SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2281-15T3

ANDREW M. PODEMS,

Plaintiff-Appellant,

v.

MICHELE PODEMS,

Defendant-Respondent.

Submitted October 17, 2017 – Decided May 14, 2018

Before Judges Leone and Mawla.

On appeal from Superior Court of New Jersey Chancery Division, Family Part, Union County, Docket No. FM-20-0952-14

Andrew M. Podems, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Plaintiff Andrew M. Podems appeals the trial court's February 1 and February 2, 2016 orders denying his post-judgment motions to modify the parties' custody and parenting time, and granting defendant Michelle Podem's motion for counsel fees and other

enforcement. We affirm all three orders, except for the award of counsel fees, which we vacate and remand for reconsideration.

I.

Plaintiff and defendant were married in New Jersey in 1999. They moved to Alaska in 2001, and had a child there in 2009. Plaintiff filed for divorce from defendant in Alaska in 2011. After a trial the Alaska Superior Court issued a judgment of and decree for divorce on July 9, 2013. That court ordered that defendant have legal and physical custody of the child, that plaintiff receive visitation, and that plaintiff pay child support.

Plaintiff appealed to the Alaska Supreme Court, which affirmed the Alaska Superior Court's decision. The Alaska Supreme Court remanded to finalize the division of defendant's retirement accounts. Podems v. Podems, No. S-15242, 2014 Alas. LEXIS 54 (Apr. 9, 2014), reh'g denied, 2014 Alas. LEXIS 78 (Apr. 29, 2014). That issue was still pending when the motions before us were decided.[1]

Defendant and then plaintiff moved back to New Jersey in 2013. On January 24, 2014, the Family Part granted defendant's

[1] The Alaska Supreme Court subsequently affirmed the Alaska Superior Court's revised division of defendant's retirement accounts. Podems v. Podems, No. S-15751, 2017 Alas. LEXIS 42 (Mar. 29, 2017).

motions "to register the July 9, 2013 Judgment and Decree for Divorce and Findings of Fact and Conclusions of Law, entered by the Superior Court of the State of Alaska," as well as that court's Child Support Order entered on the same date. Both motions were granted "with the consent of [p]laintiff on the record." The court also granted defendant's motion "to establish New Jersey as the home state of the minor child . . . with the consent of [p]laintiff on the record." "Both parties stipulated on the record that the minor child . . . has resided in the State of New Jersey since February, 2013." The court also granted defendant's motion "to establish venue in Union County for adjudication of child custody, parenting time, child support, and related issues . . . with the consent of [p]laintiff on the record." Finally, the court granted defendant's motion to modify child support.

After New Jersey courts attained jurisdiction, both plaintiff and defendant filed further motions. A series of orders were issued by different judges, which we will discuss where pertinent.

On December 8, 2015, plaintiff filed a motion ("early December motion") requesting shared legal custody, physical custody for the summer, and to amend the holiday schedule to include Jewish holidays and additional days off from school. Further, plaintiff requested that the pick-up/drop-off times be changed so that he can pick the child up directly from school, the meeting place for

other exchanges be changed from at the police station to a "public place," and that he have a right of first refusal. Finally, plaintiff requested to have Skype communications with the child.

The trial court held a hearing on January 29, 2016. The court addressed plaintiff's motion filed "December 11, 2015," in a February 1, 2016 order. The court granted plaintiff's request for Skype communication. "All other requests for relief" in plaintiff's motion filed on December 11, 2015, were denied.

The trial court also issued two orders on February 2, 2016. The first February 2, 2016 order granted defendant's motion for wage execution, modified holiday and vacation parenting time, and stated that all pick-up/drop-offs would occur "inside" the police departments. The court also awarded defendant counsel fees and costs of "$1,455 as a consequence of filing the Order to Show Cause dated November 23, 2015, and the within Post-Judgment Motion."

The second February 2 order simply denied in its entirety a post-judgment motion plaintiff filed on December 30, 2015. As plaintiff has not supplied us with that motion, it is unclear from the record what relief plaintiff requested in that motion.

Meanwhile, on January 29, 2016, plaintiff filed a notice of appeal attempting to appeal the January 24, 2014 order. Plaintiff's appellate case information statement stated he also

wished to appeal the orders issued March 28, 2014, "11/19/14"; "9/11/15"; and November 24, 2015. Plaintiff later filed a motion to "add points to appeal." On April 25, 2016, we permitted plaintiff to amend his notice of appeal to include the trial court's February 1, 2016 and February 2, 2016 orders, but ruled that plaintiff's appeal was dismissed as "untimely as to any previous order." On November 7, 2016, we reiterated that we would "only consider arguments pertaining to the February 1, 2016 and February 2, 2016 orders."

II.

Plaintiff argues New Jersey courts do not have proper jurisdiction to modify the child support order, originally issued in Alaska. However, there was no modification of child support granted by the February 1 and 2 orders, which either denied relief or addressed other issues.[2] Therefore, the issue of jurisdiction to modify child support is not before us.

Plaintiff cites the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), N.J.S.A. 2A:34-53 to -95, and the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A. However, he does not dispute that the trial court had jurisdiction over "legal custody, physical custody, and visitation." N.J.S.A.

[2] The first February 2 order granted wage execution, but plaintiff does not appeal that issue.

2A:34-54; see 28 U.S.C. § 1738A(b)(3), (b)(9), (c) (addressing "custody" and "visitation"). In any event, we note plaintiff consented to registering the Alaska judgment in New Jersey, and agreed that New Jersey is the child's home state, that it had been since February 2013, and that the Union County court had venue to adjudicate child custody, parenting time, and child support.

III.

Plaintiff challenges the trial court's rulings denying his motions to modify child custody, parenting time, and other visitation issues. "In Lepis v. Lepis, 83 N.J. 139 (1980), the Supreme Court set forth 'the proper procedure for courts to follow on modification motions.'" R.K. v. F.K., 437 N.J. Super. 58, 62 (App. Div. 2014) (citation omitted).

> Modification of an existing child custody order is a "'two-step process.'" First, a party must show "a change of circumstances warranting modification" of the custodial arrangements. If the party makes that showing, the party is "'entitled to a plenary hearing as to disputed material facts regarding the child's best interests, and whether those best interests are served by modification of the existing custody order.'"
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> [Costa v. Costa, 440 N.J. Super. 1, 4 (App. Div. 2015) (quoting R.K., 437 N.J. Super. at 62-63; other citations omitted).]

Here, the trial court ruled that plaintiff failed to show changed circumstances, and denied plaintiff's motion without a plenary hearing.

A.

Plaintiff argued that the trial court erred in failing to increase his parenting time during the child's summer vacation. Plaintiff's early December motion asserted the child should "spend the summer with" plaintiff, giving defendant only visitation because the child's IEP plan indicated the child would not need to attend summer school in summer 2016. Plaintiff and defense counsel agreed plaintiff was referring to a portion of the October 2015 IEP stating summer school was "not required at this time." According to defense counsel, defendant's certification stated past practice had been, and both parents were advised at the time of the October 2015 IEP, that the final determination on summer school was based on the entire school year and would not be made until the spring. When plaintiff claimed the IEP was the final decision, the trial court replied: "Why don't you get me a certification, if that's your position, from the people at the school district who you claim have conclusively decided as of October that a special needs child will the following June not have to attend some sort of summer schooling?" The court told plaintiff he could file a new motion with such a certification and

a parenting plan to explain what summer activities the child would do in plaintiff's custody to replace the summer activities he did in defendant's custody.

Plaintiff has not supplied us with the IEP or defendant's certification, both of which are "essential to the proper consideration of the issues[.]" R. 2:6-1(a)(1)(I); see Soc'y Hill Condo. Ass'n, Inc. v. Soc'y Hill Assocs., 347 N.J. Super. 163, 177-78 (App. Div. 2002) (ruling that where the appellant failed to provide essential parts of the record, "we have no alternative but to affirm"); see also Cipala v. Lincoln Tech. Inst., 179 N.J. 45, 55 (2004). Moreover, according to the transcript, the October IEP was stating the situation "at this time" and the final decision would be made in the spring. In these circumstances, we cannot fault the trial court's decision that it was "not even close to looking at the summer," that it lacked adequate information, and that plaintiff should file a new motion with proper certifications. See R. 1:6-6 ("If a motion is based on facts not appearing of record or not judicially noticeable," the movant must support it with "affidavits made on personal knowledge"). Therefore, the court did not abuse its discretion in declining to rule on plaintiff's request to expand his summer parenting time.

B.

Plaintiff also argues that the trial court erred in failing to afford him custody on Jewish holidays and Columbus Day, Election Day, NJEA convention days, and any other days off from school that were not previously included in the original November 21, 2014 order. The November 21, 2014 order granted plaintiff's cross-motion to establish a holiday schedule by consent, adopting the court's holiday schedule. The court's holiday schedule provided that the parties should alternate a list of holidays, including Columbus Day. The court's holiday schedule added:

> Note: Depending on the heritage, culture and traditions of the particular family, the parties may wish to expand the list of holidays to include Ramadan, Passover, Yom Kipper, Rosh Hashanah, Chanukah and/or Kwanza. None of these days, however, will be considered as Holidays unless specifically ordered by the Court or agreed upon in writing.

At the January 29, 2016 hearing, plaintiff asserted that his father is Jewish and that it is his paternal family's tradition to meet for Jewish holidays. Defendant disputed whether plaintiff had ever celebrated the Jewish holidays during the marriage.

The trial court declined to modify the holiday schedule to allow parenting time to plaintiff on Jewish holidays because plaintiff admittedly failed to raise the issue when the holiday schedule was first agreed to on November 21, 2014, and plaintiff

could not identify any change in circumstances. The same is true for the other holidays.

There is a "'strong public policy favoring stability of arrangements'" in family court matters. Lepis, 83 N.J. at 148 (citation omitted). "Because the custody arrangement was agreed to and incorporated in the trial court's judgment, plaintiff is required to demonstrate changed circumstances to justify its modification." Bisbing v. Bisbing, 230 N.J. 309, 337 (2017). As plaintiff failed to demonstrate changed circumstances, the trial court properly rejected his attempt to fine tune the holiday schedule to add holidays he could have sought in 2014.

C.

Plaintiff also appeals the trial judge's decision to not alter the pick-up/drop-off location from specified police departments to a public space.

The March 28, 2014 order states:

> Plaintiff's Motion for Defendant to assist with the pick-up/drop-off of the minor child . . . is hereby granted. With regard to the pick-up/drop-off of the minor child, the parties stipulated on the record that the parties shall perform pick-up/drop-off [of] the minor child at [a specific] Police Department parking lot.

The November 21, 2014 order provided: "Unless mutually agreed to by parties, pickup/drop[-]off] shall continue to be at the

police department in the municipality where the parties reside," which the order specified. The November 20, 2015 order addressing Thanksgiving 2015, provided that the parties would exchange the child at the "Police Department" in their respective towns.

At the January 29, 2016 motion hearing, when plaintiff proposed moving the exchange to a bagel store, the trial court assumed defendant "doesn't feel comfortable doing that." Defense counsel responded: "Yes your Honor, which is why we did the police station in the first place." The court later stated that defendant "doesn't feel safe doing a pickup and drop[-]off somewhere else. That's a concern for me."

Defense counsel later stated that "the reason, in part, that the exchange is done at the station is for defendant's and the child's safety."

Plaintiff asserts he is the one who originally requested police station drop-offs and pick-ups. However, given the persistent requirement that pickups and drop-offs occur at police stations, the court could draw the reasonable inference it was a safety precaution.

In any event, plaintiff failed to show a change of circumstance justifying relief. Plaintiff argued that changing the exchange location to the bagel store would save each parent ten to fifteen minutes of driving, but offered no reason to believe

that had not been equally true at the time of the 2014 orders. Similarly, plaintiff's request to change the Friday pickup time from 6:00 p.m. to 3:45 p.m. to avoid rush hour traffic was rejected because the trial court was "sure there was traffic in the same period of time when this was entered into" in November 21, 2014. Absent a change of circumstances, the court properly declined to disturb the exchange site and time the parties had used since 2014.

The trial court did grant defendant's motion to clarify where at the police departments exchanges should occur: "at the police department" in the November 21, 2014 order was modified to "inside the police departments and not in the unattended and unsupervised parking lot" in the February 2, 2016 order. Defense counsel argued that it had already "been ordered that it will be inside the police station," and that "[t]here is too much hostility . . . between these litigants to have it anywhere else." Plaintiff disagreed. However, his failure to provide us with defendant's certification supporting her motion leaves us with an inadequate record to review this relatively minor change. See R. 2:6-1(a)(1)(I).

D.

Defendant also argues the trial court erred in failing to grant his early December motion stating: "If it doesn't already exist, the [c]ourt should order the [r]ight of [f]irst [r]efusal

with its standard provisions." However, plaintiff did not orally argue for a right of first refusal at the January 29, 2016 hearing, or supply a supporting certification. Plaintiff cites defense counsel's statement that when defendant "works the 12-hour day at the hospital" on "the day of the exchange, the maternal grandparents serve as the conduit for getting [the child] to and from the [police] department." However, without evidence that circumstances had changed, the trial court properly rejected this request.

E.

In 2013, the Alaska Superior Court awarded defendant sole legal custody. Plaintiff's early December motion asserted the trial court should have "changed [that] to shared so that I can take an active role in planning and advocating for our [the child's] education and health." At the January 29 hearing, plaintiff argued that since the divorce he had been certified in New Jersey as a special education teacher, but he was similarly certified in Alaska before the divorce trial. He also argued he had been certified in other areas of child and family support since the divorce.

However, the great majority of those certifications preceded the November 21, 2014 order. That order denied plaintiff's motion to change custody "as there are no proofs as to any substantial

change in circumstances warranting same." Despite leaving sole legal custody with defendant, that order provided that plaintiff: "shall be entitled to have access to [the child's] educational and medical records, and shall be permitted to communicate with all education and medical providers." Given the November 21, 2014 order, the trial court properly rejected plaintiff's claim that he was being denied the opportunity to advocate for the child, and found no changed circumstances since that order justifying the termination of defendant's sole legal custody.

F.

Plaintiff also argues that the trial court erred in failing to grant his request for a parenting coordinator. Plaintiff's request for a parenting coordinator was denied without prejudice in an August 15, 2014 order. Plaintiff made reference to that 2014 ruling at the January 29 hearing, but he has failed to show that he re-raised this issue in his motions adjudicated in February 2016. Because our review is limited to the February 1 and February 2, 2016 orders, this argument is not properly before this court. In any event, he did not show a change of circumstances.

IV.

Plaintiff also argues the trial court in the first November 2 order erred in granting defendant's motion and awarding her counsel fees and costs in the amount of $1,455 "as a consequence

of filing the Order to Show Cause dated November 23, 2015, and the within Post-Judgment Motion." The basis of this award is unclear, but in part it concerns an exchange of orders to show cause regarding which parent would have the child on Thanksgiving, November 26, 2015.

On November 20, 2015, plaintiff filed a motion seeking an order to show cause in which he requested the "court to enforce [his] parent time for Thanksgiving by ordering defendant to provide transfer times or agree to my suggested times for pickup/drop[-]off." He attached the November 21, 2014 order's holiday schedule, which provided that he had "Thanksgiving Day and Friday after Thanksgiving" on "odd years." He also attached emails asking defendant to schedule his Thanksgiving time, to which she responded only: "Any questions about holidays and weekends revert back to order." In a November 20, 2015 ex parte order a first family judge granted plaintiff parenting time for Thanksgiving and the Friday after, and ordered plaintiff to serve defendant with the order.

However, in a November 24, 2015 order, a second family judge ordered that "[t]he Court Order entered on November 20, 2015 by the [first judge] awarding parenting time to Plaintiff for the Thanksgiving holiday . . . is hereby rescinded due to integral

facts not before [the first judge] at the time of issuance." The order gave defendant the Thanksgiving parenting time.

It is unclear why the second judge reversed the first judge, or why the trial court awarded counsel fees. Defense counsel argued that plaintiff "neglected to tell [the first judge] that his adversary was an attorney and that we should probably call the attorney before we make a ruling on an ex parte order." However, the first judge saw fit to adjudicate the application on an ex parte basis, the rules of court do not require prior notice of orders to show cause in all circumstances, and do not distinguish between represented and unrepresented parties. See R. 4:52-1(a), -2.

Defense counsel also argued that the Thanksgiving schedule in the November 21, 2014 order "had been reversed so that [plaintiff] had it in 2014, my client had it in 2015, [the second judge]'s order says that in 2016, it's back with [plaintiff]." However, the second judge's order says nothing about 2016, and nothing before us shows the November 21, 2014 order was modified only days after issuance.

Again, plaintiff has not supplied us with any certification accompanying defendant's motion for counsel fees. See R. 2:6-1(a)(1)(I). However, the orders that are before us raise questions about awarding fees for the Thanksgiving 2015 dispute. Moreover,

the trial court made no findings regarding the award of fees for that dispute or for defendant's post-judgment motion.

"[A]ll applications for the allowance of fees [in family actions] shall be supported by an affidavit of services," and the judge is required to consider specified factors. R. 4:42-9(a)(1), (b), (c); see R. 5:3-5(c), (d); R.P.C. 1.5. Here, "[u]nfortunately, the [trial court]'s decision to award counsel fees did not address the pertinent factors under Rule 5:3-5(c), and failed to make the required findings set forth therein." Clarke v. Clarke ex rel. Costine, 359 N.J. Super. 562, 572 (App. Div. 2003) (citing R. 1:7-4).

Under these circumstances, the appropriate course is to vacate that portion of the first February 2, 2016 order awarding counsel fees, and to "remand for the trial judge to reconsider whether to award counsel fees and to make findings of fact and conclusions of law with respect thereto." Ibid. We express no opinion on the merits. We affirm the remainder of that order, as well as the February 1, 2016 order and the second February 2, 2016 order.

Plaintiff's remaining arguments lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed in part, vacated in part, and remanded. We do not retain jurisdiction.