SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0785-14T1

BRYAN ALINTOFF,

Plaintiff-Respondent,

v.

RACHEL B. ALINTOFF,

Defendant-Appellant.

Argued May 11, 2016 – Decided May 18, 2017

Before Judges Ostrer, Haas and Manahan.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FM-13-545-12.

Caryl Wolfson Leightman argued the cause for appellant (Howard W. Bailey and Ms. Leightman, attorneys; Mr. Bailey and Ms. Leightman, on the briefs).

Clara S. Licata argued the cause for respondent.

The opinion of the court was delivered by

OSTRER, J.A.D.

In this divorce case, defendant Rachel B. Alintoff appeals from the trial court's final child custody order, pursuant to Rule

5:8-6, awarding plaintiff Bryan Alintoff primary residential custody of the parties' son, Matt.[1] The child was born in 2009, two years after the parties married, and two years before plaintiff filed for divorce. Defendant does not challenge the award of joint legal custody to both parents. The custody trial, which spanned twenty-eight days over several months, proceeded while resolution of equitable distribution and permanent alimony was stayed due to defendant's September 2012 bankruptcy filing. However, defendant appeals from the trial court's order terminating plaintiff's obligation to pay unallocated pendente lite support to defendant, and requiring defendant to pay child support to plaintiff. She contends the court erred in its imputation of income to her, and violated the bankruptcy stay by ordering her to pay child support. Defendant also appeals from the trial court's order denying defendant's recusal motion. Having considered defendant's arguments in light of the record and applicable legal principles, we affirm, substantially for the reasons set forth in Judge Linda Grasso Jones's comprehensive written decisions.

[1] We utilize a pseudonym to protect the child's privacy.

I.

The trial court reviewed the facts in detail. It suffices here to highlight the following. In September 2011, after a period of marital difficulties, defendant vacated the marital home in New Jersey with two-year-old Matt, many of his belongings, passport, and other personal documents. She gave no advance notice to plaintiff. She relocated to her parents' home in Brooklyn, and never returned. Defendant claimed she feared for Matt's safety if left with plaintiff since he possessed a gun.[2] However, the court concluded, upon review of the evidence, that she withheld the child to retaliate against plaintiff, because she believed plaintiff was having an affair and hiding assets from her with his business partner.

Soon thereafter, plaintiff filed his divorce complaint and an order to show cause to compel defendant to return Matt. On September 28, 2011, the parties entered into a consent order that provided the parties shared "joint legal and . . . physical custody," and granted plaintiff parenting time from Friday morning

[2] Plaintiff used the gun recreationally at a shooting range and did not keep ammunition at home.

to Monday morning.[3] At the time, plaintiff worked away from home, in finance, but returned home around 3:00 p.m., and defendant was a stay-at-home caregiver. Eventually, however, plaintiff shifted to working primarily from home; defendant moved out of her parents' home and into her own apartment in Brooklyn, and began working part-time.

In the months that followed Matt's removal and the commencement of divorce proceedings, defendant took various steps that were at odds with shared decision-making involving Matt. In October 2011, she obtained an order of protection from a New York court, barring plaintiff from interfering with defendant's care and custody of Matt, but that court soon thereafter dismissed the action for lack of jurisdiction.[4] Defendant also threatened litigation against the operator of a gymnastics class that plaintiff proposed to send Matt to on Saturdays, when he had

[3] The order required plaintiff to store the handgun at the shooting range. However, after he learned he could not do so, he sold the gun.

[4] The New York court dismissed the action on October 11, 2011. After defendant denied plaintiff his parenting time for the weekend beginning on October 7, plaintiff obtained an emergent order from one of Judge Grasso Jones's predecessors, which required defendant to return Matt to New Jersey, granted plaintiff temporary physical and legal custody, and granted defendant supervised parenting time. We later vacated that order upon defendant's emergent appeal and subjected the parties to the September 2011 consent order.

parenting time. The parties exchanged numerous texts that the trial court found demonstrated defendant's unwillingness to meet plaintiff directly to discuss Matt's care. Defendant registered multiple complaints about plaintiff with the Division of Youth and Family Services, which ultimately found no reason for concern. She also alleged, but failed to prove, plaintiff had an alcohol problem.[5]

In December 2011, the court granted in part defendant's motion for pendente lite support, ordering plaintiff to cover defendant's schedule B automobile expenses, and pay $1157 in unallocated support to defendant.[6] In the same order, the court granted plaintiff's motion to enjoin either party from enrolling Matt in a school or activity without the other's written consent.

Questions arose regarding Matt's development and whether certain interventions were warranted. Defendant obtained the evaluation of a speech therapist without plaintiff's participation. With plaintiff's consent (conveyed by his attorney), the therapist then treated Matt for six months. In

[5] In particular, she alleged plaintiff had an emergent, alcohol-related hospital admission in New York. Plaintiff retained an expert who confirmed that none of the over thirty hospitals in New York had any records of the alleged admission.

[6] The court designated the entire amount as non-deductible to plaintiff and non-taxable to defendant.

early 2013, defendant unilaterally obtained evaluations of Matt from a New York City Board of Education contractor, OMNI Childhood Center of Brooklyn. Without consulting with plaintiff or notifying the court, defendant enrolled Matt in a Brooklyn pre-school geared for children with special needs, which provided occupational, physical and speech therapy. After learning of his enrollment from Matt, plaintiff consented to his son's continued participation rather than disrupt it. In the summer of 2013, defendant also enrolled Matt in a summer school without consulting plaintiff.

Plaintiff invited defendant to attend an evaluation of Matt by a New Jersey licensed occupational therapist plaintiff selected, Ursula Shah. Defendant appeared at the therapist's office as scheduled, but instead of participating, she objected to the session proceeding. Plaintiff had to obtain a court order to enable the evaluation to proceed.

Other evaluations were performed during the course of the litigation, some specifically for the purpose of trial. The parties jointly retained Patricia Baszczuk, Ph.D., who completed a 162-page custody evaluation in January 2013, based on a more than year-long process that included numerous interviews of the parties; observations of each party with Matt; psychological testing; questionnaires of numerous friends and family members;

and review of Matt's records, communications between the parties, and videotapes of their interactions when transferring Matt. The trial court found Dr. Baszczuk's report and testimony credible and helpful.

After evaluating the statutory factors, N.J.S.A. 9:2-4, Dr. Baszczuk opined that it would serve Matt's best interests to grant plaintiff primary residential custody.[7] Among other things, Dr. Baszczuk concluded that defendant was less willing or able to compromise and coparent than plaintiff. She tended to make unsupported accusations. Tension arose when she transferred Matt to plaintiff and she exposed Matt to her anger. She was consumed by the divorce-related conflict, and her family members were actively engaged in her cause.

Dr. Baszczuk opined that plaintiff was better able to separate himself from the litigation and focus on parenting strategies. Dr. Baszczuk recommended the appointment of a parenting coordinator. She also recommended that plaintiff attend sessions with a therapist to deal with his anger. She recommended that defendant "undergo a neuropsychological evaluation to investigate possible underlying conditions for her emotionally charged and unregulated behavior toward [plaintiff]; tendencies toward cyclic

[7] Plaintiff unsuccessfully sought pendente lite implementation of Dr. Baszczuk's recommendations.

emotional outbursts; [and] recurring and problematic information processing issues."

Defendant also obtained her own custody expert, Maria Salvanto, Ph.D., who opined that defendant should receive primary residential custody. However, the court gave no weight to Dr. Salvanto's opinion because, among other reasons, she did not comply with the Specialty Guidelines for Psychologists Custody/Visitation Evaluations promulgated by the New Jersey Board of Psychological Examiners.[8]

In the midst of the trial, the parties jointly retained neurologist, Judith Bluvstein, M.D., to provide a litigation opinion after a pediatric neurologist, Yuri Brosgol, M.D., diagnosed Matt with autism spectrum disorder (ASD) or Asperger's syndrome.[9] Dr. Bluvstein opined that Matt's "constellations of symptoms . . . are more indicative of frontal lobe dysfunction than ASD/Asperger's." She diagnosed Matt with frontal lobe and

[8] The court was critical of the expert's failure to address all the factors in N.J.S.A. 9:2-4(c), her minimal contacts with plaintiff, and her failure to review all relevant documents.

[9] Both parties attended Dr. Brosgol's evaluation of Matt, which was not performed for litigation purposes, but was conducted while the trial was ongoing. He found that Matt presented "features [that] fit the criteria for autistic spectrum disorder" and "[h]is high cognitive functioning skills and peculiar rigid preoccupations . . . resemble what was previously known as Asperger's syndrome."

executive function deficit, language development disorder, and an immature self-regulatory system. She recommended Matt have an MRI and conduct a Video EEG Monitoring Test (VEEG) at a sleep center. Dr. Bluvstein's report was admitted into evidence by consent.

In her ninety-page written decision, Judge Grasso Jones considered each of the statutory factors under N.J.S.A. 9:2-4.

> [1] the parents' ability to agree, communicate and cooperate in matters relating to the child; [2] the parents' willingness to accept custody and [3] any history of unwillingness to allow parenting time not based on substantiated abuse; [4] the interaction and relationship of the child with its parents and siblings; [5] the history of domestic violence, if any; [6] the safety of the child and the safety of either parent from physical abuse by the other parent; [7] the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; [8] the needs of the child; [9] the stability of the home environment offered; [10] the quality and continuity of the child's education; [11] the fitness of the parents; [12] the geographical proximity of the parents' homes; [13] the extent and quality of the time spent with the child prior to or subsequent to the separation; [14] the parents' employment responsibilities; and [15] the age and number of the children.[10]

The court recognized that truly shared residential custody was impractical, given defendant's plan to remain in Brooklyn and

[10] We utilize the numbering adopted by the trial court.

plaintiff's plan to remain in New Jersey (factor 12). Thus, the court had to designate one parent as the primary residential parent.

Many of the factors did not favor either party. The court found that both parents deeply loved their son, had a close and loving relationship with him (factor 4), and were willing to accept custody (factor 2). Both parties were active and involved parents before the separation; the judge found that plaintiff, even when he worked outside the home, returned by 3:30 p.m. (factor 13). Although the court noted that plaintiff now worked from home, and defendant worked outside the home, neither parent's employment responsibilities interfered with their ability to serve as the parent of primary residence (factor 14).

There was no history of domestic violence (factor 5), and neither posed a safety risk (factor 6). The court noted plaintiff's sale of his handgun and rejected defendant's claims of substance abuse. The court found that Matt had special needs, although the trial evidence did not disclose a definitive diagnosis (factor 8). Plaintiff was slower than defendant to recognize Matt's needs for therapy, yet the court found that both parties would meet his needs. The court noted that plaintiff recognized the value of Matt's pre-school program and consented to it after learning about it after-the-fact, and defendant was a "wonderful

champion for the child in seeking out educational and therapeutic opportunities." Matt's age did not favor one parent over the other (factor 15). Although defendant had already enrolled Matt in a Brooklyn kindergarten program to commence in the school year following trial (factor 10), the court found that Matt did not need to remain enrolled for continuity or quality reasons. He would be graduating from his pre-school in any event.[11]

What tipped the balance in favor of plaintiff was the court's finding that if granted primary residential custody, plaintiff was more likely than defendant to coparent and work cooperatively. The court reviewed the parties' voluminous text messages and their parental performance during the pendente lite period. The judge found that neither parent was blameless. She did not withhold criticism of certain communications made by plaintiff. Yet, with respect to their "ability to agree, communicate and cooperate" (factor 1), the judge found:

> Husband is more likely to reach out to Wife to try and resolve matters. Based upon the evidence presented, Wife has not exhibited that willingness. The court finds that Wife will not work with Husband toward a negotiated resolution on issues concerning the child. Wife behaves as if she is entitled to "make the call" on all issues having to do with the child. She does not respect Husband's rights

[11] Other factors were irrelevant, such as the preferences of the child (factor 7) — he was too young to express one — and his relationship with siblings (factor 4) — he had none.

> to participate in important decisions concerning the child. If this was the behavior only when this litigation began, it would not be of such concern, but the parties have been separated for three years, and Wife's behavior has not changed; if anything, she has taken even greater steps in forcing Husband out of the picture in making decisions concerning the parties' child.

The court considered defendant's tendency to act unilaterally, in connection with Matt's educational needs (factor 10). Although she was a "staunch advocate" for Matt, the court found she "parents as if she is the only parent." Notwithstanding that both parties had stable home environments (factor 9), the court expressed concern that defendant's immediate family did not support coparenting.[12] The court was also critical of defendant's interference with plaintiff's exercise of parenting time in the early stages of the litigation (factor 3), although the court recognized that the both parties subsequently abided by the parenting time order.[13] With respect to each parties' fitness to

[12] The court cited defendant's brother's attempt, in a meeting with plaintiff, to get plaintiff to drop his request for custody; and a letter from defendant's father to plaintiff's former attorney, threatening to bring charges against him.

[13] The court noted that plaintiff voluntarily returned Matt on Sunday nights, forfeiting his Sunday overnight parenting time, rather than force Matt to awake very early Monday morning for the return trip to Brooklyn and 8:30 a.m. drop-off. Defendant rejected plaintiff's request to alter his parenting time period to Thursday evening to Sunday evening.

serve as the primary residential parent (factor 11), the court reviewed in detail the evidence concerning plaintiff's alleged substance abuse and found the allegation unsupported. On the other hand, the court found that defendant was willing to sabotage plaintiff's efforts – such as her opposition to Matt's gym class and Dr. Shah's evaluation – even if contrary to Matt's interests.

The court designated plaintiff as the parent of primary residence; defendant as the parent of alternative residence; and granted defendant parenting time three out of every four weekends, from the end of the Friday school day until Sunday at 6:00 p.m., plus Wednesday afternoon parenting time. Summer vacation time was to be divided equally and the parties would alternate significant holidays. Consistent with Dr. Baszczuk's recommendation, the court ordered plaintiff to attend therapy "to address recurrent issues and allegations of anger management[,]" and defendant was required to undergo a neuropsychological evaluation, and attend individual therapy. The parties were required to retain a parenting coordinator and to utilize a specified calendaring system, to assure they were informed of Matt's activities, appointments and events.

Pending defendant's appeal, and pursuant to a limited remand, the court later granted plaintiff's motion to terminate his pendente lite unallocated support obligation to defendant and

awarded plaintiff child support. The court averaged plaintiff's income over a multi-year period, and imputed an income of $70,000 to defendant after finding defendant was voluntarily underemployed, and set child support at $124 a week. The court also denied defendant's recusal motion, which was based on her filing a federal civil rights suit against the judge and others. Defendant subsequently was permitted to amend her notice of appeal to include this order.

II.

In a custody dispute, the trial court's "primary and overarching consideration is the best interest of the child." Kinsella v. Kinsella, 150 N.J. 276, 317 (1997). A trial judge is obliged to consider the factors identified in N.J.S.A. 9:2-4 and other relevant factors, and set forth its reasons for its decision pursuant to N.J.S.A. 9:2-4(f). See id. at 316-17; see also Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007) ("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).").

In considering defendant's challenge to the court's custody order, we are mindful of our limited scope of review. We defer to the trial judge's fact-findings, and shall not disturb them unless convinced "they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible

evidence as to offend the interest of justice." Abouzahr v. Matera-Abouzahr, 361 N.J. Super. 135, 151 (App. Div.) (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)), certif. denied, 178 N.J. 34 (2003). "That deference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" MacKinnon v. MacKinnon, 191 N.J. 240, 254 (2007) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)). Our deference is also rooted in our respect for the Family Part's special expertise in family matters. Cesare, supra, 154 N.J. at 411-12. Absent compelling circumstances, we are not free to substitute our judgment for that of the trial court, which has become familiar with the case. Schwartz v. Schwartz, 68 N.J. Super. 223, 232 (App. Div.), certif. denied, 36 N.J. 143 (1961). Nonetheless, we owe no special deference to the trial court's legal conclusions. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

On appeal, defendant revisits and reinterprets evidence in the record; challenges the court's reliance on Dr. Baszczuk's expert opinion, whom defendant attempts to discredit with ad hominem attacks and questions of her impartiality; and asks us to reach conclusions different from the trial court with respect to defendant's willingness to coparent and cooperate with plaintiff, and to secure the educational and therapeutic programs that Matt

needs. In short, defendant asks us to substitute the trial court's judgment with our own.

That we shall not do. Given our standard of review and having carefully reviewed defendant's contentions with respect to the award of primary residential custody, we affirm substantially for the reasons set forth in Judge Grasso Jones's comprehensive written opinion. We discern no abuse of discretion in the court's decision to credit Dr. Baszczuk. See Fox v. Twp. of W. Milford, 357 N.J. Super. 123, 131 (App. Div.), certif. denied, 176 N.J. 279 (2003). We are satisfied that substantial credible evidence supports Judge Grasso Jones's credibility findings, her findings with respect to the statutory factors, and her ultimate conclusion regarding the custodial arrangement that will best serve Matt's interest.

We briefly address defendant's assertion that the court committed reversible error by barring the testimony of proposed experts and the admission of certain reports regarding Matt's disabilities. These include: two undated reports of Candace Toussie, the speech language pathologist; the OMNI evaluation (consisting of a summary report); the social history report prepared by a licensed clinical social worker, Lea Mendelsohn,; a psychological evaluation of Matt by Shulamis Frieman, Psy.D.; a progress report by Matt's special education teacher at Special

Sprouts, Lauren V. Zunde; and Dr. Brosgol's neurologic evaluation.[14]

First, we discern no error in the court's use of discretion to bar Toussie's reports and the OMNI evaluation, as well as its decision to bar the Special Sprouts witnesses from testifying as experts — since they were not properly disclosed as such in discovery. See State v. Heisler, 422 N.J. Super. 399, 414-15 (App. Div. 2011). The court also barred Dr. Brosgol's report because it was not prepared for litigation purposes. However, the court did not bar these professionals from testifying as fact witnesses and defendant did not avail herself of this option. Furthermore, the court permitted defendant to call an expert witness to rebut Dr. Bluvstein's opinion, which was obtained in the midst of trial. She declined.

Defendant misplaces reliance on Kinsella, supra, for the proposition that the court was obliged to relax rules of evidence to admit these reports. We recognize that "[o]ne consequence of the special role of the courts in custody disputes is that

[14] We granted defendant's post-argument motion to expand the record to include these documents, which defendant proffered before the trial court. We also permitted defendant to supplement the record with documents that were not even offered at the trial court, including subsequent Special Sprouts progress reports and Matt's Individualized Education Plan, prepared by the New York City Department of Education.

evidentiary rules that are accepted as part of the adversarial process are not always controlling in child custody cases." Kinsella, supra, 150 N.J. at 318. The trial court necessarily relies on mental health and other experts to ascertain the child's best interests. Id. at 319-20. Yet, in Kinsella, the Supreme Court also recognized the significant limitations in utilizing the opinions of treating psychologists, as opposed to evaluations prepared by litigation experts. Id. at 320-21. Notably, "[e]valuators are more likely than treating psychologists to be objective." Id. at 320. Therefore, the Court held that "the first source of information about the parents' mental health should be the independent experts appointed by the courts or hired by the parties for the purpose of litigation, rather than the professionals who have established relationships with the parties." Id. at 328. Although the treating professionals here relate to the child's health, not the parents', the principle in Kinsella still applies. The trial court's decision to bar expert opinions that were not solicited for litigation purposes and that, in some cases, were solicited without plaintiff's participation, was not at odds with Kinsella.

Second, and more importantly, based on our examination of the precluded reports, the exclusion of the documents was not "of such a nature as to have been clearly capable of producing an unjust

result." R. 2:10-2. As discussed above, the factor that tipped the balance in favor of designating plaintiff as the primary residential parent was the court's finding that he was more likely to cooperate and coparent than defendant. The court found that both parents recognized Matt had special needs. Plaintiff recognized the value of the Special Sprouts program and consented to Matt's attendance, notwithstanding defendant's failure to consult with him. Although Dr. Bluvstein questioned Dr. Brosgol's assessment of ASD and Asperger's, Dr. Bluvstein nevertheless discerned significant issues of concern, identified a frontal lobe dysfunction, and recommended a MRI and an overnight VEEG exam. In short, the excluded documentary evidence does not undermine the court's findings that Matt has special needs; both parents recognize that, and are prepared to address them; and plaintiff is more likely than defendant to do so in a cooperative effort, if granted primary residential custody.

We also shall not disturb the trial court's order on limited remand, compelling defendant to pay child support that was calculated based on defendant's imputed annual income of $70,000 and plaintiff's four-year averaged annual income of $152,000. We review the court's determination for an abuse of discretion, see Innes v. Innes, 117 N.J. 496, 504 (1990), and we find none.

We reject defendant's procedural arguments. First, the automatic stay imposed by defendant's bankruptcy filing did not bar the court from awarding child support. See 11 U.S.C.A. § 362(b)(2)(A)(ii) (automatic stay does not stay "the commencement or continuation of a civil action . . . for the establishment or modification of an order for domestic support obligations"); Henry J. Sommer & Margaret Dee McGarity, Collier Family Law and the Bankruptcy Code ¶ 5.03[3] (Matthew Bender); cf. Clark v. Pomponio, 397 N.J. Super. 630, 642-43 (App. Div.) (addressing alimony), certif. denied, 195 N.J. 420 (2008). Second, the court did not exceed the scope of our limited remand; we authorized the court to address the "issue of pendent[e] lite support," which encompassed pendente lite child support.

We also discern no error in the court's finding that defendant, a college graduate with a prior history of full-time employment, was voluntarily underemployed as a part-time waitress working two nights a week. Defendant argues that the figure imputed to her was excessive. At a subsequent plenary hearing on the parties' financial issues, defendant will have an opportunity to present additional competent evidence of her skills, employability and earning capacity. Upon such a showing, a downward adjustment of the $70,000 imputed figure may be warranted. See Mallamo v. Mallamo, 280 N.J. Super. 8, 12 (App. Div. 1995)

(noting that pendente lite support is typically decided on a limited record). However, in the absence of a full record, we shall not disturb the trial court's imputation of income based on average wages of persons in New York City performing jobs related to her past lines of work. See Sternesky v. Salcie-Sternesky, 396 N.J. Super. 290, 307-08 (App. Div. 2007) (stating that "[i]mputation of income is left to the sound discretion of the trial judge based on the evidence presented").

Finally, we discern no merit to defendant's contention that Judge Grasso Jones was obliged to recuse herself once defendant decided to file suit against her in federal court. Defendant does not even include in the record a copy of the complaint that she contends justified recusal. We need not try to review an issue "when the relevant portions of the record are not included." Cmty. Hosp. Grp., Inc. v. Blume Goldfaden, 381 N.J. Super. 119, 127 (App. Div. 2005); see R. 2:6-1(a) (stating appellant must include in the appendix "such other parts of the record . . . as are essential to the proper consideration of the issues").[15]

[15] Based on the trial court's decision rejecting defendant's recusal motion, we understand that defendant also named the entire Monmouth County judiciary, and included bizarre allegations that the defendants were guilty of racketeering, "operat[ed] a cottage industry and Star Chamber for profit and sadism," and engaged in "a seditious conspiracy to undermine and usurp the Federal government, through a calculated system of fraud, eugenics, and

In any event, based on what has been presented before us, no "reasonable, fully informed person [would] have doubts about the judge's impartiality[.]" State v. Dalal, 221 N.J. 601, 606 (2015). Here, defendant filed a lawsuit against the judge days before a hearing on plaintiff's motion to terminate pendente lite support and then immediately called for her disqualification. As such, a "reasonable, fully informed person" would suspect the filing was intended to "manipulate the judicial system and engage in forum shopping," id. at 607, particularly in light of defendant's past unsuccessful efforts to litigate her dispute in New York.[16]

To the extent not addressed, defendant's remaining points lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

social engineering; and dealing in obscene matters of human trafficking, child pornography and child prostitution . . . ."

[16] In addition to her failed effort to secure an order of protection, defendant also filed an unsuccessful motion to change venue before trial.