SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2542-14T1
A-1188-15T1

D.G., n/k/a
D.H.,

Plaintiff-Appellant,

v.

R.G.,

Defendant-Respondent.

Argued May 18, 2017 – Decided July 14, 2017

Before Judges O'Connor and Whipple.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Mercer County, Docket No. FM-11408-13.

D.H., appellant, argued the cause pro se.

Lindsey Moskowitz Medvin argued the cause for respondent (Szaferman, Lakind, Blumstein & Blader, P.C., attorneys; Ms. Moskowitz Medvin, of counsel and on the briefs).

PER CURIAM

In these back-to-back appeals, plaintiff appeals from a December 10, 2014 order appointing a therapist for the parties'

son, as well as an August 27, 2015 order addressing numerous prayers for relief raised by both plaintiff and defendant. We affirm the December 10, 2014 order; however, we are constrained to remand the August 27, 2015 order for a statement of reasons.

Plaintiff and defendant were married in May 2001 and had multiple children. On July 24, 2013, the court entered a dual final judgment of divorce incorporating a marital settlement agreement (agreement). Pursuant to the agreement, the parties shared joint legal custody, and plaintiff had primary residential custody of the children. Defendant agreed to pay child support of $385 bi-monthly, and was responsible for providing medical and dental insurance for the children. Unreimbursed medical expenses were to be paid in proportion to the parties' net incomes with defendant responsible for fifty-three percent and plaintiff forty-seven percent of the payments.

After the parties' divorce, a guidance counselor recommended the parties' child engage in therapy. On December 20, 2013, defendant moved to compel plaintiff to cooperate with arranging counseling for the child and to pay her share of the counseling in accordance with the parties' agreement. On January 10, 2014, the trial judge granted defendant's motion.

Despite the court order, the child did not receive counseling; therefore, defendant moved on April 25, 2014, to hold plaintiff

in contempt for noncompliance with the court's January 10, 2014 order. According to defendant's motion, plaintiff rejected defendant's suggested therapists because she did not have enough advance notice of the therapy appointments, had not reviewed the therapist's qualifications, or the therapist was out of network. The court denied defendant's motion on May 2, 2014, but ordered the parties to work collaboratively to ensure the child was in therapy as soon as possible. Additionally, the court appointed a guardian ad litem (GAL) to prepare a report for the court about all the children.

The GAL issued her report in October 2014. At that time, the parties had still not agreed upon a therapist to address their child's needs, and the GAL suggested another child could benefit from similar counseling. The GAL recommended the court order defendant and plaintiff to attend mediation and remain in the courthouse until both parents agreed upon a therapist. The GAL suggested both parties bring a list of therapists to mediation to avoid court appointment of a therapist, as plaintiff expressed concerns over the affordability of a court appointed-therapist. However, if no agreement ensued, the GAL recommended the court appoint a therapist, order defendant to pay the entirety of the bill, and order defendant's child support payments reduced commensurate to the amount of plaintiff's proportionate share.

After an unsuccessful mediation session on December 10, 2014, the parties appeared before the trial judge for case management. Counsel for defendant told the judge the issue between the parties was whether or not the counselor should have a Ph.D., and whether the counselor should be in-network in order to reduce costs. Counsel informed the court the GAL found and approved a qualified psychologist with a Ph.D.; however, the psychologist was out-of-network. Defendant tried unsuccessfully to find a suitable healthcare provider in-network. According to defendant, his insurance provider provides limited reimbursements per session to a mental health professional, and he could not find a qualified psychologist in-network. Plaintiff, dissatisfied with defendant's choice, asserted dire financial circumstances due to unemployment. She claimed she could not even afford to send the parties' youngest child to daycare, and that her home was in foreclosure.

The judge informed plaintiff she would have to make certain arrangements, such as obtaining a job, because based upon the GAL's report the children needed therapy. The judge concluded the conference, but ordered them to remain in the courthouse until they could agree upon a plan for the children's therapy.

After a recess, the court re-opened the record; however, plaintiff was absent. According to defendant's counsel, he provided plaintiff with a list of qualified psychologists and told

her he and defendant would be going across the street for coffee. When they returned later, plaintiff was nowhere to be found. Plaintiff texted defendant informing him she would be gone for twenty minutes but later texted she would be gone for an hour. Defendant's counsel informed the judge plaintiff left the courthouse. Defendant texted plaintiff, informing her the judge instructed she return to the courthouse in ten minutes. Plaintiff responded she was making phone calls and would be back in five minutes. When the judge went back on the record, plaintiff was not present.

The judge entered an order assigning defendant's choice of psychologist and ordering defendant to pay for the cost. Defendant's child support payments were reduced by the amount of plaintiff's contribution for unreimbursed medical costs. Additionally, the court ordered plaintiff to cooperate with defendant and ensure the children attend the sessions with the psychologist.

Plaintiff moved to stay the December 10, 2014 order. Following oral argument, the trial judge denied the stay. An appeal of that order followed.

Shortly thereafter, on December 22, 2014, plaintiff filed an omnibus motion raising thirty prayers for relief. Defendant filed a cross-motion, and plaintiff filed an additional motion to enforce

litigants' rights. Argument for these new motions was scheduled for February 20, 2015.

On or about January 30, 2015, plaintiff hired counsel. Oral argument on the motions were adjourned without a date. Plaintiff filed another motion requesting the court clarify the December 10, 2014 order, defendant pay child support and alimony on a timely basis, and that defendant pay plaintiff $1275.51 in arrears.

On August 27, 2015, the trial judge issued an order addressing all fifty-one items of relief requested in the aggregate by both parties. Among other things, the judge ordered plaintiff to cooperate with effectuating the children's counseling. Additionally, the judge granted defendant temporary primary physical and residential custody of one of the children pending an evaluation. Each item of relief ordered by the judge was set forth in a separate paragraph in the order. Immediately following the sentence identifying the specific relief ordered, the judge added an explanation for the relief ordered. However, the explanation was just a few words and far too brief to communicate the court's reasons for providing the subject relief. Plaintiff subsequently moved for reconsideration of the August 27, 2015 order.

On October 30, 2015, the court heard oral argument on plaintiff's motion for reconsideration. Plaintiff had new counsel

on this date, who asserted the August 27, 2015 order was deficient because the court provided no factual and legal conclusions. The judge referred to the parties' counsel's telephone conference in June 2015, saying he

> scratched out some general comments as to what — where [he] was going with the motion that [he] shared with both attorneys so that they were aware of what the — let's say the rationale was for many of the decisions that have been placed in this order so that [he] was satisfied both parties were aware of the — let's say the rational and the conclusions that were ultimately were put into this order.

Additionally, the judge stated,

> it was agreed that the Court would issue an order based primarily on what had been shared with both parties. And you know, so for purposes of let's say minimizing, this would have probably been a 50 or 60 page opinion but most of the conclusions and rationale had already been shared with the parties.

The trial judge denied plaintiff's motion for reconsideration, finding she had "neither alleged a palpably incorrect or irrational basis for the prior order nor demonstrated that it was an obvious failure by the Court to consider competent evidence at the time of the modification hearing." Plaintiff appealed both the August 27 and October 30, 2015 orders.

Our standard of review is as follows. "[F]indings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394,

411-12 (1998) (citing Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). "Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court fact-finding." Id. at 413. However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citations omitted).

I.

We first address the December 10, 2014 order concerning the appointment of a therapist. Plaintiff argues the trial court erred in entering the order, asserting she should have been permitted to present evidence of her financial situation and the other in-network psychologists available. We disagree.

The best interests of the child is the court's primary consideration in custody cases. Kinsella v. Kinsella, 150 N.J. 276, 317 (1997). When there is a "genuine and substantial factual dispute regarding the welfare of the children," a plenary hearing is required. Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007). Here, there is no dispute the two children needed counseling. The question properly centered upon who the therapist should be, a decision within the court's discretion. There was

no "genuine and substantial factual dispute" requiring a plenary hearing.

Almost one year prior to the challenged order, defendant initiated efforts to commence counseling. In that year, the parties failed to agree upon a therapist. After giving the parties many opportunities to come to an agreement, plaintiff left the courthouse without resolution of the issue. The judge entered an order appointing a therapist, directing defendant to pay the entirety of the bill, and reducing defendant's support payments by the amount of plaintiff's share of unreimbursed medical expenses.

Plaintiff has not established any legal error in the court's order nor any abuse of the court's discretion. "Family Part judges are frequently called upon to make difficult and sensitive decisions regarding the safety and well-being of children." Id. at 111. Family Part judges have "special expertise in family matters" and we will "not second-guess their findings and the exercise of their sound discretion." Ibid. Here, the Family Part judge did not abuse his discretion in ordering defendant to pay for the psychologist's bill, while having his child support payments reduced to reflect plaintiff's share of unreimbursed medical expenses, a result completely consistent with the parties' agreement. We therefore affirm the December 10, 2014 order.

II.

We next address plaintiff's appeal of the August 27, 2015 order. Plaintiff argues she had no opportunity to presents facts or argue the omnibus motion filed December 22, 2014 and ultimately decided on August 27, 2015. Additionally, she argues the court should not have changed custody of one child without a hearing. Because the trial judge failed to provide a sufficient statement of reasons in the August 27, 2015 order, we are constrained to remand the matter for the judge to provide his reasons for granting or denying the specific relief in the August 27 order plaintiff challenged in her motion for reconsideration.

Rule 1:7-4(a) states "[t]he court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right . . . ." When a trial judge fails to provide his or her factual findings, this court's review is impeded and a remand is necessary. Elrom v. Elrom, 439 N.J. Super. 424, 443 (App. Div. 2015). A trial judge must make specific findings on the record in order for this court to be "informed of the rationale underlying his conclusion." Esposito v. Esposito, 158 N.J. Super. 285, 291 (App. Div. 1978).

What the Family Part judge offered fell short of the requirements of Rule 1:7-4. While some of the fifty-one items of relief are followed by a conclusory sentence ostensibly explaining the ruling, we are not provided any insight into the judge's "rationale underlying his conclusion." See ibid.

At oral argument on the motion for reconsideration, the trial judge explained the rationale for his order was provided during a telephonic conference between court and counsel. However, the telephone conference was not recorded or transcribed; therefore, the judge cannot rely upon a proceeding never memorialized as his statement of reasons. Moreover, the parties were not present during the telephone conference, and plaintiff was represented by new counsel following the conference who had not been privy to what was discussed. Rule 1:7-4 mandates the court provide a statement of reasons. Without a statement of reasons, we cannot meaningfully review the August 27, 2015 order, and we are constrained to remand.

Of particular concern is the temporary change in custody of the child without a hearing. When modifying custody or parenting time a party must "demonstrate changed circumstances that affect the welfare of the children." Hand, supra, 391 N.J. Super. at 105-06. Additionally, a plenary hearing is necessary when there is a "genuine and substantial factual dispute regarding the welfare

of the children." Ibid. However, a plenary hearing is not always necessary. Id. at 106. When determining whether a plenary hearing is necessary, "the threshold issue is whether the movant has made a prima facie showing that a plenary hearing is necessary." Ibid.

Defendant moved to modify the parties' agreement to obtain temporary physical and residential custody of one child. It is not clear, based upon the record, whether defendant made a showing so clear and irrefutable a plenary hearing was not necessary, because the judge made no factual findings or legal conclusions. We cannot discern on what basis the temporary change in custody was made. We note the transfer was temporary, but we recognize almost two years have passed since the entry of this order and the child is still residing with his father. As such, the Family Part judge should address the issue of custody first and if a plenary hearing is necessary, conduct such hearing as soon as possible.

Plaintiff's additional arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part; remanded in part for findings consistent with this opinion. We do not retain jurisdiction.