "Daddy." According to Mother and Stepfather, Child calls Father by his first name when she is at their home.

90. Father's parents are deceased, and he has two siblings, a sister who lives in Falls, Pennsylvania and a brother who lives in Hanover, Pennsylvania.

91. Father did not graduate from high school and does not have a GED. He has been employed as a diesel mechanic by Wilco, a trucking company, in Bethlehem, Pennsylvania, since 2006. He earns \$2,800.00 per month.

92. Father has not attended any parent-teacher conferences at Child's school.

93. While Mother and Stepfather allege that Stepfather is Child's biological father, they offered no admissible evidence or testimony to establish the same. Further, neither has taken any steps to have Father removed from Child's birth certificate. Finally, Stepfather has taken no steps to intervene in this action, which was filed in 2008.

94. Sometime back in the summer or fall of 2012, Child and A.H. Mother's son, were in a bathroom together in Mother's home and an incident occurred which resulted in Mother calling Children and Youth. Children and

Youth conducted an investigation of the incident but it appears that any alleged abuse was determined to be unfounded. Mother did not question Child about the incident, but suspects that A.H. may have exposed himself to Child or touched Child inappropriately. As of July 16, 2013, Children and Youth did not have any active involvement in the matter, but Mother does not permit A.H. to visit her home when she has custody of Child.

DISCUSSION

Father commenced this action by filing a "Petition for Custody" on December 5, 2008. The parties attended a conference with a Custody Master on January 16, 2009, but they were unable to reach an agreement. On that same date, the Master recommended an interim custody Order, which was adopted by the Court and filed on January 23, 2009. That Order required home evaluations and directed that, pending trial, the parties were to share legal and physical custody of Child equally, with each party having physical custody of Child in alternating weeks. Exchanges were to be made on Fridays at 5:00 p.m., with the party receiving custody providing transportation. The holidays were to be shared equally. Neither party filed a praecipe to have the matter scheduled for trial, and the parties abided by the interim Order through the time of the instant trial.

On March 30, 2012, Father filed "Plaintiff's Petition for Modification of Custody Order." In his Petition, Father requests primary physical custody of Child. The parties attended a custody conference with a Custody Master on

June 8, 2012, but they were unable to reach an agreement. On the same date, the Master recommended an interim Order, which was adopted by the Court and filed on June 18, 2012. That Order required home evaluations to be performed, required the parties to attend the Information Night/Co-Parenting Education program, allowed both parties to register Child for school in their respective districts, and directed that all aspects of the prior interim Order, including the custody schedule, were to remain in effect.

On July 5, 2012, Mother filed "Defendant's Cross-Petition for Modification of Custody Order." In her Cross-Petition, Mother requests sole legal and physical custody of Child, alleging that Father is not Child's biological father.

On September 10, 2012, Father filed a praecipe scheduling the case for a non-jury trial on October 22, 2012. On October 22, 2012, the trial was continued to December 18, 2012, because Stepfather needed to be evaluated, pursuant to 23 Pa.C.S.A. § 5329(c), as a result of his prior driving under the influence of alcohol convictions. In granting the continuance, President Judge F.P. Kimberly McFadden ordered Father, Mother, and Stepfather to undergo a drug test, which Mother and Father failed, testing positive for marijuana.

On December 18, 2012, the case was assigned to the undersigned for trial. At that time, the evaluation of Stepfather had not been completed, so

the case was continued to January 15, 2013. As noted above, testimony was taken on January 15-16, 2013, February 8, 2013, and July 16, 2013.

It is well-established that, “[w]ith any child custody case, the paramount concern is the best interests of the child. This standard requires a case-by-case assessment of all the factors that may legitimately affect the physical, intellectual, moral and spiritual well-being of the child.” *J.R.M. v. J.E.A.*, 33 A.3d 647, 650 (Pa. Super. 2011) (quoting *Durning v. Balent/Kurdilla*, 19 A.3d 1125, 1128 (Pa. Super. 2011)). Pursuant to 23 Pa.C.S.A. § 5328(a), “[i]n 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.” 23 Pa.C.S.A. § 5328(a). After considering all such relevant factors, the Court may make an award of shared, primary, partial, sole, or supervised physical custody and shared or sole legal custody, provided such award is in the best interests of the child. 23 Pa.C.S.A. § 5323.

In evaluating the best-interests standard, the Court must first consider “[w]hich party is more likely to encourage and permit frequent and continuing contact between the child and another party.” 23 Pa.C.S.A. § 5328(a)(1). In this case, Mother and Stepfather have told Child that Father is not her biological father and that they are going to change her last name. Further, Mother is seeking “sole” legal and physical custody. In addition, Mother does not advise Father of Child’s medical appointments. It appears

to the Court that Mother would prefer it if Father were no longer a part of Child's life. Given all of the above, the Court will weigh this factor in favor of Father.

In evaluating the best-interests standard, the Court must next consider "[t]he 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." 23 Pa.C.S.A. § 5328(a)(2).² Because this factor relates to the safety of Child, the Court must give it weighted consideration. See 23 Pa.C.S.A. § 5328(a). There is no evidence of abuse in either party's home.³ However, the Court is concerned that Mother has apparently made no effort to ascertain with any precision what occurred between Child and A.H. last year. In explaining her reticence, Mother stated that she "just wanted to get past it" and "leave it behind" and that she "didn't want to know any details." The Court finds this attitude on the part of Mother to be disturbing and inexplicable. While A.H. may not have abused Child, Mother appears willing to turn a blind eye *if he did*. Mother's attitude raises serious concerns about her ability to provide

² As used in this section, "abuse" has the same definition used in Section 6102(a) of the Protection From Abuse Act, 23 Pa.C.S.A. § 6102(a). 23 Pa.C.S.A. § 5322(a).

³ The Court cannot make a finding, based upon the evidence presented, that A.H. "abused" Child.

adequate physical safeguards for Child. Therefore, the Court will weigh this second factor in favor of Father.

In evaluating the best-interests standard, the Court must also consider “[t]he parental duties performed by each party on behalf of the child.” 23 Pa.C.S.A. § 5328(a)(3). Both parties ensure that Child attends school, though Child’s absences are more numerous when she is in Father’s custody. Mother schedules and attends Child’s medical appointments but does not advise Father of them. When Child is in Father’s custody, Father and A.R. share the parental duties. When Child is in Mother’s custody, Mother performs all of the parental duties. Thus, this factor weighs in favor of Mother.

In evaluating the best-interests standard, the Court must next consider “[t]he need for stability and continuity in the child’s education, family life and community life.” *Id.* § 5328(a)(4). “In custody decisions[,] the court must consider the importance of continuity in the child’s life and the desirability of development of a stable relationship with established parental figures and known physical environment.” *Wiseman v. Wall*, 718 A.2d 844, 850 (Pa. Super. 1998). “Parental figures” may include individuals living in the households of a child’s parents. *See id.*

The Court has concerns regarding the stability of Mother’s home. With the possible exception of B.H., none of Mother’s or Stepfather’s children reside at Mother’s home on a permanent basis. A.H. resides with Mother

every other weekend; N.H. resides with his father every other weekend; S.P. resides with his mother every other weekend; and D.P. resides in Mother's home every other weekend. Without knowing the specifics of the particular custody schedules of the other children who reside at Mother's home, there could be anywhere from zero to six children residing at Mother's home at any given time. Mother's home has a constant influx and outflux of children, and Mother is expecting another child this fall, which will likely exacerbate what is already a disorganized environment. The record indicates that Children and Youth have twice been called to Mother's home, once because Mother left Child in the care of her then-twelve-year-old daughter while she was out stripping at a night club and Child was locked inside the house by herself, and once because of a report – by Mother herself – of her son's potential sexual abuse of Child.

The Court acknowledges that Father and A.R. have no real plans to become married, and Father has no ownership interest in the home where he resides with A.R. Further, if Child resides with Father, she will have to transfer schools. On the other hand, while Father and A.R. have made no marital commitment to one another and Father has no ownership interest in the home he shares with A.R., he and A.R. do appear to be in a stable, committed, long-term relationship. Also, since Child has only completed kindergarten at her current school, the Court does not believe that a change in school at this point in her life would be unduly disruptive.

For all of the above reasons, the Court will weigh this factor in favor of Father.

In evaluating the best-interests standard, the Court must also consider “[t]he availability of extended family.” 23 Pa.C.S.A. § 5328(a)(5). Mother’s parents and brother live in Hazleton, which is approximately nineteen miles from Lansford. Mother told the home evaluator that she sees her parents several times per year but that she does not have much of a relationship with her brother. She offered no testimony concerning Child’s relationship with her extended family.

Father’s parents are deceased and his sister lives in Falls, which is approximately sixty-six miles from Walnutport. Father’s brother lives in Hanover, which is approximately 126 miles from Walnutport. Father told the home evaluator that he sees his siblings a couple times per month but offered no testimony concerning Child’s relationship with them.

Given that neither party offered any evidence concerning Child’s relationship with extended family, the Court will not weigh this factor in favor of either party.

In evaluating the best-interests standard, the Court must next consider “[t]he child’s sibling relationships.” 23 Pa.C.S.A. § 5328(a)(6). Pursuant to Pennsylvania’s doctrine of “family unity,” courts should, whenever possible, permit siblings to be raised together. *Johns v. Cioci*, 865 A.2d 931, 942 (Pa. Super. 2004). “This policy does not distinguish between

half-siblings and siblings who share both biological parents.” *Id.* However, this policy is only one factor among many which the court must consider and is not controlling. *E.A.L. v. L.J.W.*, 662 A.2d 1109, 1118 (Pa. Super. 1995). Further, courts must not give automatic preference to one parent simply because that parent has had additional children with a different partner and the other parent does not. *Id.*

In this case, Child has a half-sister and two-half-brothers through Mother. Her half-sister and one half-brother reside primarily with Mother, while her other half-brother resides with Mother every other weekend. Child has been raised with her half-siblings since birth. Father has no other children. The Court believes that it is in Child’s best interests to develop close relationships with her half-siblings. However, the Court does not believe that this necessitates granting primary physical custody to Mother. Moreover, the Court believes that granting primary physical custody to Father, while perhaps hindering the development of close sibling relationships, would not prevent the development of such relationships. Further, regardless of whether there was a finding that A.H. abused Child, the Court questions the degree to which Child has bonded with A.H., given that he is in Mother’s custody only every other weekend and further given that Mother has seen fit to ensure that A.H. is not present in the home when Child is there.

Nevertheless, the Court finds that the doctrine of “family unity” is a relevant factor in this case, as Child has been raised with her half-siblings. For the above reasons, the Court has considered this factor slightly in favor of Mother.

In evaluating the best-interests standard, the Court must also consider “[t]he well-reasoned preference of the child, based on the child’s maturity and judgment.” 23 Pa.C.S.A. § 5328(a)(7). Although a child’s preference is not controlling in a custody case, it does represent “an important factor which must be carefully considered in determining the child’s best interest.” *Com. ex rel. Pierce v. Pierce*, 426 A.2d 555, 559 (Pa. 1981). However, “[t]he weight to be accorded the child’s preference varies with the age, maturity and intelligence of the child and the reasons given for the preference.” *Id.*

Here, Child testified but did not state a preference. Further, Child was not of a sufficient age, maturity, or intelligence for the Court to rely upon any of her testimony in reaching a decision. Therefore, the Court did not find this factor relevant in this case.

In evaluating the best-interests standard, the Court must next consider “[t]he 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.” 23 Pa.C.S.A. § 5328(a)(8). Here, Mother and Stepfather have told Child that Father is not

her biological father and that they are going to change her last name. Such behavior on the part of Mother and Stepfather evidences a campaign to undermine Child's bond with Father and, ultimately, to cause Child to sever her heretofore close relationship with Father. Therefore, the Court will weigh this factor in favor of Father.

In evaluating the best-interests standard, the Court must also consider "[w]hich party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs." *Id.* § 5328(a)(9). The Court concludes that Father and Mother are individually equally capable of maintaining a loving, stable, consistent, and nurturing relationship with Child. While the Court notes with displeasure Mother and Stepfather's drug use, there is no evidence that it has impacted Child's emotional development. Accordingly, the Court does not weigh this factor in favor of either party.

In evaluating the best-interests standard, the Court must next consider "[w]hich party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child." *Id.* § 5328(a)(10). In this case, both parties are equally capable of attending to Child's daily physical needs. While Father has not attended medical appointments, Mother conceded that she does not advise Father of the dates and times. Nevertheless, Father has made no independent effort to contact Child's doctor, and was not even sure who Child's doctor is. As for

emotional and developmental needs, the Court finds that both parties are equally capable of providing for the same. As for educational needs, the Court notes that Father has not attended parent/teacher conferences at Child's school, while Mother has. While Father attempted to blame this on Mother, since Father has shared legal and physical custody of Child and transports her to and from school every other week, the Court does not find this excuse to be a valid one.

Moreover, Father has attempted to disenroll Child from the school that she currently attends. Likewise, Child was absent more frequently from school while in Father's custody. For all of the above reasons, the Court will weigh this factor in favor of Mother.

In evaluating the best-interests standard, the Court must consider "[t]he proximity of the residences of the parties." 23 Pa.C.S.A. § 5328(a)(11). Lansford is approximately twenty-two miles from Walnutport, and the parties do not live in the same school district. Further, the parties appear unable to communicate about Child. Thus, in considering this factor, the Court has determined that a shared physical custody arrangement does not continue to be in Child's best interests.

In evaluating the best-interests standard, the Court must next consider "[e]ach party's availability to care for the child or ability to make appropriate child-care arrangements." *Id.* § 5328(a)(12). The Court notes that "[a] parent's work schedule may not deprive that parent of custody if

suitable arrangements are made for the child's care in his or her absence." *Gerber v. Gerber*, 487 A.2d 413, 416 (Pa. Super. 1985).

In comparing Mother and Father's availability to care for Child, the Court notes that Father works until 1:30 p.m. on weekdays and returns home by 2:00 p.m. Father's new work schedules permits him to pick Child up after school and eat dinner with her. Mother is currently unemployed and is a stay-at-home mother. Mother plans to return to a part-time job in the future. Based on the above discussion, the Court will not weigh this factor in favor of either party.

In evaluating the best-interests standard, the Court must also consider "[t]he 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." 23 Pa.C.S.A. § 5328(a)(13).

The Court finds that there is very little willingness among the parties to communicate with each other concerning Child. When Father needs to communicate with Mother, he has A.R. send Mother a text message. Likewise, when Mother needs to communicate with Father, she sends a text message to A.R. The parties rarely communicate in person. Neither party's explanation for this was credible, and it is obvious to the Court that neither party really likes the other. Both Father and Mother share blame for this

lack of communication. Thus, this factor does not weigh in favor of either party.

In evaluating the best-interests standard, the Court must next consider “[t]he history of drug or alcohol abuse of a party or member of a party’s household.” *Id.* § 5328(a)(14). Mother and Stepfather tested positive for marijuana in October 2012. Stepfather admitted to using marijuana on New Year’s Eve in 2012 and has been convicted of possession of LSD. Stepfather has also been convicted of driving under the influence of alcohol twice. However, Mr. Brennan concluded that Stepfather does not pose a threat to Child and does not require counseling. There is no evidence of drug or alcohol abuse by Father. Although there is no evidence that the past drug or alcohol use of Mother or Stepfather has impacted Child, the Court, not finding credible Mother’s assertion that she no longer smokes marijuana, is concerned about Mother’s future drug use. Therefore, the Court will weigh this factor in favor of Father.

In evaluating the best-interests standard, the Court must also consider “[t]he mental and physical condition of a party or member of a party’s household.” 23 Pa.C.S.A. § 5328(a)(15). Mother has been diagnosed with bipolar disorder but does not take medication or regularly see a psychiatrist. There is no evidence to suggest that Mother’s condition has impacted negatively on her ability to parent Child. In this regard, the Court notes that “while psychiatric considerations may very well be important, they must not

be made determinative, for in deciding upon a child's best interest the court must take many factors into account. This is so because often times 'psychiatry and the law are not co-extensive.'" *T.B. v. L.R.M.*, 874 A.2d 34, 38 n.3 (Pa. Super. 2005) (quoting *In re Donna W.*, 472 A.2d 635, 644 (Pa. Super. 1984)). Nevertheless, the Court is concerned that while Mother does not regularly take medication for her condition and does not regularly see a psychiatrist, she instead uses marijuana to "[r]elieve stress." (N.T., 1/15/2013, at 47.) Father has no known mental or physical conditions. Stepfather suffers from neuropathy in his left leg, and A.R. is disabled because of a knee injury. However, neither condition impacts Child. Given all of the above, the Court will weigh this factor evenly.

Finally, in evaluating the best-interests standard, the Court may consider "[a]ny other relevant factor." 23 Pa.C.S.A. § 5328(a)(16). In this case, the Court finds no other relevant factor that has not been addressed in the above discussion.

WHEREFORE, having considered all relevant factors, giving weighted consideration to those factors which affect the safety of Child, the Court enters the following:

**IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL ACTION**

D.H.,)	
Plaintiff)	No. C-48-CV-2008-12809
)	
v.)	
)	
N.P.,)	
Defendant)	

ORDER OF COURT

AND NOW, this 12th day of August, 2013, upon consideration of Plaintiff's Petition for Modification of Custody Order and Defendant's Cross-Petition for Modification of Custody Order, it is hereby ordered as follows:

1. **Legal Custody.** Plaintiff ("Father") and Defendant ("Mother") shall have shared legal custody of C.H., ("Child") born on February 22, 2007. "Legal Custody" shall be defined as the right to make major decisions on behalf of Child, including, but not limited to, medical, religious, and educational decisions. Thus, major decisions concerning Child, including, but not necessarily limited to, Child's health, welfare, education, and religious training and upbringing, shall be made by the parties jointly, after discussion

and consultation with each other, with the goal of developing and adhering to a harmonious policy in Child's best interests.

Each party shall keep the other party informed of Child's development. Each party shall not interfere with the other party's physical custody of Child. The parties shall give support to one another in their role as parents and shall take into account the views of the other parent regarding the physical and emotional well-being of Child. Each party shall notify the other party of any activity that could reasonably be expected to be of significant concern to the other. Day-to-day decisions shall be the responsibility of the parent then having physical custody.

Each party shall have the right to receive, directly from Child's school, copies of Child's report cards, test results, notices of parent-teacher conferences and school programs, and any other information normally released to a custodial parent.

Each parent shall further have the right to receive, directly from the provider, any medical, psychological, psychiatric, prescription drug, dental, or any other records or reports normally released to a custodial parent.

2. **Primary Physical Custody.** Father shall have primary physical custody of Child.

3. **Partial Physical Custody.** Unless the parties agree otherwise, Mother shall have partial physical custody of Child, as follows:

a. School Year. During the school year, Mother shall have physical custody of Child every other weekend from after school on the last school day of the school week until 8:00 p.m. on the day before Child's school resumes, with Mother retrieving Child directly from her school;

1. Dinner Visit. Every Wednesday, Mother shall have physical custody of Child from after school until 8:00 p.m., with Mother retrieving Child directly from her school;

b. Summer. During the summer, Mother shall have physical custody of Child every other two-week period, with exchanges being made at 8:00 p.m. on Sundays, from the first Sunday that is at least one week subsequent to Child's last day of school until the last Sunday of summer that is at least one week prior to the beginning of Child's next school year. The parties shall schedule their respective summer vacations so as not to interfere with the schedule set forth in this paragraph;

c. By Agreement. Mother shall have physical custody of Child at any other time mutually agreed to by the parties, and the parties are encouraged to allow Mother to exercise liberal periods of physical custody of Child in addition to the periods outlined above and below.

4. **Holidays.** Holidays shall be shared as the parties may agree. If the parties cannot agree, then the parties shall have the following periods of physical custody, which shall supersede the parties' school-year and summer custody schedules:

a. Thanksgiving Recess. In even-numbered years, Mother shall have physical custody of Child from 4:00 p.m. on Child's last day of school until 8:00 p.m. on the day before Child's school resumes. In odd-numbered years, Father shall have physical custody of Child from after school on Child's last day of school until the start of school on the day Child's school resumes;

b. Christmas/Winter Recess. Unless the parties agree otherwise, the following schedule shall supersede all other physical custody provisions from Child's last day of school before Christmas until Child returns to school following New Year's Day;

1. Christmas. In odd-numbered years, Mother shall have physical custody of Child from 4:00 p.m. on Child's last day of school until 12:00 p.m. on December 25 and then continuing from 12:00 p.m. on December 26 to 12:00 p.m. on December 30. In odd-numbered years, Father shall have physical custody of Child from 12:00 p.m. on December 25 to 12:00 p.m. on December 26. In even-numbered years, Father shall have physical custody of Child from after school on Child's last day of

school until 12:00 p.m. on December 25 and then continuing from 12:00 p.m. on December 26 to 12:00 p.m. on December 30. In even-numbered years, Mother shall have physical custody of Child from 12:00 p.m. on December 25 to 12:00 p.m. on December 26;

2. New Year's. In even-numbered years, Mother shall have physical custody of Child from 12:00 p.m. on December 30 until 8:00 p.m. on the day before Child's school resumes. In odd-numbered years, Father shall have physical custody of Child from 12:00 p.m. on December 30 until the start of school on the day Child's school resumes;

c. Easter/Spring Recess. In even-numbered years, Mother shall have physical custody of Child from 4:00 p.m. on Child's last day of school until 8:00 p.m. on the day before Child's school resumes. In odd-numbered years, Father shall have physical custody of Child from after school on Child's last day of school until the start of school on the day Child's school resumes;

d. Mother's Day/Father's Day. Mother shall have physical custody of Child every Mother's Day weekend, from 2:00 p.m. on Saturday until 2:00 p.m. on Sunday. Father shall have physical custody of Child every Father's Day weekend, from 2:00 p.m. on Saturday until 2:00 p.m. on Sunday;

e. Memorial Day Weekend. In odd-numbered years, Mother shall have physical custody of Child from 4:00 p.m. on Friday until 8:00 p.m. on Memorial Day. In even-numbered years, Father shall have physical custody of Child after school on Friday until the start of school on the day Child's school resumes; and

f. Labor Day Weekend. In even-numbered years, Mother shall have physical custody of Child from 8:00 p.m. on Friday to 8:00 p.m. on Labor Day. In odd-numbered years, Father shall have physical custody of Child from 8:00 p.m. on Friday to 8:00 p.m. on Labor Day.

5. **Child's Birthday.** In odd-numbered years, Mother shall have physical custody of Child from 4:00 p.m. to 8:00 p.m. on Child's birthday, if Child's birthday is on a school day. If Child's birthday is on a weekend in an odd-numbered year and that weekend is not Mother's regular weekend for partial physical custody, Mother shall have physical custody of Child from 6:00 p.m. on the day preceding Child's birthday until 2:00 p.m. on Child's birthday. If Child's Birthday is on a weekend in an even-numbered year and that weekend is Mother's regular weekend for partial physical custody, Father shall have physical custody of Child from 6:00 p.m. on the day preceding Child's birthday until 2:00 p.m. on Child's birthday. This schedule shall supersede the parties' regular custody schedule.

6. **Transportation.** The parties shall equally share transportation of Child, with the party receiving physical custody providing transportation. Exchanges shall take place at the parties' residences or as otherwise agreed to by the parties. The parties shall be cordial to each other at exchanges. Any individual operating the vehicle that transports Child must have a valid driver's license. Mother shall not permit Child to be a passenger in a car operated by J.P. unless and until J.P. obtains a driver's license.

7. **Telephone Access.** The non-custodial parent shall have daily phone contact with Child at 7:00 p.m. The non-custodial parent shall initiate the phone call. If Child is not available to speak to the non-custodial parent at that time, the custodial parent shall ensure that the phone call is returned as soon as possible.

8. **Activities.** Each party shall advise the other, on an ongoing basis, of the schedule of all curricular and extracurricular activities and events involving Child. Both parties shall have the right to attend such activities and events and to participate in them, if applicable. Neither party shall schedule an activity that interferes with the other party's periods of physical custody without that party's consent.

9. **Medical/Dental Appointments.** The parties shall consult with each other before scheduling medical/dental appointments. Neither party shall schedule, cancel, or change the date and time of a non-emergent

medical or dental appointment without the other party's consent. Both parties shall have the right to attend such appointments.

10. **Modification.** The custodial periods set forth in this Order shall be strictly adhered to and shall not be modified except by agreement of both parties. The parties shall accommodate reasonable requests for modification that are in Child's best interests.

11. **Contact Information.** Each party shall keep the other party advised of a current address, e-mail address, telephone number, and cell phone number. The parties shall communicate face-to-face, if possible, to discuss issues concerning Child.

12. **Injuries and Health.** Each party shall promptly advise the other party of any injuries sustained by Child, any illness suffered by Child, and any need for non-routine medical care.

13. **Non-Alienation.** The parties shall encourage Child to love and respect Mother, Father, and their respective family members, and they are prohibited from doing or saying anything to alienate Child from Mother, Father, and their respective family members, either directly or indirectly, by any pretense or ploy whatsoever. The parties shall not make, or permit anyone else to make, derogatory or negative comments about Mother, Father, and their respective family members in the presence or hearing of Child. The parties shall not talk to Child about this custody case/order.

Neither Mother nor any member of her family or household shall make comments to Child denying Father's paternity of Child.

14. **Arguments.** The parties shall not engage in arguments or heated conversations in the presence or hearing of Child. All contact between the parties, and their family members, shall be polite, civil, and respectful.

15. **Headings.** The paragraph headings in this Order are for ease of reading only and shall not be legally binding.

16. **Residence Change and Relocation.** Neither party shall change residence without providing notice to, and obtaining the written approval of, the other party. Neither party shall relocate unless both parties have consented to the proposed relocation or the Court approves the proposed relocation. "Relocation" means a change in the residence of Child which significantly impairs the ability of the non-relocating party to exercise his or her custodial rights. The party proposing the relocation shall notify the other party of the proposed relocation, and the other party may file an objection to the proposed relocation. The procedures set forth at 23 Pa.C.S.A. § 5337 shall govern the notification of any proposed relocation, any objection to a proposed relocation, and any other matter relating to relocation.

17. **Previous Orders.** This Order shall supersede all prior custody Orders in this case.

BY THE COURT:

J.