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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2494-15T4

A.J.M.D.P.,

Plaintiff-Appellant,

v.

M.T.R.C.,

Defendant.

IN THE MATTER OF
A.C.R.M., a juvenile.

Submitted January 31, 2017 – Decided April 5, 2017

Before Judges Ostrer, Leone and Vernoia.

On appeal from the Superior Court of New
Jersey, Chancery Division, Family Part, Mercer
County, Docket No. FD-11-603-16.

Cella & Associates, LLC, attorneys for
appellant (Robert K. Valane, on the brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff A.J.M.D.P. is the mother, and defendant M.T.R.C. the father, of A.C.R.M. (Amanda)¹. Plaintiff filed a complaint in the Family Part seeking custody of Amanda and requested the judge make specific findings under 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11(c). The court denied plaintiff's request for custody, concluding it lacked jurisdiction because, by the hearing date, Amanda had turned eighteen. The court subsequently denied her motion for reconsideration. Plaintiff appeals from the two orders, entered December 23, 2015 and February 3, 2016. Having reviewed the record and applicable law, we vacate the orders and remand for further proceedings.

Before addressing the facts, we briefly summarize the nature of the trial court proceeding. Plaintiff's filing was a predicate to obtaining "special immigrant juvenile" (SIJ) status for Amanda pursuant to the Immigration Act of 1990, as amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008). The SIJ application is a two-step process that requires the collaboration of both state and federal systems. H.S.P. v. J.K., 223 N.J. 196, 209 (2015).

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

First, the child, or an individual acting on the child's behalf, must "petition for an order from a state juvenile court making findings that the juvenile satisfies certain criteria." Id. at 210 (internal quotation marks and citation omitted). Under 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11(c), the Family Part must make findings on the following factors:

(1) The juvenile is under the age of 21 and is unmarried;

(2) The juvenile is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court;

(3) The "juvenile court" has jurisdiction under state law to make judicial determinations about the custody and care of juveniles;

(4) That reunification with one or both of the juvenile's parents is not viable due to abuse, neglect, or abandonment or a similar basis under State law; and

(5) It is not in the "best interest" of the juvenile to be returned to his parents' previous country of nationality or country of last habitual residence within the meaning of 8 U.S.C.A. § 1101(a)(27)(J)(ii); 8 C.F.R. § 204.11(a), (d)(2)(iii) [amended by TVPRA 2008].

[H.S.P., supra, 223 N.J. at 210 (quoting In re Dany G., 117 A.3d 650, 655 (Md. Ct. Spec. App. 2015)).]

Second, once the trial court makes the necessary preliminary findings, the "juvenile can submit his or her application for SIJ

status to USCIS [United States Citizenship and Immigration Services] in the form of an I-360 petition. If USCIS approves the juvenile's I-360, he or she will be granted SIJ status." Ibid.

In handling these SIJ-related applications, the Family Part's role is "solely to apply its expertise in family and child welfare matters to the issues raised in 8 C.F.R. § 204.11, regardless of its view as to the position likely to be taken by the federal agency or whether the minor has met the requirements for SIJ status." Id. at 200-01. "This approach will provide USCIS with sufficient information to enable it to determine whether SIJ status should be granted or denied[.]" Id. at 201.

Plaintiff's complaint, supported by her certifications, was uncontested, as defendant died in 2004 by hanging. Plaintiff and Amanda also testified at the custody hearing.

Plaintiff and Amanda are citizens of Guatemala. Before his death, defendant neglected and abandoned Amanda, and failed to support or assist in her upbringing. When he did decide to visit plaintiff and Amanda, plaintiff said he would "always arrive drunk," and would hit or threaten plaintiff.

In June 2006, plaintiff moved to the United States, leaving Amanda, then eight-years-old, in her mother's care. After arriving in the United States, plaintiff found work as a cook and sent

money to Guatemala to support Amanda. She spoke weekly to Amanda by telephone.

Amanda testified she had no memory or recollection of her father. From 2006 to 2014, her grandmother raised her. There was a lot of crime in Guatemala and, on one occasion, Amanda was robbed leaving a bank. Plaintiff asserted that when local gangs learned that she was living in the United States, gang members threatened to kill Amanda if she did not pay them money.

In 2014, Amanda's grandmother grew ill. Unable to care for Amanda in Guatemala, she arranged for Amanda to travel to the United States and reunite with her mother. In July 2014, sixteen-year-old Amanda fled Guatemala for the United States. After she crossed the Texas border, Immigration and Customs Enforcement personnel arrested and detained her, but ultimately released her to plaintiff's care, pending deportation and immigration proceedings. Amanda's grandmother died in March 2015.

Amanda was just a month short of her eighteenth birthday when plaintiff filed the custody application. Amanda was living with her mother and was doing well in high school, where she was a sophomore and learning to speak English. Amanda expressed a desire to remain with her mother, who supported her. She feared she would become the victim of violence if she returned to Guatemala.

Furthermore, no family members were ready or willing to care for her.

The trial court denied plaintiff's custody application because Amanda had turned eighteen by the time of the hearing. The court concluded she was therefore an adult under N.J.S.A. 2A:4A-22(a) and N.J.S.A. 9:17B-3 and could not be placed in plaintiff's custody:

[T]his Court is of the position that under state law, I do not have jurisdiction to award custody to an 18 year old. [Amanda's] date of birth is November [], 1997. The petitioner's claim for custody is governed by N.J.S.A. 9:2-9 applicable to minor children. [Amanda] is no longer a minor, pursuant to N.J.S.A. 9:17B-3 and has reached the age of majority. She is also not a juvenile as defined by N.J.S.A. 2A[:]4A-22 as someone under 18 years of age. No services are being provided to [Amanda] in accordance with N.J.S.A. 9:17B-3, an exception to the age majority of 18. . . . And so there is a limited exception with regard to being a full adult at the age of 18. So, for those reasons, this Court does not have jurisdiction to make a custody determination under N.J.S.A. 9:2-9 since she is no longer a minor.

Consistent with its conclusion that it lacked jurisdiction to place Amanda in plaintiff's custody, the court determined Amanda was not dependent on the court or under the custody of an agency or individual appointed by the court. The court addressed the other factors set forth in 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11 and made the following findings: Amanda was under the age

of twenty-one and unmarried (Factor One); it lacked jurisdiction under state law to make judicial determinations about the custody and care of juveniles (Factor Three); defendant had abandoned Amanda, and reunification had already occurred between plaintiff and Amanda (Factor Four); and it was not in Amanda's best interest to return to Guatemala (Factor Five). The judge explained, "[T]here are no family members to live with or care for her. The threat of gang violence would also make it dangerous to do so. All her needs are currently being met by her mother in the United States, where she is secure and thriving."

The court denied plaintiff's motion for reconsideration. Citing O.Y.P.C v. J.C.P., 442 N.J. Super. 635 (App. Div. 2015), the court concluded it considered all "possible exceptions [to exercise jurisdiction] and, in fact, attempted to address each of them and why they did not apply in the particular facts of this case."

On appeal, plaintiff contends the trial court erred by denying her custody application on the ground that Amanda had turned eighteen. Plaintiff argues the trial court failed to consider circumstances, under N.J.S.A. 9:17B-3, where the trial court may nevertheless exercise jurisdiction over a person, despite reaching the age of majority. Additionally, she contends that the doctrine

of parens patriae and principles of emancipation establish the Family Part's jurisdiction over her custody application.

Our review of Family Part fact findings is limited. We will not disturb findings supported by sufficient, substantial and credible evidence in the record. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 278-79 (2007). We defer to family court fact-findings in part because of its "special expertise" in family matters, its "feel of the case," and opportunity to assess credibility based on witnesses' demeanor. N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008); Cesare v. Cesare, 154 N.J. 394, 412-13 (1998). However, we exercise de novo review of the trial court's legal conclusions. H.S.P., supra, 223 N.J. at 215.

We find the trial court erred in concluding that N.J.S.A. 9:17B-3 precluded it from exercising jurisdiction over Amanda in order to make a custody decision. Although the statute generally sets the age of majority at eighteen, it reserves judicial authority to exercise jurisdiction over persons under twenty-one. It states, in pertinent part:

Except . . . with respect to the right of a court to take any action it deems appropriate and in the interest of a person under 21 years of age . . . every person 18 or more years of age shall in all other matters and for all other purposes be deemed to be an adult and, notwithstanding any other provision of law to

the contrary, shall have the same legal capacity to act and the same powers and obligations as a person 21 or more years of age.

[Ibid. (emphasis added).]

Thus, the court was empowered to exercise jurisdiction over Amanda if the circumstances warranted and it furthered Amanda's interests. Although over the age of eighteen, Amanda – presumably due to her circumstances in Guatemala – is still in high school and depends upon her mother for housing and support. Amanda evidently seeks to be placed in her mother's custody, and to submit to her mother's control, just as her mother wishes to exercise it.

In O.Y.P.C., supra, 442 N.J. Super. at 641-44, we described the Family Part's role in hearing SIJ petitions and the sources of its jurisdiction over persons between eighteen and twenty-one years old. Aside from reversing and remanding because the trial court declined to make the essential findings – an oversight not present in this case – we directed the trial court to consider whether to exercise jurisdiction over the above-eighteen child pursuant to N.J.S.A. 9:17B-3. We noted in O.Y.P.C., as we do here, that N.J.S.A. 9:17B-3 "excepts from its definition of adulthood-at-age-eighteen 'the right of a court to take any action it deems appropriate and in the interest of a person under 21 years of age.'" Id. at 643 (quoting N.J.S.A. 9:17B-3).

In making that determination, "the court should apply New Jersey law as it would in any . . . ordinary custody case." Id. at 641. "[I]f the trial judge believes that, under New Jersey law," it is appropriate or inappropriate to "place the juvenile 'under the custody of an entity or individual' . . . the court should state that conclusion." Id. at 641 n.5. Thus, after reviewing all the facts and factors under N.J.S.A. 9:2-4(c), the court should consider whether it is in Amanda's interest to be placed in plaintiff's custody.² See Morgan v. Morgan, 205 N.J. 50, 64 (2011) ("A custody case is squarely dependent on what is in the child's best interest."); Baures v. Lewis, 167 N.J. 91, 115 (2001) ("Whoever can better advance the child's interest will be awarded the status of custodial parent."); Fantony v. Fantony, 21 N.J. 525, 536 (1956) ("Our law in a cause involving the custody of a minor child is that the paramount consideration is the safety, happiness, physical, mental and moral welfare of the child."). Yet, the court's conclusion should not be based on a desire to influence the federal SIJ decision one way or another.

² The court's factor two determination – whether Amanda "is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court" – is distinct from its factor five determination – that it is not in Amanda's best interests to return to Guatemala.

Finally, the court erred in its factor three determination. As noted above, the question pertains to whether the court meets the definition of a "juvenile court" found in federal regulation. In other words, the issue is whether "[t]he 'juvenile court' has jurisdiction under state law to make judicial determinations about the custody and care of juveniles[.]" H.S.P., supra, 223 N.J. at 210 (quoting In re Dany G., supra, 117 A.3d at 655). We interpret this factor to pertain to the court's general jurisdiction over juveniles, and not to jurisdiction over a particular child before the court. See 8 C.F.R. § 204.11(a) ("Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.").

Accordingly, we vacate the orders dated December 23, 2015 and February 3, 2016, and remand the case to the Family Part for further proceedings consistent with this opinion. To the extent not addressed, plaintiff's remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Vacated 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