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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3497-20**

MARCIE SANDERS,

Plaintiff-Respondent,

v.

SCOTT SANDERS,

Defendant-Appellant.

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Submitted September 13, 2022 – Decided December 21, 2022

Before Judges Messano and Gummer.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Bergen County,  
Docket No. FM-02-2823-16.

Scott Sanders, appellant pro se.

Hellring Lindeman Goldstein & Siegal, LLP, attorneys  
for respondent (Sheryl E. Koomer and Corinne B.  
Maloney, of counsel and on the brief).

PER CURIAM

This matter is before us a second time. Our prior opinion explained in detail the contentious divorce litigation that culminated in the parties' May 2018 default judgment of divorce (JOD). Sanders v. Sanders, No. 5092-17 (App. Div. July 21, 2020) (slip op. 1–7). At the time, "defendant was incarcerated, having been convicted and sentenced in federal district court for the Southern District of New York for multiple counts of mail fraud involving his livery cab business." Id. at 2; see also id. at 7 n.3 (noting that defendant appeared at the default hearing by phone from a penal institution). We affirmed the trial judge's decision to enter default, his refusal to vacate default, and his decision to enter the default JOD after a hearing, id. at 8, based on "the totality of defendant's contumacious conduct." Id. at 13.

In the written decision incorporated into the JOD, the trial judge awarded plaintiff "sole legal and residential custody" of the parties' two sons, born in 2002 and 2005, "until such time as the defendant is released from incarceration." The judge left the parties "to their own devi[c]es with regard to arranging visitation . . . while [defendant] is incarcerated in Florida," noting "[t]he children must be afforded an opportunity to meet with their father" subject to the penal institution's regulations.

In August 2020, defendant was released from the federal prison to serve the rest of his sentence on home detention pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), due to the COVID-19 pandemic.<sup>1</sup> Now residing in New City, New York, with his elderly mother and younger brother, defendant, in April 2021, filed a motion seeking joint legal custody of the children and implementation of a parenting-time schedule. Alternatively, defendant sought a plenary hearing based on changed circumstances and agreed to submit to reunification therapy if ordered by the judge. Defendant sought additional relief regarding enforcement of the JOD and counsel fees, but none of the issues raised by the resolution of those portions of the motion are before us.

Plaintiff filed a cross-motion in opposition. Among other things, she asked the court to order defendant to disclose the details and conditions of his home confinement and to direct him to file a Case Information Statement (CIS).

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<sup>1</sup> The CARES Act expanded the power of the Bureau of Prisons to "place a prisoner in home confinement" as an alternative to compassionate release. Pub. L. No. 116–136, 134 Stat. 281 (2020). The Attorney General instructed the Bureau of Prisons to make the most of this expanded power by placing in home confinement "all inmates whom [the Bureau] deem[s] suitable candidates." Increasing Use of Home Confinement at Institutions Most Affected by COVID-19, Office of the Attorney General (Apr. 3, 2020).

Plaintiff sought counsel fees. We do not address other relief sought in the cross-motion because those issues also are not before us.

After hearing oral argument, the same judge who had entered the JOD decided the motion and cross-motion, explaining his reasons in an oral opinion placed on the record. The judge concluded that defendant's request for modification of the JOD regarding joint custody or parenting time with the children was "premature." The judge noted defendant had provided no documentation that he had been "released from the care, custody[, and] control . . . of the federal government" and had provided only a document stating, "the earliest date that he will be . . . or . . . can be or may be eligible for release . . . is January . . . 2022."<sup>2</sup>

Noting the parties' eldest son was now an adult and capable of deciding whether to have any relationship with defendant, the judge focused his attention on the parties' younger son. The judge cited the lack of any "expert opinion" demonstrating defendant did not pose a risk of harm to the child. The judge

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<sup>2</sup> In a footnote in his brief, defendant claims whether his release to home confinement was a sufficient changed circumstance is now moot "due to his release from home confinement on January 4, 2022." The brief was filed December 31, 2021. Moreover, defendant cites to an exhibit in his appendix that is a screenshot from the Bureau of Prisons website and was filed with the trial court on May 20, 2021.

denied defendant's request for joint custody or parenting time "without prejudice until such time as [defendant] actually is granted his freedoms and until such time as he can demonstrate . . . he has taken steps to learn how he can be a father, [and] . . . he has his . . . life under control."

The judge also rejected defendant's request for parenting time on similar grounds before denying defendant's alternative request for a plenary hearing.

[Defendant] has neither made a prima facie showing demonstrating that it's in the best interest of [his son], to make that type of change now, nor has he fully released the information that regulates the control that the government has over his . . . present situation, and his freedom has not been restored fully, that request is premature and it is denied without prejudice.

The judge also refused to order reunification therapy, concluding defendant failed to provide sufficient information about the limits of his home confinement or any expert opinion about the appropriateness of beginning therapy.

In the May 28, 2021 order, the judge denied defendant's motion "in its entirety." The judge also compelled defendant to file an "updated and completed" CIS so "child support obligation[s] can be determined," and awarded

plaintiff \$9,687.87 in counsel fees and costs occasioned by defendant's "frivolous and vexatious" motion practice.<sup>3</sup> This appeal followed.

Defendant contends the judge erred by denying his requests for "visitation, custody, and/or reunification therapy." He also argues the judge mistakenly required only defendant to submit an updated CIS, and the fee award was "unreasonable." We have considered the arguments in light of the record and applicable legal standards. We affirm.<sup>4</sup>

### I.

Defendant argues that the JOD was, by its terms, a temporary award of custody to plaintiff solely because defendant was incarcerated. He claims the order under review effectively stripped him of fundamental parental rights over his son, violated his due process rights, and shifted the burden to defendant to prove his fitness as a parent.

We acknowledge parents' constitutional right to "maintain relationships with their children." N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527,

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<sup>3</sup> The order also restated defendant's obligation to pay a series of counsel fee awards made by the judge, our court following the appeal, and in other proceedings.

<sup>4</sup> Defendant raises additional issues in his reply brief which we do not consider. See, e.g., Pannucci v. Edgewood Park Senior Hous. – Phase 1, LLC, 465 N.J. Super. 403, 410 (App. Div. 2020).

553 (2014) (citing In re Guardianship of K.H.O., 161 N.J. 337, 346 (1999)). And "New Jersey's public policy to 'assure minor children of frequent and continuing contact with both parents after' separation or divorce." Bisbing v. Bisbing, 230 N.J. 309, 321 (2017) (quoting N.J.S.A. 9:2-4). However, in this case, the judge clearly stated that the proceeding was not about terminating defendant's parental rights, and the judge made no findings regarding parental fitness.

Moreover, the judge rejected defendant's claim that the JOD's award of custody to plaintiff was by default, instead referencing "other information . . . that was contained" in the court's opinion supporting the default JOD. The judge presided over a default hearing in which defense counsel cross-examined plaintiff over four non-consecutive days. See Sanders, slip op. at 7. Our deference to the Family Part's fact finding is "rooted in its familiarity with the case, [its] opportunity to make credibility judgments based on live testimony, and [its] expertise in family matters." N.J. Div. of Child Prot. & Permanency v. J.Y., 467 N.J. Super. 235, 244 (App. Div. 2021) (emphasis added) (citing Cesare v. Cesare, 154 N.J. 394, 411–13 (1998)). Defendant's argument completely mischaracterizes the judge's rationale for denying any change in custody or awarding defendant parenting time.

Instead, what undergirded the judge's decision was appropriate consideration of the best interests of the parties' son, and whether defendant's conclusory statements supporting his motion demonstrated a change of circumstances regarding those interests. It is axiomatic that a decision concerning custody is left to the sound discretion of the Family Part judge. Randazzo v. Randazzo, 184 N.J. 101, 113 (2005) (citing N.J.S.A. 2A:34-23). "The touchstone for all custody determinations has always been 'the best interest[s] of the child.'" Faucett v. Vasquez, 411 N.J. Super. 108, 118 (App. Div. 2009) (alteration in original) (quoting Kinsella v. Kinsella, 150 N.J. 276, 317 (1997)). "Custody issues are resolved using a best interests analysis that gives weight to the factors set forth in N.J.S.A. 9:2-4(c)." Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007) (citing V.C. v. M.J.B., 163 N.J. 200, 227–28 (2000)).

"A party seeking to modify custody must demonstrate changed circumstances that affect the welfare of the children." Ibid. (citing Borys v. Borys, 76 N.J. 103, 115–16 (1978)). "[W]hen the submissions show there is a genuine and substantial factual dispute regarding the welfare of the children,' the 'plenary hearing is necessary to resolve the factual dispute.'" Faucett, 411 N.J. Super. at 128 (alteration in original) (quoting Hand, 391 N.J. Super. at 105).



We agree with the judge that defendant failed to present a prima facie case of changed circumstances justifying modification of the JOD.

Lastly, defendant argues that "[a]t a [m]inimum," the judge should have ordered commencement of reunification therapy. Here, too, however, the judge did not foreclose the need for or benefit of such therapy; he simply said defendant failed to adduce any evidence that commencement of the therapy was in his son's best interests. We agree.

## II.

Defendant's remaining arguments require little discussion. He claims the judge erred in granting plaintiff's request to order defendant to file an updated CIS because plaintiff "made no argument . . . in support of" the relief. Defendant claims that ordering him to file a CIS without any justification supporting plaintiff's request denied him the opportunity to demand that plaintiff also file a CIS.

However, in the certification submitted to the trial court, defendant stated, "Should the [c]ourt require me to file a [CIS] detailing this information with related documents as [p]laintiff, I will certainly do so." More importantly, a CIS "shall be filed and served in all contested family actions," which include "any

issue as to custody." R. 5:5-2(a). Defendant's motion sought a change in custody.

Lastly, defendant contends the judge abused his discretion in awarding counsel fees to plaintiff because defendant's motion was premised on reasonable grounds supporting at least commencement of reunification therapy, and defendant had brought the motion in good faith. We are unpersuaded.

"An appellate court will not disturb a counsel fee award in a matrimonial case except 'on the "rarest occasion," and then only because of clear abuse of discretion.'" Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008). When awarding counsel fees, courts consider the factors set forth in Rule 5:3-5(c).

Here, the judge provided an in-depth and well-reasoned analysis of plaintiff's entitlement to an award of counsel fees and costs on the record. He addressed each factor of Rule 5:3-5(c) and made specific findings. Despite defendant's assertions, the court found he was insincere in his application to modify custody, as he had failed to provide any credible and pertinent information to support his request.

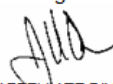
Although defendant urges us to review the fee award in light of his request to commence reunification therapy, that would have us ignore that defendant

asked for eleven forms of relief, many of which were previously litigated and for which he was previously sanctioned due to their lack of merit. Every argument was unsuccessful.

We have "stressed that 'a trial court must analyze the [relevant] factors in determining an award of reasonable counsel fees and then must state its reasons on the record for awarding a particular fee.'" R.M. v. Supreme Court of New Jersey, 190 N.J. 1, 12 (2007) (alteration in original) (quoting Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21 (2004)). The judge did so here. Because "there is satisfactory evidentiary support for the trial court's findings, '[our] task is complete and [we] should not disturb the result.'" Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013) (quoting Beck v. Beck, 86 N.J. 480, 496 (1981)).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION