

# RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

### SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-1755-21

J.G.,

Plaintiff-Respondent,

v.

D.G.,

Defendant-Appellant.

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Submitted May 24, 2023 – Decided June 19, 2023

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Morris County,  
Docket No. FM-14-1415-14.

Shaw Divorce & Family Law, LLC, attorneys for  
appellant (Andrew M. Shaw, on the brief).

Respondent has not filed a brief.

PER CURIAM

In this one-sided appeal, defendant D.G.<sup>1</sup> challenges the January 3, 2022 order denying his request for a plenary hearing to address the parties' custody and parenting time issues. We affirm.

## I.

Defendant and plaintiff J.G. are divorced and have three children together: M.G. (Max), born June 2003; K.G. (Kelly), born December 2005; and V.G. (Vance), born October 2009. Under the parties' 2017 judgment of divorce (JOD), which incorporated their custody and parenting time agreement (CPTA), they agreed to "share joint legal and physical custody" of their children and abide by "an equal parenting time schedule."

In July 2019, plaintiff filed an order to show cause (OTSC), seeking "temporary full custody" and "full medical decision making for" Kelly. Plaintiff certified Kelly was hospitalized for suicidal ideations and defendant refused to consent to Kelly taking the anti-depressants recommended by her social worker and psychiatrist. Plaintiff also certified Kelly threatened to "kill herself" if she had to return to defendant's home. The trial court denied plaintiff's request for emergent relief pending a return date on the OTSC.

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<sup>1</sup> We use initials for the parties and pseudonyms for their children to protect their privacy. R. 1:38-3(d)(3).

On August 5, 2019, the judge granted plaintiff's application for "sole temporary physical custody" of Kelly but ordered the parties to continue to share joint legal custody. Additionally, the judge directed plaintiff to seek defendant's prior consent for Kelly's treatment options but permitted plaintiff "to make the final decision with respect to any disputed treatment option." The judge also allowed defendant to continue exercising parenting time with Kelly "unless it bec[ame] contrary to the professional recommendations of Kelly's treating professionals." Additionally, he directed the parties to submit a "report from [Kelly's] treating mental health professional regarding recommendations for the reunification of [Kelly] and [d]efendant and whether it [was] therapeutically indicated for" defendant to resume a shared parenting time schedule. Defendant did not seek appellate review of this order.

In October 2019, defendant moved to reinstate his custody and parenting time rights under the CPTA. He certified Kelly's doctors refused to "make any recommendations regarding whether . . . her . . . exercis[ing] parenting time with [him] was contrary to her best interest," and stated he was not being consulted on any decisions regarding Kelly's treatment. He also certified he had no parenting time with Kelly after her release from the hospital, and she was readmitted to the hospital shortly thereafter.

Additionally, in support of his request to have his rights under the CPTA reinstated, defendant claimed Kelly's suicidal ideations worsened after she was put on Lexapro and there were "problems at [p]laintiff's . . . home." He asserted plaintiff abused prescription drugs "like Xanax and Valium," and was reported to the Division of Child Protection and Permanency (Division) for throwing an object at one of the parties' sons. Defendant further stated there was "no history of abuse between [him] and any of the children," and Kelly's "complaints" about living with him were "exclusively 'rules' based" because he was a stricter parent, whereas plaintiff was "content to be the 'fun' parent."

The trial court entered an order on October 4, 2019, lifting any existing restraints on defendant's legal custodial rights to Kelly, and directing the parties to engage in reunification therapy. However, the order also provided plaintiff would "continue to have sole temporary physical custody of Kelly pending successful completion of reunification therapy." This order also was not challenged on appeal.

In March 2020, plaintiff filed an emergent application for full "medical decision-making" authority regarding Kelly. Plaintiff certified defendant refused all "medication adjustments" recommended by Kelly's doctors and that the four reunification sessions Kelly had with defendant all "ended with [Kelly]

hysterically crying." The matter was rescheduled to the following month, but in the interim, defendant was ordered not to withhold approval for Kelly to receive medication recommended by her psychiatrist.

On April 2, 2020, another judge assigned to the case, who later entered the January 3, 2022 order that is the subject of this appeal, granted plaintiff "sole decision-making ability regarding [Kelly's] . . . mental health care and treatment until further [o]rder." The judge also required plaintiff to keep defendant "informed and advised of all decisions, treatments, medications and recommendations" pertaining to Kelly, and ordered reunification therapy to continue. Defendant did not appeal from the April 2, 2020 order.

In July 2021, plaintiff filed another OTSC regarding Kelly. Plaintiff asked for the right "to exercise her sole authority" and make decisions "for [Kelly's] mental health" so Kelly could work at a local shoe repair shop over defendant's objection. Defendant opposed the OTSC, certifying it would be unhealthy for Kelly to work at the shoe repair shop, given its high-pressure environment and the fact the shop had "sharp objects all over the store" which could place Kelly at risk, considering "her suicidal ideation and self-harm urges."

Defendant also alleged plaintiff's home was dangerous for the children, and particularly, Kelly, because plaintiff allowed the children to have "access to

alcohol and other drugs[,] including marijuana." Further, he submitted pictures of text message exchanges between plaintiff and the children where drugs and alcohol were mentioned, and a photo from a video Kelly posted that was captioned "other people[,] 'your kid smokes weed and drinks wtf'" and "my mom [says] 'weed is hardly a drug [, I] let her do it stfu.'"

Additionally, defendant certified plaintiff consistently violated the court's prior order by failing to keep him informed about Kelly's treatments and by thwarting reunification therapy. He asked that the judge reinstate his medical decision-making authority and "require [p]laintiff to abide by and cooperate with . . . the original order of therapy."

On July 20, 2021, the judge entered an order, permitting Kelly to work at the shoe repair shop and directing the parties to "cooperate and agree upon a therapist, preferably in-network, to facilitate Kelly's relationship with [d]efendant." Defendant did not challenge this order on appeal.

In August 2021, plaintiff filed a motion, in part, seeking relief from a prior order directing her to share in the cost of defendant's reunification therapy with Kelly. Defendant opposed the motion and filed a cross-motion, requesting, in part, that the judge enter an order "restricting [p]laintiff to supervised parenting time with . . . [a] court-approved program" and "requiring [her] to undergo a

substance abuse and psychological evaluation." Alternatively, he asked the judge to reinstate "the 50/50 parenting time schedule under the parties' CPTA[] and/or . . . schedule[] this matter for a plenary hearing as soon as possible on the issues of custody and parenting time." Defendant also requested that "the [c]ourt . . . obtain and review [the Division's] case file with respect to [p]laintiff and the parties' children." In support of this application, he certified plaintiff "stonewalled therapy" between defendant and Kelly in the prior year, and she continued to place the children at risk because of the poor home environment she created and her alleged ongoing drug and alcohol abuse. He also submitted police reports, undated text exchanges and undated photos of Kelly drinking and smoking.

The judge heard the parties' cross-applications on December 17, 2021. And although the parties were represented by counsel at that hearing, the judge allowed the parties the chance to speak directly to him after counsel presented their respective positions. When voicing their concerns, the parties spoke at length about Kelly. Also, throughout the December 17 hearing, defendant and his attorney repeatedly asked the judge to "set [the matter] down" for a plenary hearing to address the parties' custody and parenting time issues.

When the judge issued his oral decision on the motions, he denied

defendant's request for a plenary hearing, stating, "I do not find that there is a prima facie showing of changed circumstances which would warrant a change of custody hearing." He added, "I don't have enough for a hearing. I've got an order changing custody that's over two years old." The judge also noted that when another judge modified the CPTA in 2019, that judge "didn't change the custody situation . . . simply because . . . it was alleged that the child didn't want to go visit with dad. It's much more complex than that, much more." He continued, "the reason for the change of custody was because the child was threatening to commit suicide if the child had to stay or visit with" defendant.

Further, the judge stated Kelly's "mental health issue is not being helped by the . . . animosity that these two parents can't figure out how to put aside." He also confirmed he would "get the [Division's] files and start with that," but the parties were directed to "continue reunification therapy" in the interim.

Additionally, the judge denied defendant's request that plaintiff have supervised visits with the children and undergo substance abuse and psychological evaluations, again stating he did "not find . . . a prima facie showing of changed circumstances." The judge further stated, "[I] need to have compliance with the prior court order and I need both parties to engage." Moreover, he ordered there to "be no drug or alcohol consumption by the



children . . . while in the households . . . of the[ir] respective parents." The judge entered a conforming order on January 3, 2022.

## II.

On appeal, defendant first argues his custody and parenting time rights were restricted "without a testimonial hearing," and the judge "ignored evidence that plaintiff allowed the parties' children to abuse drugs and alcohol in her home." Accordingly, he urges us to reverse the January 3 order and "remand for discovery, mediation, and an expedited plenary hearing as to the best interests of the . . . children." He also contends "this matter should be remanded to a new judge" because the judge who entered the January 3 order "expressed strong and unsupported views, engaged in serious procedural irregularities, and may be committed to [his] findings."

Our review of a Family Part order is limited. See Cesare v. Cesare, 154 N.J. 394, 411-13 (1998). Substantial deference is accorded to a Family Part judge's findings of fact because of their special expertise in family matters. Id. at 413. Thus, we defer to the Family Part judge's determinations, absent an abuse of discretion, and will not disturb such determinations unless they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Id. at 412

(quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). However, we "owe no deference to a trial court's interpretation of the law, and review issues of law de novo." Cumberland Farms, Inc. v. N.J. Dep't of Env't Prot., 447 N.J. Super. 423, 438 (App. Div. 2016).

A decision concerning custody is left to the sound discretion of a Family Part judge. See Randazzo v. Randazzo, 184 N.J. 101, 113 (2005). In any custody or parenting time dispute, "it is well settled that the court's primary consideration is the best interests of the children." Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007) (citing Kinsella v. Kinsella, 150 N.J. 276, 317 (1997)).

"A party seeking to modify custody must demonstrate changed circumstances that affect the welfare of the children," and that the proposed modification will serve the children's "best interests." Ibid. Stated differently, the party seeking to change a judgment or agreement involving a custodial arrangement bears the burden of proof to demonstrate the status quo is no longer in a child's best interest. See Bisbing v. Bisbing, 230 N.J. 309, 322 (2017).

A party seeking modification of a custody or parenting time arrangement is entitled to a plenary hearing as to the child's best interests only after establishing a prima facie case of a change in circumstances. Costa v. Costa,

440 N.J. Super. 1, 4 (App. Div. 2015). That is because "not every factual dispute that arises in the context of matrimonial proceedings triggers the need for a plenary hearing." Harrington v. Harrington, 281 N.J. Super. 39, 47 (App. Div. 1995) (citing Adler v. Adler, 229 N.J. Super. 496, 500 (App. Div. 1988)). In fact, "a plenary hearing is only required if there is a genuine, material and legitimate factual dispute." Segal v. Lynch, 211 N.J. 230, 264-65 (2012) (citations omitted). "Without such a standard, courts would be obligated to hold hearings on every modification application." Lepis v. Lepis, 83 N.J. 139, 159 (1980).

"In determining whether a material fact is in dispute, a court should rely on the supporting documents and affidavits of the parties. Conclusory allegations [are], of course, . . . disregarded." Ibid. Also, the necessity of a plenary hearing must be demonstrated by the movant. Hand, 391 N.J. Super. at 106. We review a trial court's denial of a plenary hearing for an abuse of discretion. See Costa, 440 N.J. Super. at 4.

Guided by these standards, we perceive no reason to disturb the January 3, 2022 order. As the judge noted during the December 17 hearing, defendant's custody and parenting time rights under the CPTA were initially modified by the court in 2019 "because [Kelly] was threatening to commit suicide if [she]

had to stay or visit with" defendant. The record also reflects that when Kelly was hospitalized in the summer of 2019, the parties could not agree on her course of treatment. Subsequently, the parties continued to argue about Kelly's treatment, where she should work, and whether she should be forced to stay or live with her father over her objection, so the trial court entered a series of orders modifying the parties' custody and parenting time rights. Yet the only order from which defendant appeals is the January 3, 2022 order.

Under these circumstances, we are not persuaded the judge abused his discretion in finding there was no need for a plenary hearing on custody and parenting time issues. In fact, defendant presented no medical report or other competent evidence at the December 17 hearing to make a prima facie showing it would be in Kelly's best interests to alter the existing custody and parenting time arrangements, much less return to the status quo that existed before the CPTA was modified in 2019. Because defendant failed to demonstrate a substantial change in circumstances occurred from the time the order immediately preceding the January 3 order was entered to when the order under appeal was entered, he was not entitled to a plenary hearing. Further, we are satisfied that given the parties' ongoing acrimonious litigation, Kelly's significant mental health history, her strained relationship with defendant, and

defendant's allegations about plaintiff's home environment, the judge properly directed the parties to engage in reunification therapy, prohibited them from allowing the children access to alcohol or illicit drugs in their homes, and ordered the Division to release its file so the judge could review it and ensure the children's best interests were protected.

Finally, we note that Kelly reaches majority in December 2023. Therefore, she, rather than a Family Part judge, soon will determine how much time she spends with either party. We trust the safeguards provided under the January 3 order will serve her best interests, and that of her minor sibling, going forward.

Based on our conclusions, we need not address defendant's remaining argument that this matter should be reassigned to another judge on remand.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION