

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

R.O.,)	
Plaintiff)	No. C-48-CV-2012-9906
)	
v.)	
)	
R.S.J.,)	
Defendant)	

DECISION

This matter is before the Court on Plaintiff’s Amended Petition for Relocation, which includes a request for modification of custody, filed on September 2, 2014. Testimony was taken on December 10, 2014, and the matter is ready for disposition.

FINDINGS OF FACT

1. Plaintiff is R.O. (“Father”), who is twenty-eight years old and currently resides at 443 West Turner Street, Allentown, Lehigh County, Pennsylvania. (N.T., 12/10/2014, at 4:9-16, 18:14-15.)

2. Defendant is R.S.J. ("Mother"), who is twenty-two years old and currently resides at 140 Bushkill Street, Easton, Northampton County, Pennsylvania. (*Id.* at 18:16-17, 43:11-19.)

3. Father and Mother are the parents of C.V.O. ("Child"), who was born on June 29, 2012. (Am. Pet. for Relocation ¶ 3; N.T., 12/10/2014, at 5:22-6:11.)

4. Mother has no other children. (N.T., 12/10/2014, at 54:4.)

5. There was no evidence presented that Father has any other children.

6. Before Mother became pregnant with Child, she and Father were best friends. (N.T., 12/10/2014, at 35:16-23.)

7. Their relationship ended one week after Mother gave birth to Child. (*Id.* at 35:24-36:1.)

8. After the relationship ended, there was conflict between the parties as to who would have custody of Child. (*Id.* at 36:2-8.)

9. Around this time, the parties petitioned for Protection from Abuse Orders against each other, but no such petitions were granted. (*Id.* at 36:19-23.)

10. Father has been living at his current residence for one year. (*Id.* at 4:17-19.)

11. Father currently resides with his friend, K.M. (*Id.* at 4:20-21; 42:7-10.)

12. Father's current residence is Ms. M.'s apartment, and Father is not on the lease. (*Id.* at 42:11-12.)

13. The parties' current custodial arrangement is governed by an interim agreement that was adopted as an Order of Court ("Interim Order") by the Honorable F.P. Kimberly McFadden on October 18, 2012, was filed on October 24, 2012, and was modified by an Order of Court entered by the Honorable Stephen G. Baratta on June 25, 2013, and filed on July 1, 2013.

14. The Interim Order, as modified, sets out custody as follows: Father has physical custody of Child from Friday after work until Tuesday morning, with the exception of Father's weekend work-day, either Saturday or Sunday from 8:00 a.m. to 5:00 p.m., during which Mother has physical custody of Child. Mother also has physical custody from Tuesday morning until Friday evening. (Interim Order; N.T., 12/10/2014, at 7:6-15.)

15. Despite the schedule set forth in the Interim Order, Father consistently does not pick up Child for half of his scheduled weekends, leaving Child in Mother's custody during Father's scheduled custodial time every other weekend. (*Id.* at 47:23-48:8, 82:15-83-19.)

16. Based on credible testimony from Mother in this regard, the Court finds that, despite the terms of the Interim Order, the status quo of Child and the parties, in reality, is that Mother has had primary physical custody of Child, with Father having partial physical custody every other weekend.

17. When Father does exercise his periods of physical custody, he is home providing care for Child. (N.T., 12/10/2014, at 7:19-22.)

18. Father provides all of the necessary transportation to exchange custody of Child. (*Id.* at 39:17-23.)

19. Father is employed as a kitchen trainer at Buffalo Wild Wings restaurant. (*Id.* at 9:7-9.)

20. Father previously worked at the restaurant's Easton location but transferred to the Secaucus, New Jersey location to accept a managerial position with a higher salary. (*Id.* at 9:17-11-3.)

21. Father currently works Tuesday, Wednesday, and Thursday, from 12:00 p.m. to 12:00 a.m., and Friday from 12:00 p.m. to 6:00 p.m. (*Id.* at 8:19-9:6.)

22. In his current position, Father earns \$13.50 per hour. (*Id.* 33:1-4.)

23. Father occasionally travels for extended periods to train employees at other restaurant locations. When he does this, Father is paid \$14.50 per hour. (*Id.* at 27:2-9; 33:5-11.)

24. These trips span between one and two weeks, are optional, and occur approximately one or two times per year. (*Id.* at 27:18-28:1.)

25. Most recently, Father attended a four-week training trip in Morristown, New Jersey. (*Id.* at 87:7-23.)

26. Mother has physical custody of Child for the entirety of these trips. (*Id.* at 34:6-10.)

27. Father calls Child every day while he is traveling for work. (*Id.* at 38:3-8.)

28. During these calls, he speaks amicably with Child and with Mother. (*Id.* at 46:21-47:2.)

29. Father has been offered a position with Buffalo Wild Wings at their Morristown, New Jersey location. (*Id.* at 11:7-12.)

30. This position would include an increase in pay, managerial responsibilities, and the same schedule that Father presently works. (*Id.* at 13:9-22.)

31. If Father were to accept this position, he intends to move to New Brunswick, New Jersey. (*Id.* at 11:20-22.)

32. New Brunswick is approximately forty-five minutes from Easton, where Mother resides. (*Id.* at 13:4-8.)

33. In New Brunswick, Father would reside at 732 Edpas Road ("Father's Proposed Residence"), the home of his best friend, T.P. (*Id.* at 15:21-25, 17:25-18:3.)

34. Mr. P. works for Cablevision and has no criminal record. (*Id.* at 18:20-19:2.)

35. At Father's Proposed Residence, Child would have her own bedroom. (*Id.* at 29:3-4.)

36. Father would sleep in a separate loft area, on the second floor. (*Id.* at 29:5-8.)

37. Mr. P. has a separate bedroom. (*Id.* at 29:9-11.)

38. Although Father testified that he intends to add his name to the lease of Father's Proposed Residence, he has not made these arrangements and, at the time of the hearing, had not even contacted the landlord to see if this is possible. (*Id.* at 41:8-42:1.)

39. Father's Proposed Residence would call for rent in the amount of \$600.00, which is the same amount Father currently pays to Ms. M. to stay in her apartment. (*Id.* at 42:2-6.)

40. Father has researched potential schools and daycare institutions that Child could attend in New Brunswick. (*Id.* at 31:1-5.)

41. Father's mother ("Paternal Grandmother") lives fifteen minutes from Father's Proposed Residence, in South Plainfield, New Jersey. (*Id.* at 16:5-11.)

42. Father's cousins live in Jersey City. (*Id.* at 16:13-20.)

43. Father has a good relationship with his cousins. (*Id.* at 21:4-12.)

44. These cousins have interacted with Child, have a good relationship with her, and have attended her birthday parties on occasion. (*Id.* at 21:15-25.)

45. Father's sister lives in Phillipsburg, New Jersey, as do Child's cousins. (*Id.* at 17:1-7.)

46. On occasion, Paternal Grandmother assists with childcare. (*Id.* at 17:8-13.)

47. She is currently employed by a school as a secretary. (*Id.* at 17:14-17.)

48. Paternal Grandmother lives with her husband, who owns a plumbing business. (*Id.* at 17:18-22.)

49. Father has a good relationship with Paternal Grandmother and her husband. (*Id.* at 21:1-3.)

50. Father's father is deceased. (*Id.* at 99:9-11.)

51. Mother resides, with Child, in a public housing apartment, for which she pays \$50.00 per month in rent. (*Id.* at 44:25-45:6, 54:25-55:2.)

52. If she were to be moved from public housing to Section 8 housing, Mother's rental expense would increase to approximately \$250.00 per month. (*Id.* at 59:6-10.)

53. Mother earns \$100.00 per week providing babysitting services for her neighbor's child and her younger brothers and sisters. (*Id.* at 45:7-15, 58:25-59:2.)

54. Mother does not have a car. (*Id.* at 50:7-8.)

55. Her mother ("Maternal Grandmother") resides at 420 South 20th Street, Easton, Pennsylvania. (*Id.* at 55:5-7.)

56. On occasion, Mother stays at Maternal Grandmother's residence on the weekends. (*Id.* at 79:16-19, 80:9-11.)

57. Father last resided in his own apartment, with his own lease, in 2012, around the time of Child's birth. (*Id.* at 56:8-12.)

58. He has not signed any subsequent leases because he has not had sufficient funds to pay for security deposits. (*Id.* at 99:4-12.)

59. He next moved between residences, first with his brother-in-law, on Washington Street, in Easton, then with a friend next door, then with his mother next door, then to another residence located behind the Northampton County Courthouse, then back in with his brother-in-law, and finally to his current residence, Ms. M.'s apartment. (*Id.* at 56:13-57:6.)

60. Maternal Grandmother's sister (Mother's aunt), as well as Mother's three sisters (Child's aunts), ages twenty-one, fifteen, and five, all reside in Easton. (*Id.* at 60:16-61:25.)

61. Child has a close relationship with her aunts. (*Id.* at 61:10-17.)

62. Mother's cousin also resides in Easton, as do her nephew, who is four, and her niece, who is nine months old. (*Id.* at 61:6-21.)

63. The New Jersey Division of Youth and Family Services ("DYFS") investigated Father regarding a burn mark appearing on Child but closed the investigation when it determined that the allegation of abuse was unfounded. (*Id.* at 48:17-22, 62:16-25.)

64. The address that was the subject of DYFS's investigation of Father was 3 Webster Road, in New Jersey. Father testified he did not know why or how this address was provided to DYFS. (*Id.* at 96:14-97:3.)

65. Father has told Mother that he already moved to New Jersey and has indicated that, at times, Child has stayed with him in New Jersey during his periods of physical custody. (*Id.* at 73:20-74:4.)

66. On one occasion in 2013, Child had scabies and lice at the same time. (*Id.* at 80:20-81:2, 88:16-89:6.)

67. There was no evidence presented from which the Court could determine the exact time or cause of these conditions.

68. Mother has taken Child to the doctor for annual checkups, for vaccines, and to the dentist. (*Id.* at 81:9-25.)

69. Father, on one occasion, took Child to the emergency room at Easton Hospital for a high temperature. (*Id.* at 93:2-22.)

70. Mother testified that, since the Interim Order was entered in October 2012, Father has not exercised his weekend periods of custody every weekend but rather every other weekend. (*Id.* at 83:5-14.) The Court found this testimony credible.

71. In addition to rent, Father's expenses include car insurance and a phone bill. (*Id.* at 101:5-7.)

DISCUSSION

Father commenced this proceeding on April 25, 2014, by filing a Petition for Relocation - Custody, which included a request for modification of the Interim Order. On May 16, 2014, Mother filed a Counter-Affidavit Regarding Relocation, in which she objected to Father's proposed relocation. On September 2, 2014, Father filed an Amended Petition for Relocation, which he served on Mother on the same date. The Amended Petition also requests modification of the existing Order.

As noted above, at the time Father initiated this proceeding and currently, the status quo of Child, in reality and despite the Interim Order, is that Mother exercises primary physical custody and Father exercises partial physical custody every other weekend.¹ Because Mother has, in reality, been Child's primary physical custodian since 2012, the Court will treat Father's Petition as one seeking modification of the Interim Order to an order awarding him primary physical custody and permission to relocate to New Jersey. Accordingly, the Court will analyze both the statutory child custody factors and the relocation factors. See *A.V. v. S.T.*, 87 A.3d 818, 820-23 (Pa. Super. 2014); 23 Pa.C.S.A. § 5338(a).

¹ It is apparent to the Court that Father obtained the Interim Order, by agreement, to avoid paying child support, since he has not followed the Interim Order but, rather, has seen Child on a schedule which, if incorporated into a written order of court, would have required him to pay child support.

It is well-established that, “[w]ith any child custody case, the paramount concern is the best interest 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)). “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” 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 interest of the child. *Id.* § 5323(a).

In evaluating the best-interest standard, the Court must examine sixteen factors. *Id.* § 5328(a). First, the Court must consider “[w]hich party is more likely to encourage and permit frequent and continuing contact between the child and another party.” *Id.* § 5328(a)(1). In this case, both parties testified that they intend to allow the other parent to maintain a continuing relationship with Child. While Father has been away on work trips, he and Mother have cooperated in facilitating phone conversations between Father and Child. Each party has also been cooperative in exchanging Child during transfers of physical custody. There was no

evidence presented that either party would not allow contact between Child and the other parent. Thus, the Court will not weigh this factor in favor of either party.

The second factor requires the Court to 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.” *Id.* § 5328(a)(2).² There was evidence that DYFS investigated Father regarding a burn mark that appeared on Child. This investigation was terminated when DYFS determined the allegation to be unfounded. As a result, the Court finds that there is no continued risk of harm to Child and that each parent can appropriately safeguard her physical condition. Accordingly, this factor will not be weighed in favor of either party.

The third factor requires the Court to consider “[t]he parental duties performed by each party on behalf of the child.” *Id.* § 5328(a)(3). Parental duties “[i]nclude[] meeting the physical, emotional and social needs of the child.” *Id.* § 5322. Father was candid that Mother assumed most of the responsibility regarding scheduling and attending Child’s doctor visits, vaccinations, and dentist visits. Each party has assumed childcare

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).

responsibilities while Child has been in his or her physical custody. While Father has attended at least one of Child's doctor visits, the evidence established that Mother has been the primary caretaker for Child for more extensive periods of time, and with more consistency. This is in large part due to the fact that Father forgoes his periods of physical custody on a regular basis, causing the current arrangement to be one where Father exercises physical custody every other weekend. Therefore, the Court will weigh this factor in favor of Mother.

The fourth factor requires the Court to consider "[t]he need for stability and continuity in the child's education, family life and community life." *Id.* § 5328(a)(4). There was no evidence that Child has had any schooling to this point. Father testified that he researched and was satisfied with potential schools in the New Brunswick area; however, this does not impact Child's current educational situation. Regarding family life, Mother has numerous relatives in the Easton area that Child has interacted with and become close with. These relatives are close in age to Child and all reside within a short distance of Mother. Removing Child from the Easton area would disrupt the relationship she has developed with these relatives. Given all of the above, the Court will weigh this factor in favor of Mother.

The fifth factor requires the Court to consider "[t]he availability of extended family." 23 Pa.C.S.A. § 5328(a)(5). The closest member of Child's extended family to New Brunswick is Paternal Grandmother, who

resides fifteen minutes from Father's Proposed Residence. Other members of Father's family, including his sister and Child's cousins, reside in Phillipsburg, approximately fifty minutes from Father's Proposed Residence. On the other hand, numerous members of Mother's family reside in Easton. These include Maternal Grandmother, Child's two aunts, and Child's cousins. These family members have been an important part of Child's life, and it appears they would continue to be if Child remained in Pennsylvania. Because the availability of extended family is greater in Pennsylvania, the Court will weigh this factor in favor of Mother.

In evaluating the best-interest standard, the Court must next consider "[t]he child's sibling relationships." *Id.* § 5328(a)(6). Here, Child has no siblings. Therefore, this factor will not be considered.

The seventh factor requires the Court to 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). Neither party asked the Court to interview Child in this case, and Child is only two years old. Thus, this factor is not relevant.

The eighth factor requires the Court to 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). There was no evidence presented concerning this factor, and it is therefore not relevant to the Court's decision.

The ninth factor requires the Court to 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 believes that both Mother and Father are equally capable of maintaining a loving, stable, consistent, and nurturing relationship with Child. Accordingly, the Court will not weigh this factor in favor of either party.

The tenth factor requires the Court to 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). The evidence demonstrated that Mother has tended to the majority of Child’s daily physical needs, including taking her to the doctor and dentist, when necessary. She often has physical custody of Child for full days or even weeks at a time, making it clear that she is equipped to handle a full range of Child’s needs and can do so for extended periods. There was no testimony as to Child’s emotional, developmental, or special needs.

Child is only two years of age, making educational needs irrelevant to the Court’s determination. Lastly, as Father works full-time and Mother does not, Mother is in a position to more readily attend to Child’s daily physical and developmental needs. Because Mother will have more free time at home with Child, and because she has attended to Child’s daily needs more

consistently in the past, the Court will weigh this factor slightly in favor of Mother.

The eleventh factor requires the Court to consider “[t]he proximity of the residences of the parties.” *Id.* § 5328(a)(11). Father’s Proposed Residence and Mother’s residence are approximately forty-five minutes apart. Father’s current residence is approximately thirty minutes from Mother’s. The Court finds that a fifteen minute difference, alone, does not affect the best interest of Child. However, in light of other evidence, an increase in the distance between the parties may affect the likelihood that Child will spend sufficient time with each parent. Accordingly, because the distance does not per se impact the best interest of Child, the Court will not weigh this factor in favor of either party, but will revisit it further in its analysis of the relocation factors.

The twelfth factor requires the Court to 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). Father testified that Paternal Grandmother has been and would continue to be available to assist with childcare. Father has provided adequate childcare when he has physical custody and is not working; however, it is often Mother performing this role

for extended periods of time. Mother testified that Maternal Grandmother is also available for childcare and has provided the same in the past. Mother currently works solely as a babysitter, putting her in an ideal position to provide care for Child whenever needed. For these reasons, the Court will weigh this factor slightly in favor of Mother.

The thirteenth factor requires the Court to 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 evidence presented in this case established that the parties have cooperated when it comes to Child’s best interest. They have been, for the most part, able to successfully navigate the custody of Child since October 2012. Though there was conflict between the parties following the breakdown of their relationship, neither party has demonstrated an unwillingness to cooperate in pursuing Child’s best interest. Therefore, the Court will weigh this factor equally.

The fourteenth relevant factor is “[t]he history of drug or alcohol abuse of a party or member of a party’s household.” *Id.* § 5328(a)(14). There was no evidence presented regarding this factor, making it irrelevant to the Court’s decision.

The fifteenth factor requires the Court to consider “[t]he mental and physical condition of a party or member of a party’s household.” *Id.* §

5328(a)(15). Neither Father, Mother, Ms. M., nor Mr. P. has any mental or physician condition, that the Court has been made aware of, which could impact Child's care or safety. Thus, the Court will not weigh this factor in favor of either party.

Finally, in evaluating the best-interest standard, the Court may consider "[a]ny other relevant factor." *Id.* § 5328(a)(16). Mother testified that Father often diverts from the custody schedule and allows Child to remain in Mother's custody for additional weekend periods. The Court found this testimony credible and will factor it into its decision accordingly. Further, while Father seeks primary physical custody and relocation, he does not own or rent a residence and only has a roof over his head by the grace of his friends. With regard to his proposed residence in New Jersey, Father has not even asked the landlord if he can be added to the lease. Father has, since the parties' separation, bounced from residence to residence. The Court is not comfortable with Father's housing situation. On the other hand, Mother has her own residence.³

Turning to Father's Amended Petition for Relocation, the Court notes that "[t]he party proposing [a] relocation has the burden of establishing that the relocation will serve the best interest of the child as shown under" the factors enumerated in Section 5337(h) of the Domestic Relations Code. *Id.*

³ A review of the Court's analysis of all fifteen factors reveals that all of the relevant best-interest factors in this case weigh in favor of Mother retaining primary physical custody of Child.

§ 5337(i)(1). In addition, “[e]ach party has the burden of establishing the integrity of that party’s motives in either seeking the relocation or seeking to prevent the relocation.” *Id.* § 5337(i)(2). In disposing of a relocation petition, the Domestic Relations Code requires the Court to consider ten factors, “giving weighted consideration to those factors which affect the safety of the child.” *Id.* § 5337(h). First, the Court must consider “[t]he nature, quality, extent of involvement and duration of the child’s relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child’s life.” *Id.* § 5337(h)(1). Since her birth, Child has split time between Mother’s residences and Father’s residences. In living between these residences, Child has developed a close relationship with Mother’s family. The evidence established that Child has consistent contact with her aunts, cousins, and Maternal Grandmother in Easton. The evidence also established that Child has a close relationship with Paternal Grandmother and with Father’s family in Jersey City. Overall, it appears that Child has had greater involvement with and exposure to Mother’s family in Easton. Thus, she has had a greater opportunity to form close bonds with these relatives. As a result, the Court will weigh this factor slightly against relocation.

Next, the Court must consider “[t]he age, developmental stage, needs of the child and the likely impact the relocation will have on the child’s physical, educational and emotional development, taking into consideration

any special needs of the child.” *Id.* § 5337(h)(2). As stated previously, Child does not have any discernible special needs that would be impacted by relocation. She has not attended any school to date. Thus, it does not appear relocation would disrupt any academic progress. If Father relocates, transferring custody of Child would require a forty-five-minute drive, whereas it now requires a thirty-minute drive. The Court does not feel this increase affects Child’s needs or development. For these reasons, the Court will not weigh this factor in favor of or against relocation.

Next, the Court must consider “[t]he feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.” *Id.* § 5337(h)(3). “A court’s determination is not whether the alternative schedule would maintain the current level of the non-custodial parent’s interaction with the children, but rather whether the substitute arrangements ‘will foster adequately an ongoing relationship’ between the non-custodial parent and the children.” *Hogrelius v. Martin*, 950 A.2d 345, 352 (Pa. Super. 2008) (quoting *White v. White*, 650 A.2d 110, 113 (Pa. Super. 1994)). “Thus, although an alternative custody schedule necessarily reduces the frequency of a parent’s interaction with a child because of the distance involved, relocation should not be denied for that reason alone.” *Id.*

The parties testified that they would each be willing to cooperate in achieving a workable system of partial custody should relocation be granted. The primary point of contention is that Mother is not comfortable with Child residing in New Brunswick because she is unfamiliar with Mr. P. and feels that she would be unable to come to Child's aid, should any special or urgent attention be required. Mother's testimony revealed that, in light of the fact that Father has frequently moved between residences and has cohabitated with a constantly changing cast of individuals, she feels she cannot be truly sure of his, and by extension Child's, living arrangements.

While the Court sympathizes with these concerns, Father gave no indication that he would deny or prohibit Mother from maintaining a substantial portion of custody of Child. As discussed, Father's Proposed Residence is only fifteen minutes further from Mother's residence than is his current residence. As Father has provided transportation to facilitate the exchange of physical custody in the past, there is no reason to believe this could not continue if Father relocated to New Brunswick. Because it appears that relocation will not prevent Mother from adequately fostering an ongoing relationship with Child, the Court will weigh this factor in favor of relocation.

The next factor requires the Court to consider "[t]he child's preference, taking into consideration the age and maturity of the child." 23 Pa.C.S.A. § 5337(h)(4). As stated previously, Child has not been asked to state a preference in this case. Therefore, this factor is not relevant.

Next, the Court must consider “[w]hether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.” *Id.* § 5337(h)(5). There is no evidence of such conduct in this case. Therefore, this factor is likewise not relevant.

Next, the Court must consider, “[w]hether the relocation will enhance the general quality of life for the party seeking the relocation [and for the child], including, but not limited to, financial or emotional benefit or educational opportunity.” *Id.* § 5337(h)(6)-(7). If Father were to accept the position he has been offered at the Morristown location of Buffalo Wild Wings, he would receive an increase in pay. In addition, Father’s Proposed Residence would offer more living space for Child. Based on these considerations, it would appear that some increase in quality of life would accompany a move to New Brunswick, particularly financially. Therefore, the Court will weigh this factor slightly in favor of relocation.

The next factor requires the Court to consider, “[t]he reasons and motivation of each party for seeking or opposing the relocation.” 23 Pa.C.S.A. § 5337(h)(8). It appears Father desires to relocate in order to improve his employment situation. As discussed, Mother’s primary reason for opposing the relocation is her unfamiliarity with Father’s Proposed Residence and his intended cohabitant. Mother stated that she does not oppose Father moving to New Brunswick, or even having Child visit this

location, but she does oppose Child staying overnight at Father's Proposed Residence. (See N.T., 12/10/2014, at 51:1-54:5, 62:7-62:15.)

This Court, during a pre-trial conference in this case, made it clear that, pending trial, Child was not to stay overnight in New Jersey. (N.T., 6/6/2014, at 13:3-15.) This was in an effort to uphold the Interim Order, as modified, until a final resolution was reached after a hearing. It was also to ensure that Mother would get the benefit of the preferred babysitter rule in the event that, when visiting Father in New Jersey, Child would need to stay the night at Paternal Grandmother's residence, which, at the time, was the only residence available for overnights in New Jersey. In essence, Mother asks the Court to extend this mandate if Father is to permanently move to New Brunswick. This would produce a result where Father would have to return Child to Mother's residence for each night of his custodial period. If Mother had further developed her reasoning for why this should be the case, the Court might have some basis on which to agree with her concerns. For example, Mother claimed that she objects to Child sleeping in New Jersey because she does not have the means of transportation to get to Child, if necessary. However, she also admitted that the same holds true with regard to Father's current residence. In addition, Father currently resides with a friend and would do the same at Father's Proposed Residence. Mother did not produce any evidence tending to show that Mr. P. is any less suitable a housemate than Ms. M. In this regard, Mother's reasons for

objecting to the relocation appear to be less than fully-formed and were not adequately explained at trial. Because Father intends to relocate to better his employment, and because Mother opposes the relocation for reasons that were not sufficiently developed at trial and are at times self-contradictory, the Court will weigh this factor in favor of relocation.

Finally, the Court must consider “[a]ny other factor affecting the best interest of the child.” *Id.* § 5337(h)(10). As stated in the context of the best-interest factors, the Court believes that Father has not exercised a substantial number of his weekend custody periods under the Interim Order. If Father were to relocate, Child’s interest in spending time with her father may be disadvantaged, because Father would be further from Mother and, as a result, may be even more likely to continue to neglect his periods of custody. In this way, Father’s non-observance of the custody schedule in the past weighs against relocation going forward because an increase in distance between the parties’ residences leads the Court to believe that Child would spend even less time with Father, which would not necessarily be in Child’s best interest. Thus, the Court will take this history into account when deciding the relocation issue, as well as the custody issue. Moreover, as discussed previously, Father’s Proposed Residence is leased by Father’s friend, Father has no property interest therein, and Father has not even sought to obtain a legal property interest therein. This fact, standing alone,

could be enough to persuade the Court to deny Father's Petition and will factor heavily in the Court's consideration.

Having considered both the best-interest factors and the relocation factors, it is apparent that Mother should retain primary physical custody of Child. Therefore, the Court will deny Father's Amended Petition for Relocation and will memorialize the parties' status quo custody arrangement.⁴

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

⁴ Acknowledging that Father is likely to move to New Jersey following the Court's decision, and given Child's age, the Court will remove the preferred babysitter provision, as it is not feasible given the distance between the parties' residences and Mother's inability to provide transportation.

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

R.O.,)	
Plaintiff)	No. C-48-CV-2012-9906
)	
v.)	
)	
R.S.J.,)	
Defendant)	

ORDER OF COURT

AND NOW, this 26th day of January, 2015, upon consideration of Plaintiff's Amended Petition for Relocation, filed on September 2, 2014, and after hearing testimony on December 10, 2014, said Petition is hereby **DENIED**. Based upon the Court's Decision, filed this date, the Court hereby determines that it is the best interest of the parties' child to amend the existing custody Order as follows:

1. **Legal Custody.** Plaintiff ("Father") and Defendant ("Mother") shall have shared legal custody of C.V.O. ("Child"). "Legal Custody" means 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, 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 that is 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 respective roles 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 of Child.

Each party shall have the right to receive, directly from any school Child shall be enrolled in, 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 record or report normally released to a custodial parent.

2. **Primary Physical Custody.**⁵ Mother shall have primary physical custody of Child.

3. **Partial Physical Custody.**⁶ Unless the parties agree otherwise, Father shall have partial physical custody of Child every other weekend from 7:00 p.m. on Friday until 7:00 p.m. on Monday (Friday to Monday). Father's first such weekend shall commence on the first Friday following the filing of this Order.

a. Dinner Visits. Father shall have physical custody of Child every other Monday, from 4:00 p.m. until 7:00 p.m. This Monday shall be the Monday of the weeks that Father has partial physical custody of Child for the weekend (the Mondays preceding the Fridays of Father's regular weekends of partial physical custody);

b. Vacation. Father shall have physical custody of Child for a two-week-long (i.e., fourteen consecutive days) period which shall include a weekend on which Father is scheduled to exercise physical custody of Child. Mother shall have physical custody of Child for a two-week-long period which shall include a weekend on which Mother is scheduled to exercise custody of Child. Each party shall notify the other party, in writing, of his/her intent to exercise his/her vacation custodial period no later than thirty (30) days prior to the start of that

⁵ "Primary physical custody" means the right to assume physical custody of Child for the majority of time. "Physical custody" means the actual physical possession and control of Child.

⁶ "Partial physical custody" means the right to assume physical custody of Child for less than a majority of the time.

week-long period but no earlier than May 1. The party who provides written notice first shall have priority for the weeks selected, except that neither party may select, as a vacation week, any week which includes a Holiday during which the other party is entitled to exercise physical custody of Child. This schedule shall supersede the parties' regular custody schedule; and

c. By Agreement. Father shall have physical custody of Child at any other time mutually agreed to by the parties, and the parties are encouraged to allow Father 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' regular and vacation custody schedules:

a. Thanksgiving. In even-numbered years, Father shall have physical custody of Child from 4:00 p.m. on the day before Thanksgiving until 12:00 p.m. on the day after Thanksgiving.

In odd-numbered years, if the weekend after Thanksgiving is not Father's regular weekend for partial physical custody of Child, Father shall have physical custody of Child from 4:00 p.m. on the day after Thanksgiving until Sunday at 7:00 p.m.;

b. Christmas. In odd-numbered years, Father shall have physical custody of Child from 12:00 p.m. on Christmas Eve until 12:00 p.m. on Christmas. In odd-numbered years, Mother shall have physical custody of Child from 12:00 p.m. on Christmas until 12:00 p.m. on the day after Christmas.

In even-numbered years, Mother shall have physical custody of Child from 12:00 p.m. on Christmas Eve until 12:00 p.m. on Christmas. In even-numbered years, Father shall have physical custody of Child from 12:00 p.m. on Christmas until 12:00 p.m. on December 26;

c. New Year's. In even-numbered years, Father shall have physical custody of Child from 12:00 p.m. on New Year's Eve until 12:00 p.m. New Year's Day. In even-numbered years, Mother shall have physical custody of Child from 12:00 p.m. until 7:00 p.m. on New Year's Day.

In odd-numbered years, Mother shall have physical custody of Child from 12:00 p.m. on New Year's Eve until 12:00 p.m. New Year's Day. In odd-numbered years, Father shall have physical custody of Child from 12:00 p.m. until 7:00 p.m. on New Year's Day;

d. Easter. In even-numbered years, Father shall have physical custody of Child from 12:00 p.m. on the day before Easter until 12:00 p.m. on Easter. In even-numbered years, Mother shall

have physical custody of Child from 12:00 p.m. until 7:00 p.m. on Easter.

In odd-numbered years, Mother shall have physical custody of Child from 12:00 p.m. on the day before Easter until 12:00 p.m. on Easter. In odd-numbered years, Father shall have physical custody of Child from 12:00 p.m. until 7:00 p.m. on Easter;

e. Mother's Day/Father's Day. Mother shall have physical custody of Child on Mother's Day from 9:00 a.m. until 7:00 p.m. Father shall have physical custody of Child on Father's Day from 9:00 a.m. until 7:00 p.m.;

f. Memorial Day Weekend. In odd-numbered years, if it is not Father's regular weekend for partial physical custody of Child, Father shall nevertheless have physical custody of Child from 7:00 p.m. on Friday until 7:00 p.m. on Memorial Day. In even-numbered years, if it is Father's regular weekend for partial physical custody of Child, Mother shall nevertheless have physical custody of Child from 7:00 p.m. on Friday until 7:00 p.m. on Memorial Day; and

g. Labor Day Weekend. In even-numbered years, if it is not Father's regular weekend for partial physical custody of Child, Father shall nevertheless have physical custody of Child from 7:00 p.m. on Friday until 7:00 p.m. on Labor Day. In odd-numbered years, if it is Father's regular weekend for partial physical custody of Child,

Mother shall nevertheless have physical custody of Child from 7:00 p.m. on Friday until 7:00 p.m. on Labor Day.

5. **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.

6. **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.

7. **Contact Information.** Each party shall keep the other party advised of a current address, e-mail address, telephone number, and cell phone number.

8. **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.

9. **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.

10. **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. *The parties shall communicate face-to-face, if possible, to discuss issues concerning Child.*

11. **Residence Change and Relocation.** The custodial parent shall not change Child's residence without providing notice to, and obtaining the written approval of, the other party. Neither party shall relocate with Child 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.

12. **Transportation.** Until Mother obtains a car, Father shall provide all transportation for exchanges, but Mother shall reimburse Father for one-half the cost of any gasoline used by Father for such transportation, calculated by using the mileage covered and the average price of gasoline, per gallon, at the time of the transport. When Mother obtains a car, the party receiving physical custody of Child shall provide transportation for that exchange.

13. **Telephone Contact.** The party exercising physical custody of Child shall assure reasonable phone contact with the non-custodial parent.

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

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

BY THE COURT:

/s/Anthony S. Beltrami

J.