J-A06024-14

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

M.C.,	:	IN THE SUPERIOR COURT OF
Appellant	:	PENNSYLVANIA
	:	
v.	:	No. 2970 EDA 2013
	:	
A.C.	:	

Appeal from the Order Entered October 3, 2013
In the Court of Common Pleas of Montgomery County
Family Court Division, at No. 2013-00310

BEFORE: BENDER, P.J.E., PANELLA, and LAZARUS, JJ.

MEMORANDUM BY PANELLA, J. **FILED MAY 13, 2014**

M.C. (Father) appeals the order of the Court of Common Pleas of Montgomery County, entered October 3, 2013, that continued in force the terms of an agreement between Father and A.C. (Mother) by which they share legal custody of L.C. (Child), born in April of 2010, and by which they share primary physical custody on a four-month, rotating basis. We affirm.

The trial court held hearings in this matter on April 25, 2013, and April 26, 2013. An agreed scheduling order called for the notes of testimony to be transcribed by June 7, 2013, and briefs to be filed by July 8, 2013; oral argument was to be heard on July 12, 2013. By the time the parties filed briefs, however, Mother had created a change of circumstance by relocating, from Redding, California to Sacramento, California. In a conference call, the trial court and counsel agreed to open the record to hold a supplemental hearing on September 18, 2013.

The record supports the following summary of the facts of this matter. Mother resides in Sacramento, California; Father resides in Hatboro, Montgomery County, Pennsylvania. The parties are in the process of divorce. Mother and Father entered into a stipulation and agreed order of custody on January 27, 2012, that the trial court entered as an order of court on February 1, 2012. The agreed order provided the parties would share legal custody of Child, and that they would share physical custody of Child on a four-month rotating basis.

On November 16, 2012, Mother filed a petition to relocate with Child to Redding, California with Child in her primary physical custody. On October 29, 2012, Father filed an answer objecting to Mother's relocation and proposing that the parties maintain the four-month rotating schedule until Child starts kindergarten in August 15, 2015, when Father would assume primary physical custody of Child in Pennsylvania. The trial court held hearings subsequent to a series of emergency petitions and petitions for special relief that resulted in the agreed order remaining in force. In the memorandum filed with its order on October 13, 2013, the trial court concluded:

> Under the present facts, in the best interest of [Child], and considering the statutory factors, the court will order that the present order remain intact. [Child], who is not old enough to go to school, is flourishing in the custody of both parents, and there is wisdom in the present agreed order when focused on the best interest of [Child].

Trial Court Memorandum and Order, 10/3/13, at 2.[1]

Father and Mother met, married, and Mother gave birth to Child while they both served in the United States Navy. They were stationed at Virginia Beach, Virginia, when Child was born. Father completed his enlistment and moved to his parents' home in Hatboro, Pennsylvania, with Child, in August of 2011, when Child was approximately one year old. The understanding between the parties was that Mother would join him when she completed her enlistment.

According to Mother, she had performed about eighty-five percent of all parental duties up to that point. Mother spent time with Child after that when she visited with Child at the home of Father's parents, while Father, with his parents' assistance, was Child's primary caregiver. In November of 2011, Father told Mother he wanted a divorce. Mother returned to her home in Redding California in February of 2012, after the entry of the custody order.

Father works full-time as a medical assistant with North Willow Grove Family Practice while he pursues a nursing degree with the goal of becoming a registered nurse. Father lives with his girlfriend, C.H., in an apartment in Hatboro. C.H. has a bachelor's degree in psychology and works as a mental

[1] The trial court entered a Memorandum and Order on October 3, 2013, in which it discussed and analyzed the statutory custody and relocation factors. On November 6, 2013, the trial court entered an Opinion, in compliance with Pa.R.A.P. 1925(a), in which it directed this Court's attention to its October 3, 2013 Memorandum as its Rule 1925(a) opinion.

health counselor while she studies for a master's degree. Father cares for Child, whom he has enrolled in daycare, with the assistance of C.H. and his extended family.

Mother earned an esthetician certificate and worked in a beauty salon in Redding, California, before she relocated to Sacramento. She enrolled at California State University, Santa Cruz, in February of 2013. Mother lives with her boyfriend, N.M. N.M. works full-time as a computer programmer and technician. Mother cares for Child with the assistance of N.M. and her extended family. Mother also enrolls Child in daycare.

Mother called as witnesses, her boyfriend, N.M.; N.M.'s father, R.M.; Mother's mother, R.S.; a friend of Mother, P.T.; and Mother's sister, N.C. Father called as witnesses his girlfriend, C.H.; Father's father, K.C.; Father's mother, S.C.; Father's brother; J.C., a neighbor of Father, D.C. The trial court found, "These witnesses credibly confirmed that both parents are dutiful, loving, and attentive parents." Trial Court Memorandum and Order, at 2-3.

The supplemental hearing, held after Mother relocated from Redding, California to Sacramento, California, revealed the fact that Mother and N.M. had signed a rental deposit on an apartment in Sacramento on June 6, 2013, with a move-in date of June 22, 2013. Mother testified that she discussed the move with Father, and that he had no objection. N.T. 9/18/13, at 36. The apartment has two bedrooms and one bathroom; Child has her own

bedroom. Mother has secured new employment in Sacramento and works as a talent and admissions director at Barbizon Studio. Mother testified that she earns salary plus commission and that her job holds greater promise than her old job in Redding. Mother works on Tuesdays and Wednesdays from 2 p.m. to 8:30 p.m., and a few weekends per month. The work on weekends involves travel to other cities in the states of California and Washington to do booking shows to attract individuals interested in Barbizon's modeling, television, and training classes. Mother will make $3,000 for her work in September of 2013 and hoped to make $4,000 per month in the future.

The trial court entered the order complained of on October 3, 2013. Father filed his notice of appeal and statement of errors complained of on appeal on October 17, 2013.

Father presents the following issues for our review:

> 1. The [trial court] failed to consider that Father should be the primary custodian based upon the evidence presented at trial.
>
> 2. The [trial court] failed to consider that Mother's relocation petition should be denied and dismissed based upon the evidence presented as well as Mother's failure to meet her burden of proof, particularly when considering the evidence presented and not presented by Mother and her failure to meet her burden of proof pursuant to 23 P.S. §5337(i).
>
> 3. The [trial court] abused [its] discretion in ruling contrary to the overwhelming evidence in favor of Father being the primary custodian and not outright denying Mother's petition for relocation.

Father's Brief, at 4.

Our scope and standard of review for custody is:

> In reviewing a custody order, our scope is of the broadest type and our standard is abuse of discretion. We must accept findings of the trial court that are supported by competent evidence of record, as our role does not include making independent factual determinations. In addition, with regard to issues of credibility and weight of the evidence, we must defer to the presiding trial judge who viewed and assessed the witnesses first-hand. However, we are not bound by the trial court's deductions or inferences from its factual findings. Ultimately, the test is whether the trial court's conclusions are unreasonable as shown by the evidence of record. We may reject the conclusions of the trial court only if they involve an error of law, or are unreasonable in light of the sustainable findings of the trial court.

C.R.F., III v. S.E.F., 45 A.3d 441, 443 (Pa. Super. 2012).

We have stated,

> the discretion that a trial court employs in custody matters should be accorded the utmost respect, given the special nature of the proceeding and the lasting impact the result will have on the lives of the parties concerned. Indeed, the knowledge gained by a trial court in observing witnesses in a custody proceeding cannot adequately be imparted to an appellate court by a printed record.

Ketterer v. Seifert, 902 A.2d 533, 540 (Pa. Super. 2006) (quoting ***Jackson v. Beck***, 858 A.2d 1250, 1254 (Pa. Super. 2004)).

The primary concern in any custody case is the best interests of the child. "The best-interests standard, decided on a case-by-case basis, considers all factors that legitimately have an effect upon the child's physical, intellectual, moral, and spiritual wellbeing." ***Saintz v. Rinker***, 902 A.2d 509, 512 (Pa. Super. 2006) (citing ***Arnold v. Arnold***, 847 A.2d 674, 677 (Pa. Super. 2004)).

We must accept the trial court's findings that are supported by competent evidence of record, and we defer to the trial court on issues of credibility and weight of the evidence. If competent evidence supports the trial court's findings, we will affirm even if the record could also support the opposite result. ***In re Adoption of T.B.B.***, 835 A.2d 387, 394 (Pa. Super. 2003).

Additionally,

> [t]he parties cannot dictate the amount of weight the trial court places on evidence. Rather, the paramount concern of the trial court is the best interest of the child. Appellate interference is unwarranted if the trial court's consideration of the best interest of the child was careful and thorough, and we are unable to find any abuse of discretion.

S.M. v. J.M., 811 A.2d 621, 623 (Pa.Super. 2002) (quoting ***Robinson v. Robinson***, 645 A.2d 836, 838 (Pa. 1994)).

Father presents three issues for our consideration but he actually has only two objections to the trial court's decision to leave the current custody order in force. First, Father disagrees with the conclusion that the trial court reached when it considered the evidence, and, second, Father complains that Mother did not produce certain evidence that he considers essential to the trial court's deliberation. We will not examine Father's brief point-by-point, but we will offer two examples.

In much of his brief, Father examines the evidence presented, claims that it favors Father, and asks us to vacate the trial court order and grant Father primary physical custody. This we may not do. We will defer to the

trial court on issues of credibility and weight of the evidence, and will affirm the trial court even if the record could also support the opposite result. ***In re Adoption of T.B.B.***, ***supra***.

Where Father does not ask us to reexamine the evidence, he complains that Mother failed to produce evidence essential to the trial court's deliberations. Father fails, however, to guide us to the place in the record where he objected to the lack of that evidence. As an example, Father complains that Mother did not verify her employment. The record reveals that Father's counsel asked Mother if she had proof of employment and proof that she was enrolled in school. Mother stated that she could provide proof of both the following day. N.T. 4/25/13, at 171. When Father's counsel asked for those documents at the beginning of the hearing on the next day, Mother offered to look through her file to find them and Father's attorney responded, "I don't need to see them now. This morning will be fine. I am sure that we will take a break at some point." N.T. 4/26/13, at 5. The trial court suggested the lunch break; Father's attorney agreed, and the hearing continued. ***Id.*** This is the last mention of these documents that we can find in the notes of testimony for April 26, 2013. At the hearing on September 18, 2013, Mother offed to produce W-4s to confirm that she worked for Barbizon. N.T. 9/18/13, at 20. Those documents were not admitted into evidence, but Mother's lease and her esthetician license were.

Id., at 49. We are unable to find any objection to the fact that Mother's W-4s were not admitted as evidence.

Father also makes the claim that there is insufficient evidence as to the quality of the school system Child would attend in California. Father's Brief, at 24. We note, however, that while the quality of a school system is an important consideration in custody matters, Child is just three years of age and will not enroll in a public school for two more years. The trial court, noting that Father had requested that the trial court draft the order so that he would assume primary physical custody in April of 2015, stated, "In approximately 2 years, when [Child] is to enter kindergarten, it is the hope of this court that the parties will agree on a custody schedule so as to avoid litigation on the issue under the then existing facts." Trial Court Memorandum and Order, at 11. Thus, the trial court was aware of the issue of schooling, but recognized that it was an issue not yet ripe for determination.

Our examination of the record reveals that Father either failed to object to the lack of the evidence he complains is missing or failed to elicit that evidence on cross-examination. Father's failure to object at trial results in the waiver of his claim. ***See Fillmore v. Hill***, 665 A.2d 514, 516 (Pa. Super. 1995) ("Failure to timely object to a basic and fundamental error . . . will result in waiver of that issue. On appeal, the Superior Court will not consider a claim which was not called to the trial court's attention at a time

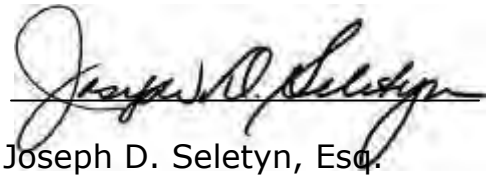
when any error committed could have been corrected. The principle [*sic*] rationale underlying the waiver rule is that when an error is pointed out to the trial court, the court then has an opportunity to correct the error." (citations omitted)); ***Smith v. Smith***, 637 A.2d 622, 626 (Pa. Super. 1993) ("Appellant's failure to object to the court's noncompliance with the procedural [requirements] constituted a waiver of his [issue on appeal].").

