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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4690-15T1

AARON FENZI,

Plaintiff-Appellant,

v.

JACQUELINE BALLAN,

Defendant-Respondent.

Argued April 25, 2017 – Decided August 25, 2017

Before Judges Espinosa and Grall.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Hudson County,
Docket No. FD-09-0720-16.

Theodore A. Grezlak, III, argued the cause for
appellant (James R. Lisa, on the brief).

Robyne D. LaGrotta argued the cause for
respondent (Lagrotta Law, LLC, attorneys; Ms.
LaGrotta, of counsel and on the brief).

PER CURIAM

After communicating online for several months, the parties
met for the first time in April 2014. Defendant relocated to New

Jersey and moved into plaintiff's home in August 2014. One month later, the parties learned defendant was pregnant. Their relationship deteriorated and defendant moved out of plaintiff's residence in March 2015. She gave birth to "Joey"¹ in May 2015. Defendant relocated to Georgia with Joey in October 2015 without informing plaintiff.

In October 2015, plaintiff filed a verified complaint and order to show cause seeking sole legal and residential custody of Joey. The trial court granted plaintiff sole temporary legal and residential custody, ordered defendant to return Joey to New Jersey, to appear in court on November 4, 2015 and suspended her parenting time until she appeared. Defendant appeared telephonically, without counsel, on November 12, 2015. The court entered various orders, and, after mediation was unsuccessful, conducted a trial in May 2016.

On May 25, 2016, the court entered an order granting joint legal custody of Joey to the parties and sole residential custody to defendant. In its oral decision, the court reviewed each of the factors relevant to a custody determination set forth in N.J.S.A. 9:2-4(c). The court then relinquished jurisdiction over Joey to Georgia. Furthermore, the court found defendant did not

¹ We use a pseudonym to protect the child's identity.

act in bad faith when she left New Jersey with Joey, recognizing she consulted with an attorney who incorrectly advised her it was legal to do so.

After plaintiff filed a notice of appeal from the May 25, 2016 order, the parties executed a consent order in which they agreed that the May 25, 2016 custody order "be domesticated to the State of Georgia with full effect and enforcement as if issued by a Superior Court of a Georgia County." Thereafter, the consent order was filed with the Georgia Superior Court.

In his appeal, plaintiff argues the trial court erred when it failed to analyze "cause" for the child's removal as required by N.J.S.A. 9:2-2 and that, even if the court had conducted a relocation analysis, defendant failed to satisfy her burden under Baures v. Lewis, 167 N.J. 91 (2001). Defendant counters that the trial court based its decision upon the relief sought by plaintiff, for sole legal and residential custody. She argues further that, even if the trial court had conducted a Baures analysis, the result would have been the same and that, because plaintiff entered into the consent order to domesticate the custody order in Georgia, he waived his right to appeal the May 25, 2016 order.

By giving his consent to the domestication of the order in Georgia, plaintiff agreed that the order as it existed should be given full faith and credit in that state. Nonetheless, for the

sake of completeness, we address the merits of plaintiff's arguments.

For the first time on appeal, plaintiff argues that, because the removal of Joey from the state was an issue, the trial court erred in applying a best interests analysis rather than the analysis articulated in Baures v. Lewis, 167 N.J. 91, 116-17 (2001), applicable to the removal of a child as governed by N.J.S.A. 9:2-2. Since this appeal was argued, the Supreme Court decided Bisbing v. Bisbing, ___ N.J. ___ (2017), and abandoned the Baures standard in favor of a best interests analysis to be applied "to all interstate relocation disputes under N.J.S.A. 9:2-2 in which the parents share legal custody." Id. at 3. The Court defined such disputes as "cases in which one parent is designated as the parent of primary residence and the other is designated as the parent of alternate residence and cases in which custody is equally shared." Id. at 3. The Court directed,

In all such disputes, the trial court should decide whether there is "cause" under N.J.S.A. 9:2-2 to authorize a child's relocation out of state by weighing the factors set forth in N.J.S.A. 9:2-4, and other relevant considerations and determining whether the relocation is in the child's best interests.

[Id. at 3-4.]

The Court further instructed that "the best interests standard applies to the determination of 'cause' under N.J.S.A.

9:2-2." Id. at 40.

Thus, if this were purely a relocation case in which custody had been previously determined, the Baures analysis would not apply. However, as plaintiff acknowledges, even under Baures,

A removal case is entirely different from an initial custody determination. When initial custody is decided, either by judicial ruling or by settlement, the ultimate judgment is squarely dependent on what is in the child's best interests.


[Baures, supra, 167 N.J. at 115.]

Because plaintiff's complaint sought the "initial custody determination," it was entirely appropriate for the trial court to make that decision based upon an analysis of the child's best interests.

Although plaintiff challenges the use of the best interests standard, he does not argue the trial court's analysis under that standard was flawed or challenge any of the court's findings regarding the N.J.S.A. 9:2-4(c) factors. In fact, he concedes, "If defendant were to stay in New Jersey, then the current custody ruling would have been sufficient." We agree.

The order granting joint legal custody of Joey, sole residential custody to defendant and relinquishing jurisdiction to Georgia is affirmed.

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


CLERK OF THE APPELLATE DIVISION