SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5153-15T1

T.B.,[1]

Plaintiff-Appellant,

v.

D.B.,

Defendant-Respondent.

Submitted September 20, 2017 – Decided October 6, 2017

Before Judges Simonelli and Haas.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Ocean County, Docket No. FM-15-0214-14.

Warren L. Peterson, attorney for appellant.

Respondent has not filed a brief.

PER CURIAM

In this post-judgment matrimonial matter, plaintiff appeals from the June 21, 2016 order of the Family Part denying her motion to allow her boyfriend, a convicted sex offender subject to the

[1] We use initials to protect the privacy of the family.

registration and notification requirements of Megan's Law, N.J.S.A. 2C:7-1 to -10, to have contact with the parties' four children. We affirm.

The parties were married in 2004 and have four children. They separated in 2012. At the time of their separation, plaintiff was romantically involved with her boyfriend. On November 15, 2012, the trial court entered an order setting child support, and stating that the parties would share joint legal custody of the children with plaintiff having temporary residential custody. The order further provided that plaintiff's boyfriend "shall have no contact whatsoever with the parties[']children nor be in their presence."

On June 14, 2013, the court entered a second child support and parenting time order, which stated that plaintiff "is not to leave [her boyfriend] in a care[-]giving capacity for the children at any time." One week later, the court entered another order again providing that plaintiff's boyfriend was "to have no contact with the minor children in any capacity nor be in the presence of the children at any time."

On September 20, 2013, the court entered a fourth order stating that the parties' "children shall not be in [plaintiff's boyfriend's] presence at any time. If [the boyfriend] is in the [presence] of the minor children, [defendant] may petition the court . . . for custody and removal of the minor children." The

parties divorced in May 2014. The parties continued to share joint legal custody of the children with plaintiff designated as the parent of primary residence.

In November 2015, the parties exchanged a series of text messages. During this exchange, plaintiff wrote that the children had been to her boyfriend's home and he helped them with their homework. Plaintiff also stated that she and her boyfriend took the children to church on a "couple" of occasions.

Based on these statements, defendant filed a motion seeking to have residential custody of the children transferred to him. Plaintiff responded with a cross-motion seeking an order permitting her boyfriend to have supervised contact with the children.[2] In a certification accompanying her motion, plaintiff denied that her boyfriend had been in contact with the children. She stated that she became engaged to her boyfriend in November 2014 and wanted the children to "have an opportunity to know and have a relationship with their stepfather."

Plaintiff's certification contained a number of hearsay statements not based upon her personal knowledge. For example, she alleged the boyfriend's "parole officers feel that [her boyfriend] should be allowed around [the] children, with [her]

[2] Plaintiff also sought other relief, but those requests are not involved in the present appeal.

supervision." Plaintiff did not provide a certification from a parole officer to support this claim and, at oral argument on the motion, stated it would be a violation of her boyfriend's parole "to live with the children." Plaintiff also asserted, again without any supporting certifications or documentation from the agency, that the Division of Child Protection and Permanency (Division) had evaluated her boyfriend and she "believe[d] the evaluation was favorable to" him. Plaintiff did not provide a certification from her boyfriend on any of these topics.

Following oral argument, the trial judge denied plaintiff's motion to permit her boyfriend to have contact with the children. In his written statement of reasons, the judge noted that the court had issued four prior orders barring the boyfriend from being in the presence of the children for any purpose and that plaintiff failed to establish any basis for modifying that prohibition.[3] This appeal followed.

On appeal, plaintiff asserts that she established a change of circumstances warranting a modification of the bar against her boyfriend having contact with the children, and the trial judge should have conducted a plenary hearing and granted discovery of

[3] The trial judge denied defendant's motion for a change of custody without prejudice. Thereafter, plaintiff indicated that she no longer planned to marry or live with her boyfriend.

the Division's records prior to considering her motion. We disagree.

The scope of our review of the Family Part's orders is limited. We owe substantial deference to the Family Part's findings of fact because of that court's special expertise in family matters. Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). We will only reverse the judge's decision when it is necessary to "ensure that there is not a denial of justice because the family court's conclusions are [] clearly mistaken or wide of the mark." Parish v. Parish, 412 N.J. Super. 39, 48 (App. Div. 2010) (alternation in original) (quoting N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)).

A party who seeks to modify an existing custody or parenting time order must meet the burden of showing changed circumstances and that the arrangement is no longer in the best interests of the child. Finamore v. Aronson, 382 N.J. Super. 514, 522-23 (App. Div. 2006). The issue is "two-fold and sequential." Faucett v. Vasquez, 411 N.J. Super. 108, 127 (App. Div. 2009), certif. denied, 203 N.J. 435 (2010).

Plaintiff did not meet this burden. The prohibition against plaintiff's boyfriend having any contact with the children had been in place since the time of the parties' separation in 2012. Plaintiff was involved with her boyfriend at that time. Her

announced engagement to this individual, with whom she had been involved in a years-long relationship, was certainly not a new development or a changed circumstance warranting a modification of the four prior orders.

Plaintiff also failed to show that there had been any change in her boyfriend's circumstances. Indeed, she admitted at oral argument that he was still prohibited by the terms of his parole from living with the children.

Although plaintiff claimed in her certification that her boyfriend's parole officers and the Division now believed that he could safely have supervised contact with the children, these statements were not based upon her own personal knowledge as required by Rule 1:6-6,[4] which governs the presentation of evidence on motions. Therefore, the trial judge properly discounted these claims.

Plaintiff's argument that the judge should have conducted a plenary hearing also lacks merit. "A plenary hearing is required when the submission show there is a genuine and substantial factual dispute . . . and the trial judge determines that a plenary hearing is necessary to resolve the factual dispute." Hand v. Hand, 391

[4] Rule 1:6-6 requires certifications "made on personal knowledge, setting forth only facts which are admissible in evidence to which the affiant is competent to testify."

N.J. Super. 102, 105 (App. Div. 2007). Because plaintiff raised nothing more than bald allegations concerning her boyfriend's efforts to reform, which lacked competent factual support, we discern no abuse of discretion in the judge's decision to resolve the motion without conducting a plenary hearing. Similarly, because plaintiff did not demonstrate a change of circumstances warranting a re-examination of the prior orders prohibiting contact between her boyfriend and the children, there was no need for discovery of any of the Division's records. As noted above, there was no competent evidence in the record establishing that the Division had conducted any evaluation of plaintiff's boyfriend.

As for the balance of any of plaintiff's arguments not expressly discussed above, they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.