

APPENDIX

J



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL DIVISION

HEIDI BRUSH, :
Plaintiff/Respondent :
v. : No. 2012-3103
LELAND FELDMAN, :
Defendant/Petitioner : In Custody

FILED FOR RECORD
2021 JUN 22 PM 4:59
JEREMY S. ENEON
PROTHONOTARY
CENTRE COUNTY, PA

CUSTODY ORDER

AND NOW, this 22nd day of June, 2021, following custody trial attended by both parents, the Court enters the following ORDER regarding the custody of the parties' minor child, to wit:

- [REDACTED]
1. The parties shall have joint legal custody of their minor child, legal custody being defined as the legal right to make major decisions on behalf of the child, including but not limited to, medical, religious and educational decisions. The parties shall discuss and consult with one another on these decisions with a view to adopting a harmonious policy calculated to promoting the child's best interests.
 2. Each party has a right to be kept informed of the child's educational and medical development and shall have the right of access to the child's educational and medical records. Each party shall be entitled to complete and full information concerning the child from each other and from any doctor, dentist, teacher, or similar authority, and to have copies of any reports, notices or other communications given to either party as a parent.

3. Each party shall notify the other of any matter relating to the child that could reasonably be expected to be of significant concern to the other party.

4. The parties shall have shared physical custody in accordance with the following:

School Year

During the school year [REDACTED] shall live primarily with her mother subject to periods of temporary custody as outlined hereinafter. At the beginning of the school year Mother shall supply Father with a list of all school holiday periods and the dates of the following summer vacation. Father shall be entitled to share equally in all three-day weekends and the extended holiday periods for Thanksgiving, Christmas, and Easter. Upon entry of this order the parties shall, within four weeks, outline their exchange plan for the 21-22 school year. All exchanges shall occur at a neutral public location suitable to both parties. In the event that an agreement cannot be reached the parties shall submit their proposals to the court and an order will be issued directing the sharing of school year periods.

Summer 2021

The parties shall communicate forthwith to establish a plan for a sharing of summertime custody. All periods of temporary physical custody of Father shall be initially in the area of State College, Pennsylvania and will not necessarily include overnight custody. In the event that an agreement cannot be reached the parties shall submit their proposals to the court, and an order will be issued directing the sharing of the Summer 2021.

Summer 2022 And Beyond

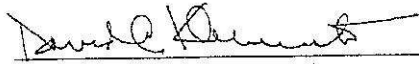
The parties shall share the summer vacation on a two third for Father and one third for Mother basis. If a plan cannot be orchestrated by the parties by March 1st of the year, the parties shall submit their proposals to the court, and an order will be issued directing the sharing of the

summer vacation periods.

5. Each party shall have reasonable telephone and mail access to the child when the child is in the custody of the other parent.
6. Neither party shall impair the other party's right to custody or interfere with the other parent's custody when the child is with that parent.
7. Neither party shall disparage the other party in front of the child, attempt to alienate the affections of the child from the other party, or allow third parties to attempt to alienate the affections of the child from the other party.
8. The parties shall not involve the child in any of the disputes concerning him or her, including but not limited to, financial matters.
9. Day to day decisions shall be the responsibility of the parent having physical custody at that time. Additionally, the parent having physical custody of the child at the time of an emergency shall have the right to make any immediate decisions necessitated by the emergency. However, that parent shall inform the other parent of the emergency and consult with him or her regarding the emergency as soon as is practicable. If either parent should be unreachable at their residence or work site, then that party shall provide the other party with the necessary information to facilitate notification of an emergency.
10. The relocation of either party from their current residences shall form a basis for change of this custody schedule and no such relocation shall take place without the non-relocating party's express consent or court order after a full hearing. Relocation is defined as a change in a residence of a child which significantly impairs the ability of a nonrelocating party to exercise custodial rights. The party proposing relocation shall notify every other individual who has custody rights to the child, and in doing so, shall comply with the provisions of 23 Pa.C.S.A. §5337(c).

11. Each party shall promptly notify the other of details of travel plans, travel arrangements, and any delays that might affect the custodial arrangement.

BY THE COURT



David C. Klementik, Senior Judge
Specially Presiding

NOTICE OF ENTRY OF
ORDER OR DECREE,
PURSUANT TO PA. R.C.P.
236 NOTIFICATION. THIS
DOCUMENT HAS BEEN
FILED IN THIS CASE.

PROTHONOTARY, CENTRE
COUNTY, PA.

DATE: 06/25/2021



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL DIVISION

HEIDI BRUSH,
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v.

LELAND FELDMAN,
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No. 2012-3103

In Custody

JEREMY S. LEBRON
PROthonotary
CENTRE COUNTY, PA

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MEMORANDUM

Before the court is the Petition to Modify Custody filed on behalf of Defendant/Petitioner, Leland Feldman [hereafter referred to as "Father" or "Petitioner"] seeking physical and legal custody of his daughter, [REDACTED] [hereinafter referred to as "the Child"] of and from the Plaintiff/Respondent, Heidi Brush [hereinafter referred to as "Mother" or "Respondent"] filed for record on February 6, 2020. The Petition, filed pro se, consists of eighty-one pages, and in addition to seeking sole legal and primary physical custody of the Child, seeks findings of contempt Against Respondent for failing to comply with provisions of a court order dated December 27, 2013. As will be detailed in the facts hereinafter set forth Father had been precluded contact with Respondent and the Child pursuant to Protection from Abuse orders beginning in 2012 and concluding in 2018. Accordingly, we find it necessary to make a de novo review of the relationships from their beginning in 2007 as impacting the present.

Facts

1. Plaintiff, Heidi M. Brush, resides in the State College area of Centre County at an address which is undisclosed at her request throughout these proceedings. She is forty-eight years of age, having been born on [REDACTED]

2. Defendant, Leland C. Feldman, resides at [REDACTED]
He is fifty years of age, having been born on [REDACTED]
3. The child subject of these proceedings is [REDACTED] who was born of the parties on [REDACTED]
4. Father graduated from the University of Wisconsin in 1988 and enlisted in the United States Marine Corps, from which he received an honorable discharge.
5. He thereafter served as a Field Training Officer for the Milwaukee, Wisconsin Police Department for in excess of nine years.
6. Mother achieved Bachelors and Masters degrees in English at the Pennsylvania State University and a PhD from the University of Illinois.
7. Following the date of their marriage in February 2007, Heidi became pregnant, and she asserts that Leland became a different person in his belligerence and apparent unwillingness to have a child.
8. The parties had moved to Steamboat Springs, Colorado, in an effort to find police work of a less stressful nature for Leland.
9. On November 1, 2008, at a time when the Child was approximately ten months of age, a domestic disturbance occurred in which Leland "punched" Heidi in the chest which caused the wind to be knocked out of her as she fell. At some point in time, consistent with the foregoing, Leland had also thrown a coffee cup in the direction of Heidi which, it is admitted, did not strike her but did scare her.
10. Within days, Leland's position as a police officer for the Steamboat Springs Police Department ended as 3rd degree assault charges had been filed by Heidi against him. As of January 7, 2009, two months after the incident, the charges were dismissed pursuant to

Heidi's notification to the District Attorney that she would no longer be of assistance in the investigation and prosecution as she was moving away from Colorado.

11. Heidi moved to Fayette County, Pennsylvania where a divorce was filed in June.
12. A Consent Order for Custody was issued on October 15, 2009 in Fayette County whereupon the parties shared legal custody, Mother had primary physical custody, and Father had periods of partial physical custody.
13. Mother proceeded to move with the Child to Centre County, Pennsylvania where she was engaged as an educator with the Pennsylvania State University.
14. On March 17, 2010 father received an Order to pay child support in the amount of \$295 per month while he was residing in Milwaukee, Wisconsin.
15. Father attended Bryant and Stratton College where he received an Associates Degree in nursing in August 2011 and commenced a career as a registered nurse.
16. Father had one visit in downtown State College, Pennsylvania with Audrey during the year 2010.
17. Father had a visit with [REDACTED] in January 2011 and a subsequent visit in August 2011.
18. In a desire to obtain a specific schedule for visitation, father filed a petition for modification of custody in Fayette County, Pennsylvania on April 3, 2012; however, the Court properly acknowledged that custody jurisdiction resided in Centre County.
19. In May 2012 the parties had a meeting in State College to discuss a custody modification.
20. On December 12, 2012 a custody conference occurred before the court which conference was attended primarily by counsel as Father was in Wisconsin at the time. An Agreed Order of Custody was issued providing for shared legal custody, natural mother having primary physical custody, and natural father having supervised custody.

21. Later in the afternoon on December 12, 2012, Heidi was physically assaulted on the campus of the Pennsylvania State University whereupon she was strangled from behind and her throat was subjected to a slashing which required seventeen stitches.
22. Although there was no evidence presented to suggest that Leland Feldman was in the Commonwealth of Pennsylvania on that occasion, Heidi, to this day, believes that Leland engaged an individual to assault her because he was unhappy with the result of the morning custody consent agreement. To this day Leland denies any involvement whatsoever with the incident and was never questioned or charged in connection with the assault.
23. On December 14, 2012 Heidi proceeded to apply for and received an Ex Parte Emergency Protection from Abuse order which precluded Father from having any contact with Mother or the Child. Although there was no allegation of threat to the Child, she was included as a "protected party".
24. On January 11, 2013 the court issued an "agreed" **Temporary PFA Order** extending for eighteen months without hearing the underlying merits of Leland's defense.
25. Father, in later correspondence to his attorney, Racquel Ross, complained that he thought by his agreement to the PFA Order he would be gaining access to [REDACTED] for custody purposes. In fact, the Child was listed as a protected party and any hope he had of reaching an agreement for custody was lost.
26. In March 2013 Father exchanged emails with his attorney, Racquel Ross, regarding how unhappy he was with the "bargain" which had been reached for the PFA. He was expecting that although he had a no contact order with Mother, he would at least have visitation with his daughter.

27. Attorney Ross, believing that the emails represented a threat to Mother and the trial judge, telephoned counsel for Mother of her concerns about her client. This contact to Attorney Bierly set off a wave of alerts regarding Father to the State College Borough Police Department, the Pennsylvania State University Police Department, and the FBI.
28. In conjunction with a status conference in May, 2013, Father's new attorney, Mark Weaver, requested that Attorney Ross supply the court and parties with copies of the so-called "threatening" communications from Father.
29. On June 5, 2013, in a conference call with the Trial Judge, Attorney Bierly, Attorney Ross, and a representative attorney from Attorney Weaver's office, Attorney Bierly had to admit that the email communications from Father were, indeed, non-threatening.
30. On December 27, 2013 the Court entered a Temporary PFA Custody Order which provided for shared legal custody, Mother to have primary physical custody, and Father to have regular Skype conversations with the Child. In addition, Father was to have supervised visits through the Centre County Child Access Center.
31. Based on Mother's Petition to Modify Custody from the December 27, 2013 Order, an order was issued on May 20, 2014 providing for Mother's sole legal custody, Father's Skype access on Thursdays, and supervised visits at the Child Resource Center.
32. With the January, 2013 PFA to expire in July 2014, Mother filed for a "Petition to Extend" which resulted in an order on July 8, 2014 to extend the PFA to August 31, 2014.
33. On the occasion of a supervised visit on July 2, 2014 Mother alleged, that although Father was not to approach her and the Child outside of the supervised visitation site, he approached toward her, albeit at some distance, with a smirk on his face. Based on this, Mother raised new concerns regarding her safety.

34. On July 24, 2014 the director of the visitation facility issued a letter regarding his observations of the July 2nd event and indicated that the encounter was not at the fault of Father, but rather was of Mother's failure to leave the premises as instructed.
35. On August 18, 2014 another Temporary Protection from Abuse Order was issued with an expiration date of December 14, 2014. The order provided that Father should have contact with the Child at the Child Access Center and through Skype as set forth in the prior order of December 27, 2013.
36. Following several PFA extensions granted at Mother's request, a final hearing on the PFA Petition filed in 2012 was conducted on September 10, 2015. The final PFA Order was entered on September 15, 2015, and, while providing for no contact with Mother, Father was afforded contact with the Child through the Child Access Center. The order was fixed to expire on September 10, 2018.
37. The aforesaid Final PFA order was appealed to the Pennsylvania Superior Court where it was sustained on August 5, 2016.
38. On June 1, 2017 a Custody Order was entered providing for delivery of letters and gifts through Attorney Douglas Hearn. For the period of June 13, 2017 to November 13, 2017 Father sent regular checks to the Child which were not cashed on the child's behalf for quite some time.
39. On February 1, 2019 Mother filed another PFA action against Father alleging that he was "stalking" her by virtue of an email he had sent to Mother's custody attorney asking for details of two listed medical events which had occurred to the Child. For this filing Mother received a temporary order with a scheduled hearing for February 15, 2019.

40. From the hearing it became apparent that Father had learned of the medical events by virtue of his insurance coverage and had done nothing that he was not otherwise authorized and encouraged to do; to wit: be made aware of the health status of his daughter. The Final Protection Order was denied following hearing on February 15, 2019.

Standard

In custody disputes, the controlling question and paramount concern of the court is the best interests of the child; all other considerations are deemed subordinate to the child's physical, intellectual, moral, and spiritual well-being. *Hogrelus v. Martin*, 950 A.2d 345 (Pa.Super.2008). The Court is to consider a range of factors when awarding custody with a focus to determining what is in the best interests of the child. 23 Pa.C.S.A. §5323(a). In an action regarding the custody of the child between parents of the child, there is to be no presumption that custody should be awarded to a particular parent. 23 Pa.C.S.A. §5327(a). A parent's right to child custody is constitutionally protected as a fundamental liberty under the 14th Amendment to the United States Constitution. *U.S. Constitution, Amendment IV; Cardamone v. Elshoff*, 659 A.2d 575 (Pa.Super.1995).

Factors

Likelihood To Encourage And Permit Frequent And Continuing Contact Between The Child And The Other Party

If any one thing is clear from the facts of this case it is evident that Mother has done everything in her power to deny Father contact with his daughter under circumstances where there has been no evidence whatsoever of any abuse or threat by Father to the Child. Mother's claim of "child abuse" having occurred in the 2008 incident where an altercation occurred between Father and Mother is completely bogus. By all accounts the child was never placed in danger and

Mother's continued use of this event as a reason for denying father periods of physical custody, even as recently as the February 1, 2018 PFA Petition, is disingenuous and calculated solely to deny Father physical custody for over ten years.

Present And Past Abuse Committed By A Party And Which Party Can Better Provide Safeguards And Supervision Of The Child

The sole incident of abuse which is admitted and documented in this case occurred during the 2008 altercation when Mother alleges that she was pushed or punched in the chest and had the wind knocked out of her. The allegations of verbal abuse prior to this event, in this Court's view, amount to exaggerated instances where "hot buttons" were pushed and excessive language was displayed.

Mother has done an excellent job raising the Child and has extended to her love and guidance to the point that she is an excellent student and socially adjusted. At the same time, however, Father, by virtue of Mother's aggressive suppression of his parental rights, has been denied the opportunity to place a father's mark on her social development. While mother has pursued a career in academics, Father has demonstrated a variety of talents which suggests that he could be an excellent role model. His military service, certification as a police officer, and his training and employment as a registered nurse suggests that he could easily safeguard and supervise a child. Substantial damage has been afforded to Father's constitutional right to the parenting of his child by Mother's antics to paint him as abusive and not worthy of having a normal relationship with his daughter. The attack on Mother at a point in time when Father was not even in the Commonwealth of Pennsylvania represents such a stretch of circumstantial evidence of his involvement that he was never even questioned by the authorities who supposedly investigated the crime. Furthermore, the so-called "threat" by Father in walking out of the supervised visitation facility and just simply moving in the direction of Mother and the Child is such an outrageous

claim to perpetuate eight years of PFA orders that Mother's credibility in raising these matters to the court is nil. Unfortunately, however, the damage has been done, and it will be difficult to rehabilitate the father-daughter relationship.

Parental Duties Performed By Each Party On Behalf Of The Child

Clearly, Mother has performed almost exclusively all child-rearing tasks to date for [REDACTED] Because of the ongoing PFA Orders beginning in 2012 and the geographical separation of the parties over the years, Father has, to date, performed almost no parental duties on behalf of the child except for the payment of child support.

Need For Stability And Continuity In The Child's Education, Family Life And Community Life

The Child has enjoyed stability and continuity in the custodial relationship for most of her life because she experienced a one parent childhood to date. She has known nothing but stability and continuity because Father has been unable to get his foot in the door to spend time with the Child. Going forward, a custody order extending to Father periods of physical custody will undoubtedly rock the boat of "stability and continuity"; however, in order for the Child to experience the benefits of a two-parent childhood, the road forward will not necessarily be smooth.

Availability Of Extended Family

At the time of hearing the Maternal Grandfather enjoyed an ongoing relationship with the Child as he was only two hours distance by driving from her residence. He has not, however, been an ongoing and regular source of childcare and support throughout the Child's lifetime.

The paternal extended family all live some distance from Mother and Child and would not be available as a source of childhood nurturing and involvement. It was suggested that at such times as Father would have physical custody there would be an opportunity to allow his siblings to get to know the Child.

Child's Sibling Relationships

██████████ is an only child, and there were no discussions regarding cousins or other family members of her generation.

Preference Of The Child

This Court had an opportunity to interview ██████████ in chambers without the presence of counsel or parents. By all appearances she is a very intelligent and pleasant child who is fearful of the custody proceedings as a source of change to her world. Without really knowing her Father she has been placed in fear of him by Mother. Accordingly, she would prefer that she continue to reside with and be in the continuous care of Mother. A review of the many letters sent by Father to Audrey over the years reveals that Father attempted his best to give her some sense of his character outside of that fronted by Mother. There was no evidence of any kind demonstrating that Father exhibited any conduct to ██████████ which would justify her independent conclusion that father was dangerous or a person of bad character.

Attempts Of A Parent To Turn The Child Against The Other Parent

As previously mentioned, it is the Court's conclusion that in Mother's course of conduct in throwing as many roadblocks as possible in front of Father's efforts to develop a relationship with his daughter ██████████ was led to understand that Father was a threat to her and her happiness as a one parent child in State College, Pennsylvania.

Greater Likelihood To Maintain A Loving, Stable, Consistent And Nurturing Relationship With The Child Adequate For The Child's Emotional Needs

Father has a lot of ground to make up in establishing a normal relationship with the Child. By all appearances from his persistence in pursuing his legal rights and the openness of his correspondence to his daughter Father would ask for nothing more than to be able to establish a

loving, consistent, and nurturing relationship with the Child. Because of her exclusive custody since birth, Mother has been permitted to maintain a relationship which is loving, stable, consistent and nurturing and which is adequate for the Child's emotional needs.

Greater Likelihood To Attend To The Daily Physical, Emotional, Developmental, Educational and Special Needs of the Child

As previously indicated, Mother has exclusively attended to the child's needs throughout her lifetime and has done an excellent job. We believe, however, that having been given the same opportunity as Mother for a primary relationship, Father would do well in fulfilling the Child's day-to-day needs..

Proximity Of The Residences

A significant challenge to Father's establishment of a normal father-daughter relationship is the extensive geographical separation of the parties. With Father residing either in Arizona or Wisconsin the distance would preclude regular weekly or semi-monthly visits and partial custody periods would have to operate around holidays during the school year and summer time vacation opportunities.

Each Party's Availability To Care For The Child Or To Make Appropriate Child-Care Arrangements

Consistent with the prior paragraph, there could be no regular visitation periods during the school year. Accordingly, Father's custodial opportunities would occur during the summer months when he would make himself available exclusively for the child.

Level Of Conflict Between The Parties

Obviously, the level of conflict between the parties is, and has been, significant. Mother clings to her ongoing claims of abuse thirteen years after the parties were together, and at this point

in time, Father resents having been placed in a position where he has to start anew to develop a relationship.

History Of Drug And Alcohol Abuse Of A Party Or Member Of Their Household

There has been no suggestion of any drug or alcohol abuse by either parent.

Mental And Physical Condition Of A Party Or Of A Member Of Their Household

The parties give all appearances of being in excellent physical health and clearly capable of carrying out an active parental role. The emotional aspects going forward, however, may require outside professional assistance. The degree of such assistance will be in direct proportion to Mother's personal level of cooperation and her encouragement to [REDACTED]. Time can only tell if that cooperation and encouragement will be forthcoming.

Conclusions

We conclude that there should be no impediment going forward to the establishment of a normal father-daughter relationship, even under the circumstances of the geographical separation of the parties [REDACTED] should continue to reside primarily with her mother; however, every effort should be made to allow Father to make an impact on his daughter's life as we believe she will be benefited greatly by it. As indicated at the outset, we find no abusive behavior by Father toward the Child which should have denied him a normal relationship with her.

At this point it is almost impossible to dictate a reunification program which will be acceptable to both parents and [REDACTED]. Nonetheless, it must start somewhere. We anticipate that

Father will jump hurdles to make this work, and we can only ask that Mother recognize that it is
in her daughter's best interest to enjoy a two-parent family while she is still a minor child.

BY THE COURT



David C. Klementik, Senior Judge
Specially Presiding

Dated: June 22, 2021

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