SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2217-21

V.A.,

Plaintiff-Appellant,

v.

C.M., JR.,

Defendant-Respondent.

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Argued March 8, 2023 – Decided April 4, 2023

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Cumberland County, Docket No. FD-06-0002-18.

Angelina Montanez-Santiago argued the cause for appellant.

Respondent has not filed a brief.

PER CURIAM

In this one-sided appeal plaintiff, V.A.,[1] challenges a December 13, 2021 order allowing defendant C.M., Jr. to relocate to Florida with the parties' son, J.M. (Jack). Plaintiff also appeals from a March 2, 2022 order denying her motion to reconsider the December 13 order. Because we conclude defendant failed to present a prima facie case of "cause" for Jack's relocation and was not entitled to a plenary hearing, and because his proofs at the relocation hearing were lacking under N.J.S.A. 9:2-2, we reverse the December 13 order and remand for further proceedings. Therefore, we need not address plaintiff's appeal from the March 2 order.

I.

We glean the facts from the limited motion record. The parties never married. Following Jack's birth in 2015, plaintiff was the parent of primary residence (PPR) and defendant, as the parent of alternate residence (PAR), exercised parenting time on alternating weekends. On May 5, 2020, the trial court awarded the parties joint legal custody of Jack, designated defendant as the PPR, and named plaintiff as the PAR. The May 5 order also stated plaintiff was entitled to parenting time every other week from Sunday to Saturday, and

[1] We use initials for the parties and a fictitious name for the minor to protect their privacy. R. 1:38-3(d)(13).

the child was to be exchanged curbside "on Sunday[s] at 5 p.m." Additionally, the May 5 order barred plaintiff's current husband, who was facing charges for conspiracy to commit murder, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:11-3, from having contact with Jack. Further, defendant's child support obligation was terminated under the order, but his arrears were ordered to be paid off at the rate of $90 per week.

Defendant moved to modify the May 5 order four months after its entry, asking that plaintiff's parenting time be reduced to alternating weekends for the benefit of Jack's "daily routine, mental health and sense of security." Plaintiff formally opposed the motion, and in February 2021, the trial court ordered the parties to attend mediation to resolve their issues. During mediation, defendant revealed he planned to move to Florida "as of May or June 2021." After mediation failed, the judge entered an order in April 2021, directing that Jack "continue to attend therapy," plaintiff was "entitled to attend therapy with the minor child," and scheduling the matter to return to court in June 2021. No change to the parenting time schedule was included in the April 2021 order.

In July 2021, while both parties were still living in Vineland, defendant filed a motion to relocate to Florida with Jack. Using a standardized non-dissolution (FD) form, defendant outlined the basis for his application in four

sentences, stating: "I am requesting to relocate [Jack] to the [S]tate of Florida. Better living situation, better educational optio[n]s, and a better en[viron]ment. My [fiancée] and I have an option to give a better quality of life for [Jack]. There will [be] better financial stability, free personalized learning, and [etc.]." Defendant's motion papers were not signed, nor did he certify that any statements he made were true, and no exhibits other than a confidential litigant information statement were referenced in his motion papers.

The trial court subsequently issued notices to the parties to appear before the court on August 24, 2021 for a "temporary custody hearing." Just five days before the scheduled hearing date, plaintiff filed a cross-motion with a supporting certification, opposing defendant's motion and asking the trial court to modify the May 5, 2020 order to allow her to resume her role as Jack's PPR.

The trial court conducted a virtual hearing on August 24, 2021, during which plaintiff was represented by counsel and defendant appeared pro se. At the outset of the hearing, the parties agreed they currently shared physical custody of Jack under the May 5, 2020 order, with "schedule[ed] parenting time one week on, one week off." After summarizing the relief requested in the parties' cross applications, the judge stated:

> [i]n order for the court to determine whether . . . to allow the child to move to Florida with [his] father, we

> have to hold what's called [a] Bisbing[2] hearing under the Supreme Court case of Bisbing v. Bisbing, to determine whether . . . moving the child to Florida with his father would be in the . . . child's best interest.

The judge asked defendant if he had recently moved to Florida and defendant answered, "[y]es, I did." Immediately thereafter, the judge swore in the parties and invited defendant to "present [his] testimony." Defendant's initial testimony was brief, spanning less than five pages of the hearing transcript. He stated there were "a couple of reasons why [he had] to move out of state," and explained:

> I met a wonderful partner, she's very involved in [Jack's] life. Her family is also involved in [Jack's] life and we decided to move . . . to Florida. It was better for everyone in the situation. Understanding that [Jack's] mother was in New Jersey, I did ask if we could talk to her about it. . . . [S]he kept denying it the whole time, which I understand, but there's a few things that I wanted to present. . . .
>
> I would either be okay with [Jack] being with me throughout the school year and then every . . . school break and even summertime and two weeks of vacations or as much time as possible to give to the mother, or vice versa. It's just that this is the best way for me – moving to Florida is just going to be the best way for me to provide for . . . my child. . . . I believe . . . he's more stable, more secure here [in Florida].
>
> [(emphasis added).]

[2] Bisbing v. Bisbing, 230 N.J. 309 (2017).

Defendant also testified the child's schooling was "constantly an issue" between the parties. Additionally, he stated, "I don't know how [plaintiff's] household is going to stand if her husband does go to jail or prison, which we don't know if it's going to happen and that's something that I feel as though it's not stable for [Jack]." Defendant also claimed there was "too much back and forth" between the parties, "a lot of lack of communication, a lot of irresponsibilit[y] from both sides, and this [was] not healthy for" Jack. Defendant added, "I feel as though him coming to [Florida] will be more beneficial for him. And that's all I really have to say."

The judge directed plaintiff's counsel to cross-examine defendant, and she asked him ten questions. Counsel elicited that defendant: (1) moved to Florida the preceding week; (2) registered Jack for school in Florida "in case" the relocation application was granted; (3) brought Jack to Florida the week prior but did not accompany the child on a flight back to New Jersey, instead, arranging for his brother to retrieve Jack from the airport and drop him off for plaintiff's parenting time; and (4) filed his relocation application shortly before he signed a lease to live in Florida.

When cross-examination concluded, the judge asked defendant if he had "any proposed exhibits" for the court to consider. Defendant answered, "[n]o."

The judge then inquired if defendant wanted the "lease [for his Florida home] to be admitted into evidence," and defendant answered affirmatively.

With the lease in evidence, the judge questioned why it was only a "four-month lease." Defendant responded he was "looking for specific areas and specific places to purchase a home," and "it's a little difficult to look for a good home. But we have a few options that we're . . . looking into." Defendant clarified he executed a short-term lease but still hoped to buy a home. He provided no specifics about: where he was currently living; the size of his home; the number of occupants living with him; whether Jack would have his own room if he moved to Florida; the type of neighborhoods defendant was considering for his next move; where Jack would attend school, how he selected Jack's school before registering him, the quality of the school in Florida where Jack was registered versus the quality of the school Jack would attend in New Jersey; or what child care was available for Jack if defendant secured employment in Florida.

After the judge questioned defendant about his lease, the judge again asked defendant if he had "[a]ny other exhibits." Defendant stated he did and would "send" proof Jack was "all registered" for school. The judge responded, "I don't need to see it, sir. You testified that you've advanced the registration in

Florida. . . . Anything else you wish me to consider, sir?" Defendant answered, "[n]o." However, the judge probed further, asking defendant what type of work he did and where he was employed. Defendant testified he worked for a solar engineering company in New Jersey and was "discussing . . . with [his] employer" whether he could do "the same sort of work" in Florida. Defendant added, "if not, I do have some job opportunities here that I'm looking into . . . . [S]o that's not going to be an issue."

Next, the judge asked defendant if Jack had any special needs and whether a child study team evaluated Jack. Defendant testified no child study team was involved with Jack, but Jack's "therapist believe[d] . . . he ha[d] ADHD with some anxiety" and thought "the situation [was] actually heightening his attention deficit and his anxiety to the point where . . . they [were] talking about . . . medication possibly in the future."

Following the judge's additional questions, plaintiff's counsel was offered, but declined to further cross-examine defendant, and the following exchange occurred:

> Plaintiff's Counsel: Your Honor, . . . prior to my going forward, I want to make sure that I didn't receive any exhibits at all except for the application. I want to make sure Your Honor can provide me with any additional exhibits.

> The Court: The only exhibit I'm aware of is the leas[e] that I admitted into evidence. I'm not seeing anything else.
>
> Plaintiff's Counsel: Oh. Was there a certification by . . . defendant submitted to the court?
>
> The Court: I don't believe so. Did . . . he file a certification? Your client[] filed a certification.
>
> Plaintiff's Counsel: Correct, Your Honor.
>
> The Court: I can double check his application, one second.

The judge located defendant's motion papers, recited defendant's four-sentence, uncertified statement of why defendant wanted to relocate with Jack to Florida and questioned defendant as follows:

> The Court: [Y]ou didn't file any kind of certification in addition to your application, did you sir?
>
> Defendant: No – what certification[?]
>
> The Court: All right[,] if you didn't file one, then there isn't any. The [question] is[,] did you file an additional certification? I did not see one, sir.
>
> Defendant: No.
>
> The Court: Okay. The answer is no, counsel. You can proceed.

After pointing out to the court that her "client did provide a certification to the court," plaintiff's counsel stated plaintiff was "requesting at this time . . .

that [defendant's] application be denied and he be prohibited from relocating the child from the State of New Jersey." Further, plaintiff's counsel stated, "as far as the . . . testimony that [defendant's] given, there's no basis for" relocation. The judge made no ruling on counsel's request.

Plaintiff's counsel next argued defendant contacted the Division of Child Protection and Permanency (DCPP) "to make allegation[s] and . . . that matter [was] still pending." She also highlighted that under a recent order, defendant "was to provide information regarding the therapist [he] was taking the child to and he never provided that information or confirmation that the child [was] receiving therapy." Further, counsel contended that while defendant lived in New Jersey, he removed Jack from the school he attended for a year and "moved him . . . to a daycare center." She added, "of course, my client didn't consent to that." Moreover, counsel argued defendant "went as far as taking the child to Florida – [plaintiff] didn't know he was in Florida. But a case worker for [DCPP] had to call him and say you need to bring the child back . . . for [plaintiff's] parenting time." Finally, counsel stated she was prepared to ask plaintiff some questions but reserved the right to give a closing statement. Without further comment, the judge asked counsel, "[c]an you examine your client?"

During plaintiff's limited direct examination, she stated she objected to defendant's relocation application because it was not in Jack's best interest and Jack would have "no stability" in Florida. Plaintiff also testified she: never met defendant's fiancée; was unaware defendant moved to Florida; did not know he traveled to Florida with Jack earlier that month; and only found out defendant took Jack to Florida after a DCPP caseworker called defendant and asked to see the child.

Additionally, plaintiff stated she took care of Jack's educational and medical needs but was not involved in his therapy because defendant never provided her with the therapist's name nor confirmed Jack was seeing a therapist. After plaintiff's counsel asked plaintiff about Jack's school in Vineland, the judge interjected that he was "very familiar with the Vineland public school system" and didn't "need to hear any testimony about it."

Next, the judge posed questions to plaintiff about her marital status. She responded she was separated from her husband, her husband was not detained on his pending criminal charges, and she had not decided if she would divorce him. Further, plaintiff stated Jack had no contact with her husband, consistent with a prior court order. She also testified she lived with her children and her grandmother, Jack had "a good relationship" with his ten-month-old brother, and

"love[d] him very much."

In response to the judge's questions about her employment status, plaintiff testified she was due to "start work [the] next month" as a full-time bank teller. The judge asked what she would "do for childcare" if Jack remained in her custody. Plaintiff answered, "[m]y grandma has always taken care of [Jack] and she'll be taking care of my baby as well." In response to the judge's inquiry about whether she received support from her husband, plaintiff stated, "if I need money, I'll ask him and . . . he never has a problem in giving it to me." She also stated her husband paid for various monthly expenses, including her utilities, without specifying how much he contributed.

When defendant was permitted to cross-examine plaintiff, he asked her seven questions. Notably, the judge then told the parties, "I need some more information to decide this case." He ordered defendant to provide the court and counsel with "a report from [Jack's] treating psychologist," to describe "what the course of treatment was and any recommendations" the therapist made when therapy concluded. Further, the judge stated, "I need to see any report cards or progress reports of any preschool . . . the child attended this past year." Additionally, the judge advised the parties he would ask DCPP "to provide . . . a summary of whatever investigation they engaged in in this matter," adding,

"nobody has asked for that and I'm curious what the issues were and what they found to be going on."[3]

The judge also stated he would "render a decision . . . consistent with the holding[] of Bisbing v. Bisbing" once he received the requested information from DCPP and defendant, and did not "really need a closing from" plaintiff's counsel unless she wished to address the court because he "underst[ood her] argument completely." Plaintiff's counsel opted not to deliver a closing statement but asked that Jack remain with plaintiff pending a decision from the court. Defendant concurred, stating, "[t]he more time spent before it's decided with her, the better."

Before ending the hearing, the judge told the parties and counsel, "frankly, I haven't a clue what I'm going to do with this case, but I will have a decision, well-reasoned, based on the facts and the law when I decide it." Reiterating the importance of receiving a report from Jack's therapist, the judge stated, "I frankly would have expected to have had that report in my hands as part of this hearing. I'm disappointed that I don't, but I also understand, sir, that you're a layperson and not a lawyer and might not have really appreciated the need for

[3] The record reflects DCPP investigated a report from defendant that Jack was seeing plaintiff's husband, in violation of the court's order and plaintiff's husband was abusive to Jack. DCPP deemed these allegations unfounded.

that report."[4]

Plaintiff's counsel asked the judge, "are we going to have another conference or appearance before the decision or is the decision going to be made?" The judge told the parties they would be given a date in the future, when he would "place the decision on the record."

On October 25, 2021, Mark C. Cox, Ph.D, submitted a two-page, handwritten letter to the court, confirming he met Jack, defendant, and defendant's fiancée "for a total of seven visits" between April and June 2021, Dr. Cox stated he had "not met the mother, nor ha[d] she called." Additionally, the letter reflected Jack was diagnosed with ADHD, and "adjustment disorder with anxiety." Further, the letter noted that on June 3, 2021, Dr. Cox informed defendant Jack needed: a "stable, predictable environment, which has clear structure and less chaos"; and "special education in school, and possibly a private tutor at home." Lastly, the letter stated: "I hope that [Jack, defendant and his fiancée] do well in their new Florida home."

Dr. Cox's uncertified letter provided no details about his qualifications or

[4] There is no report in the record from any therapist predating the August 24 hearing. Instead, plaintiff provided us with a letter from Jack's therapist, in redacted form, dated October 25, 2021; this is the same letter the judge referenced in his December 13 and March 2 decisions.

area of expertise, whether he performed any testing on Jack, what course of treatment, if any, he recommended for the child, or what he was told about the parties' circumstances. The letter did not mention whether Dr. Cox attempted to contact plaintiff before submitting the letter.

On December 13, 2021, the parties returned to court. Defendant appeared with counsel, who was told by the judge after counsel entered his appearance on the record, "this case was tried to conclusion. I'm about to render my decision." Defendant's attorney responded, "I heard that on Friday, Judge, and I was surprised. . . . [M]y client . . . believed that evidence and testimony was still open." Defendant's counsel asked if the court had received a medical report from Jack's doctor, to which the judge responded, "I believe we've received everything we need for me to render this decision."

As promised, the judge rendered his decision orally. Citing Bisbing, the judge analyzed the fourteen factors enumerated under N.J.S.A. 9:2-4(c), namely:

> the 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).]

Regarding the parties ability to agree, communicate, and cooperate in matters relating to the child, the judge concluded "[d]efendant's behavior demonstrates that if the child were to be relocated to Florida, he would fail to adequately include the plaintiff in the child's life . . . . [T]his factor weighs against the defendant's relocation application." Additionally, the judge stated that considering "the interaction and relationship of the child with [his] parents and siblings," and "[d]ue to the relationship [Jack] has with his baby brother, this factor suggests . . . the [c]ourt should reject [d]efendant's relocation application." Further, the judge considered the geographical proximity of the parents' homes, and found Jack

> spent most of his life in New Jersey, and requires a stable home. Thus, moving the child so far from everything he knows in New Jersey may cause a great disruption and period of instability for him. Therefore, this factor weighs against [d]efendant's application to relocate the child to Florida.

Additionally, the judge found the factors involving the parties' "willingness to accept custody," "the history of domestic violence," "the safety of the child," "the extent and quality of time spent with the child prior to or subsequent to [the parties'] separation," and "the parents' employment responsibilities" did not weigh in either party's favor. Moreover, the judge found Jack's preference about relocation was "not relevant," due to his young age, nor was either parent's fitness "relevant to the [c]ourt's analysis," because "[n]either party . . . raised any evidence that either parent [was] unfit."

Turning to "the quality and continuity of the child's education," the judge observed:

> the parties have not directly compared the child's school in New Jersey and any school he might attend in Florida. However, the child currently attends school in New Jersey. Thus, changing the child's school may disrupt the child's education. However, the child is only seven years old. Therefore, . . . the child has just begun his life as a student . . . . [While] this factor weighs in . . . [p]laintiff's favor[, it] does not largely influence the [c]ourt's analysis.
>
> [(emphasis added).]

Regarding "the needs of the child," the judge noted Jack was diagnosed with ADHD and adjustment disorder with anxiety, and Dr. Cox recommended Jack "be in a stable environment, receive special education in school and

possibly study with a private tutor." Further, the judge found:

> [b]oth parties have demonstrated their ability to tend to the child's needs . . . . However, of the two parties, it appears that [d]efendant could provide the child with a more stable life . . . . Additionally, if plaintiff's husband is incarcerated, it may cause chaos in plaintiff's life as well as the child's.
>
> The recommendations that the [c]ourt received from the child's psychologist inform the [c]ourt that providing the child with stability and less chaos is of paramount importance. Therefore, since [d]efendant is able to provide a more stable environment, this factor weighs heavily in favor of granting [d]efendant's application for relocation.

Turning to the factor involving "the stability of the home environment offered," the judge determined that because the child was born in New Jersey and "resided here for the great majority of his life . . . , allowing the child to move to Florida would be a large disruption to the child's current environment. Thus, this factor would initially appear to favor [p]laintiff's cross application." Nonetheless, the judge stated:

> it appears . . . [d]efendant would provide the child with a more stable home. Defendant has a lease for a house in Florida and plans to buy a home there with his fiancé[e] once the lease is up. In [p]laintiff's testimony, she stated . . . her husband helps pay for her bills to support plaintiff and her children. However, it is unclear as to whether [she] would be able to afford living in her home in New Jersey if her husband would be sent to jail. Defendant did not present evidence that

> he had employment in Florida, but [d]efendant testified . . . that he had different possible job opportunities waiting for him there.[5]
>
> On the contrary, [p]laintiff's testimony suggests that the stability of her home is at least in part dependent on her husband's support. Yet, plaintiff's husband has been facing severe criminal charges for years, with the possibility of incarceration constantly looming over him. Accordingly, this factor mostly favors [d]efendant's application to relocate the child to Florida.
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> [(emphasis added).]

Finally, regarding "the age and number of children" at issue, the judge concluded the parties' dispute centered around only one child; he also mistakenly found Jack was "seven years old." Further, the judge found Jack's young age "reflect[ed] his need for a stable living environment" so "the child should primarily reside with one parent and live with the other during extended periods of time[,] such as longer breaks from school" to "avoid constantly traveling back and forth between New Jersey and Florida."

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[5] To the extent the judge referenced the parties' financial circumstances in his December 13 oral and written opinions, and reiterated those findings in his March 2 written opinion, we observe that neither party presented testimony or exhibits during the August 24 hearing regarding their assets, liabilities, or their anticipated or prior level of earnings. Further, neither party presented proof of their expenses, other than defendant's four-month lease, which would have expired by the time the judge rendered his December 13 opinions.

Acknowledging "this case . . . [was] a close call," the judge directed Jack to live with defendant during the school year and awarded plaintiff parenting time "during the child's breaks from school." Additionally, the judge stated plaintiff would have "open and liberal parenting time with" Jack whenever she traveled to Florida, and her costs to spend parenting time in Florida would be paid by defendant.[6] Given the judge's findings, he granted defendant's relocation application and denied plaintiff's application for the child to stay in New Jersey and for her to resume her role as Jack's PPR.

Plaintiff moved for reconsideration of the December 13 order, arguing, in part, the judge failed to conduct a trial on the issue of relocation. After hearing argument on the application, the judge reserved decision. On March 2, 2022, the court denied the reconsideration motion.

II.

On appeal, plaintiff contends the trial court erred by: (1) granting defendant's relocation application, despite defendant's failure to show it was in

[6] The judge's December 13 written opinion appears to contain a clerical error to the effect that "plaintiff" is responsible to "pay the costs necessary to effectuate [her] parenting time" with Jack. However, the accompanying December 13 order states "[d]efendant shall pay the costs to effectuate [p]laintiff's parenting time with the child." Likewise, the judge's December 13 oral opinion and his March 2 written opinion reflect defendant is responsible for "the costs to effectuate [p]laintiff's parenting time with the child."

Jack's best interests to move to Florida; (2) denying her cross-motion to modify the May 2020 order and name her as Jack's PPR; (3) finding a substantial change in circumstances warranted modification of the May 5, 2020 order in defendant's favor; (4) "fail[ing] to conduct a trial" on plaintiff's relocation application; and (5) denying her reconsideration motion. Because we agree with plaintiff's first argument, we reverse the December 13 order and remand for further proceedings. Accordingly, we do not address her remaining arguments.

Our review of a family court order is limited. See Cesare v. Cesare, 154 N.J. 394, 411 (1998). Generally, the family court's factual findings "are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)).

"Discretionary determinations, supported by the record, are examined to discern whether an abuse of reasoned discretion has occurred." Ricci v. Ricci, 448 N.J. Super. 546, 564 (App. Div. 2017) (citing Gac v. Gac, 186 N.J. 535, 547 (2006)). An abuse of discretion occurs when a trial court's decision "rested on an impermissible basis, considered irrelevant or inappropriate factors, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." Elrom v. Elrom, 439 N.J. Super. 424, 434

(App. Div. 2015) (internal quotation marks and citations omitted). Parenthetically, a trial court's denial of a reconsideration motion also is reviewed for an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (citation omitted). However, a court's legal conclusions are reviewed de novo. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019).

In any custody or parenting time dispute, "the court's primary consideration is the best interests of the children." Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007). Therefore, 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 child[]." Todd v. Sheridan, 268 N.J. Super. 387, 398 (App. Div. 1993) (citation omitted). Stated differently, a party seeking to change a judgment involving a custodial arrangement bears the burden of proof to demonstrate the status quo is no longer in a child's best interest. Bisbing, 230 N.J. at 322; see also R.K. v. F.K., 437 N.J. Super. 58, 62-63 (App. Div. 2014).

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). "A parent's relocation may constitute a substantial change of circumstances warranting modification of the physical

custody arrangement." Fall & Romanowski, N.J. Family Law: Child Custody, Protection & Support § 24:2-2(i) (2022-2023).

Once the moving party makes a prima facie showing of changed circumstances, only then is the moving party 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 . . . order." Faucett v. Vasquez, 411 N.J. Super. 108, 111 (App. Div. 2009). Thus, a plenary hearing is not required unless the parties' submissions demonstrate "there is a genuine and substantial factual dispute regarding the welfare of the children." Hand, 391 N.J. Super. at 105; see also Lepis v. Lepis, 83 N.J. 139, 159 (1980) (holding "a party must clearly demonstrate the existence of a genuine issue as to a material fact before a hearing is necessary," and noting that "[w]ithout such a standard, courts would be obligated to hold hearings on every modification application").

The Family Part has substantial discretion in granting or denying applications to modify parenting time orders, and, generally, we will defer to the Family Part's decision on "whether a plenary hearing must be scheduled." Jacoby v. Jacoby, 427 N.J. Super. 109, 123 (App. Div. 2012).

Under N.J.S.A. 9:2-2, a parent who seeks to remove a child from this state when the other parent does not consent must demonstrate "cause" for the

removal. The legislative intent of this statute was "'to preserve the rights of the noncustodial parent and the child to maintain and develop their familial relationship.'" Bisbing, 230 N.J. at 323 (quoting Holder v. Polanski, 111 N.J. 344, 350 (1988)).

In Bisbing, the Court interpreted "cause" under N.J.S.A. 9:2-2 as requiring the petitioning parent to satisfy the best-interests analysis set forth in N.J.S.A. 9:2-4(c), "supplemented by other factors as appropriate." Id. at 338 (citing N.J.S.A. 9:2-4(c)). Accordingly, "courts should conduct a best interests analysis to determine 'cause' under N.J.S.A. 9:2-2 in all contested relocation disputes in which the parents share legal custody—whether the custody arrangement designates a parent of primary residence and a parent of alternate residence, or provides for equally shared custody." Id. at 335. And in conducting a best interests analysis,

> [t]he trial court may consider . . . documentary evidence, interviews with the children at the court's discretion, and expert testimony. See R. 5:8-6 . . . ; Pressler & Verniero, [Current N.J. Court Rules, cmt.] 1.45 on R. 5:8-6 [(2023)] (stating that in custody hearings, "[i]t is clear that the parties must have an appropriate opportunity for experts' assistance").
>
> [Id. at 335-36.]

Guided by these principles, we are persuaded the judge correctly

determined defendant's move to Florida constituted a "substantial change in circumstances that affects the child's welfare." That is because defendant's move out of state rendered the parties' joint physical custodial arrangement under the May 5, 2020 order unworkable. As the judge aptly noted during his December 13 oral decision, Jack's parents were currently "spread 1,000 miles apart" due to defendant's move to Florida, and "the child may be deprived of regular contact" with his father "and of the activities they shared together. . . . Therefore, . . . this . . . is a substantial change in circumstance that affects the child's welfare."

However, we part company with the Family Part judge's determination that defendant was entitled to a plenary hearing on the issue of relocation, because defendant's motion lacked the requisite certification attesting to the veracity of any of the statements made in his motion. Moreover, even if we accepted defendant's deficient motion papers, he did not establish a prima facie case for the relief sought. Therefore, a Bisbing hearing was not warranted.

We also are troubled by the judge's decision to proceed with a Bisbing hearing given the lack of sufficient notice to the parties about the nature of the hearing. The parties received notification they were to appear for a "temporary custody hearing" on August 24, 2021, mere weeks after defendant filed his

motion and just five days after plaintiff filed her cross-motion. As is evident from the record, the relocation decision was not a temporary one at all, and the parties and counsel did not grasp the import of the August 24 hearing as it proceeded, nor before or immediately after it was held.

Moreover, because the hearing was conducted so soon after the cross-applications were filed, neither party had the opportunity to request discovery from the other or retain an expert, if desired, to assist in resolving the issues before the court. Equally concerning is the fact the judge, rather than defendant, not only initiated the request for Jack's therapist to provide a report to the court, but he relied on Dr. Cox's belated, uncertified and handwritten letter to make a decision without offering plaintiff an opportunity to challenge the contents of the letter. Similarly, neither party was offered the chance to address the contents of Jack's educational records or the DCPP records the judge requested at the conclusion of the August 24 hearing.

Finally, even if we concluded defendant met his threshold burden in presenting a prima facie case for relocation and was entitled to a plenary hearing, which we do not, we are convinced the judge mistakenly granted defendant's relocation application, considering the paucity of defendant's proofs in establishing cause for the removal. In fact, it appears the judge implicitly

recognized defendant's proofs were lacking, as the judge plainly stated at the conclusion of the August 24 proceeding, "I need some more information to decide this case." As noted, this statement was made after the judge already had directly elicited testimony from each party and had asked defendant if he wished to offer his lease or any other exhibits into evidence. The mistake in granting defendant's relocation application is that much more glaring in the face of defendant's testimony during the August 24 hearing that he "would either be okay with [Jack] being with [him] throughout the school year and then every . . . school break and even summertime and two weeks of vacations or as much time as possible . . . [with] the mother, or vice versa," implying he might have been amenable to Jack staying with his mother during the school year. (emphasis added).

The decision whether to permit a parent to relocate to another state with a child over the objection of the other parent, thus changing the existing custodial arrangement, is a serious one. Therefore, trial judges may not handle such an application in a summary manner but must proceed in the framework established under Bisbing. A Family Part judge charged with reviewing a relocation application must first determine whether a movant has demonstrated a prima facia case of a substantial change in circumstances to warrant a plenary hearing.

Only if that initial threshold showing is made should a plenary hearing be scheduled and the need for discovery and expert opinion be addressed. Additionally, any expert reports to be considered by the trial court should be exchanged in advance of any plenary hearing, including reports from court-appointed experts, as contemplated under Rule 5:3-3(a).

Based on the forgoing, we reverse the December 13, 2021 order and direct plaintiff's parenting time under the May 5 order to be reinstated as soon as practically possible, pending any further order from the trial court. In that regard, we instruct the remand judge to schedule a case management conference with the parties and their counsel, if any, within thirty days, to determine: what temporary custody and parenting time schedule will serve Jack's best interests pending the child's return to New Jersey; and when plaintiff's custody and parenting time rights under the May 5 order can be reinstated. Of course, either party is free to file an application in the future to modify the custody and parenting schedule under the May 5 order, so long as they meet the threshold burden of showing changed circumstances affecting Jack's welfare. Bisbing, 230 N.J. at 322.

To the extent we have not addressed plaintiff's remaining arguments, they

are either moot,[7] rely on circumstances that no longer exist due to Jack's move to Florida over a year ago, or do not warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed and remanded. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION

[7] See e.g., Greenfield v. N.J. Dep't of Corr., 382 N.J. Super. 254, 257-58 (App. Div. 2006) ("An issue is 'moot' when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy.") (citations omitted).