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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0965-16T4

KHALED DARDIR,

Plaintiff-Appellant,

v.

SHROUK KHALIL,

Defendant-Respondent.

Submitted December 4, 2017 – Decided April 27, 2018

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, Docket No. FM-09-0232-13.

Khaled Dardir, appellant pro se.

Billy E. Delgado, LLC, attorney for respondent (Dalya Youssef, on the brief).

PER CURIAM

Plaintiff Khaled Dardir appeals from certain provisions in an October 3, 2016 Family Part order. He challenges: (1) the denial of his request he be designated the primary caretaker of the parties' child, presently age six; (2) the denial of his

request for reimbursement of his share of the parenting time coordinator's fees; (3) the provision ordering he contribute to the child's after-school care expenses; and (4) the provision ordering the child to have a neuropsychological evaluation. Plaintiff also requests we direct another judge to hear this matter on remand. We affirm.

I

The parties married in 2009, had a child in 2011, and divorced in 2013. The parties' property settlement agreement (PSA), incorporated into a dual judgment of divorce, designated defendant Shrouk Khalil the child's primary caretaker.

One year after they divorced, plaintiff filed a motion seeking to be designated the primary caretaker. On June 14, 2014, the court entered an order directing Ronald Silikovitz, Ph.D., conduct a custody evaluation, and appointing a guardian ad litem (GAL) to represent the child's interests. The court also ordered a plenary hearing be scheduled after Dr. Silikovitz completed his report.

Thereafter, the GAL authored a report recommending defendant continue as the primary caretaker but Dr. Silikovitz determined otherwise, recommending plaintiff should be so designated. The court scheduled a plenary hearing. After a day of testimony, the parties settled, entering into a consent order

on October 6, 2015. That order provided defendant was to continue as the child's primary caretaker. The parties also agreed to retain the services of a parenting time coordinator (PTC) to resolve any parenting time problems; plaintiff agreed to pay sixty and defendant forty percent of the PTC's fees.

Approximately one year later, on October 3, 2016, the court entered an order denying a motion plaintiff had filed requesting he become the primary caretaker. The court found plaintiff failed to show a change in circumstances warranting any modification in the parties' custodial arrangement. The court also denied plaintiff's request he be reimbursed for his contribution to the PTC's fees, concluding plaintiff agreed to be responsible for sixty percent of those fees in the consent order.

In the October 3, 2016 order, the court also granted defendant's cross-motion to permit her to take the child for a neuropsychological evaluation. During oral argument on the motion, plaintiff conceded he did not oppose such request and, after having reviewed the record, the court found plaintiff had previously alleged the child had various problems. The court found it would be in the child's best interests to be evaluated so if there were any problems, they could be addressed.

Finally, the court ordered plaintiff contribute toward the child's after-school care costs. At the time the parties entered into their PSA, the child was not yet attending school. The PSA noted the child was being cared for by defendant's mother and stated that if such care ceased, the parties would attempt to agree upon a new arrangement and, if they failed, defendant could file a motion. Thereafter, the parties attempted but failed to reach an accord on this issue and defendant filed a motion. The court determined the parties would pay for after-school care costs, and directed plaintiff to pay sixty-three and defendant thirty-seven percent of such costs, the percentage break-down the parties agreed govern payment for extra-curricular activities in the PSA.[1]

II

On appeal, plaintiff asserts the following arguments for our consideration:

> POINT I: THE TRIAL COURT ERRED BY DENYING THE CHANGE OF CUSTODY. ITS PRIOR ORDERS THAT A PLENARY HEARING WOULD FOLLOW THE COMPLETION OF THE COURT APPOINTED EXPERT REPORT AS TO CHANGE OF CUSTODY IF CONDITIONS WERE MET.

[1] In their PSA, the parties agreed to deviate from the Child Support Guidelines when they settled upon the amount of child support each was to pay. Nevertheless, they agreed plaintiff was to contribute sixty-three and defendant thirty-seven percent toward the cost of the child's extra-curricular activities.

POINT II: THE TRIAL COURT ERRED BY DENYING THE PLAINTIFF REIMBURSEMENT MONIES PAID DUE TO DEFENDANT'S LACK OF COPARENTING.

POINT III: THIS COURT SHOULD REVERSE THE ORDER TO COMPEL THE PLAINTIFF OF PAYING THE AFTER-SCHOOL CARE AS PER LACK OF DISCUSSION AT THE HEARING.

POINT IV: THE TRIAL COURT ERRED BY GRANTING THE DEFENDANT'S MOTION TO MOVE FORWARD TO EVALUATE A MINOR CHILD.

POINT V: ON REMAND, THIS MATTER SHOULD BE HEARD BY A DIFFERENT JUDGE.

We first address plaintiff's contention the court erred when it denied his request to become the child's primary caretaker. He argues that, before the custody hearing was scheduled, Dr. Silikovitz determined he should be the primary caretaker. Therefore, he contends, he should have been granted custody when he again sought to be designated the primary caretaker in his most recent motion. We reject this argument.

Custody orders are not considered "final orders" and are always subject to modification. Wilke v. Culp, 196 N.J. Super. 487, 494 (App. Div. 1984). In any custody determination, "the primary and overarching consideration is the best interest of the child." Kinsella v. Kinsella, 150 N.J. 276, 317 (1997). When a judgment or order regarding custody and visitation is rendered, "whether [it is] reached by consent or adjudication,

[it] embodies a best interests determination." Todd v. Sheridan, 268 N.J. Super. 387, 398 (App. Div. 1993).

To alter a custody arrangement, the moving party must show there has been a change in circumstances and that it is in the child's best interest to modify such arrangement. See Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007). To determine whether a party has made a prima facie showing of changed circumstances, the court must consider the terms of the order or judgment it is asked to modify and determine if there has been a change of circumstance since the entry of such order or judgment.

We will not disturb a trial court's fact-finding if supported by "adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (citing Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)). We accord similar deference to a trial court's determination that a party has failed to establish a change in circumstances warranting modification of child custody arrangements; we review such determinations for an abuse of discretion. Costa v. Costa, 440 N.J. Super. 1, 4 (App. Div. 2015).

Here, the parties' October 6, 2015 consent order was the most recent best interests' determination. See Todd, 268 N.J. Super. at 398. That determination was defendant be the primary

caretaker. The trial court found plaintiff failed to show there had been a change in circumstances since the entry of that consent order, and thus denied his request he be designated the primary caretaker. Plaintiff does not challenge that particular determination. His argument is that, before the parties entered into the consent order, Dr. Silikovitz determined he should be the primary caretaker.

Plaintiff does not appreciate Dr. Silokovitz' opinion was subject to challenge, and one of the purposes of the plenary hearing was to test that opinion. But before Dr. Silokovitz was called as a witness, the parties settled and agreed defendant would remain the primary caretaker. Thus, as a practical matter, Dr. Silokovitz' opinion no longer has any value as his report predates the existing order and cannot now serve to establish a prima facie case of changed circumstances. Therefore, because plaintiff did not show a change of circumstances following entry of the consent order that warranted a transfer of custody, the trial court appropriately rejected his request custody of the child be transferred to him.

We turn to plaintiff's contention about after-school care expenses. He argues such expenses are extracurricular activities, and the PSA states he need not contribute to such expense unless he agrees. We disagree after-school care is an

extracurricular activity. Unless there are circumstances that excuse a parent from paying child support, a parent must contribute to work-related day care expenses. See Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A, www.gannlaw.com (2018). There was no evidence plaintiff was relieved of this duty.

We have considered plaintiff's remaining arguments and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION