SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2290-20

DAMIEN ROTTEMBERG,

Plaintiff-Appellant,

v.

MELISSA ROTTEMBERG,

Defendant-Respondent.

Submitted April 7, 2022 – Decided April 20, 2022

Before Judges Haas and Mawla.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FM-13-0666-20.

Damien Rottemberg, appellant pro se.

Rozin Golinder, Law, LLC, attorneys for respondent (Edward A. Wojciechowski, of counsel and on the brief).

PER CURIAM

In this post-judgment matrimonial matter, plaintiff appeals from the Family Part's March 5, 2021 order that denied his motion to modify the existing child custody and parenting time order. We affirm.

The parties were residents of New York. They were married in June 2009 and divorced in April 2015. They have one child, born in August 2011.

Prior to their divorce, a New York judge conducted a multi-day custody trial. On June 17, 2014, the judge issued an order granting defendant sole legal and primary physical custody of the parties' child. The order also permitted defendant to relocate from New York to Hoboken, New Jersey. The order granted plaintiff parenting time on alternate weekends from Friday to Sunday after the child began kindergarten and on Wednesdays after school.[1] The judge also set a vacation and holiday parenting time schedule.

On May 9, 2018,[2] a different New York judge granted defendant's subsequent motion to relocate from Hoboken to Manalapan. The judge's order stated that plaintiff would continue to have parenting time with the child on alternate weekends from Friday to Sunday, every Wednesday immediately after

[1] Before the child began kindergarten, plaintiff also had overnight parenting time each week from Tuesday to Wednesday. This was no longer possible once the child started school.

[2] The order was dated May 3, 2018, but was filed by the court on May 9, 2018.

school until 7:00 p.m., and pursuant to the established vacation and holiday parenting time schedule.

Thereafter, plaintiff filed two motions in the New Jersey Family Part seeking to grant him legal custody of the child and increase his parenting time. The trial judge denied the first motion without prejudice on June 19, 2020, and ordered the parties to engage in mediation. The judge denied plaintiff's second motion on October 19, 2020,[3] after finding that New York had not yet relinquished jurisdiction of the custody issues to New Jersey under the Uniform Child Custody Jurisdiction and Enforcement Act, N.J.S.A. 2A:34-53 to -95.

Plaintiff then asked the New York court to transfer jurisdiction of the custody and parenting time issues to New Jersey where the parties' child now lived. The court granted this motion on December 24, 2020.

Shortly thereafter, plaintiff filed a motion in the Family Part "request[ing] to open a trial to change custody" and to "[c]hange [v]isitation arrangements[.]" Plaintiff argued that because New Jersey now had jurisdiction over custody and parenting time issues, the court should revisit the New York courts' determinations and grant him legal custody of the child.

[3] This order was dated October 16, 2020, but filed on October 19, 2020.

The trial judge conducted oral argument and denied plaintiff's motion on March 5, 2021. In the written findings accompanying her order, the judge explained that plaintiff failed to establish a change in circumstances since the May 9, 2018 order that required a modification of custody and parenting time. The judge stated:

> There is no change in circumstances since the previous [o]rder wherein the New York court had the same facts and circumstances before it that are presently before the court. New York has acceded jurisdiction of the custody matter only to New Jersey and this court does not find plaintiff to have established a prima facie change in circumstance to demonstrate a revisit to legal custody or the parenting time schedule. . . . The court carefully considered both [New York] custody decisions and notes the May [9], 2018 decision was to allow defendant . . . to move to Monmouth County . . . and established a schedule which provided modified parenting time. Nothing has changed.

On appeal, plaintiff argues the trial judge should have addressed the issue of custody and parenting time anew once New Jersey obtained jurisdiction of these issues. He also claims the judge misread the two prior New York decisions. Based on our review of the record and applicable law, we conclude that plaintiff's arguments are without sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for

the reasons set forth in the judge's thorough findings. We add the following brief comments.

The scope of our review of the Family Part's order is limited. We owe substantial deference to the Family Part's findings of fact because of that court's special expertise in family matters. Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). As a result, "the opinion of the trial judge in child custody matters is given great weight on appeal." Terry v. Terry, 270 N.J. Super. 105, 118 (App. Div. 1994). Thus, "[a] reviewing court should uphold the factual findings undergirding the trial court's decision if they are supported by adequate, substantial and credible evidence on the record." MacKinnon v. MacKinnon, 191 N.J. 240, 253-54 (2007) (alteration in original) (quoting N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007)).

While we owe no special deference to the judge's legal conclusions, Manalapan Realty v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995), "we 'should not disturb the factual findings and legal conclusions of the trial judge unless . . . convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice' or when we determine the court has palpably abused its discretion." Parish v. Parish, 412 N.J. Super. 39, 47 (App. Div. 2010) (quoting

Cesare, 154 N.J. at 412). We will reverse the judge's decision "[o]nly when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' . . . to ensure that there is not a denial of justice." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007)).

Plaintiff's arguments concerning the March 5, 2021 order reveal nothing "so wide of the mark" that we could reasonably conclude the order constituted "a denial of justice." In New Jersey, a party who seeks to modify an existing custody or parenting time order must meet the burden of showing changed circumstances and that the arrangement is no longer in the best interests of the child. Finamore v. Aronson, 382 N.J. Super. 514, 522-23 (App. Div. 2006). The issue is "two-fold and sequential." Faucett v. Vasquez, 411 N.J. Super. 108, 127 (App. Div. 2009).

Plaintiff did not meet this burden. While he may be dissatisfied with the decisions rendered by the New York courts, he failed to show any change of circumstances following those decisions that would warrant the modifications in custody and parenting time he sought. The judge's written findings are supported by substantial credible evidence in the record and, in light of that, her legal conclusions are unassailable.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION