

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2809-21

D.S.,

Plaintiff-Respondent,

v.

L.S. and P.G.,

Defendants-Appellants.

Submitted October 16, 2023 – Decided January 2, 2024

Before Judges DeAlmeida and Bishop-Thompson.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Burlington County,
Docket No. FD-03-1278-16.

L.S. and P.G., appellants, pro se.

Maleski, Eisenhut & Zielinski, LLC, attorneys for
respondent (Adam M. Eisenhut and Neil W. Brazer, of
counsel and on the brief).

PER CURIAM

Before us is the continuing dispute over the custodial of B.G. (Bob)¹, the biological son of defendants L.S. (Mom) and P.G. (Dad) (collectively defendants). Plaintiff D.S., the maternal grandmother (MGM) of Bob, previously appealed a trial court order denying her counterclaim that she is the psychological parent to Bob. We remanded the matter for a new plenary hearing. D.S. v. L.S. and P.G., No. A-4699-18 (App. Div. Jan. 8, 2021) (slip op. at 12).

This matter now returns for us on defendants' appeal from the March 29, 2022 Family Part order, finding, following a plenary hearing. MGM is the psychological parent to Bob following a plenary hearing. The court ruled that MGM satisfied the four elements established in V.C. v. M.J.B., 163 N.J. 200 (2000). Having considered the record and the arguments presented by the parties in light of the applicable law, we affirm.

I.

Mom and Dad are the biological parents to Bob, born in July 2008, in Montana. Sometime thereafter, Mom and Bob moved to Florida. In 2009, Dad

¹ We use initials and pseudonyms to refer to the parties and the minor child to protect their privacy and preserve the confidentiality of these proceedings. R. 1:38-3(d)(3), (12) and (13).

relocated to Texas. The same year, Mom and Bob relocated to New Jersey and moved in with MGM. MGM provided financial support in the form of housing, food, clothing, toys, and books. She also transported Bob to and from daycare, school, and doctors' appointments. When Mom secured employment, MGM provided childcare for Bob. Mom and Bob lived with MGM for approximately four years.

In November 2013, Mom and Bob moved into an apartment. MGM continued to provide financial assistance by paying the security deposit, partial rent, phone bill, and utilities for "several months." She also continued to provide childcare for Bob.

In 2014, the Mercer County Family Part entered an order granting defendants joint legal custody of Bob, with Mom designated as the parent of primary residence (PPR). Thereafter, a consent custody order was entered regarding the terms of Dad's visitation with Bob in New Jersey.

The next year, Mom's driver's license was suspended for driving under the influence. As a result, MGM was responsible for taking Bob to daycare, doctors' appointments, school, and other activities. Defendants signed a consent agreement, later memorialized into a consent order, addressing Dad's parenting time with Bob in New Jersey.

Following an incident in a supermarket parking lot, on July 23, 2015, MGM obtained an order requiring defendants to show cause why the court should not grant her custody of Bob based upon allegations of escalating alcohol abuse by Mom. The court entered an interim order on July 27, 2015, granting MGM physical custody of Bob pending the completion of an investigation by the Division of Child Protection and Permanency (the Division) of Mom, permitting supervised parenting time and drug and alcohol testing for Mom.

On October 28, 2015, the court ordered joint temporary legal custody to be shared among the parties and MGM retained "sole physical custody until further notice of the court."

The matter was transferred to the Burlington County Family Part. After a hearing on July 13, 2016, the court entered an order granting shared legal custody among the parties and physical custody remained with MGM. Subsequent orders were entered amending parenting time but did not alter MGM's physical custody of Bob.

In August 2018, Dad filed an application seeking residential custody of Bob, relocation to Texas, and termination of MGM's physical custody. In response, MGM filed a counterclaim to modify the prior custody order, seeking

a declaration as a "psychological parent of [Bob]" and "co-equal rights" as defendants.

A plenary hearing was held on nonconsecutive days during which the trial court heard testimony from MGM, Mom, and Dad, and interviewed Bob pursuant to Rule 5:8-6. Following the hearing, on April 3, 2019, the court issued an oral decision accompanied by an order, denying Dad's request for residential custody of Bob and relocation to Texas, granting joint legal custody to defendants, and designating Mom as the PPR and Dad as parent of alternate residence. This new custody arrangement was to become effective on April 27, 2019. The order also provided that in the interim, Mom "shall have unsupervised parenting time" on the weekend of April 13, 2019.

The trial court also determined MGM had not established she had become a psychological parent of Bob. Relying upon V.C., the court denied MGM's counterclaim, concluding no expert testimony was presented and a plenary hearing was required. MGM, however, was granted visitation.

Sadly, Mom relapsed in her recovery before her scheduled April 13 parenting time. As a result, MGM filed an order to show cause (OSC), requesting a stay of the April 3 order pending appeal. In advance of the OSC hearing, Mom was ordered to undergo a psychological evaluation and submit

proof of then-current employment and housing. The trial court granted the stay and residential custody remained with MGM.

MGM moved for reconsideration of the April 3 order. The court again denied MGM's motion to designate her as Bob's psychological parent. As noted above, an appeal followed.

Before the new hearing was scheduled, MGM moved for summary judgment on whether she was the psychological parent of Bob. On September 20, 2021, the court denied MGM's motion without prejudice. After considering the four factors established in V.C., the trial court determined MGM satisfied two of the four factors. As to factor two, MGM and Bob lived in the same household. Regarding factor three, the court found MGM had "assumed the obligations of parenthood by taking significant responsibility for [Bob's] care, education, and development." However, the trial court reasoned factor one and four remained in material fact genuinely in dispute and expert testimony was needed.

Following our remand order, a four-day hearing was held to address factors one, whether the biological parent consented to or fostered the establishment of a parent-like relationship with MGM, and four, whether a bond existed between MGM and Bob. The trial court heard testimony from MGM's

expert, Dr. Jonathan Walls; MGM; and Mom. Dad declined to testify. The court also considered exhibits admitted into evidence.

In rendering its decision on March 29, 2022, the trial court explained that it considered the parties' testimony in the prior and remand hearings. The court highlighted Dr. Walls's opinion that Bob and MGM had a "reciprocal healthy bond." In particular, Dr. Walls testified that "[MGM] and [Bob] have a close, warm[, and] loving relationship. [Bob] looks to [MGM] for advice." The court found Dr. Walls "believable," and his testimony was "clear" with the "appropriate demeanor." He was not "evasive" and "did not fail to answer any questions."

The court similarly found MGM's demeanor "appropriate." She testified in a "credible manner" based on her "command" of the facts. MGM was not "evasive," answered the questions "directly," and "sought clarification of questions if needed."

The trial court noted that Mom acknowledged MGM and Bob have a bond. No evidence was presented to contradict consent or the establishment of a bond. In contrast to MGM's testimony, the court characterized Mom's testimony as a "lot of venting." It found "there [was] not much [of her] testimony that [the

court could] rely on." The court explained she did not answer the "core" questions posed and did not testify to many of the facts.

Based on the evidence, the court found "there was consent that [MGM] stepped into the position of psychological parent for [Bob]" based on Mom's actions at the time, after noting that only one party needs to consent or foster the relationship. Additionally, the court concluded a bond existed between MGM and Bob based on the uncontroverted testimony. The court, therefore, concluded MGM satisfied the four elements of the test established in V.C. and ruled MGM is the psychological parent for Bob. This appeal followed.

II.

Defendants argue on appeal: (1) it is unconstitutional to appoint a third party as a psychological parent if the nonconsenting party is a fit parent; (2) there was no consent by Mom; (3) psychological parent status cannot be granted without the biological parents consenting or fostering of the relationship; and (4) there was insufficient evidence in the record to meet the requirements of V.C.

It is well established that our scope of review of the trial court's findings is limited. See Cesare v. Cesare, 154 N.J. 394, 411 (1998). Deference is accorded to the Family Part due to its "special jurisdiction and expertise" in

family issues, and we will not disturb the court's factual findings and legal conclusions "unless [we are] convinced . . . 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 412-13 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). "Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility because, having heard the case, and seen and observed the witnesses, the trial court has a better perspective than a reviewing court in evaluating the veracity of witnesses." P.B. v. T.H., 370 N.J. Super. 586, 601 (App. Div. 2004) (citing Pascale v. Pascale, 113 N.J. 20, 33 (1988)). Even in the context of a custody dispute, we review issues of law de novo. R.K. v. F.K., 437 N.J. Super. 58, 61 (App. Div. 2014).

We review a custody award under an abuse of discretion standard, giving deference to the court's decision provided that it is supported by "adequate, substantial, credible evidence" in the record. Cesare, 154 N.J. at 411-12. "[T]he decision concerning the type of custody arrangement [is left] to the sound discretion of the trial court[.]" Nufrio v. Nufrio, 341 N.J. Super. 548, 555 (App. Div. 2001) (second and third alteration in original) (quoting Pascale v. Pascale, 140 N.J. 583, 611 (1995)). Thus, "the opinion of the trial judge in child custody

matters is given great weight on appeal." Terry v. Terry, 270 N.J. Super. 105, 118 (App. Div. 1994). Nonetheless, "we must evaluate that opinion by considering the statutory declared public policy and criteria which a trial court must consider." Ibid. In doing so, we owe no deference to "the trial judge's legal conclusions, and the application of those conclusions to the facts." Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013).

A grandparent can demonstrate that he or she has become a psychological parent to the child and stands in the shoes of a parent. V.C., 163 N.J. at 221-28. To be a psychological parent, "the legal parent must consent to and foster the relationship between the third party and the child; the third party must have lived with the child; the third party must perform parental functions for the child to a significant degree; and most important, a parent-child bond must be forged." Id. at 223. "What is crucial here is not the amount of time but the nature of the relationship." Id. at 226. "Once a third party has been determined to be a psychological parent to a child . . . he or she stands in parity with the legal parent." Id. at 227.

Having reviewed the record and considering the applicable law, we are satisfied the trial court's ruling that MGM established that she is the psychological parent of Bob is supported by substantial credible evidence. The

record establishes MGM contributed to the care and emotional, physical, and educational needs of Bob since at least 2009. Here, the record shows Mom had mental health issues and alcohol abuse that escalated over the years. Dad did not reside in New Jersey and had not been present in Bob's life, visiting him on his first birthday in 2009, did not visit again until 2013 or 2014, and thereafter Bob visited Dad for a few weeks throughout the year during the holidays and summers. The record is clear that MGM was the constant in Bob's life as caretaker and primary residential custodian. This consistency resulted in an unrefuted "reciprocal healthy bond" between MGM and Bob.

The arguments advanced by defendants do not convince us that the trial judge erred. The absence of Dad's testimony and the lack of expert testimony to refute a bond between MGM and Bob did not preclude the trial judge from drawing what is a natural inference – the relationship was that of a child and a grandparent fulfilling the role of a parent who lacked the capacity to provide the care the young child needed. See V.C., 163 N.J. at 221-28. Notwithstanding the absence of testimony, we are satisfied the trial court afforded the parties the opportunity to be heard throughout the hotly contested proceedings. We do not find the trial court's ruling was so "wide of the mark" that a mistake was made. Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting N.J. Div. of Youth & Fam.

Servs. v. E.P., 196 N.J. 88, 104 (2008)). Accordingly, we find no abuse of discretion.

To the extent we have not addressed any of defendants' remaining contentions, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION