SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3531-19

M.H.,

Plaintiff-Respondent,

v.

A.H.,

Defendant-Appellant.

Submitted October 13, 2021 – Decided May 4, 2022

Before Judges DeAlmeida and Smith.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FM-13-0126-16.

Cores & Associates, LLC, attorneys for appellant (Amy Sara Cores, on the briefs).

Robert S. Popescu, attorney for respondent.

PER CURIAM

Defendant A.H. appeals from the April 29, 2020 order of the Family Part denying his application to compel M.H. to engage in mediation to review and

modify the custody and parenting time provisions of the parties' memorandum of understanding (MOU) in this matrimonial dissolution matter, or to modify the parties' agreement based on a change of circumstances.[1] We affirm.

I.

The trial court found the following facts. The parties were married in 2011 and have one child, who was born that year. They separated in 2014 after entry of a final restraining order against A.H. pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35. M.H. subsequently withdrew the FRO and filed a complaint for divorce.

In 2015, following a court-ordered mediation, the parties, who were both represented by counsel, executed the MOU. The agreement provides for joint legal custody of the child, with M.H. serving as the parent of primary residence. Pursuant to the MOU, A.H. has physical custody of the child on alternate weekends and Mondays and Wednesdays after school.

When the parties entered into the MOU they lived two miles apart. The agreement provides that:

> IN THE EVENT either parent moves his/her residence to a distance greater than fifty (50) miles or one hour

[1] We use initials to identify the parties to preserve the confidentiality of information in the record. R. 1:38-3(d)(9), (12).

> travel time, then the provisions above shall no longer apply and shall have to be renegotiated.

The agreement also provides that the parties will "confer and review periodically the visitation plan as to its adequacy, feasibility and appropriateness in light of the children's [(sic)] age and developmental needs." The MOU also states that its provisions are "not intended to be affected by the remarriage of either parent."

The court notified the parties that absent an objection by a specified date, the MOU would be considered final. A.H. did not object. On May 27, 2016, the court entered an order finding the MOU to be conclusive as to the issues of custody and parenting time of the child.

A.H., however, subsequently moved to vacate the MOU to permit custody and parenting time to be resolved in the still-pending divorce action. On February 17, 2017, the trial court denied the motion, finding that "[t]he only conclusion that can be reached in this application is that [A.H.] is unhappy with the agreement he reached over a year ago and is trying to change the agreement despite the fact that there have been no changed circumstances."

On March 24, 2017, the trial court entered a final judgment of divorce (JOD) incorporating the terms of the MOU. At that time, the child was five years old and had started elementary school.

On March 24, 2020, A.H. moved for an order compelling the parties to mediate the custody and parenting time provisions of the MOU or, in the alternative, to modify the parties' agreement based on a change of circumstances. In support of his motion, A.H. argued that the MOU is "wholly inadequate to guide" the parties as the child ages. He argued the agreement "reads as though I am a glorified babysitter" and contains references – such as the child's nap time and pajamas – reflecting its obsolescence. He alleged that his child's needs have changed since the MOU was executed, noting he was eight years old, involved in sports, and had homework on the days A.H. had custody after school. In addition, A.H. argued that M.H. intended to remarry and move, although he did not know where she planned to live after her marriage. He expressed concern that M.H.'s relocation would have a negative effect on his parenting time.

M.H. opposed the motion. She argued A.H. had not established a change of circumstances since entry of the JOD in 2017. In addition, she argued that A.H.'s motion was part of his continuing, unsuccessful attempts to circumvent the terms of the MOU since its adoption by the court. While the motion was pending, M.H. remarried and moved sixteen miles from the home she occupied at the time of entry of the JOD.

On April 29, 2020, Judge Stacey D. Adams issued an order denying A.H.'s motion. Judge Adams filed a written opinion setting forth her findings of facts and conclusions of law. She concluded that legal precedents provide that remarriage alone does not constitute a change of circumstances warranting modification of the parties' agreement. The judge noted that this conclusion is bolstered here by the MOU's specific provision that its terms will not be affected by the remarriage of either party.

Judge Adams also found that the child's relocation to a new home sixteen miles from his prior residence does not warrant modification of the MOU. The judge noted that the MOU requires revising the custody and parenting time provisions when one of the parties moves more than fifty miles. M.H.'s relocation was to a location far less miles than the automatic trigger. In addition, the judge concluded that the additional driving time of approximately forty-five minutes anticipated by A.H. to pick up the child was not a significant impact on his parenting time that warranted compelled mediation or modification of the MOU. The court noted that prior to M.H.'s move, A.H., who coaches the child's sports team, enrolled him in sports lessons at a location twenty miles from his home. The court found that this undermined A.H.'s objection to M.H.'s sixteen-mile relocation.

Finally, Judge Adams concluded that the passage of time since the court incorporated the MOU into the JOD was insufficient to justify compelled mediation or modification of its provisions. The judge found that when the JOD was issued, the child was already enrolled in school and A.H. "has not presented any evidence demonstrating that his needs during the week have changed so significantly that parenting time should be revisited."

This appeal follows. A.H. argues that the trial court: (1) made findings of fact not supported by the record; (2) misapplied the law; (3) effectively modified the MOU; and (4) misinterpreted the parties' agreement.

II.

Our review of a Family Part's order is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). "[W]e do not overturn those determinations unless the court abused its discretion, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." Storey v. Storey, 373 N.J. Super. 464, 479 (App. Div. 2004). We must accord substantial deference to the findings of the Family Part due to that court's "special jurisdiction and expertise in family matters . . . ." Cesare, 154 N.J. at 413.

We must defer to the judge's factual determinations, so long as they are supported by substantial credible evidence in the record. Rova Farms Resort,

Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). This court's "[a]ppellate review does not consist of weighing evidence anew and making independent factual findings; rather, [this court's] function is to determine whether there is adequate evidence to support the judgment rendered at trial." Cannuscio v. Claridge Hotel & Casino, 319 N.J. Super. 342, 347 (App. Div. 1999) (citing State v. Johnson, 42 N.J. 146, 161 (1964)). We review de novo the court's legal conclusions. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Finally, settlement of matrimonial disputes is encouraged and highly valued in our court system. Quinn v. Quinn, 225 N.J. 34, 44 (2016) (citing Konzelman v. Konzelman, 158 N.J. 185, 193 (1999)). Settlement agreements are governed by basic contract principles and, as such, courts should discern and implement the parties' intent. J.B. v. W.B., 215 N.J. 305, 326 (2013); Pacifico v. Pacifico, 190 N.J. 258, 266 (2007). "The court's role is to consider what is written in the context of the circumstances at the time of drafting and to apply a rational meaning in keeping with the 'expressed general purpose.'" Pacifico, 190 N.J. at 266 (quoting Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 302 (1953)).

Custody orders are subject to revision based on the changed circumstances standard. Eaton v. Grau, 368 N.J. Super. 215, 222 (App. Div. 2004). As we explained in Costa v. Costa, 440 N.J. Super. 1, 4 (App. Div. 2015):

> [m]odification of an existing child custody order is a "'two-step process.'" R.K. v. F.K., 437 N.J. Super. 58, 62 (App. Div. 2014) (quoting Crews v. Crews, 164 N.J. 11, 28 (2000)). First, a party must show "a change of circumstances warranting modification" of the custodial arrangements. Id. at 63 (quoting Beck v. Beck, 86 N.J. 480, 496 n.8 (1981)). 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.'" Id. at 62-63 (citation omitted).

We review a trial court's determination regarding a change of circumstances for an abuse of discretion. Costa, 440 N.J. Super. at 4 (citing Hand v. Hand, 391 N.J. Super. 102, 111-12 (App. Div. 2007)).

Having carefully reviewed A.H.'s arguments in light of the record and applicable legal principles, we affirm the April 29, 2020 order for the reasons stated by Judge Adams in her thorough and well-reasoned written opinion. There is ample support in the record for Judge Adams's conclusion that A.H. failed to establish that M.H.'s relocation will have a significant impact on his parenting time or that the passage of time since the 2017 entry of the JOD

justifies either compelling M.H. to engage in mediation or a court-ordered modification of the custody and parenting time provisions of the MOU.

Affirmed.