

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

N.B.S.,)	
Plaintiff)	No. C-48-CV-2013-5107
)	
v.)	
)	
A.S.,)	
Defendant)	

DECISION

This case is before the Court on Plaintiff's cause of action for Custody contained in a Complaint in Divorce ("Complaint for Custody"), filed on May 13, 2013, and Defendant's Petition to Relocate.¹ Testimony was taken from

¹ Defendant has not filed a petition to relocate and none appears on the docket. On July 25, 2014, Defendant filed and served Plaintiff with a Notice of Proposed Relocation, pursuant to 23 Pa.C.S.A. § 5337(c). On August 21, 2014, Plaintiff filed a Counter-Affidavit, pursuant to 23 Pa.C.S.A. § 5337(d), in which he objected to Defendant's proposed relocation and modification of the existing custody Order and requested a hearing. On August 22, 2014, President Judge Stephen G. Baratta entered an Order assigning the case to the undersigned for disposition. It should be noted that there is no provision in the current relocation section of the Domestic Relations Code that requires a petition to relocate to be filed. See 23 Pa.C.S.A. § 5337. Rather, the statute simply requires a relocation notice to be mailed to the opposing party along with a form counter-affidavit. See *id.* § 5337(c). The opposing party must execute and file the counter-affidavit to contest the relocation and trigger the scheduling of a hearing. See *id.* § 5337(d). In any event, the Court will refer to Defendant's request to relocate as a Petition to Relocate for purposes of this Decision.

January 12, 2015, through January 14, 2015, and the matters are ready for disposition.

FINDINGS OF FACT

1. Plaintiff is N.B.S. ("Father"), who was born on May 15, 1982, and currently resides at 400 Bridle Path Road, Bethlehem, Northampton County, Pennsylvania ("Father's Residence"). (N.T., 1/12/2015, at 100:12-15, 242:14-15.)

2. Defendant is A.S. ("Mother"), who was born on September 24, 1985, and currently resides at 839 Radcliffe Street, Bethlehem, Northampton County, Pennsylvania ("Mother's Residence"). (*Id.* at 32:9-10, 38:19-21, 126:8-10; N.T., 1/13/2015, at 284:7-8.)

3. Mother and Father are the parents of A.B.S. ("Child"), who was born on April 7, 2008. (Mother's Pretrial Conference Mem. at 1.)

4. The parties' residences are two miles apart. (N.T., 1/12/2015, at 100:14-101:2.)

5. Mother attended Kean University, where she completed sixty-two credits of nursing study. (N.T., 1/13/2015, at 179:23-180:13.)

6. Mother would like to complete nursing school. (*Id.* at 180:14-23.)

7. Mother has also completed online classes related to becoming a conservation officer. (*Id.* at 186:10-21.)

8. Father graduated from the Pennsylvania State University in 2004 with a bachelor's degree in communications. (N.T., 1/12/2015, at 242:16-22.)

9. Father has a half-sister, Me.S., who lives in Bellefonte, Pennsylvania, and a half-brother, Joshua, who lives in Raleigh, North Carolina, neither of whom have children. (*Id.* at 242:23-243:11.)

10. Father's Residence is an apartment which he has been renting since approximately June 1, 2014. (*Id.* at 100:16-21.)

11. E.G. has lived, with her husband, behind Mother's Residence since 1986. (*Id.* at 9:14-18, 8:10-13.)

12. Ms. G. lives with her young grandson, with whom Child often plays. (*Id.* at 11:10-18, 18:14-17.)

13. In September of 2014, Mother suffered a seizure while at Ms. G.'s residence and was taken away by ambulance. (*Id.* at 23:1-10.)

14. As a result of that seizure, Mother's driver's license has been and remains suspended until at least March 4, 2015. (*Id.* at 67:12-20.)

15. Mother and Father met on January 1, 2007, at which time Mother was residing with her parents in New Jersey, and Father was residing in Hoboken, New Jersey. (*Id.* at 32:17-33:2.)

16. When the parties met, Father was working in Manhattan for a company called BBDO and was earning approximately \$60,000.00 per year. (*Id.* at 33:13-20.)

17. Shortly after their relationship began, the parties moved to Clifton, New Jersey, where they had Child and where they lived for one year. (*Id.* at 34:10-35:10.)

18. The parties were married on December 14, 2007, and Father filed for divorce in 2013. (*Id.* at 142:1-7.)

19. After one year in Clifton, Mother, Father, and Child moved to Nazareth, Pennsylvania, where they rented a house and Father obtained employment with Spark, the advertising agency where he currently earns \$83,000.00 per year as director of brand strategy and is a valued employee. (*Id.* at 36:14-37:12, 133:7-8, 244:3-4, 288:22-289:10.)

20. Spark's regular work hours are Monday through Friday, from 8:30 a.m. to 5:00 p.m., but employees have flexibility regarding when they are physically present at work. (*Id.* at 288:13-21, 291:2-292:2.)

21. In his employment with Spark, Father has traveled overnight on three occasions. (*Id.* at 191:20-24.)

22. One of Father's work trips to California lasted two weeks because Father visited his father ("Paternal Grandfather"), during which time Mother cared for Child. (*Id.* at 192:5-16.)

23. Due to his job, Father often uses his computer and phone in Child's presence and when he has custody of Child. (N.T., 1/13/2015, at 63:6-64:3; N.T., 1/14/2015, at 55:1-4, 17-22.)

24. Father's parents were divorced when Father was young, and Father maintained a strong relationship with Paternal Grandfather, despite not living with him. (N.T., 1/12/2015, at 194:7-22.)

25. After living in Nazareth for a year, Mother and Father purchased Mother's Residence, where they lived together with Child as a family until the parties separated and Father moved out in 2014. (*Id.* at 37:14-38:18.)

26. The parties' marriage was an unhappy one for numerous reasons, especially with regard to finances. (*Id.* at 198:6-14, 211:24-212:1.)

27. Over the course of living in Pennsylvania, Mother has become progressively unhappy, in contrast to her usual state of mind and personality. (*Id.* at 197:22-198:20; N.T., 1/13/2015, at 65:19-66:10, 90:23-91:13, 135:7-136:8, 144:7-22; N.T., 1/14/2015, at 8:4-9:6.)

28. The parties have mutual Protection from Abuse Orders against each other. (N.T., 1/12/2015, at 39:2-9.)

29. Father shoved and spit at Mother on one occasion. (N.T., 1/13/2015, at 217:23-25.)

30. In 2009, Mother consulted her primary care physician about anxiety and was referred to the emergency room, where she would be able to see a psychiatrist. (N.T., 1/12/2015, at 106:7-15.)

31. When the hospital became aware of a "suicidal event" in Mother's past, she was hospitalized in the behavioral health unit of Lehigh

Valley Hospital – Muhlenberg, where she remained for approximately three to four days. (*Id.* at 40:21-43:9, 106:16-107:1.)

32. When it became apparent to Father that the hospital intended to keep Mother for a full weekend, he contacted her doctors to request that she be released. (*Id.* at 107:2-108:9.)

33. Upon her release from the hospital, Mother began treating with Dr. P.G., a psychiatrist, who she currently sees every few weeks. (*Id.* at 43:17-44:1, 45:11-18.)

34. Dr. G. initially diagnosed Mother with bipolar disorder, anxiety, and depression, for which he prescribed various medications, including Lithium and Tegretol. (*Id.* at 44:5-45:10.)

35. Mother's current prescriptions include Clonazepam for anxiety, Ritalin for ADHD, Clonidine for Post-Traumatic Stress Disorder ("PTSD"), Trazodone to help her sleep, and Cymbalta for fibromyalgia. (*Id.* at 45:19-47:8.)

36. Mother also treats with a psychologist, D.G., for her PTSD. (*Id.* at 50:8-22.)

37. Mother's PTSD is the result of an incident that occurred on June 1, 2013, in which she was assaulted by her "friend," D. D. (*Id.* at 47:12-48:12, 90:6-9.)

38. On several occasions in the spring of 2013, Mother visited Mr. D. at his New Jersey home, where the assault took place. (*Id.* at 48:19-49:22.)

39. Mr. D. was sentenced to approximately one year in prison as a result of this assault. (*Id.* at 52:21-53:5.)

40. In or around late 2009, after her release from the hospital, Mother wrote what can fairly be described as two suicide notes in her diary, one addressed to her "family and friends" and one addressed to Child. (Pet'r's Exs. 3-4.)

41. Mother claims that she wrote these notes in accordance with suggestions from Dr. G. and Mr. G. that she keep a journal to express her anger. (N.T., 1/13/2015, at 168:17-169:21.)

42. From 2007 until Child's birth, Mother worked full time as a nanny. (N.T., 1/12/2015, at 151:18-152:13.)

43. From 2009 to 2011, Mother worked seasonally at floral shops and, for one month, as a volleyball coach at Lafayette University. (*Id.* at 79:6-17, 114:22-115:8.)

44. Mother was terminated from her employment with Lafayette. (*Id.* at 95:16-17; Pet'r's Ex. 1.)

45. Mother was last employed at Pedia Manor, in Durham, Pennsylvania, where she worked from April 2011 until September 2012. (N.T., 1/12/2015, at 53:21-54:8, 78:20-79:5.)

46. At Pedia Manor, Mother cared for technologically dependent sick children. (N.T., 1/13/2015, at 172:9-16.)

47. While working for Pedia Manor, there were occasions when Mother stayed overnight with co-workers and was absent from the parties' home for extended periods. (N.T., 1/12/2015, at 56:9-15, 118:7-19.)

48. Around this time, Mother disclosed to Father that she had been involved in an extra-marital sexual relationship with an individual named B.P. (*Id.* at 118:20-119:22.)

49. When Mother was working at Pedia Manor, Child was in the care of Father or at daycare. (*Id.* at 86:25-87:5.)

50. Mother resigned from Pedia Manor due to an untenable work schedule. (*Id.* at 54:9-55:9, Pet'r's Ex. 2.)

51. While the parties were living together, they each participated in taking Child to sporting events and dentist appointments. (N.T., 1/12/2015, at 61:14-62:1.)

52. In the wake of Father's filing for divorce and Mother's assault, the parties continued to live together and effectively co-parent Child. (*Id.* at 125:11-126:10.)

53. Father often transported Mother and Child to participate in Girl Scouts activities. (*Id.* at 62:2-12.)

54. In addition, Father participated with Child in apple-picking and ice skating events through the Girl Scouts program. (*Id.* at 130:19-131:4.)

55. Child attends Lincoln Elementary School in Bethlehem, Pennsylvania. (*Id.* at 70:11-13.)

56. Child is a gifted student and is a member of the school's Leader in Me Program. (*Id.* at 62:16-18, 63:6-9.)

57. Most recently, Father has been transporting Child to school. (*Id.* at 62:19-24.)

58. On December 23, 2014, Father was informed that Child had not been picked up from school in the afternoon and that Mother could not be reached. (*Id.* at 137:2-9.)

59. As a result, Father picked Child up from school twenty-five minutes after her dismissal time. (*Id.* at 137:9-17.)

60. Mother has started an application for Social Security Disability benefits. (*Id.* at 64:13-65:1.)

61. Mother receives spousal support and child support payments from Father totaling \$1,837.00 per month. (*Id.* at 65:5-7, N.T., 1/14/2015, at 24:1-5.)

62. Mother intends to relocate to her parents' home in Paterson, New Jersey ("Mother's Proposed Residence"). (N.T., 1/12/2015, at 66:9-12.)

63. Mother's Proposed Residence is approximately eighty-six miles from Mother's Residence. (*Id.* at 66:16-25.)

64. Child has her own bedroom at Mother's Proposed Residence. (*Id.* at 177:1-4.)

65. Mother's Proposed Residence is a large, one-family house with three bedrooms, a living room, kitchen, two bathrooms, a dining room, and a livable attic. (N.T., 1/13/2015, at 67:3-9, 137:6-13; Pet'r's Ex. 2.)

66. Mother's Proposed Residence has an above-ground pool, which Child enjoys. (N.T., 1/14/2015, at 43:21-44:6.)

67. If Mother were to relocate, she would enroll Child in Saint Brendan Catholic School, where Child's class size would be between twenty-five and twenty-eight students and the tuition is \$443.00 per month. (N.T., 1/12/2015, at 70:16-19, 71:22-25; N.T., 1/13/2015, at 163:5-10.)

68. The size of Child's current class at Lincoln Elementary School is twelve to fourteen students. (N.T., 1/12/2015, at 72:10-14.)

69. In the event of Mother's relocation, Father intends to remain involved in decisions regarding Child's education. (*Id.* at 180:20-24.)

70. Mother has also investigated Saint Philip School in Clifton, New Jersey. (N.T., 1/13/2015, at 259:5-12.)

71. In 2010, Child was enrolled in the YMCA for daycare, which she would, at times, attend five days per week for ten hours per day. (N.T., 1/12/2015, at 82:13-20, 274:13-18.)

72. Father attended the intake session at the YMCA and was primarily responsible for driving Child there. (*Id.* at 275:5-25.)

73. Child remained enrolled in the YMCA program for approximately two years. (*Id.* at 83:5-7.)

74. The parties each participated in Child's ballet classes through the YMCA. (*Id.* at 131:18-25.)

75. In the summer of 2010, Mother was employed as a nanny for a family in Saucon Valley, Pennsylvania, where she reported early in the morning and was responsible for the care of two adolescents. (*Id.* at 154:10-157:15; N.T., 1/13/2015, at 183:3-185:16.)

76. Father's Mother, M. E. S. ("Paternal Grandmother"), is fifty-three years old, has owned a home on Apollo Drive, in Bethlehem, Pennsylvania since December 2014, and has resided there since January 10, 2015. (N.T., 1/12/2015, at 134:12-18; N.T., 1/13/2015, at 40:3-10, 50:19-21.)

77. Paternal Grandmother last worked in 2005 as a teaching assistant for autistic children. (N.T., 1/13/2015, at 53:16-24.)

78. In 2008, following her divorce, Paternal Grandmother stayed with the parties in their Nazareth residence until disagreements between Mother and Paternal Grandmother prompted the parties to request that Paternal Grandmother move back to Harrisburg. (N.T., 1/12/2015, at 184:3-185:23.)

79. Paternal Grandmother resides with her fiancé, B.D., with whom she has been in a relationship for approximately five years. (*Id.* at 183:17-21, 185:24-186:8; N.T., 1/13/2015, at 27:6-15.)

80. Paternal Grandmother has multiple sclerosis ("MS"), for which she uses a cane and/or walker and takes Valium, as needed, and Percocet, daily. (N.T., 1/12/2015 at 186:16-19; N.T., 1/13/2015, at 28:8-16, 29:20-30:15.)

81. Paternal Grandmother's MS presents no inhibitions with regard to her ability to drive, go about her daily activities, or provide care for Child. (N.T., 1/13/2015, at 29:5-14, 30:16-21, 31:2-9.)

82. Paternal Grandmother assisted with childcare when Father had physical custody in the summer of 2014. (N.T., 1/12/2015, at 187:17-24.)

83. Paternal Grandmother has picked Child up from school on several occasions. (N.T., 1/13/2015, at 31:10-32:7.)

84. Father disciplines Child, including the use of corporal punishment, while Mother does not. (*Id.* at 33:13-22; N.T., 1/14/2015, at 46:11-48:1.)

85. Child has five third-cousins who reside in Harrisburg and with whom Child has a loving relationship. (N.T., 1/13/2015, at 43:1-21.)

86. During Hurricane Sandy, Mother stayed with Child at Mother's Proposed Residence for approximately one week, while Father stayed in the parties' residence. (N.T., 1/12/2015, at 166:8-167:1.)

87. In 2012, Mother's vehicle required repairs, which were paid for by Mother's parents. (*Id.* at 167:2-168:1.)

88. Father worked a second job at Sears from November 2012 to March 2013. (*Id.* at 168:11-169:8.)

89. When Father worked two nights per week at Sears, Mother cared for Child. (*Id.* at 169:9-12.)

90. Mother's Residence is currently listed for sale, and Mother has made renovation efforts to prepare the residence for showings. (*Id.* at 203:24-204:19.)

91. There was conflict between the parties regarding the money Mother spent on these efforts. (*Id.* at 204:20-208:17.)

92. Mother's Residence has one bathroom, bedrooms for both Child and Mother, a kitchen, and a playroom. (N.T., 1/14/2015, at 30:3-31:5.)

93. Mother pays her bills with assistance from her family. (N.T., 1/13/2015, at 213:15-17.)

94. During the 2013-14 school year, Mother often prepared dinner, Father played with Child, and each parent bathed Child. (N.T., 1/12/2015, at 209:13-210:1.)

95. Father entered the marriage with approximately \$2,500.00 of personal credit card debt, and the parties' total debt, as a result of home improvements, rent, and other bills, increased to approximately \$20,000.00 over the course of their marriage. (*Id.* at 212:2-213:11.)

96. Father currently has no personal debt. (*Id.* at 244:5-7.)

97. Father was primarily responsible for paying bills, monitoring the parties' finances, and purchasing groceries during the marriage. (*Id.* at 211:9-12, 214:1-215:3.)

98. Father has ADHD, for which he has been taking Concerta for approximately a year and a half. (*Id.* at 222:25-224:6.)

99. Father has taken Lorazepam and Buspar in the past. (*Id.* at 227:6-12.)

100. Father attended two therapy sessions at Bethlehem Counseling Associates for depression and anxiety. (*Id.* at 225:2-227:5.)

101. Father and Child have engaged in activities including swimming, playing with Child's dollhouse, reading books, and trips to the Crayola Experience, the library, Iron Pigs' games, and to visit Father's family in Harrisburg. (*Id.* at 229:13-25, 231:16-23.)

102. The parties have taken Child to the movies and on a week-long vacation to Williamsburg, Virginia. (*Id.* at 230:5-231:15.)

103. If Mother were permitted to relocate and moved out of Mother's Residence, Father would consider moving back into Mother's Residence with Child. (*Id.* at 234:9-16.)

104. Mother is approximately \$3,500.00 behind on mortgage payments on Mother's Residence. (*Id.* at 245:3-10.)

105. If Child remains in Bethlehem, she will continue at Lincoln Elementary School. (*Id.* at 235:1-236:7.)

106. Child has made friends at Lincoln. (*Id.* at 237:8-14.)

107. Child's kindergarten teacher, L.R., found Child to be a gifted student, and Ms. R. had normal interactions with the parties when they dropped Child off at school. (*Id.* at 246:3-11.)

108. S.R. has lived next door to Mother's Residence for thirty-eight years. (*Id.* at 248:16-249:8.)

109. Ms. R. often observed Father playing outside with Child and taking Child to and from school and daycare. (*Id.* at 249:19-25.)

110. Father installed a swing set in the backyard of Mother's Residence. (*Id.* at 251:20-23.)

111. On occasion, Child plays with Ms. R.'s eight-year-old granddaughter. (*Id.* at 252:14-18.)

112. In one interaction she had with Mother, Ms. R. observed Mother to be under the influence of medication and slurring her speech. (*Id.* at 261:2-262:18.)

113. One week prior to New Year's Day in 2015, at approximately 4:00 a.m., Ms. R. observed Mother's acquaintance, Johnny, knocking on the door of Mother's Residence with an alcohol bottle in his hand and then observed him enter Mother's Residence when Mother opened the door. (*Id.* at 266:11-267:2.)

114. Johnny later sent Mother flowers and a sympathy card, which included the message "my deepest sympathies, rest in peace." (*Id.* at 268:18-271:20.)

115. Father's Aunt, A. M. ("Paternal Great-Aunt"), resided in Easton, Northampton County, Pennsylvania from September 2012 until March 2014 and now resides in Phillipsburg, Pennsylvania. (N.T., 1/13/2015, at 9:14-10:24.)

116. Paternal Great-Aunt has a granddaughter who is the same age as Child. (*Id.* at 10:13-16.)

117. While living in Northampton County, Paternal Great-Aunt babysat Child approximately five to six times. (*Id.* at 10:14-24.)

118. In the summer of 2013, before Mother was assaulted by Mr. D., Mother returned home in a highly upset state, prompting Paternal Great-Aunt to contact Paternal Grandmother to make her aware of the situation. (*Id.* at 11:14-16:2.)

119. Father's sister has been employed as a protective service worker and caseworker for the Centre County Office of Aging for one year. (*Id.* at 17:7-13.)

120. Father's sister was assaulted in January of 2014, which resulted in her undergoing emergency surgery for a broken leg, after which she was temporarily bedridden. (*Id.* at 17:14-18:11.)

121. For one week of Father's sister's recovery, Mother assisted her with all of her activities of daily living, including cooking, bathing, and dressing, during which time Child was in Father's care. (*Id.* at 18:4-20, 24:3-5.)

122. Mother's cousin, A.C., is thirty-nine years old and resides in Woodbridge, New Jersey, approximately thirty minutes from Mother's Proposed Residence. (*Id.* at 58:17-21, 60:23-25.)

123. Mr. C. speaks with Mother on the telephone approximately two to three times per week. (*Id.* at 59:13-18.)

124. Before her driver's license was suspended, Mother visited Mr. C. and other family members in New Jersey approximately two to three weekends per month with Child. (*Id.* at 59:19-60:22.)

125. During these visits, Mr. C. participated with Child in apple-picking, playing with his dogs, and going out to eat. (*Id.* at 62:2-16.)

126. Mr. C. has ten nieces and nephews, all of whom attend family reunions. (*Id.* at 67:19-25.)

127. These nieces and nephews are similar in age to Child and often play with her. (*Id.* at 68:1-11.)

128. Mr. C. was born in Colombia and then moved to New Jersey. (*Id.* at 81:11-15.)

129. In total, there are approximately fifteen members of Mother's extended family hailing from Colombia who currently reside within thirty minutes of Mother's Proposed Residence. (*Id.* at 81:22-83:23.)

130. Mother's sister, T.P., is thirty-one years old and lived one mile from the parties in Pennsylvania until she recently moved to Paramus, New Jersey. (N.T., 1/12/2015, at 199:3-6; N.T., 1/13/2015, at 84:20-25.)

131. Mother and Child visited Ms. P. at her Pennsylvania residence once or twice per week, where Child would play with Ms. P.'s daughter, C.P., who is three. (N.T., 1/12/2015, at 199:10-21; N.T., 1/13/2015, at 85:23-24.)

132. Ms. P. works in human resources and payroll for a trucking company, has an associate's degree in paralegal studies, and is currently studying for her bachelor's degree. (N.T., 1/13/2015, at 85:1-8.)

133. Ms. P. has been married to S.P. for five years. (*Id.* at 85:15-18.)

134. Prior to the parties' separation in April 2014, Ms. P. purchased clothes for Child and for Mother on occasion. (*Id.* at 102:22-103:7.)

135. Mother applied for a job at Rite Aid, in Bethlehem, in September 2014. (*Id.* at 118:14-119:5.)

136. Mother's other sister, Yesenia, is twenty-six years old, lives in Clifton, New Jersey, and is in nursing school. (*Id.* at 90:4-19, 135:3.)

137. Mother does not socialize with anyone in Bethlehem. (*Id.* at 132:10-16.)

138. Mother's mother, M. C. ("Maternal Grandmother"), is fifty-five years old and resides in Mother's Proposed Residence. (*Id.* at 133:22-134:1.)

139. Mother's father, L.C. ("Maternal Grandfather"), is fifty-four years old and resides in Mother's Proposed Residence. (N.T., 1/14/2015, at 3:19-23.)

140. Maternal Grandmother and Maternal Grandfather ("Maternal Grandparents") have been married for thirty-five years. (*Id.* at 4:4-5.)

141. Maternal Grandfather is employed as an employee-trainer and welder for a company called HMT in Totowa, New Jersey, where he earns approximately \$100,000.00 annually. (*Id.* at 4:15-5:8.)

142. Maternal Grandfather travels a few times per year for his job. (*Id.* at 5:11-20.)

143. Mother and Child visit with Maternal Grandmother almost weekly. (N.T., 1/13/2015, at 135:7-9.)

144. Despite not having a driver's license, Mother has continued to visit her family frequently because Ms. P. or Maternal Grandparents have provided transportation. (*Id.* at 219:14-19, 274:11-22.)

145. These visits include trips to the mall and to restaurants. (*Id.* at 142:20-24.)

146. Maternal Grandparents are willing to, and would happily, accommodate Mother and Child moving into their home. (*Id.* at 136:25-137:5; N.T., 1/14/2015, at 6:4-11.)

147. Maternal Grandparents have provided economic support for Mother and Child by purchasing basic necessities for Child, and they intend to continue to do so in the future. (N.T., 1/13/2015, at 140:22-141:16; N.T., 1/14/2015, at 6:12-15.)

148. Maternal Grandmother was last employed two months ago taking care of senior citizens. (N.T., 1/13/2015, at 143:16-24.)

149. Father has a good relationship with Maternal Grandmother, and he treats her with respect. (*Id.* at 145:17-20.)

150. If Mother were to relocate, she would facilitate contact between Father and Child via phone, computer, and video-chat. (*Id.* at 211:11-19.)

151. Mother has participated in an animal program and a chess program with Child at school. (*Id.* at 221:22-222:19.)

152. If Mother were to relocate, she desires Father to have partial physical custody of Child three weekends per month, one weeknight, extra holidays, and half of the summer. (*Id.* at 271:2-6.)

153. Mother testified that if she were permitted to relocate, custody of Child would be exchanged via a shared-transportation system, where Maternal Grandparents and Mother's sisters would assist with driving. (*Id.* at 272:17-273:10.)

154. Mother has not investigated potential psychiatrists or psychologists who could treat her in New Jersey, nor a dentist that could treat Child. (*Id.* at 290:6-22.)

155. Mother has not selected a home in which to reside in Pennsylvania should Mother's Residence be sold. (*Id.* at 291:1-292:8.)

156. Yesenia's boyfriend, who manages a bowling alley, and Maternal Grandfather's boss have represented to Maternal Grandfather that they can offer Mother a job. (N.T., 1/14/2015, at 12:8-25.)

157. Child likes Lincoln Elementary School. (*Id.* at 28:13-15.)

158. Child testified that she would like to move to New Jersey and see Father on the weekends. (*Id.* at 54:19-56:4.)

DISCUSSION

Father filed a Complaint for Custody on May 13, 2013. On July 25, 2014, Mother filed a Notice of Proposed Relocation ("Notice"). In her Notice, Mother seeks permission to relocate to Mother's Proposed Residence (Maternal Grandparents' home) with Child. On August 21, 2014, Father filed a "Counter[-]Affidavit Regarding Relocation," in which he objects to Mother's proposed relocation. On September 5, 2014, Father filed a Reply with New Matter to Mother's Notice. On September 18, 2014, Mother filed a Reply to Father's New Matter.

On May 16, 2014, shortly after Father filed his custody action, the parties entered into an interim agreement that, pending trial, they would

share legal custody of Child, Mother would have primary physical custody, and Father would have partial physical custody approximately every other weekend. An Order encompassing that agreement was filed by President Judge Baratta on May 21, 2014.

On August 22, 2014, President Judge Baratta entered an Order assigning the case to the undersigned for disposition. The undersigned issued an Order on September 9, 2014, scheduling the matter for trial on October 27, 2014. The Court later had to continue the trial due to a five-week long criminal homicide jury trial the undersigned presided over. As a result, the matter was rescheduled, by Order dated November 24, 2014, to January 12, 2015. Testimony was taken on January 12 through January 14, 2015.

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, the evidence presented indicates that each party will likely encourage and permit frequent and continuing contact between Child and the other party. Each party testified to their desire that the other parent remain involved in Child’s life. Mother testified that she plans to remain in Pennsylvania to be with Child if Child remains in Pennsylvania. If that were to occur, the parties’ testimony established that they could continue the co-parenting routine that was used while the parties lived together in Pennsylvania with Child. If Mother were to relocate with Child, there is no indication that she would deny Father a chance to have frequent and continuing contact with Child. Nor has Father indicated that he would do anything to stop Mother from having frequent and continuing contact with Child, whether she is in New Jersey or Pennsylvania. Further, each party has been cooperative in facilitating joint custody of Child since the summer of 2014. As a result, 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 Mother and Father have been awarded Protection from Abuse Orders against each other. There was also testimony that Father shoved and spit at Mother on one occasion. However, based on the evidence of the parties’ current circumstances, there is nothing to suggest any risk of abuse to Child or either party. Therefore, the Court will not weigh this factor 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). Each party has performed a substantial share of parental duties. While Mother worked at Pedia Manor and Father worked full time, their work schedules required the parties to perform parental duties on an alternating basis. When Mother ended her employment at Pedia Manor, Father was the primary wage-earner, and Mother was the primary caretaker. Even during this time, however, Father performed parental duties including driving Child to and from daycare, playing with Child, and shopping for groceries. When Father was working and Mother was not, Mother’s primary duties included

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).

cooking, walking Child to school, spending time with Child during the day, and arranging visits between Child and her cousin. Mother and Father have each attended Child's medical appointments. Mother and Father were also both highly involved in making arrangements for Child's schooling. Leading up to the filing of her Notice, Mother visited at least two schools in New Jersey where Child could potentially be enrolled. Father was not told of these visits, so he could not participate in them.

At the present time, Father assumes the role of Child's disciplinarian while he has custody. When Mother has custody of Child, she is a stay-at-home mom. Mother's current inability to drive has not impacted her ability to perform parental duties. The evidence established that each parent is and has been fully capable of performing parental duties. Therefore, the Court will not weigh this factor in favor of either party.

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). With regard to education, Child attends Lincoln Elementary School, where, as was demonstrated by the undisputed testimony of all of the witnesses, she has thoroughly excelled. Child has thrived at Lincoln and has made friends who will be continuing elementary school in the Bethlehem Area School District. Child likes attending Lincoln Elementary School and has not attended any school in New Jersey. Though Child expressed a desire to join her cousin, Chloe, at Saint Brendan in New

Jersey, this does not impact the need for continuity in Child's current education.

Regarding continuity in community life, at the young age of six, Child has not had the chance to extend her relationships beyond her family to other members of the community, aside from her school friends in Pennsylvania. As for family life, "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.* In this case, Child has direct and extended family living in both New Jersey and Pennsylvania. The evidence established that Child has a loving relationship with her extended family members in both New Jersey and Pennsylvania. However, from shortly after her birth until present, Child has lived exclusively in Pennsylvania, and the only real, permanent home she has known has been Mother's Residence. Since Father moved to Father's Residence, Child has spent significant time in both Mother's Residence and Father's Residence. While she has also spent a substantial amount of time in Mother's Proposed Residence, this time has consisted of visits, as opposed to permanent living. Moreover, Child now spends time at Paternal Grandmother's home in Bethlehem. In essence, Mother's Residence and Father's Residence are, for the most part, the only places that Child has

called home with her parents. Because the evidence regarding continuity in education, home life, and physical environment points strongly to Pennsylvania, the Court will weigh this factor, as a whole, in favor of Father.

The fifth factor requires the Court to consider “[t]he availability of extended family.” 23 Pa.C.S.A. § 5328(a)(5). Child has Maternal Grandparents, two maternal aunts, and numerous cousins and third-cousins within close proximity of Mother’s Proposed Residence. Paternal Grandmother and her fiancé live in close proximity to Father’s Residence in Bethlehem. Maternal Grandparents reside in Mother’s Proposed Residence, thereby making them the most available extended family members. All of these extended family members appear to have been heavily involved in Child’s life since birth. Although members of Child’s extended family reside in both New Jersey and Pennsylvania and all appear to have a loving relationship with Child, the Court will weigh this factor in favor of Mother, as Maternal Grandparents live in Mother’s Proposed Residence, have been intimately involved in Child’s life since birth, and Child has more young extended family members to interact with in New Jersey.

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 is not relevant.

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). When interviewed in this case, Child presented as bright, happy, conversational, and polite. When asked about her feelings regarding a possible move to New Jersey, Child responded that she wants to join her cousin at school and wants to live with Mother and see Father on the weekends. When asked whether the parties had spoken to her about testifying, Child responded that Mother had discussions with her regarding the questions that she would be asked and had previously told her that she and Child were moving to New Jersey. (See N.T., 1/14/2015, at 38:5-18, 53:7-21.) Regarding her maturity and judgment, Child appeared mature and intelligent for her age, certainly in an academic sense, while also demonstrating some ordinary immaturity in the form of fidgeting, answering incompletely, and answering non-responsively. Given Child's young age, her inability to answer some questions due to immaturity, and the fact that some of her answers appear to have been arrived at with some influence from Mother, the Court will not weigh this factor in favor of either party.

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. The parties testified that Child maintains a position of utmost importance in both of their lives. 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 established that each party has been invested in Child’s everyday needs. Child has no identifiable special needs regarding education or emotional care. As Father works full time and Mother does not, Mother will have more free time at home with Child and appears to be in a position to more readily attend to Child’s daily physical and developmental needs. In addition, there was evidence presented regarding Father’s tendency to become preoccupied with work and to spend significant time on his computer or phone when in Child’s presence. While Father is certainly not to be faulted for his work-ethic, the fact that Father’s work is a constant presence in his life suggests that he will be unable to attend to Child’s daily needs as easily as will

Mother. Accordingly, 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). Mother’s Proposed Residence and Father’s Residence are approximately an hour and a half apart by car. Mother’s Residence and Father’s Residence are five minutes apart. As this factor is being analyzed in the context of a Petition to Relocate as well as a Complaint for Custody, the Court will examine the effect that a move to Mother’s Proposed Residence would have on Child. If Child were to move to Mother’s Proposed Residence, she would face multiple hours in the car when transferring between the parties. This appears to be a drastic increase from the current five-minute distance between the parties, and enduring such trips with regularity would more than likely become a chore or annoyance which Child would come to associate with visiting Father. With both parties residing in Bethlehem, Child can transfer between parents with ease, and each parent is able to remain involved in Child’s day-to-day life with minimal notice, planning, or travel. This arrangement more readily allows for Child to receive the love and care of each parent on a consistent basis. Assuming for the sake of analysis that Mother’s Proposed Residence is Child’s residence, the Court will weigh this factor in favor of Father.

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). If Child remains in Pennsylvania, she will remain enrolled in Lincoln Elementary School. Father’s work schedule would allow him to drive Child to school in the morning. At the end of school, Child could remain in after-care until Father is available to pick her up. Paternal Grandmother could also assist with picking Child up and caring for her until Father returns home from work. If an urgent situation were to arise, Father’s flexible work schedule would allow him to attend to Child’s needs at any time. Father would also be available to care for Child when not working.

If Child relocates to New Jersey, Child could be transported to and from school by Maternal Grandmother until Mother is able to drive again. Mother and Maternal Grandmother do not work, and, thus, either could care for Child after school. If Mother does not relocate, she could continue walking Child to school. As it appears that each party is either available for or can make suitable arrangements for Child’s care in any of the potential living arrangements, the Court will weigh this factor equally.

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 were able to successfully navigate the system of partial custody in place during the summer of 2014. Though there was conflict between the parties throughout their marriage and the breakdown of their relationship, neither party has demonstrated an unwillingness to cooperate in pursuing Child's best interest. The majority of the conflict between the parties was directed from parent to parent and was not of any harm or import to Child. 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 that either party has a history of drug or alcohol abuse. Therefore, this factor is not relevant.

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 party's physical condition presents any significant issues. Mother suffered a seizure, which rendered her incapable of driving, but she does not appear to be at risk of further episodes in the future. Since 2009, Mother's mental health has presented substantial difficulties. In 2009, Mother's therapy for depression and anxiety prompted her to pen two notes

which cause the Court some unrest. In one, Mother speaks very negatively about herself, shows very little self-esteem, and appears to be saying farewell to her friends and family in anticipation of committing suicide. In the other, Mother addresses to Child what also reads as a suicide/farewell note. Though these notes were written some time ago, Mother continues to battle PTSD, anxiety, and depression. The Court cannot help but be concerned with Mother's mental-health history and has some consternation about subjecting Child to the possibility of Mother revisiting such negative thoughts in the future. Mother has taken a daily regimen of prescription medications since the onset of her depression and anxiety in 2009, with additional medication being introduced following the development of her PTSD in 2013. However, it does not appear that Mother's use of these medications has been improper or irregular. Most importantly, Mother's prescription regimen has not hindered her ability to care for Child.

Father has also taken prescription drugs for anxiety in the past. However, as Father does not present any mental-health concerns, and Mother's mental-health history and current mental state give rise to some level of concern, the Court will weigh this factor in favor of Father.

Finally, in evaluating the best-interest standard, the Court may consider "[a]ny other relevant factor." *Id.* § 5328(a)(16). The Court does not find any such factor.

Turning to Mother's Petition to Relocate, 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.* § 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). Child has had substantial contact with Mother's family in New Jersey. Paternal Grandmother has also been highly involved in Child's life. Mother and Father have each been devoted parents and have been integral in shaping Child's development to this point. The quality of Child's relationship with each party, which has been maintained despite the parties' difficult marriage, is to be applauded, as is the parties' credible testimony regarding their mutual desire to continue to see Child thrive. It is clear that Father assumes responsibility for establishing order and discipline in Child's life, which appears to have

contributed to her maturity and good behavior. It is equally clear that Mother is an extremely nurturing individual, which is reflected in Child's warmth and charm. In sum, each party has contributed to Child's well-being in meaningful ways. As such, the Court will not weigh this factor in favor of or 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 above, Child does not have any discernible special needs that would be impacted by relocation. Her basic educational needs, however, would be impacted by relocation. Child has attended Lincoln Elementary School while living in Pennsylvania, where she has excelled in the classroom and as a leader amongst her peers. In doing so, Child has been successful in first grade and has made friends who will be continuing in the same elementary school. Thus, relocation would remove Child from a school system to which she has become accustomed. It would require Child to enter an unfamiliar school system and make new school friends.

Child's cousin attends Mother's proposed school in New Jersey, and Child is aware of and receptive to the possibility of joining her. However, it is also clear that Child enjoys her current school and that it meets her educational and social needs. The fact that Child has only attended school in

and has only lived permanently in Pennsylvania suggests that relocating would require a greater adjustment for Child than would remaining in Pennsylvania. As a result, the Court will weigh this factor 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). “An aspect of this determination is the degree to which the court can be confident that the custodial [parent] will comply cooperatively with alternate visitation arrangements which the move may necessitate.” *Gruber v. Gruber*, 583 A.2d 434, 439 (Pa. Super. 1990). “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.” *Hogrelus 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 are each willing to cooperate in achieving a workable system of partial custody should relocation be granted. The evidence established that each party would allow the other to continue a loving

relationship with Child. Despite this, the parties currently reside within minutes of each other. Were Child to relocate to New Jersey, the feasibility of Father maintaining his current relationship with Child would be significantly diminished because Child would no longer live near Father. Under Mother's proposed custody schedule, Father would have custody of Child for half of Child's summer break, and the parties would rotate, annually, Child's Easter break and any of Child's three-day weekends and holidays. Father would also have custody for two weekends per month.

The distance between Mother's Proposed Residence and Father's residence and Father's full-time work schedule make it such that it would not be feasible for Father to easily visit Child outside of these proposed custodial periods.³ Since the parties' separation, Father has had physical custody for every other weekend and a mid-week dinner visit. The primary difficulty presented by an increase in distance between the parties is not a decrease in Father's custodial time but a decrease in Father's ability to maintain a constant physical presence in Child's life and to be there for Child should an urgent situation arise. These things are possible under the parties' current living arrangement. If Child relocates more than an hour away, Father will not be at liberty to pick up and move closer to Child because he has a stable and lucrative job which he would be unwise to part with. On the other hand,

³ Further, given that Mother does not have a driver's license, it would not be feasible for Mother to deliver Child to Father for such impromptu visits.

if Mother does not relocate and retains primary custody, Mother will be required to reside within close physical proximity to Father, making it less likely that Father's relationship with Child would suffer.⁴ Overall, Father's relationship with Child will inevitably suffer in the event of relocation. As a result, the Court will weigh this factor against 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). For the same reasons as discussed in the best-interest analysis, the Court will not weigh this factor in favor of or against relocation.

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 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). A party desiring to relocate may "seek an improved physical environment in which to live and raise children." *Gruber*, 583 A.2d at 439. Mother testified that she was not happy living in Bethlehem. She stated that the area made her feel isolated and

⁴ Further, Mother would be free to visit her family during periods when Father is exercising partial physical custody.

alone, causing her to miss her family. This was corroborated by Maternal Grandparents and by Ms. P.

In weighing both sides, the Court has no doubt that Mother would be happier in New Jersey where her family resides. Thus, the Court finds that Mother would emotionally benefit from relocating with Child to New Jersey. The same cannot be said, however, of Child, who appears to be emotionally content in Pennsylvania. Further, there was no evidence which casts doubt on the Lehigh Valley area as a suitable area for the parties or for Child. Thus, the Court does not find either location to be an "improved physical environment in which to live and raise children." *Id.* The evidence did not establish that New Jersey offers improved educational or financial prospects for Mother or for Child. To the contrary, Maternal Grandparents testified that they intend to continue to support Mother financially, which can occur in either Pennsylvania or New Jersey. As the statute permits the Court to take into account the emotional state of the relocating party in analyzing this factor, the Court will weigh this factor slightly in favor of relocation with regard to Mother but against relocation with regard to Child.

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). "The court must assure itself that the move is not motivated simply by a desire to frustrate the visitation rights of the non-custodial parent or to impede the development of a healthy, loving

relationship between the child and the non-custodial parent.” *Gruber*, 583 A.2d at 439. The Court does not believe that the proposed relocation is motivated by Mother’s desire to frustrate the custodial rights of Father or to impede the growth of a healthy and loving relationship between Father and Child. Rather, Mother seeks to relocate because she wants to be close to her family in New Jersey and because she believes that Child would benefit from relocation. Likewise, there is no evidence that Father objects to the proposed relocation out of spite, jealousy, or ill-will directed at Mother. Rather, the record indicates that Father objects to the move because he loves his daughter and wants her to continue to live near him so that he can be intimately involved in her upbringing. This is demonstrated in the following exchange:

[Mr. Spadoni:] If the judge grants [relocation] . . . is that a good thing?

[Father:] Absolutely not.

Q Why is it not a good thing?

A You know, [Child’s] got one mother and one father, and I don’t think that there is an ability for both mother and father to have an ongoing, meaningful, relationship with [Child] with that sort of distance apart. . . . [Child’s] thriving in Bethlehem . . . [and] enjoys spending time with both parents. . . . I’m established in Bethlehem[.] I’m involved in the community. I am able and willing to be a parent after school, before school, and I mean I’ve done that in the past.

(N.T., 1/12/2015, at 129:5-130:5.)

Turning to the reasons behind relocation, Mother has not offered any evidence that Child's well-being is not properly served in Bethlehem. Instead, much of the evidence concerned Mother's well-being in Pennsylvania, and too much concerned the breakdown of the parties' relationship, a development that rarely impacted Child's best interest. For this reason, the Court has cause to believe that Mother's relocation is driven more by her interest than by reasons which impact on Child's best interest or welfare. Though it is clear Mother's motivations are not to spite Father, it is not clear they arise from a concern specifically for Child's best interest. Thus, the Court will weigh this factor against relocation.

Next, the Court must consider, "[t]he present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party." 23 Pa.C.S.A. § 5337(h)(9). For the reasons outlined above with regard to the best-interest counterpart to this factor, the Court will not weigh this factor in favor of or against relocation.

Finally, the Court must consider "[a]ny other factor affecting the best interest of the child." *Id.* § 5337(h)(10). The Court finds the impulsive nature of Mother's ill-planned proposed relocation to be relevant to this case. The evidence established that Mother's intended relocation is not prompted by the availability of any specific education or employment opportunities. Rather, Mother desires to relocate to remove herself from a living situation

with which she is personally unsatisfied. If Mother relocates, it will be to her parents' home which, while a larger home than Mother's Residence, does not appear to offer an increase in Child's standard of living. When questioned regarding her relocation, Mother was unable to articulate any plan for the continuation of her mental health treatment, the resumption of her education, a specific job, or Child's dental care. Moreover, Mother did not identify any specific activities or opportunities that would become newly available to Child. For these reasons, it is apparent that Mother filed her Petition to Relocate in search of an improved social and emotional situation for herself but without an identifiable nexus between a relocation and Child's best interest.

For all of the above reasons, Mother has not met her burden of proving that her intended relocation would be in Child's best interest.

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**

N.B.S.,)	
Plaintiff)	No. C-48-CV-2013-5107
)	
v.)	
)	
A.S.,)	
Defendant)	

ORDER OF COURT

AND NOW, this 2nd day of March, 2015, Defendant's Petition to Relocate, filed on July 25, 2014, is hereby **DENIED**. Upon consideration of Plaintiff's Complaint for Custody, filed on May 31, 2013, it is hereby **ORDERED**, as follows:

1. Legal Custody. Plaintiff ("Mother") and Defendant ("Father") shall have shared legal custody of A.B.S. ("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, 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 daycare records or reports normally released to a custodial parent.

2. Primary Physical Custody.¹ Mother shall have primary physical custody of Child.

¹ "Primary physical custody" means "[t]he right to assume physical custody of the child for the majority of time." 23 Pa.C.S.A. § 5322. "Physical custody" means "actual physical possession and control of a child." *Id.*

3. Partial Physical Custody.² Father shall have partial physical custody of Child, as the parties may agree. If the parties cannot agree, Father shall have partial physical custody as follows:

a. Week 1: Tuesday and Thursday from 5:30 p.m. until 8:00 p.m., commencing on March 3, 2015;

b. Week 2: Tuesday from 5:30 p.m. until 8:00 p.m. and Friday at 5:30 p.m. to Sunday at 8:00 p.m., commencing on March 10, 2015; 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.

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 custody schedule:

a. Thanksgiving. In odd-numbered years, Father shall have physical custody of Child from 5:30 p.m. on Child's last day of school until 3:00 p.m. on Thanksgiving. In even-numbered years, Father shall have physical custody of Child from 3:00 p.m. on Thanksgiving

² "Partial physical custody" means "[t]he right to assume physical custody of the child for less than a majority of the time. *Id.*

until 3:00 p.m. on the day after Thanksgiving if it is a Week 1 or until Sunday at 8:00 p.m. if it is a Week 2;

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 even-numbered years, Father shall have physical custody of Child from 5:30 p.m. on Child's last day of school until 12:00 p.m. on December 25 and then continuing from 5:30 p.m. on December 26 to 5:30 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 5:30 p.m. on December 26. In odd-numbered years, Mother shall have physical custody of Child from 5:30 p.m. on Child's last day of school until 12:00 p.m. on December 25 and then continuing from 5:30 p.m. to December 26 to 5:30 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 5:30 p.m. on December 26;

2.) New Year's. In odd-numbered years, Father shall have physical custody of Child from 5:30 p.m. on December 30 until 5:30 p.m. on the day before Child's school resumes. In

even-numbered years, Mother shall have physical custody of Child from 5:30 p.m. on December 30 until Father's next regular period of partial physical custody that occurs after Child's school resumes;

c. Easter/Spring Recess. In odd-numbered years, Father shall have physical custody of Child from 5:30 p.m. on Child's last day of school until 5:30 p.m. on the day before Child's school resumes. In even-numbered years, Mother shall have physical custody of Child from after school on Child's last day of school until Father's next regular period of partial physical custody that occurs after Child's school resumes;

d. Mother's Day/Father's Day. Mother shall have physical custody of Child every Mother's Day weekend from Saturday at 5:30 p.m. until Father's next regular period of partial physical custody that occurs after Mother's Day. Father shall have physical custody of Child every Father's Day weekend from 5:30 p.m. on Saturday until 5:30 p.m. on Father's Day;

e. Martin Luther King, Jr. Day Weekend. In odd-numbered years, Father shall have physical custody of Child from 5:30 p.m. on Friday until 5:00 p.m. on Martin Luther King, Jr. Day. In even-numbered years, Mother shall have physical custody of Child

from after school on Friday until Father's next regular period of partial physical custody that occurs after Martin Luther King, Jr. Day;

f. President's Day Weekend. In even-numbered years, Father shall have physical custody of Child from 5:30 p.m. on Friday until 5:30 p.m. on President's Day. In odd-numbered years, Mother shall have physical custody of Child from after school on Friday until Father's next regular period of partial physical custody that occurs after President's Day;

g. Memorial Day Weekend. In even-numbered years, Father shall have physical custody of Child from 5:30 p.m. on Friday until 5:30 p.m. on Memorial Day. In odd-numbered years, Mother shall have physical custody of Child from after school on Friday until Father's next regular period of partial physical custody that occurs after Memorial Day;

h. Fourth of July. In odd-numbered years, Father shall have physical custody of Child from 5:30 p.m. on July 3 to 5:30 p.m. on July 4. In even-numbered years, Mother shall have physical custody of Child from 5:30 p.m. on July 3 to 5:30 p.m. on July 4; and

i. Labor Day Weekend. In even-numbered years, Father shall have physical custody of Child from 5:30 p.m. on Friday until 8:00 p.m. on Labor Day. In odd-numbered years, Mother shall have

physical custody of Child from 5:30 p.m. on Friday until Father's next regular period of partial physical custody that occurs after Labor Day.

5. Vacation. Each party shall have physical custody of Child for a two-week-long (i.e., fourteen consecutive days) period which shall include a weekend on which that party is scheduled to exercise physical 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 two-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 vacation schedule shall supersede the parties' regular custody schedule.

6. Transportation. Transportation shall be shared as the parties may agree. If the parties cannot agree, then until Mother's driver's license is reinstated, Father shall provide all transportation to effectuate custody exchanges. After Mother's driver's license is reinstated, the parties shall equally share transportation of Child. The party receiving custody shall provide transportation, and exchanges shall take place at the parties' residences. The parties shall be cordial to each other at exchanges.

7. Telephone Access. The non-custodial parent shall be entitled to call or videoconference with Child on a reasonable, ongoing, daily

basis. If Child is not available to speak to the non-custodial parent, the custodial parent shall ensure that phone calls are returned as promptly as possible. Child shall be entitled to call the non-custodial parent as desired, and the custodial parent shall not interfere with Child's reasonable requests in this regard.

8. Activities. Each party shall advise the other, on a reasonable, ongoing basis, of the schedule of 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, except in the case of an emergency. Both parties shall have the right to attend such appointments.

If Child requires emergency medical/dental care, the party having physical custody shall notify the non-custodial parent, at the earliest opportunity consistent with insuring Child's safety, of the treatment sought and the name and location of the facility where Child is being or was treated.

10. Modification. The parties may agree to modify the schedule set forth above and shall accommodate reasonable requests for modification that are in Child's best interests. Substantial modifications other than

incidental changes for convenience shall be placed in writing and shall be signed by both parties.

11. Contact Information. Each party shall keep the other party advised of a current address, e-mail address, telephone number, and cellular telephone number. The parties shall communicate face-to-face, if possible, concerning Child. Neither party shall use Child as an intermediary for communication concerning parenting issues.

12. 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.

13. Corporal Punishment. Neither party shall employ, nor allow any other individual to employ, any form of corporal punishment whatsoever as a means to discipline 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 respective family members, shall be polite, civil, and respectful.

15. Relocation. Neither party shall change the residence of Child if such change would significantly impair the ability of the other parent to spend time with Child and participate in Child's life. In the event that a party desires to relocate as described above, he or she shall provide notice to the other party, as required by 23 Pa.C.S.A. § 5337(c). No such relocation shall occur without written consent of the other parent, or without Order of Court.

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

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

BY THE COURT:

/s/ Anthony S. Beltrami
J.