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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1832-15T3

MAYU VARGHESE,

Plaintiff-Respondent,

v.

BOBBY VARGHESE,

Defendant-Appellant.

Submitted December 22, 2016 - Decided March 24 , 2017

Before Judges Lihotz and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex
County, Docket No. FM-12-1254-12.

Miller, Meyerson & Corbo, attorneys for
appellant (Nirmalan Nagulendran, on the
brief).

Respondent has not filed a brief.

PER CURIAM

In this litigious post-judgment matrimonial matter, we review
the denial of defendant's motion to modify custody. We affirm.

The parties' six-day divorce trial ended in the entry of a
final judgment of divorce (FJOD) on June 26, 2013. The FJOD

required the parties to share joint legal and physical custody of their child, who is now eight-years old. In 2014, a four-day plenary hearing determined where the child would commence kindergarten, as plaintiff resided in Georgia and defendant in New Jersey. The order limited enrollment to the 2014-2015 school year, and required the child attend school in Georgia. Reconsideration of that order was denied and the Family Part judge was called on to resolve various issues presented by motions, which are unrelated to the current dispute.

In August 2015, defendant moved to require the child to attend school in New Jersey for the remaining elementary school years, grades one to five. Plaintiff filed a cross-motion, requesting she be designated the parent of primary residence and the court decline to exercise jurisdiction because Georgia was the child's state of residence. Further, she requested the judge enter a Thanksgiving holiday schedule. The judge denied defendant's motion without prejudice, addressed the Thanksgiving holiday, and granted plaintiff's request to decline jurisdiction. Defendant appeals from that order.

"The scope of appellate review of a trial court's fact-finding function is limited" because "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)

(quoting Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 483-84 (1974)). This court defers to a trial judge's factual findings unless they are "so manifestly unsupported by[,] or inconsistent with[,] the competent, relevant and reasonably credible evidence as to offend the interests of justice." Rova, supra, 65 N.J. at 484 (citing Fagliarone v. Township of North Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)). Also, "where the focus of the dispute is not credibility but, rather, alleged error in the trial judge's evaluation of the underlying facts and the implications to be drawn therefrom," the traditional scope of review is expanded. Matter of Guardianship of J.T., 269 N.J. Super. 172, 188-89 (App. Div. 1993) (quoting Snyder Realty, Inc. v. BMW of N. Amer., Inc., 233 N.J. Super. 65, 69 (App. Div.), certif. denied, 117 N.J. 165 (1989)). However, challenges to legal conclusions, as well as a trial judge's interpretation of the law are subject to de novo review. Estate of Hanges v. Metro Prop. & Cas. Ins. Co., 202 N.J. 369, 382 (2010); Finderne Mgmt. Co., Inc. v. Barrett, 402 N.J. Super. 546, 573 (App. Div. 2008), certif. denied, 199 N.J. 542 (2009).

Defendant argues the Family Part judge erroneously ignored the fact that New Jersey had continuing exclusive jurisdiction. We disagree.

Relying on the factors set forth in N.J.S.A. 2A:34-71, the judge stated her findings, concluding she would decline to exercise jurisdiction. In doing so, she relied on the fact the child has continuously resided in Georgia since July 2014, except for the New Jersey parenting time, and attended school in Georgia, making it the forum where evidence and witnesses regarding the child's educational needs and achievements were located. Noting the distance between plaintiff's home in Georgia and defendant's home in New Jersey was "a twelve-hour drive," the judge concluded access to school personnel or experts who may have evaluated the child's educational needs in Georgia, outweighed the judge's familiarity with the matter and defendant's claim his expert was located in New Jersey. Principally for these reasons, the judge declined to exercise jurisdiction.

New Jersey has adopted provisions of the Uniform Child Custody Jurisdiction and Enforcement Act ("the Act"), N.J.S.A. 2A:34-53 to -95, which governs "the determination of subject matter jurisdiction in interstate, as well as international, custody disputes." Sajjad v. Cheema, 428 N.J. Super. 160, 170 (App. Div. 2012). See also Greely v. Greely, 194 N.J. 168, 178 (2008). The Act was enacted "to avoid jurisdictional competition and conflict" between jurisdictions in favor of "cooperation with courts of other states as necessary to ensure that custody determinations

are made in the state that can best decide the case." Griffith v. Tressel, 394 N.J. Super. 128, 138 (App. Div. 2007).

In our review of a "judge's declination of jurisdiction, the first question to be considered 'is whether this state acquired "exclusive, continuing jurisdiction" over custody determinations involving th[e] family when the initial order was entered.'" S.B. v. G.M.B., 434 N.J. Super. 463, 471 (App. Div. 2014) (quoting Griffith, supra, 394 N.J. Super. at 139 (citations omitted)). Here, New Jersey entered the initial custody order and by doing so acquired "exclusive, continuing jurisdiction" over custody determinations involving this family. Ibid.

"The next question concerns 'whether, during the time between the initial order and the filing of the motion for modification, circumstances have changed so as to divest this state of that jurisdiction.'" Ibid. (quoting Griffith, supra, 394 N.J. Super. at 140). Here, the one change the judge found significant since the original custody order was entered is the child's attendance at school in Georgia for the entire academic year.

Indeed, the judge did not expressly state in her findings that New Jersey retained an interest in the subject matter. The record sufficiently shows this state has not lost jurisdiction based on a lack of a "significant connection" or "substantial evidence." See N.J.S.A. 2A:34-66(a)(1); Griffith, supra, 394 N.J.

Super. at 142-45. Certainly, defendant remains a resident of the state, has joint legal and physical custody of the child and enjoys significant parenting time with the child in New Jersey, allowing it to retain jurisdiction. S.B., supra, 434 N.J. Super. at 472. However, the question considered by the trial judge was not whether New Jersey had jurisdiction; rather, she weighed whether the court should decline to exercise jurisdiction in favor of a more convenient forum, which also had subject matter jurisdiction.

The UCCJA, however, permits a determination by a court not to exercise its jurisdiction regarding a custody dispute, in favor of another court, which also has jurisdiction over the subject matter. That question is governed by N.J.S.A. 2A:34-71, which states:

a. A court of this State that has jurisdiction under this act to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the court's own motion, request of another court or motion of a party.

b. Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) the length of time the child has resided outside this State;

(3) the distance between the court in this State and the court in the state that would assume jurisdiction;

(4) the relative financial circumstances of the parties;

(5) any agreement of the parties as to which state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;

(7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each state with the facts and issues of the pending litigation.

c. If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

In this matter, the Family Part judge correctly considered the applicable factors and relying on factors 2, 3, and 6,

concluded Georgia was in a better position to decide the issue of the child's residential custody and place of education.

Defendant argues the judge "failed to consider the issue of continuing exclusive jurisdiction at all." Even though the judge's opinion did not expressly state New Jersey retained continuing exclusive jurisdiction, she most assuredly understood that fact, which led her to consider whether to decline to exercise jurisdiction under the circumstances presented.

We further reject defendant's reading of this court's holding in Griffith. Quoting Griffith, defendant maintains, "once a custody determination is made in this state, jurisdiction is retained 'until both the requisite "significant connection" and the requisite "substantial evidence" are lacking.'" Although the language quoted is accurate, what defendant omits is the context of analysis, which spoke to "whether jurisdiction has been lost pursuant to subsection a(1) of N.J.S.A. 2A:34-66." Griffith, supra, 394 N.J. Super. at 142. Moreover, even though the panel concluded New Jersey retained exclusive continuing jurisdiction pursuant to N.J.S.A. 2A:34-66, it continued to consider "whether the Family Part abused its discretion by failing to decline jurisdiction in favor of Maryland pursuant to N.J.S.A. 2A:34-71." Id. at 148. Precisely, just like the matter at hand, the question is not whether New Jersey lost jurisdiction; rather, it is whether

the court should decline to exercise its jurisdiction in light of the then existing facts. Defendant's contrary suggestion is simply incorrect.

The record reflects the trial judge clearly understood her obligation to analyze the facts in light of the provisions of N.J.S.A. 2A:34-71. Noting the most significant dispute centered on where the child should attend school, the judge examined facts specific to this issue and who would present them. She concluded Georgia was in the best position to decide this issue, because the child's current teachers, records, and any school experts who identified the child's special needs were located in Georgia. The judge also evaluated that defendant engaged a New Jersey expert, who proffered an opinion about the ability of the Woodbridge public schools to address the child's special needs. However, she found accommodating an expert retained in litigation did not outweigh the need to present the fact witness located in Georgia, plaintiff designated to relate the child's needs and achievements over the prior educational year.

Under these circumstances, we conclude the judge properly applied the law and did not mistakenly exercise her discretion by denying defendant's request to exercise "exclusive, continuing jurisdiction" to continue the litigation in New Jersey. See S.B., supra, 434 N.J. Super. at 472; Griffith, supra, 394 N.J. Super.

at 144-45. We discern no basis to interfere with the judge's conclusion Georgia was the more appropriate forum.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION