SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2806-15T4

NELSON VEGA,

Plaintiff-Respondent,

v.

MARLENA TRAN,

Defendant-Appellant.

Argued October 13, 2016 – Decided April 6, 2017

Before Judges Alvarez and Manahan.[1]

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FD-07-3156-11.

Howard B. Felcher argued the cause for appellant (Law Offices of Howard B. Felcher, PLLC, attorneys; Mr. Felcher and Sydney S. McQuade, on the briefs).

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[1] Hon. Carol E. Higbee participated in the panel before whom this case was argued. The opinion was not approved for filing prior to Judge Higbee's death on January 3, 2017. Pursuant to R. 2:13-2(b), "Appeals shall be decided by panels of 2 judges designated by the presiding judge of the part except when the presiding judge determines that an appeal should be determined by a panel of 3 judges." The presiding judge has determined that this appeal shall be decided by two judges. Counsel has agreed to the substitution and participation of another judge from the part and to waive reargument.

Jessica Ragno Sprague argued the cause for respondent (Weinberger Law Group, LLC, attorneys; Ms. Ragno Sprague, on the brief).

PER CURIAM

Defendant Marlena Tran appeals from an order granting joint legal custody of their child to plaintiff Nelson Vega, the modification of a parenting time schedule and transportation arrangements, and the modification of plaintiff's child support obligation. We affirm.

The parties, although never married, were involved in a romantic relationship. During that relationship they had a child, born in January 2009. Their relationship terminated in or around 2010.

On March 22, 2011, an order was entered by a Family Division judge granting plaintiff visitation with the child on alternating weekends and every Wednesday night. In accordance with the order, plaintiff would be responsible for the pick-up and drop-off of the child. The order also addressed a holiday and vacation schedule, and plaintiff's continuing obligation to pay child support in the amount of $800 per month based upon a previously entered order. This amount was determined without resort to the New Jersey Child Support Guidelines. The issue of legal custody was not addressed in the order.

At the time of the order, defendant lived in Montclair, New Jersey. In June 2015, she relocated to Hillsdale, New Jersey, to reside with her boyfriend. Upon relocation, defendant enrolled the child in a local school and did not list plaintiff on the emergency contact list which precluded plaintiff from receiving information regarding the child from the school.

In December 2015, plaintiff filed a motion for modification of the order seeking joint legal custody, a reduction in child support, the ability to claim the child on tax returns, and modification of the parenting time schedule. Thereafter, defendant filed a cross-motion for modification of the order seeking to memorialize her "de facto" role as the child's legal guardian, provide for supervised parenting time with plaintiff, increase child support, and modification of the parenting time schedule.

On January 29, 2016, the parties appeared in court for oral argument. The judge ruled:

> I'm [going to] order joint legal custody. There . . . was no custody order in that order from March of 2011. There is . . . nothing that I've heard that would suggest that anything other than the policy in New Jersey, which favors joint legal custody, is what would be appropriate in this case.
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> In addition, Ms. Tran is going to have to share in some of the transportation, because it was her choice to move where she

> moved to. Now, that being said, I'm [going to] send [c]ounsel and the parties outside, because you should really work for a little while to see if you can't come up with some kind of a parenting time schedule that can work under these new arrangements.
>
> If you can't, I'm ultimately [going to] order something. But I think everybody would be much better off if you can work that out yourself.

The judge also noted a reduction to plaintiff's child support obligation after conducting a child support guideline calculation. The judge then directed the parties to "go outside and work on a revised parenting time schedule" and noted he would "call [them] back in a little while." Following a brief recess, the parties reached an agreement based upon the guidelines given by the judge regarding parenting time, transportation, and a vacation schedule. This appeal followed.

On appeal, defendant argues:

POINT I

> THE LOWER COURT COMMITTED REVERSIBLE ERROR IN FAILING TO CONDUCT A PLENARY HEARING RELATIVE TO THE ISSUE OF LEGAL CUSTODY.

POINT II

> THE LOWER COURT COMMITTED AN ABUSE OF DISCRETION IN MODIFYING DEFENDANT'S DE FACTO SOLE LEGAL CUSTODY OF THE CHILD TO JOINT LEGAL CUSTODY.

POINT III

THE LOWER COURT COMMITTED REVERSIBLE ERROR IN FAILING TO CONDUCT A PLENARY HEARING RELATIVE TO THE REQUEST FOR A MODIFICATION OF THE PARENTING TIME SCHEDULE AND TRANSPORTATION OF THE CHILD.

POINT IV

THE LOWER COURT COMMITTED AN ABUSE OF DISCRETION IN DOWNWARDLY MODIFYING PLAINTIFF'S CHILD SUPPORT OBLIGATION.

POINT V

THE LOWER COURT COMMITED REVERSIBLE ERROR IN FAILING TO SET FORTH AND ARTICULATE THE REASONS FOR MODIFYING PLAINTIFF'S CHILD SUPPORT OBLIGATION.

Defendant raises the following points in her reply brief:

POINT I

THE STANDARD OF REVIEW IS DE NOVO.

POINT II

THE LOWER COURT'S REVERSIBLE ERROR AND ABUSE OF DISCRETION IN DENYING A MODIFICATION OF PARENTING TIME.

A. AN AWARD OF JOINT LEGAL CUSTODY IS NOT APPROPRIATE HEREIN.

B. THE LOWER COURT'S ERROR IN MODIFYING THE PARTIES' AGREEMENT RELATIVE TO TRANSPORTATION.

POINT III

A STRICT GUIDELINES-BASED DETERMINATION OF CHILD SUPPORT IS UNWARRANTED HEREIN.

POINT IV

PLAINTIFF DOES NOT DISCUSS THE LOWER COURT'S FAILURE TO ARTICULATE THE RELEVANT STATUORY FACTORS IN ITS DECISION.

Our scope of review of the Family Part's orders are limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We accord deference to the family courts due to their "special jurisdiction and expertise" in the area of family law. Id. at 413. The court's findings are binding so long as its determinations "are supported by adequate, substantial, credible evidence." Id. at 411-12 (citing Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)). We will not disturb the factual findings and legal conclusions unless convinced they are "so manifestly unsupported by or inconsistent" with the evidence presented. Id. at 412. However, if the court's interpretation of the law is misconceived then we owe no deference. State v. Brown, 118 N.J. 595, 604 (1990).

A plenary hearing is required when there is "a genuine and substantial factual dispute" regarding the child's wellbeing. Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007). However, not every custodial determination requires a plenary hearing. See id. at 111.

Here, the March 2011 order did not address the issue of custody. Our Supreme Court has recognized that the preferred

arrangement is to grant joint physical and legal custody to each parent. Beck v. Beck, 86 N.J. 480, 485 (1981). While Beck declined to establish a presumption of joint custody, the Court noted that the legislature has expressed its intent that joint custody is in the best interest of the child. Id. at 485, 488; N.J.S.A. 9:2-4. We are satisfied that there was nothing presented by defendant to the judge demonstrating that joint custody would be inappropriate. Nor were there material factual issues in dispute presented by defendant relating to the best interests of the child that would compel a plenary hearing.

The residential custodial parent's relocation from one location in New Jersey to another with the child may have a substantial effect on the relationship between the non-residential custodial parent and the child, which may create a significant change of circumstances to permit modification of the existing custodial and parenting time agreement. Schulze v. Morris, 361 N.J. Super. 419, 421 (2003). Predicated upon defendant's unilateral decision to relocate, the judge determined that defendant should be required to participate in the transportation of the child when plaintiff had parenting time. In consideration of both our standard of review and the facts presented, we conclude the judge's decision was an appropriate exercise of discretion.

Defendant further argues the judge abused his discretion by reducing plaintiff's child support obligation. We disagree. The March 2011 order establishing child support did not use the child support guidelines in contravention of the mandate that the guidelines must be applied in every Family Part action to establish or to modify child support. R. 5:6A at Appendix IX-A. Further, there is a rebuttable presumption that an award based on the guidelines is the correct amount of child support unless a party proves to the court that circumstances exist that make a guidelines-based award inappropriate in a specific case. See, Fichter v. Fichter, 444 N.J. Super. 205, 210 (Ch. Div. 2015).

From our review of the record, we are satisfied there was no proof presented by defendant that would render the use of the guidelines inappropriate. Further, in recalculating child support, the judge utilized the guidelines and arrived at the dollar amount after consideration of the parties' respective incomes and the parenting time schedule. We perceive no abuse of discretion by the methodology the judge employed.

Defendant's remaining arguments, not specifically addressed herein, lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(1)(E).

Affirmed.