

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

W. A. H.,

Plaintiff,

vs.

D. M. H.,

Defendant.

No.: C-48-CV-2014-6549

OPINION OF THE COURT¹

Plaintiff is W. A. H. (“Father”), who resides in Bushkill Township, Northampton County, Pennsylvania. Defendant is D. M. H. (“Mother”), who resides in Bath, Northampton County, Pennsylvania. The parties are the parents of three minor children, T. E. H., born on August 4, 2001; A. J. H., born on September 10, 2005; and K. E. H., born on July 22, 2007 (collectively, the “Children”). This matter is before the court on Father’s Complaint for Custody. A non-jury trial was held on June 10, 2015, July 28, 2015, and August 24, 2015. Following the trial, Mother submitted findings of fact, conclusions of law, and a legal brief.²

¹ This Opinion sets forth the statement of reasons for the Order of Court entered on October 8, 2015.

² At the conclusion of trial, the court directed the parties to submit proposed findings of fact, conclusions of law, and legal briefs by September 18, 2015. See Order of Court dated August 25, 2015, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Aug. 25, 2015) (“Scheduling Order”). Father did not submit proposed findings of fact, conclusions of law, or a legal brief.

BACKGROUND

I. The Parties' Relationship

The parties married on September 6, 1998 in Allentown, Pennsylvania. See Divorce Complaint at ¶ 4, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Jul. 15, 2014) ("Complaint"). From 2005 until 2014, Father and Mother lived together with the Children in their family home located at 455 English Road, Bath, Northampton County, Pennsylvania 18014 ("English Road Property"). See *id.* at ¶ 1-2. Until May of 2014, the family anticipated a move to New Hampshire, which is where Father's family resides. See Notes of Testimony at 76:2-7, 77:3-9, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Jul. 28, 2015) ("July N.T."). In the spring of 2014, Mother and Father visited New Hampshire to locate a potential new family home. See *id.* at 60:3-10. Throughout the spring and summer of 2014, Father prepared the English Road Property for sale and made numerous trips to New Hampshire to move the family's belongings. See *id.* at 79:1-2.

In March of 2014, Father found suggestive texts on Mother's cellphone and began to suspect that Mother was being unfaithful. See *id.* at 73:12-25, 119:13-17; Pl.'s Ex. 1. Thereafter, the parties began to work with a marriage counselor. See July N.T. at 75:2-8; Notes of Transcript at 60:11-20, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Jun. 10, 2015)

("June N.T."). For the next two months, Father and Mother sought marriage counseling, but the couple could not reconcile. See June N.T. at 62:3-8.

Turmoil between the parties continued when, in May 2014, Father quit his job at a car dealership. See *id.* at 61:9-10; Notes of Transcript at 131:3-5, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Aug. 24, 2015) ("August N.T."). Father claims that he quit his job because preparing the family home for sale and moving their belongings to New Hampshire required substantial time. See August N.T. at 77:3-5, 44:17-25. Mother asserts that she disapproved of Father's decision to quit his job and did not believe he needed to do so to prepare their family home for sale. See *id.* at 131:6-18.

Father and Mother continued to share a home, but decided to occupy different parts of the home, and Father often locked himself in the bedroom or bathroom to avoid Mother. See *id.* at 77:19-78:3. Father moved to New Hampshire in July 2014 but periodically returned to the English Road Property to visit the Children and gather more of his belongings. See July N.T. at 79:1-11. Father stated that when he returned, Mother and the children were often staying at Mother's parents' ("Maternal Grandparents") home, something Mother and the Children did not do in the past. See *id.* at 79:1-18. Father also took the Children to New Hampshire for visits throughout the summer. See *id.* at 80:21-24. Additionally, during the summer, while Mother worked and Father was unemployed, Father often

took the Children out on bike rides and to the movies. See August N.T. at 131:22-132:10.

In August of 2014, Mother and the Children moved out of the English Road Property and into 2637 Parkside Drive, Bath, Northampton County, Pennsylvania 18014, a property owned by Maternal Grandparents. See *id.* at 129:4-5, 133:1-2. In the fall of 2014, Father attempted to disenroll the Children from their Pennsylvania schools. See *id.* at 55:5-7.

II. The Custody Litigation

On July 15, 2014, Father filed a Complaint in Divorce with a count for custody, through which he requested primary custody of the Children and stated his intention to relocate them to New Hampshire. See *generally* Complaint. On August 12, 2014, Mother filed a Counter-Affidavit Regarding Relocation, through which she objected to Father's request to relocate the Children.³ See Counter-Affidavit Regarding Relocation, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Aug. 12, 2014).

On September 2, 2014, the parties appeared before the Honorable Emil Giordano and agreed to an interim custody order ("Interim Order"). See Order of Court dated September 2, 2014, *H. v. H.*, No. C-48-CV-2014-

³ On the final day of the trial, Father stated that he recently moved back to Pennsylvania and was currently residing in his camper, which is located in Bushkill Township, Northampton County, Pennsylvania. Father was "not comfortable" disclosing the location of the camper but did provide the address of a home he intends to rent located at 125 East Chestnut Street, Nazareth, Northampton County, Pennsylvania 18064. Accordingly, Father's petition to relocate the Children is moot.

6549 (C.P. Northampton Co. Sept. 2, 2014). The Interim Order provides, *inter alia*, that:

1. The reciprocal temporary orders issued under the Protection from Abuse Act shall be withdrawn.
2. Father and Mother will have no contact except as it relates to the Children or any issues with the custodial exchange.
3. Pending the Trial, Father shall have custody of the Children each Monday evening beginning at 4:30 p.m. through Wednesday morning, at which time he shall see that the Children are delivered to their respective schools, and shall also have one weekend per month. Weekend visits begin at 4:30 p.m. on Fridays until 7 p.m. on Sundays. Given that Father will travel from New Hampshire to exercise these custodial visits, Father will text Mother or the Children to advise them as to when he gets to Mother's home. For purposes of retrieving the Children, Father shall not exit his vehicle, but, rather, Mother shall advise Children to leave her home and go to Father's vehicle.
4. Because Mother also moved from the English Road Property, Father's custodial time shall be exercised at that residence. The Court specified that Father shall use the English Road Property on both his custodial time on Mondays through Wednesdays and on his one weekend per month.
5. Father and Mother shall share equally in all utilities associated with the English Road Property, including but not limited to electric, heat, water, sewer, garbage, and related utilities. The bills are in Mother's name, and she will ensure Father gets a copy of the bill.
6. The Interim Order is to be entered without prejudice to either party's rights in future custody and divorce proceedings.
7. Father will not text or talk to the Children regarding custody issues.

See id. At the time the Interim Order was entered, the English Road Property was vacant, and Father agreed to make arrangements so that the

Children would have beds and other household necessities while residing at the English Road Property. *See id.* Father also agreed to ensure the Children completed their homework and were driven to sports practices, and any other extracurricular activities. *See id.*

On September 15, 2014, Mother filed an Answer with Counterclaim to Plaintiff's Complaint, through which she requested primary physical custody of the Children, alimony and spousal support. *See generally* Answer, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Sept. 15, 2014). On October 1, 2014, Father replied to Mother's counterclaims. *See* Reply to Countercl. to Divorce Compl., *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Oct. 1, 2014).

III. Results of Interim Order

In September 2014, following the issuance of the Interim Order, Father took the Children to New Hampshire rather than exercising his visitation with the Children at the English Road Property. *See* August N.T. at 83:13-15. When questioned about his actions at trial, Father responded that he believed he was allowed to exercise his visits in New Hampshire and did not believe that the word "shall" required him to visit with the Children at the English Road Property. *See id.* at 82:12-13, 73:3-4. Further, Father testified that the English Road Property was without electricity, plumbing, heat, or a refrigerator. *See id.* at 120:18-21.

In response to Father's actions, Mother filed a Petition for Contempt on October 2, 2014. See Petition for Contempt, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Oct. 2, 2014). Through the Petition for Contempt, Mother alleged that Father took the Children to New Hampshire from September 19, 2014 through September 21, 2014, that Father did not return the Children at the correct time, and that Father did not ensure the Children's homework was completed prior to their return in violation of the Interim Order. See *id* at ¶ 5. On October 15, 2014, Father filed an Answer to Mother's Petition for Contempt, asserting that Mother's claims were baseless and her petition should be dismissed. See *generally* Answer to Petition for Contempt, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Oct. 15, 2014).

IV. The Modified Interim Order

On October 14, 2014, a hearing was held before the Honorable Stephen G. Baratta, and the parties agreed to modify the Interim Order. See Order of Court dated October 15, 2014, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Nov. 10, 2014) ("Modified Interim Order"). The Modified Interim Order provided:

1. Father was granted primary custody of T. and allowed T. to move to Father's New Hampshire residence.
2. Mother retained primary custody of the younger two children, A. and K.

3. T. would visit with Mother once per month, and Father and Mother exchange T. at a police station located in Waterbury, Connecticut, a location approximately equidistant to Father's and Mother's residences.
4. Mother could exercise an second weekend of custody with T. if she transported T. to Pennsylvania and returned him to New Hampshire.
5. Mother was required to give Father at least a week's notice before exercising her weekend visit with T.
6. The Modified Interim Order clarified that Father could exercise weekend visits at his home in New Hampshire, but, until the English Road Property sold, he was required to use the English Road Property for the weekday visits.⁴
7. Father was required to pay Mother ninety-nine dollars to replace A.'s cellphone that was broken while in Father's care and to give Mother the Children's original birth certificates and Social Security cards.
8. Father and Mother agreed to split the cost to have Jane Tyler Ward, Ph.D, conduct an evaluation to determine whether T. was subject to alienation by either of the parties.

See id.

V. Mother's Petition for Special Relief

On December 12, 2014, Mother filed a Petition for Special Relief. *See* Petition for Special Relief, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Dec. 12, 2014). Mother asked the court to create a holiday schedule because Mother asserted that Father did not return the Children home on the Wednesday before Thanksgiving, but rather, Father returned the Children on the Sunday night following the holiday. *See id.* at

⁴ The English Road Property sold in December 2014. *See* August N.T. at 95:15-18.

¶ 6. At trial, Mother admitted that because Father was scheduled to have the Children the weekend directly following Thanksgiving, Mother only lost two days of custody with the Children. See August N.T. at 194:25-195:5. Additionally, Mother averred that Father did not provide her with the Children's birth certificates or the ninety-nine dollars ordered under the Modified Interim Order. See Petition for Special Relief at ¶ 7-8. On December 19, 2014, Father filed an Answer to Mother's Petition for Special Relief, denying all of Mother's claims. See Answer to Petition for Special Relief, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Dec. 19, 2014). On that same day, a hearing was held before the Honorable Anthony S. Beltrami. Judge Beltrami issued an order, which primarily concerned the sale of the English Road Property, attorney fees, and other amounts due to the parties and their counsel. See Order of Court dated Dec. 19, 2014, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Dec. 19, 2014). Judge Beltrami's Order required Father to execute any and all documents required to transfer ownership of the English Road Property. The Order further provided that in the event Father refused to execute any required documents, Mother shall execute the needed documents as attorney-in-fact for Father.

On December 30, 2014, Judge Baratta entered a supplemental holiday-related interim order, which stated that Father shall have custody of the Children from December 30, 2014 at 3 p.m. until January 4, 2015 at

3 p.m., with exchanges to occur in Waterbury, Connecticut, as per the Modified Interim Order. See Order of Court dated Dec. 30, 2014, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Dec. 30, 2014). On January 14, 2015, Father filed a Petition to Modify the Modified Interim Order and requested that he be granted primary custody of A. See Petition for Modification, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Jan. 14, 2015). On February 20, 2015, Judge Baratta issued an order, placing this matter on the non-jury trial list and requiring both parties to undergo a psychological evaluation performed by Ronald J. Esteve ("Dr. Esteve"), Ph.D. See Order of Court dated Feb. 19, 2015, *H. v. H.*, C-48-CV-2014-6549 (C.P. Northampton Co. Feb. 20, 2015).

VI. The Non-Jury Trial

A. Dr. Esteve's Testimony

Spanning the dates of June 10, 2015, July 28, 2015, and August 24, 2015, the trial on this matter originally encompassed both custody and relocation issues. However, during the course of the trial, Father maintained that he planned to move back to Northampton County, and although he did not yet have a signed lease, he planned to move to 125 East Chestnut Street, Nazareth, Northampton County, Pennsylvania 18064. See August N.T. at 112:22-113:5, 115:4-8. Father appeared *pro se*. See generally June N.T., July N.T., August N.T. Father, Mother, the Children, and Dr. Esteve provided testimony. See *id.*

Dr. Esteve testified and shared his findings from his psychological and custody evaluations of the family. In regard to Father's evaluation, Dr. Esteve's main concerns were Father's propensities to ask "adult questions" in front of the Children, to refuse to give Mother information as to where the Children were and what they were doing while in Father's care, and to tell T. that Mother had an affair. See June N.T. at 14:1-17, 16:11-22.

Additionally, Dr. Esteve expressed concern over Father "engaging the children" in the current litigation and telling the Children that "the circumstance as it currently is, is temporary, [and] that he is working hard to get them." *Id.* at 21:3-11. Dr. Esteve reported that Father told the Children that "he'll continue to try and be successful and that they should hold out hope" and consequently, Dr. Esteve gathered that Father "wouldn't help [the Children] accommodate to [a custody order that does not provide Father with primary custody, and] he wouldn't help them accept whatever the decision is and whatever the circumstances are." *Id.* at 21:12-19.

Thus, Dr. Esteve concluded that the "implications are very, very clear, that to be with [Father] is the very positive choice, to be with their mother is something that should not be accepted, should not be endorsed." *Id.* at 21:20-23. Moreover, Dr. Esteve found that after Father's reported episode of transient global amnesia, T. was left in a "role reversal worrying about his father and literally worrying about his father's longevity and how much more

time and opportunity he has to have a . . . relationship with his father.” *Id.* at 25:14-18.

Dr. Esteve’s report of Mother is much more favorable. Dr. Esteve reported that when asked how she might respond “if the Court were to disagree with her position and agree with [Father’s] position,” Mother responded that “she would recognize the decision, she would have to accept that and try to help and reassure her children to accommodate to that to as much as she could and would be as reasonably possible.” *Id.* at 29:20-30:4. While Dr. Esteve referred to Father as manipulative in his report, Dr. Esteve testified that Mother seemed “open and cooperative.” *Id.* at 30:24-25, Def.’s Ex. 2.

In concluding his testimony, Dr. Esteve testified that the Children should reside with Mother, and that Father’s contact with Children should be supervised. See June N.T. at 37:6-11. However, while Dr. Esteve reported that only Father alienated the Children, Dr. Esteve’s evaluation references multiple instances where Mother engaged in potentially alienating behavior, such as Mother’s pursuit of baseless protection from abuse orders against Father, Mother’s use of name-calling against Father, and a variety of other petty conduct. See generally Def.’s Ex. 2.

B. Father's Cross-Examination of Mother

Father then called Mother as of cross. The cross-examination on the first day of trial focused on Mother's alleged affairs and her name-calling directed at Father. Mother denied the affairs but did admit to texting a co-worker in a sexual manner. See *June N.T.* at 59:14-60:5. Mother repeatedly denied calling Father names such as "fag" or "queer" and denied ever using those words, but when asked whether she called Father "fag, queer, gay, [or] closet queen," Mother stated that she does not "use *some* of those words." *Id.* at 70:6-8, 72:24-73:3, 73:14-23. Moreover, Mother admitted to calling Father "Wanda," a "female name" that is "close to W.," in front of the Children. See *id.* at 138:21-139:4, July N.T. at 61:11-13. Mother also testified that she has told both T. and A. that she "wouldn't mind [Father] being around the kids more if [he] was normal." See July N.T. at 62:15-19.

On the second day of the trial, Father continued his cross-examination of Mother. See *generally* July N.T. Mother admitted that she only exercised the second, optional weekend with T. once for T.'s middle school graduation. See *id.* at 10:13-18. Mother admitted that while in New Hampshire for the graduation, there was not "turmoil," "aggravation," or "drama." See *id.* at 10:24-11:5. Mother further testified that she did not visit T. in May or June of 2015. See *id.* at 19:16-21.

Father also questioned Mother about the Maternal Grandparents and their involvement in the Children's lives. According to Mother, although the Maternal Grandparents sometimes drive A. to his baseball games and A.'s home games are within a half mile from the Maternal Grandparents' home, they do not stay to watch A.'s games. *See id.* at 16:25-17:11, 17:20-18:1. Further, Mother admitted that Father has told her that Maternal Grandparents harass Father when he picks up the Children. *See id.* at 32:21-25. Father questioned Mother about how the Children feel when they are under Maternal Grandparents' care, and Mother stated she never asks the Children how they feel about being around the Maternal Grandparents. *See id.* at 39:25-40:3. Although Father referenced an incident where Mother's father made a derogatory comment and pushed T. in front of Mother, Mother stated that she could not remember the incident. *See id.* at 42:2-7.

Mother admitted that when Father picked the Children up for his custodial time, neither she nor Maternal Grandparents allowed the Children to leave the house until exactly 4:30 p.m. *See id.* at 20:23-21:1. Moreover, Father questioned Mother about the monthly dinners with T. that were provided for in the Modified Interim Order. *See id.* at 25:9-25. Once a month, Father was to return from New Hampshire to provide custody of the two youngest children to their Mother, and T. was to have an hour with Mother, which means T. would be in the car for approximately 12 to 14

hours on a Sunday evening and would return to his New Hampshire home after midnight. *See id.* Although Mother admitted that the arrangement was “not necessarily” in T.’s best interest, she also agreed that she told Father he was in contempt each time he failed to subject T. to the long drive on a school night. *See id.* at 9-12.

Father also questioned Mother regarding her actions on May 29, 2015, the day K. broke her arm at school. *See id.* at 26:3-5. Father was to have custody of K. and A. that weekend. *See id.* at 27:6-10. The parties were both called by the school nurse, and Mother picked up K. and took her to an emergency care facility. *See id.* at 26:15-27:12, 30:6-8. Mother admitted that she told Father he could visit K. at the emergency care unit but could not pick up A. a minute earlier than the 4:30 p.m. time provided for in the Modified Interim Order. *See id.* at 29:10-14.

Father also presented Mother with her Facebook posts that seemed to reference Father. *See id.* at 53:2-55:-25. For example, one of Mother’s posts reads, “Apparently the thief that took all of my Bath and Body Works stuff has struck again. Except for one, all of my jackets and winter coats have mysteriously disappeared from the closet. She needs get [sic] her own stuff.” *Id.* at 55:21-25. Mother explained that the post assumed that whoever took her belongings was a “she” because “the items missing are all female items.” *See id.* at 56:4-6. However, Mother did admit that she has

shared Father's private sexual preferences, which involve wearing women's lingerie, with her friends. *See id.* at 58:14-17.

C. Father's Testimony

Father testified about an incident where Mother threatened to take Father's bag, which contained Father's female lingerie, and spread his belongings out on a friend's lawn at the friend's party. *See id.* at 78:4-15. He later testified that on another occasion, Mother asked T. if he would like to see the contents of the bag, a threat that never transpired. *See id.* at 83:10-19. He stated that, contrary to Mother's testimony, Mother frequently used derogatory words such as "fag, queer, [and] gay" in front of the Children. *See id.* at 79:19-24. In support, Father presented photocopies from Mother's journal that she kept for her attorney, and in Mother's handwriting, Mother wrote that she called Father "a fag and a queer." *See id.* at 17:23-24. Father testified that he felt "antagonized" by Mother, who would "mouth queer or give me a pinky finger meaning sticking it up my ass" "[w]henver the kids' backs were turned." *See id.* at 81:17-20.

Father testified about an incident where he arrived fifteen minutes early to pick up the Children. *See id.* at 88:90:2. Prior to this exchange, Mother's counsel sent Father a letter stating that a local Pizzaville restaurant would be the new custodial exchange location. *See id.* at 89:23-90:2. Mother saw Father waiting at the end of her driveway but proceeded to drive onto her front lawn, around Father's car, and to Pizzaville. *See id.* at 88:15-

25. Father drove to the local police station where Mother was eventually told to let Father have the Children. *See id.* at 89:11-22.

In another incident between the parties, Mother's father refused to let the Children take their bathing suits with them on a visit with their Father. *See id.* at 103:23-104:4. When T. attempted to bring his suit with him, Mother's father allegedly grabbed T.'s arm and would not allow him to leave the house with the bathing suit. *See id.* at 103:25-104:3. Father also reported that Mother's father, like Mother, keeps the Children from leaving before 4:30 p.m., the designated pick-up time. *See id.* at 14:7-12.

Father explained why he was late to bring the Children to Mother on multiple occasions. *See id.* at 94:16-23, 98:4-13, 101:17-23. He explained that during the week of Thanksgiving, he failed to return the Children to Mother because of a snow storm in New Hampshire that resulted in approximately eighteen inches of snow. *See id.* at 94:16-23. On another weekend, Father claimed he was an hour late to the Waterbury, Connecticut meeting place because of traffic caused when a large road sign fell onto the highway. *See id.* at 98:4-13. On a snowy Wednesday in March 2015, Father did not bring the Children home by 9 a.m. because the Children had a snow day from school, and the Modified Interim Order only provided that Father was to bring the Children to school on Wednesday mornings. *See id.* at 101:17-23. Because the Children did not have school that day and

because of the inclement weather, Father presumed he could return the Children later in the day. *See id.* at 101:17-102:2.

Father continued his testimony on the third day of the trial. Father explained that he did not use the English Road Property to exercise his custodial time because the English Road Property lacked basic amenities such as a refrigerator, water, and electricity. *See id.* at 20:20-23. Father stated that Mother never paid for the utilities, and as a result, Father made other arrangements for the custodial visits and stayed, for example, with friends, in his camper, or in New Hampshire. *See id.* at 21:4-12.

Father also pointed out that the parties have had an ongoing disagreement based on the wording of the Modified Interim Order, which states that, on Wednesday mornings, the "Children are [to be] delivered to their respective schools." *See* Order of Court dated September 2, 2014, *H. v. H.*, No. C-48-CV-2014-6549 (C.P. Northampton Co. Sept. 2, 2014). The discrepancy arose when the Children did not have school, specifically over the summer months or on snow days. July N.T. at 101:16-102:2; Aug. N.T. at 23:15-24:4. Because the Children did not have to be technically "delivered to their respective schools," Father reasoned that he could keep the Children later, but Mother wanted the Children returned home by 9 a.m. Aug. N.T. at 23:15-24-4. Father admitted many text message conversations into evidence that concerned the interpretation of this section of the Modified Interim Order. *See* Pl.'s Ex. 24.

Moreover, Father criticized Dr. Esteve's report, saying that he spent little time talking to Dr. Esteve and that he tried to contact Dr. Esteve on multiple occasions but could not reach him. Aug. N.T. at 27:5-11. Additionally, Father stated that over the course of three interviews, Dr. Esteve spent a total of an hour and fifteen minutes with him and that Dr. Esteve "barely spent fifteen minutes" with A. and K. See *id.* at 26:13-16, 30:21-23. Father further criticized Dr. Esteve for spelling each of the three Children's names wrong throughout the report and for reporting that Father never struck Mother in one section of the evaluation but stating that Father did strike Mother later in the evaluation. See *id.* at 30:14-23.

On cross-examination, Father testified that he moved back to Pennsylvania and was currently residing in a camper with T. See *id.* at 42:1-8. Father would not provide the address of the camper but did state that he planned to rent a three-bedroom house and had a lease for a property in Northampton County. See *id.* at 114:3-115:18. However, Father had not yet signed the lease by the date of the trial. See *id.* at 40:14-41:14. Father stated that T. was in the process of registering for Nazareth High School but that the registration process was not yet complete. See *id.* at 43:1-9.

Father admitted that he was in arrears in child support but that he eventually paid the amount owed and believed he was current on the payments. See *id.* at 47:10-48:18. Mother's counsel pointed out that while

Father was not paying child support, he accumulated \$565.99 on his Victoria's Secret credit card. *See id.* at 62:22-24.

Moreover, Mother's counsel questioned Father about his choice to bring T. to Pennsylvania to see A. and K. on Mondays and Tuesdays or to come to court with him. *See id.* at 75:12-76:20. Father denied that at the December 30, 2014 hearing, Judge Baratta told Father that he was not to take T. out of school to come to court proceedings or to come to Pennsylvania during the week, but Father did admit to taking T. out of school of many occasions for the purpose of bringing him to court. *See id.* at 75:12-21. On another occasion, Father took all of the Children out of school for a day and took them to an aquarium. *See id.* at 99:4-7. Father never notified Mother of this trip to the aquarium. *See id.*

Father was also cross-examined on the instances, many of which have already been discussed above, when he returned the Children late or other issues regarding the custodial exchanges. *See id.* at 112:3-9, 90:6-18, 91:1-5, 181:24-182:4. Father admitted that during the summer he usually brought the Children home later than the scheduled Sunday evening drop off time and often kept them through Wednesday evening. *See id.* at 112:3-9. Additionally, Father admitted that he took K. to New Hampshire hours after breaking her arm but would not return her Sunday evening because the medication had worn off and he did not want to subject her to a long car ride while she was in pain. *See id.* at 90:6-18, 91:1-5. As a result, both K. and

A. missed school the next day. *See id.* at 180:9-16, 182:1-5. However, according to Mother's later testimony, Father did not return the Children to Mother until that Wednesday. *See id.* at 181:24-182:4.

Lastly, on cross-examination, Father stated that he had recently been hired at Star Buick GMC, a local car dealership, and he was going to start working within the week. *See id.* at 115:22-116:7. At his new position, Father will work from 9 a.m. until 9 p.m. on Mondays, early morning until 4 p.m. on Tuesdays, 1 p.m. until 9 p.m. on Wednesdays, and 9 a.m. until 6 p.m. on Fridays and Saturdays. *See id.* at 116:17-21. As a result, Father admitted that T. will be left alone on the nights Father works late, and if he were granted primary custody of the younger two children, T. would have to care for his younger siblings. *See id.* at 116:22-117:11. However, Father stated that he would be willing to have Mother or Maternal Grandparents spend time with the Children when Father worked, and likewise, Father stated "if she's working, I would hope that I would get first crack with them and they could spend the time with me." *See id.* at 118:3-8.

On redirect, Father further explained that Maternal Grandparents frequently make comments from the porch when he picks up his Children. *See id.* at 121:25-122:3. Father claimed that during a short recess during the trial that day, one of the Maternal Grandparents called Father a "fag." *See id.* at 122:1-9. Father also testified that he did not have the birth certificates and Social Security cards that he was ordered to give to Mother.

See id. at 123: 7-18. Notably, Father claimed that following his separation with Mother and before he was ordered to give Mother the documents, he attempted to open bank accounts for the Children and could not complete the process because he did not have A.'s or K.'s Social Security cards. *See id.*

D. Mother's Testimony on Direct Examination

Mother has worked at Home Depot for the past twenty-one and a half years and has a Bachelor of Science degree from Pennsylvania State University. *See id.* at 129:18-25. Mother currently makes \$17 per hour, or approximately \$35,000 per year. *See id.* at 130:1-3.

Mother testified that during the summer of 2014, Father would take the Children to New Hampshire for a week at a time before returning them. *See id.* at 131:22-132:3. While Father was in Pennsylvania, he would often take them out while Mother was at work, and when Mother would return home, the Children would still be out with Father. *See id.* at 132:4-10. Mother explained that Father's conduct first prompted her to seek a custody order that would not allow Father to continue to take the Children to New Hampshire. *See id.* at 132:11-15.

Contrary to Father's testimony, Mother testified that she paid for the utilities at the English Road Property, and the property had electricity and running water even after she moved out at the end of August. *See id.* at

133:3-12. Moreover, Mother denied having an affair, but did admit that her texts were suggestive. *Id.* at 134:2-9.

Mother described multiple instances where the police were called to her home. *See id.* at 140:1-142:21, 143:2-12, 144:1-6, 150:1-13. One such occurrence happened after Mother took away T.'s cellphone because T. frequently took pictures of Mother and sent them to Father, and Mother wanted to keep T. from "spy[ing]" on her. *See id.* at 140:3-8. When T. realized that Mother took his phone, he refused to go to school. *See id.* at 140:1-4, 140:25-141:6. During the course of this incident, the parties spoke by phone, and Father told Mother to return the phone to T. and criticized her for stealing from their son. *See id.* at 141:14-21. Mother also revealed that "instead of saying you need to go to school, [Father] said well, you do what you think is best, to a thirteen-year-old boy who does not like to go to school. So, of course, he chose not to go to school." *See id.* at 141:18-21. Mother asked Father if he called the police. *See id.* at 142:11-15. Father responded that he called the police, and a police officer arrived soon after and spoke to T. *See id.* at 142:16-21.

On another occasion, T. locked himself in his room after Mother told him he could not play on his computer. *See id.* at 143:2-12. Mother did not call the police, but they arrived soon after the incident began. *See id.* at 144:1-6. On yet another occasion, Mother called the police after a box containing a collapsible wagon was taken from her trunk. *See id.* at 150:1-

6. There was no sign of forced entry, and only Father had a spare key to the vehicle. *See id.* at 150:11-13.

Further, Mother described that Father once returned K. to Mother with a "broken tooth." *See id.* at 145:24-146:25. Father never contacted Mother with an explanation, but Mother testified that K. told her that the tooth fell out while playing in a "bounce house." *See id.* at 146:1-3, 193:13-5. On cross-examination, Mother admitted that K. did not have a "broken tooth" but that she merely lost a baby tooth. *See id.* at 193:17-22. What might have first looked like a "broken tooth" was simply a growing adult tooth. *See id.* Mother also responded to Father's contention that Mother is constantly on her cellphone or sleeping while with the Children. *See id.* at 147:6-21. Mother admitted that there are times she uses her cellphone while around the Children, but she stated that there are also times she uses her cellphone to report Father's behavior to her attorney and to get advice as to how she should proceed. *See id.* 147:12-16.

Mother also stated that Father did not ensure the Children completed their homework while in his care. *See id.* at 153:15-156:15. For example, K. was expected to have a parent sign her list of assigned homework each night. *See id.* at 153:17-21. On the nights K. spent in Father's care, Father never signed her homework list, and in fact, on each night K. was in Father's care, K. signed Father's name for him. *See id.* at 153:25-154:5. Similarly, A. was expected to have a parent sign his test folder each weekend. *See id.*

at 156:6-11. Father signed this form during one weekend visitation with A. but failed to sign it again. *See id.* at 156:14-15. However, on cross-examination, Mother testified that she never contacted Father about the missing signatures on K.'s and A.'s homework assignments even though Mother noticed that Father repeatedly failed to sign the assignments. *See id.* at 205:24-206:12.

E. K.'s Testimony

The Children were each questioned by the Court. *See id.* at 208:15-215:19. K., age eight, provided brief testimony. When asked whether her parents ever hurt her, K. stated "[n]o" her Father did not hit her but "[n]ot really" as to whether Mother ever hurt her. *See id.* at 214:5-6, 215:5-6. K. expressed that she loves both Father and Mother and wants to spend time with both of her parents, but K. could not articulate a preference as to which parent she wished to live with. *See id.* at 214:7-14, 24-25. When asked if she wanted to continue to live with her Mother, K. responded, "I don't know." *See id.* at 214:11-14.

K. explained that both parents do not hurt her and that both parents "sometimes" yell at her but only when she is "bad." *See id.* at 213:23-214:4, 215:3-4. As an example, K. explained that her mother yelled at her after she "flipp[ed] [her] stuffed animal around and it fell behind the couch." *See id.* at 214:2-4.

Each child was asked to pick a number on a scale between one and ten, with ten being the highest, that represented how much they wanted to spend with each parent. *See id.* at 214:15-18, 223:5-10, 224:10-13, 235:24-236:6. K. responded with the number nine for both Father and Mother, conveying equal interest in spending time with Father and Mother. *See id.* at 214:15-19, 215:7-10.

F. A.'s testimony

A., age nine at the time of trial, also provided brief testimony. *See id.* at 216:3-226:9. When asked what makes him happy, A. responded that he enjoys “[p]laying with my friends, going outside” and “[b]eing with my dad.” *Id.* at 220:6-11. A. testified that while Mother is typically “nice,” she “can get a little bit angry sometimes.” *See id.* at 221:21-22. Notably, the example A. provided was the same story K. told. *See id.* at 222:4-9. A. described the incident, stating, “Like the other day, my sister accidentally threw one of her stuffed animals behind the couch and mom got mad a little” and “started yelling a bit.” *Id.* at 222:4-9.

Like K., A. testified that his father never hurt him, but A. described an incident when he was at Maternal Grandparents’ home. *See Id.* at 222:12-21. A. explained that he “was rolling [him]self up in a blanket” and Mother “smacked [his] butt.” *Id.* at 222:12-21.

When asked to provide a number between one and ten to represent how much he would like to live with each parent, A. gave a “one” on the

scale when asked about his Mother. *See id.* at 223:5-10. He gave a “ten” when asked about Father. *See id.* at 224:10-13. A. explained that he preferred to live with Father because Father spends more time with him. *See id.* at 223:16-21. A. stated, “[w]ith my dad, he plays a lot of games with me and we hang out together and my mom’s just kind of like cooking dinner or doing laundry or on her phone.” *Id.* at 223:12-15. In describing why he preferred to live with Father, he continued, “we play outside, we ride our bikes together, he takes us to the pool, he takes us to bike trails.” *Id.* at 224:14-17.

A. estimated that he saw Father “two [days] at the maximum” each week. *See id.* at 224:25. When asked to give percentages as to how much time he would like to spend with each parent, A. responded that he would prefer to be with his father either 100 percent of the time or 75 percent of the time with his mother seeing him for the remaining 25 percent. *See id.* at 225:3-13. A. recognized that his proposal was opposite to the current custodial arrangement. *See id.* at 225:14-15.

F. T.’s Testimony

Lastly, T., age fourteen, was questioned by the court. *See id.* at 226:20-237:6. When asked what makes him happy, T. stated, “Well, I like it when my parents spend time with me.” *Id.* at 230:10-13. When asked to describe Mother’s personality, T. responded that she is “usually, like, on her phone texting,” something that sometimes annoys T. *Id.* at 230:24-231:4.

T. elaborated that Mother can be both nice and mean, but when she is mean, she is unfair. *See id.* at 231:8-14. By way of example, T. recounted an incident where Mother called the police and took away his iPad because T. refused to unclog the toilet even though he did not have a plunger. *See id.* at 231:15-232:6. T. stated that he “still loves [Mother] and all, but like, ever since this divorce, I’ve, like, been seeing things, like differently.” *Id.* at 234:20-22.

T. reported that, while in T.’s presence, Mother calls his father names such as “a fag and a queer and Wanda.” *Id.* at 234:11-13. T. recounted that at nearly every custodial exchange, his parents argue, Mother calls Father names, and Father does not call Mother names. *See id.* at 234:18-235:1.

When asked to provide a number from one to ten scale as to his custodial preference, T. responded with an “eight or nine” for Father and a “four or five” for Mother. *See id.* at 235:24-236:6. Notably, T. stated that he preferred to live with both of his siblings and expressed that he has “been away from them for so long” and does not like being separated from his siblings. *See id.* at 236:7-21.

G. Redirect Examination of Mother

Following T.’s testimony, Mother briefly testified. *See id.* at 238:21-243:5. Mother clarified that although she remembered the “toilet plunging episode” recounted by T., she did not remember calling the police that day.

See *id.* at 239:1-8. Mother also testified that since she separated from Father, she has continued to work approximately forty hours per week, and Father has worked “[o]ff and on.” See *id.* at 239:12-19. Consequently, since the separation, Father’s schedule allowed him more flexibility and more time to spend with the Children. See *id.* at 240:12-19.

DISCUSSION

I. Factors To Be Considered in Awarding Custody

"With any child custody case, this court has long stated that the paramount concern is the best interests of the child." *C.M.K. v. K.E.M.*, 45 A.3d 417, 421 (Pa. Super. 2012). "This standard requires a case-by-case assessment of all of the factors that may legitimately affect the 'physical, intellectual, moral and spiritual well-being' of the child." *Id.* (quoting *Landis v. Landis*, 869 A.2d 1003, 1011 (Pa. Super. 2005)). The Child Custody Act sets forth sixteen factors that the court must consider in determining the best interests of the child when awarding any form of custody. See 23 Pa.C.S.A. § 5328.

(a) Factors.—In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

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

(2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can

better provide adequate physical safeguards and supervision of the child.

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

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

(5) The availability of extended family.

(6) The child's sibling relationships.

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

(8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.

(9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

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

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

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

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

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

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

(16) Any other relevant factor.

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

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

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

We do not find that either party is actively encouraging the Children to have a strong relationship with the other parent. Mother exhibits no flexibility as to the Modified Interim Order, and refuses to allow Father to pick up the Children until the exact time dictated in the Order, even in instances when an earlier pick-up time would have benefited the Children. Further, Mother has routinely displayed inappropriate behavior in front of the Children by calling Father derogatory names in front of the Children. However, Mother did indicate to Dr. Esteve that she would recognize and help the Children understand the outcome of the trial, unlike Father who indicated that any outcome in which he did not receive custody would be the wrong outcome.

Father does not encourage the Children to call their Mother while the Children are in his custody, and Father has shared many details regarding this legal matter that are inappropriate for the Children to hear. For example, Father told T. that his mother was unfaithful and was responsible for the family's issues. Although Father might reasonably believe that his fourteen year old son deserves some explanation as to why his parents are separating, Father does not seem to understand that this information could be harmful to his son.

Additionally, Father continues to hide from Mother any details about his visitation with the Children. Father refuses to tell Mother where the Children are going and what they are doing while in Father's care. Most disturbingly, in November of 2014, Father removed the Children from school without Mother's knowledge or approval and took them to an aquarium in New Jersey. Likewise, at trial, Father would not even provide the address of his camper, the camper T. resided in and the younger two Children frequently visited.

Therefore, we find that this factor weighs slightly in favor of Mother.

(2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.

With the exception of an isolated incident where A. reported Mother spanked him, we do not find a history of past or present abuse from either party. Therefore, we find that this factor is inapplicable.

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

Both Father and Mother raised and supported the Children for the entirety of the Children's lives. As Dr. Esteve testified, both Father and Mother could recount the developmental and educational history and milestones of the Children. For example, Father potty-trained the Children and taught them how to swim, and Mother was very involved in the Children's schooling. Both parents volunteered at the Children's schools, sports teams, and other activities.

Although we find that both Father and Mother have each performed many parental duties, we find that this factor weighs in favor of Mother due to Father's failure to make sure the Children have their homework completed while in his care and to ensure the Children go to school. We do not believe Father's claim that he did not know he needed to sign A.'s and K.'s assignments because there are occasions where Father has signed the assignments. Additionally, both A. and K. failed to complete other assignments while in Father's care.

T. has missed a significant amount of school due to Father's insistence that T. attend the parties' numerous court hearings. Father also returned the Children at midnight on a school night on at least one occasion, and because of Father's inability to follow the schedule provided for by the Modified Interim Order, the Children have, at times, missed school as a result. As discussed above, in November of 2014, Father removed all Children from school and took them to an aquarium in New Jersey.

Thus, although both parents can undoubtedly perform the parental duties associated with raising children, we find that this factor weighs in favor of Mother.

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

Since Father and Mother separated, the Children have been subject to countless long trips to and from New Hampshire, the Children moved from the home they grew up in on English Road to Mother's new residence, and in T.'s case, T. moved to a new state and new school. The Children have endured many changing circumstances; however, now that Father has moved back to Northampton County, many of the obstacles once faced by the parties and their children will likely be eliminated.

Father's move to New Hampshire created a host of problems, and as Father relocates to Northampton County, he forces T. to relocate as well. However, with Father now in Northampton County, the parties will be

more likely to provide stability for the Children. For example, Father and Mother will not have to drive nearly four hours to meet in Waterbury, Connecticut for custodial exchanges, and T. will not have to endure nearly thirteen hours in the car when Father returns A. and K. after a weekend custodial visit. Still, should Father gain primary custody of A. and K., the younger two children will be required to have to change schools.

Although Mother also changed residences, we recognize that Mother had to move because of the impending sale of the English Road Property. Additionally, Mother relocated to a house within minutes of the English Road Property, and accordingly, maintained the same school district and a degree of stability for the Children. Therefore, we find this factor weighs in favor of Mother.

(5) The availability of extended family.

We find that Mother's extended family is more available to the Children than Father's extended family. Father's extended family resides in New Hampshire, while Mother's parents live nearby and provide frequent childcare. However, Father insisted that the Children do not like to spend time with Maternal Grandparents and that Maternal Grandparents routinely call Father names and harass him when he picks up the Children. Father also explained that the Children enjoyed spending time with his parents. However, when asked about Maternal Grandparents, none of the Children expressed any negativity regarding Maternal Grandparents.

Although the Children spent time with Father's extended family when they visited New Hampshire, Father now lives in Pennsylvania, and the Children will likely spend much less time with Father's extended family. Therefore, because Mother has extended family nearby and Father's family lives in New Hampshire, we find this factor weighs in favor of Mother.

(6) The child's sibling relationships.

Prior to Father's relocation back to Pennsylvania, we would find it difficult to continue to separate the Children from each other. However, now that Father and Mother are living in the same area, it is our hope that even if the Children live with different parents, the Children will see one another with more frequency.

The Children have a strong bond with one another. T., who has lived apart from A. and K. for nearly a year, expressed his desire to live with his younger siblings. Now that Father is living in Northampton County, the Children will get to see each other more often. For example, while Father and T. lived in New Hampshire, Father was apart from T. each Monday through Wednesday when Father visited Pennsylvania and cared for A. and K. on those week nights. With Father now local, the Children can spend time together when they visit with their parents.

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

We find that this factor favors Father. While K. had no preference as to which parent she wanted to live with, both A. and T. strongly preferred to live with Father. However, we recognize that T. and A. seem to be influenced by each other and by Father. For example, when asked what makes him happy, T.'s immediate response was "I like it when my parents spend time with me." T.'s testimony strongly favored Father, but T. still stated that he loves Mother. A., who currently lives with Mother, responded that he did not want to live with Mother. Although A. reasoned that his father spends more quality time with him, the things he disliked about Mother—that she is always cooking dinner, doing laundry, and on her cellphone—highlight A.'s immaturity.

Accordingly, we find T. the only child mature enough to articulate a well-reasoned preference. Although his testimony seems unreasonably harsh on Mother, we recognize that T. has lived with Father for nearly a year, and we value his preference. Therefore, we consider T.'s preference to live with Father.

(8) *The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.*

We find that this factor neither favors Father nor Mother. Mother's use of nicknames, such as "Wanda," is inappropriate. Moreover, we

believe that Mother's Facebook posts are directed at Father. As T. is Facebook friends with Mother, he is likely to have understood that the posts were about his Father as well.

Likewise, Father's acts in telling T. about Mother's alleged affair and blaming Mother for the separation are obviously acts of alienation. Mother also testified that Father had the Children write down "bad things" about her so that Father could write a letter to the court.

Therefore, we find that this factor does not weigh in favor of Father or Mother, and we are cognizant that if the parties continue to take part in the conduct described above, both parents' relationship with the Children may be significantly damaged.

(9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

See factors four and eight above.

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

See factor three above.

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

The parties' homes are in close proximity; however, our conclusion is based on Father's testimony that he is currently living in a camper located in Northampton County and that soon, he will move into a house in Nazareth. Therefore, this factor has no impact on the court's determination of custody.

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

Based on Father's testimony that he was about to begin a new job, we conclude that both Mother and Father work full-time. As such, both parties will need to rely on others to provide childcare. Maternal Grandparents frequently care for the Children while Mother works.

Although Father stated that when he works, he would let Mother care for the Children, Father also stated that he planned to have T. care for the Children as well. While T. is fourteen years old and was left with the younger children prior to Father and Mother's separation, we believe that relying on a fourteen year old to care for two younger siblings is not appropriate. However, we credit Father for agreeing to let Mother spend time with the Children during his periods of visitation when he is working. However, because Mother has a better, more appropriate form of childcare in Maternal Grandparents, we find that this factor weighs in favor of Mother.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

The level of conflict in this case is significant. Father and Mother cannot have a conversation in person or via text without arguing or engaging in inappropriate behavior. Father reports that Mother constantly calls him names and makes lewd hand gestures, while Mother

complains of Father's frequent disregard of the custodial arrangement and inclination to argue with Mother during custodial exchanges. Additionally, Father refuses to tell Mother where he takes the Children and what they do in his care, and he does not seem to be bothered when T. secretly takes pictures of Mother and sends them to Father. In fact, Father admitted pictures of Mother into evidence at trial that were clearly taken by T. while in Mother's custody.

The tension between the parties has grown ever since Father suspected Mother of having an affair and began unexpectedly taking the Children to New Hampshire. Tensions increased as both parents continued to express their negative feelings for each other in front of the Children.

Therefore, because we find that neither Father nor Mother is more likely to cooperate with each other, we find that this factor is neutral.

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

Without any accusations that either party had any type of substance abuse, we find this factor inapplicable.

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

While Mother testified concerning Father's angry behavior at custody exchanges, we did not find that there was any testimony that

either party has any physical or mental condition that would have any impact on the custody determination. Thus, this factor is inapplicable.

II. Balancing the Factors

Based on our consideration of the statutory factors, we find that the factors weigh in favor of granting Mother primary physical custody of A. and K. and granting Father primary physical custody of T. While the Children appear to be bonded to both Mother and Father, it was clear from the evidence presented that Father does not understand that his actions result in alienation of his Children from Mother. Therefore, while both parents are capable of meeting the Children's physical needs, we find that Mother is more likely to meet the Children's emotional needs. Further, Mother has a significant support system in Maternal Grandparents. However, T. provided the court with a well-reasoned preference to live primarily with Father, and as he has lived primarily with Father for the past year, we believe that removing him from Father's primary physical custody at this juncture would result in significant conflict. Therefore, we find that A.'s and K.'s needs will best be met if they continue to live primarily with Mother while Father exercises significant periods of partial physical custody. Additionally, we find that it is in T.'s best interest to live primarily with Father, while Mother exercises significant period of partial physical custody. Moreover, the Children will have substantially more time together. The parties have periods of

partial custody on alternating weekends and Wednesday nights, and thus, when T. visits Mother or when A. and K. visit Father, the Children will be together.

BY THE COURT:

/s/ Michael J. Koury, Jr.

MICHAEL J. KOURY, JR., J.