SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3081-20

DEVON MCINTOSH,

Plaintiff-Respondent,

v.

PHANIE MORRIS,

Defendant-Appellant.

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Submitted April 26, 2022 – Decided May 17, 2022

Before Judges Currier and Smith.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Passaic County, Docket No. FD-16-0361-12.

Hegge & Confusione, LLC, attorneys for appellant (Michael Confusione, of counsel and on the brief).

Erlina Perez, attorney for respondent.

PER CURIAM

Defendant Phanie Morris appeals from a June 24, 2021 Family Part order eliminating a travel provision and expanding the parenting time afforded to plaintiff Devon McIntosh. For the reasons that follow, we affirm.

I.

The parties were never married; their son, born March 17, 2011, is their only child. By all accounts, the parties' romantic relationship was brief, and their parenting relationship was discordant. Within six months of their son's birth, plaintiff filed a non-dissolution action for joint legal custody and parenting time. The trial court subsequently granted the parties joint legal custody of their son and designated defendant as the parent of primary residence and plaintiff as the parent of alternate residence. Plaintiff was granted parenting time every Wednesday and Friday without overnights.

Thereafter, the parties agreed to expand plaintiff's parenting time. A May 7, 2012 Family Part order afforded plaintiff parenting time with the parties' child on Thursdays and Fridays from 10:00 a.m. to 4:00 p.m. and Sunday evenings from 4:00 p.m. to 8:00 p.m.

Plaintiff made applications for additional parenting time in 2016 and 2017. In a 2016 consent order, the parties agreed to expand parenting time but limited overseas travel. Overseas travel was prohibited until plaintiff conferred

with the child's allergist and obtained an EpiPen due to the child's severe allergic reaction to multiple substances, including formaldehyde, red dye, dairy, peanuts, soy, wheat, and whitefish.

The parties also agreed to a parenting plan in 2017. The 2017 consent order maintained the parties' residential and legal custody designations. The order increased plaintiff's parenting time again, granting him time on alternate weekends, alternate Tuesdays, and alternate Thursdays. The order also provided for plaintiff's parenting time during holidays and summer months.

In March 2020, plaintiff filed yet another application, this time seeking modification of the parenting time and travel provisions in the 2016 and 2017 orders. The trial judge heard oral argument in July 2020, then ordered the parties to mediation. The parties were unsuccessful in reaching an agreement. Additional oral argument took place in April 2021.

At the hearing, plaintiff claimed that there was a change in circumstances based on his class schedule and that an alteration in his parenting time was required. Plaintiff proposed changes to the weekend drop-off time, as well as changes in the summer and holiday schedules. The net effect of plaintiff's proposed changes was to secure more parenting time with his son.

Plaintiff also sought modification of the 2016 travel limit. He sought permission to travel overseas with his child despite his failure to meet with the allergist. Plaintiff argued that he neglected to meet with the child's allergist because: his son is an insured on his medical benefits plan; he owns an EpiPen; and he already knows how to operate an EpiPen because of his "field of work."

Following the hearing, the judge issued an oral decision, concluding that plaintiff showed changed circumstances sufficient to warrant modifying the 2016 and 2017 consent orders' parenting time conditions and travel restrictions. The judge noted that plaintiff's requests for changes to the school year parenting time were "reasonable" given that it was a "slight change" from the 2017 order. The judge also found it significant that plaintiff has complied with his parenting time and has never been absent in the child's life. The judge relied on the "best interests of the child" standard, considering the factors set forth in N.J.S.A. 9:2-4(c). Most significantly, the judge recognized the child's age and plaintiff's desire to spend more quality time with his son. She also found the proposed schedule offers "more consistency" and stability.

The judge further noted that the proposed summer parenting time arrangement was "reasonable." She ordered plaintiff to "ensure that the child gets to all of his [extracurricular] activities during his parenting time."

Likewise, the judge approved plaintiff's requests for increased summer and holiday parenting time.

As to international travel, the judge granted plaintiff's application. The judge found that plaintiff had extended family in Jamaica and noted plaintiff's desire to introduce his child to them. The judge highlighted that the child is ten years old. She found that plaintiff had the ability to cope with the child's medical conditions, noted the lack of reported incidents, and cited plaintiff's awareness of the procedures needed if such an emergency arises.

The judge found that plaintiff "has a constitutional right . . . to travel internationally with the child as does mom." She added that "[t]here's no restriction under the law" that prevents international travel with one's child. Therefore, plaintiff "should be given that opportunity" if he wishes to exercise his rights. The judge ordered the parties to provide notice before any travel. She also ordered defendant to retain the passport. Lastly, she ordered that any travel arrangements need to be approved by defendant.

On appeal, defendant argues the following:

> I. THE FAMILY COURT ERRED IN GRANTING PLAINTIFF'S MOTION TO MODIFY THE PRIOR COURT ORDERS GOVERNING PARENTING TIME AND RELATED ISSUES.

II.

We accord "great deference to discretionary decisions of Family Part judges[,]" Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (citations omitted), in recognition of the "family courts' special jurisdiction and expertise in family matters . . . ." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 343 (2010) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). We are bound by the trial court's factual findings so long as they are supported by sufficient credible evidence. N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007) (citing In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)).

We afford a deferential standard of review to the factual findings of the trial court on appeal. Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). These findings will not be disturbed unless they are "so manifestly unsupported by or inconsistent with competent, relevant and reasonably credible evidence as to offend the interests of justice . . . ." Id. at 484 (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)). However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Hitesman v. Bridgeway, Inc., 218 N.J. 8, 26 (2014) (quoting

Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

III.

Defendant contends that the trial judge abused her discretion in finding that there were changed circumstances that warranted modifying the parenting time, and in making this determination, erred in applying N.J.S.A. 9:2-4. Defendant also contends the judge's factual finding of changed circumstances to modify the 2016 travel provision violates the child's best interests as outlined in N.J.S.A. 9:2-4. Further, defendant argues that even if plaintiff made a prima facie showing of changed circumstances, the judge abused her discretion by summarily granting plaintiff's application without holding a plenary hearing. We disagree.

A parent seeking to modify a parenting time schedule "bear[s] the threshold burden of showing changed circumstances which would affect the welfare of the children." Todd v. Sheridan, 268 N.J. Super. 387, 398 (App. Div. 1993) (citing Sheehan v. Sheehan, 51 N.J. Super. 276, 287 (App. Div. 1958)). Changed circumstances are evaluated based on those existing at the time the prior parenting time order was entered. See Donnelly v. Donnelly, 405 N.J. Super. 117, 127-28 (App. Div. 2009). Upon such a showing, the court may hold

a plenary hearing to resolve genuine issues of material fact. Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007) (citing Shaw v. Shaw, 138 N.J. Super. 436, 440 (App. Div. 1976)). See also R. 5:8-6.

Factors affecting a child's best interests include, but are not limited to:

> [T]he parents' ability to agree, communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; the interaction and relationship of the child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children.
> [N.J.S.A. 9:2-4(c).]

Applying these principles, we discern no abuse of discretion in the judge's order granting plaintiff's application for a parenting time modification without a plenary hearing. The judge addressed the statutory best interest factors and after analyzing the factors, focused on whether plaintiff demonstrated changed circumstances to warrant a change in parenting time, finding that he did. The

judge noted the modifications sought were a "slight deviation" from the previous consent orders and, thus, were "reasonable" when viewed in this context. Defendant asserts that there is "no reason why [the 2017 schedule] has to change" because it has "been working out so far." Defendant's position set forth in her certification does not present a "material factual dispute[]" which would warrant a plenary hearing. Harrington, 281 N.J. Super. at 47. See also Lepis v. Lepis, 83 N.J. 139, 159 (1980) (finding courts should disregard "[c]onclusory allegations" in deciding whether a plenary hearing is necessary). On this record we conclude the judge properly exercised her discretion in granting plaintiff's application without a plenary hearing.

Defendant also contends the judge's factual finding of changed circumstances to modify the 2016 travel provision without a plenary hearing violates the child's best interests as outlined in N.J.S.A. 9:2-4. We disagree.

The record shows no reported incidents of any medical emergencies during plaintiff's parenting time. Additionally, we find enough in the record to support the judge's finding that plaintiff could satisfactorily address his child's medical condition while traveling with him.

Affirmed.