Our review of the record, considered in the light of Father's claims, reveals that the trial court did not abuse its discretion by maintaining the current order in effect.

We have read the trial court's opinion in this matter in light of the record. Nothing we could add to it would make it a better analysis of the custody and relocation factors as they apply to this case. Therefore, we affirm the order of the trial court by adopting the concise, thoughtful, and well-written opinion of the Honorable Emanuel A. Burtin, entered on October 3, 2013, as our own.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/13/2014

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PA
CIVIL ACTION

M[redacted] C[redacted] : NO. 2012-00310

V. :

A[redacted] C[redacted] : IN CUSTODY

MEMORANDUM and ORDER

BERTIN, J. OCTOBER 3, 2013

I. PROCEDURAL HISTORY

Hearings were held on April 25, 2013 and April 26, 2013 and an agreed scheduling order was entered for the notes of testimony to be transcribed by June 7, 2013, briefs to be filed on July 8, 2013, with oral argument on July 12, 2013. When briefs were filed, mother had, however, relocated from Redding, California to Sacramento, California, which created a change of circumstances. After telephone conference call with the court and counsel, it was agreed to open the record to hold a supplemental hearing on September 18, 2013. After said supplemental hearing, supplemental briefs were ordered for October 2, 2013. The matter is now ripe for decision.

II. BACKGROUND

This is a child custody case, involving child, L[redacted] C[redacted], date of birth April 25, 2010, age 3 years and 5 months, referred to as "child", and her young parents, M[redacted] C[redacted] referred to as "father", and A[redacted] C[redacted] referred to as "mother". Father resides in Hatboro, Montgomery County, Pennsylvania, and mother resides in Sacramento, California. The parties are still married with a divorce pending.

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The parties entered into a stipulation and agreed order on January 27, 2012 and it became an order on February 1, 2012 whereunder the parties have shared legal custody of the child and shared physical custody of the child on a four month on and four month off schedule. That four month-four month rotation of physical custody is ongoing.

Mother has filed a petition to relocate the child to be in her primary physical custody in California and father has proposed keeping the present four month-four month cycle intact until August 15, 2015 when the child is to commence kindergarten and then for father to have primary physical custody in Pennsylvania.

Under the present facts, in the best interest of the child, and considering the statutory factors, the court will order that the present order remain intact. The child, who is not old enough to go to school, is flourishing in the custody of both parents, and there is wisdom in the present agreed order when focused on the best interest of the child.

Father and mother met, married, mother conceived with the child, and the child was born while the parties were in the U.S. Navy stationed together in Virginia Beach, Virginia. In August, 2011, when the child was approximately 1½ years old, father, having completed his Navy contract, moved to his parents' home in Hatboro, Montgomery County, Pennsylvania, with the child, with the understanding that mother would be joining them after serving out the rest of her Navy contract. Mother's testimony was that up until this time, mother had performed the lion's share of parental duties and nurturing of the child, putting that percentage at 85%. Mother spent time with the child in the parent's home thereafter on visits. The frequency of those visits differs between the parties. However, in November, 2011, father told mother he wanted a

separation and divorce. Up until that time, father exercised his parental duties with the child, with assistance from his family.

On February 1, 2012, the 4 month on 4 month off shared custody order was entered, mother returning to Redding, California, where she was raised prior to entering the Navy and where her family is located. That order is ongoing.

Father is employed full time as a medical assistant at North Willow Grove Family Practice and is pursuing his education to become a registered nurse. He lives with his girlfriend, C[redacted] H[redacted], in his township apartment located in Hatboro, Pennsylvania. She has a B.A. in psychology and is employed full time as a mental health counselor. She is also pursuing a master's degree at Holy Family University to become a college counselor. Father is performing his parental duties with the assistance of his girlfriend and extended family. Under father's care, the child goes to daycare at Kiddie Academy.

Mother testified she enrolled in the Marinello School of Beauty in Redding, California and received her aesthetician certificate. Mother began classes at Shasta College in February, 2013 and began working at Aqua Salon at that time. She lives with her boyfriend, N[redacted] M[redacted]. He works as a grocery clerk 40 hours per week, plus computer work. Mother is performing her parental duties with the assistance of her boyfriend and extended family. Under mother's care, the child goes to daycare at Munchkin University.

Mother called as witnesses, R[redacted] M[redacted], N[redacted] M[redacted]'s father; R[redacted] S[redacted], mother's mother; N[redacted] M[redacted], mother's boyfriend; R[redacted] T[redacted], a friend; and N[redacted] C[redacted], mother's sister. Father called as witnesses K[redacted] C[redacted], father's

father; J[redacted] C[redacted], father's brother; D[redacted] C[redacted], a neighbor; C[redacted] H[redacted], father's girlfriend, and S[redacted] C[redacted], father's mother. These witnesses credibly confirmed that both parents are dutiful, loving, and attentive parents.

Prior to briefs being filed, and in reference therein, it became known to the court that mother had relocated from Redding, California to Sacramento, California. This occasioned a supplemental hearing which established the following.

Mother moved from Redding, California to Sacramento, California and signed a rental deposit receipt/rental information at Asbury Place on June 6, 2013, with move in date on June 22, 2013. N[redacted] M[redacted] is living there with her and is on the lease, as well. Prior to the move, mother discussed the same with father, and father had no objection to the move. The apartment has two bedrooms and one bathroom, with one child having her own bedroom.

Mother secured employment in Sacramento and works as a talent and admissions director at Barbizon Studio. Mother testified about her hours of work and duties and her compensation which is salary and commissions and holds more promise financially than her job in Redding, California. Mother works on Tuesdays and Wednesdays from 2 p.m. to 8:30 p.m. and a few weekends per month. The work on weekends involves traveling to other cities in the California and Washington state area to do booking shows to attract those who would be interested in Barbizon's modeling, television, and training classes. Mother receives commission for the bookings. Mother will make $3,000 for September, 2013 and is hoping to make $4,000 per month in the future. Mother enjoys this work.

Mother will be enrolling the child in a local daycare known as Cottage Kids Children's Center. Further, mother has applied to further her education at California

State University at Sacramento. N[redacted] M[redacted] is no longer a grocery clerk, but instead, is solely in computer programming and fixing computers.

23 Pa. C.S. §5328(a) provides:

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.

Both parties encourage and permit frequent and continuing contact through implementation of the 4 month on, 4 months off shared physical custody arrangement. Further, both parents allow telephone contact with the child.

An unfortunate episode occurred in December, 2012 involving the child's return from California to Pennsylvania. Versions of what occurred and why differ, but the matter was resolved by a court order from Judge Barrett directing the child's return to father in Philadelphia by December 30, 2012, which occurred.

2. The present and past abuse committed by a party or member of the parties' 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.

Father did not allege abuse by mother and neither party alleged any abuse of the child.

Mother testified that while pregnant in the Navy, father pushed her into a wall, as a result of which father was arrested. Command enrolled father in a drug and alcohol program at Sewells Point and he completed outpatient therapy and counseling. The charges, however, were dismissed.

There is not present risk of harm to anybody.

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

Both parents perform parental duties well, with the assistance of their respective boyfriend/girlfriend and extended family.

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

Each parent has provided for daycare for the child, each is employed, and the child has much attention from the parents, boyfriend/girlfriend, and extended family, welcomed in the community.

5. The availability of extended family.

Both sides have significant extended family which are involved in the child's life.

6. The child's sibling relationship.

Not applicable.

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

Not applicable. The child is 3 years old.

8. The attempts of a parent to turn the child against the other parent.

There is no credible evidence of this.

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.

Each party is likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs. One is not favored over the other.

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

Both parties are likely to attend to the daily physical, emotional, developmental, educational and special needs of the child. One is not favored over the other.

11. The proximity of the residences of the parties.

Father lives in Hatboro, Pennsylvania and mother lives in Sacramento, California.

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

Each party is available to care for the child on a regular and continuing basis and has made appropriate daycare arrangements.

13. The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another.

The parties are cooperating with the 4 month on/4 month off custody arrangement. Mother's written communications to father's girlfriend, however, were not appropriate.

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

Other than father's DUI in 2008 and testing positive in December, 2012 for marijuana, followed by a negative test, there is no drug or alcohol history in father's household. There is no drug or alcohol history with mother or in mother's household.

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

There are no mental health or physical health issues.

16. Any other relevant factor.

None.

23. Pa. C.S. §5337(h) Relocation Factors provides:

In determining whether to grant a proposed relocation, the court shall consider the following factors, giving weighted consideration to those factors which affect the safety of the child:

1. The 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.

Mother testified that up until the child was 1½ years of age, mother was the primary parent. Thereafter, the child resided with father in father's parents' home. Subsequent thereto, since February 1, 2012, the parties have had a 4 month-4 month rotation of custody under an agreed court order, which shows a close relationship with both parents, the boyfriend/girlfriend, and extended families of both parties.

2. The 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.

The child is a healthy and happy 3 year of child with no developmental issues or special needs who has spent the last 20 months of her life dividing time 4 months with father and 4 months with mother under an agreed court order. The needs of the child are to continue to have this equal access to both parents.

3. The 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.

The feasibility of preserving the relationship between father and child through suitable custody arrangements is to maintain the shared physical custody rotation under the agreed order.

4. The child's preference, taking into consideration the age and maturity of the child.

Not applicable. The child is 3 years old.

5. Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.

There is no established pattern to thwart the relationship of the child and the other party and the relationship is promoted through the 4 month, 4 month schedule per the agreed order.

6. Whether the relocation will enhance the general qualify of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.

Mother is already located in California with employment.

7. Whether the relocation will enhance the general qualify of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.

The general qualify of life for the child will not be enhanced by living in mother's primary custody in California, to the exclusion of father, compared to the present schedule where the child has the benefit and excellent quality of life of being with both parents, and their surroundings, equally.

8. The reasons and motivation of each party for seeking or opposing the relocation.

The child is doing well under the present shared physical custody agreed order and neither party testified to the contrary. Father has requested that the present schedule remain the same for the next 2 years and then there be a change to father's custody in Pennsylvania due to the child going to school at that time. Mother wants a change in custody now to her primary custody in California.

9. The present and past abuse committed by a party or member of a party's household and whether there is a continued risk of harm to the child or an abused party.

See (2) under Custody Factors.

10. Any other factor affecting the best interest of the child.

None.

The present agreed order, which provides for shared physical custody, on a 4 month, 4 month cycle, has been in place and operating now for 20 months. After reviewing the record, and considering the statutory facts, the court feels that the equal custody is inuring to the best interest of the child, providing equal access to both parents, who are equally dedicated to the child and provide warm and nurturing environments for the child. The child is doing well under this arrangement and neither parent testified to the contrary.

Father's request is to leave the present schedule as it is for two more years and then, when the child is ready to go to kindergarten, on August 15, 2015, convert the schedule to father's primary custody. While the court agrees with keeping the order in place, and not changing it, the court would not, and cannot, automatically convert the order two years from now, because custody orders are based on present facts and circumstances that exist at that time, not now. The court cannot enter such an order.

Mother's request is to award her primary physical custody in California at this time in lieu of the present shared physical custody. However, the child has access to both parents equally under the present schedule and is flourishing in both households. Accordingly, the court will deny mother's request.

The polestar in every custody case is the best interest and welfare of the child. If both parents were asking for a modification of the present order now, which father is not, the court would deny the requests under the present circumstances, because the present

order is inuring to the best interest of the child. Neither parent persuaded the court otherwise.

In approximately 2 years, when the child is to enter kindergarten, it is the hope of the court that the parties will agree on a custody schedule so as to avoid litigation on the issue under the then existing facts.

BY THE COURT:

EMANUEL A. BERTIN, J.

Copies mailed 10/3/13 to:

Cathy M. Cardozo, Esquire
Allyson Totaro, Esquire
Michael E. Eisenberg, Esquire
Karen Baxter-Randle, Family Court Administration

Secretary