

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1544-15T1

C.A.,

Plaintiff-Respondent/
Cross-Appellant,

v.

E.A.,

Defendant-Appellant/
Cross-Respondent.

Argued April 10, 2018 – Decided April 27, 2018

Before Judges Reisner, Gilson, and Mayer.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FM-02-1657-10.

Eilish M. McLoughlin argued the cause for
appellant/cross-respondent (Moskowitz Law
Group, LLC, attorneys; Luther G. Jones, IV,
of counsel; Luther G. Jones, IV, and Eilish
M. McLoughlin, on the briefs).

Jay R. Atkins argued the cause for
respondent/cross-appellant (Sunshine, Atkins,
Minassian, Tafuri, D'Amato, Beane & Buckner,
PA, attorneys; Jay R. Atkins and Christian L.
Beane, on the briefs).

PER CURIAM

In this post-judgment matrimonial case, defendant E.A.¹ appeals from a June 3, 2015 order of the trial court addressing custody of the parties' unemancipated children.² Plaintiff C.A. cross-appeals from the order. We affirm.

After a bench trial spanning almost thirty trial days, Judge Ronny Jo Siegal issued a lengthy oral opinion, making detailed credibility determinations, factual findings, and legal conclusions. Based on the facts as she found them to be, the judge determined that the parties' existing shared parenting agreement was no longer viable, because defendant was incapable of shared decision-making about the children. Most significantly, the judge found that defendant's unreasonable conduct was harmful to the children's best interests and was a threat to their emotional well-being.

The judge found that "the defendant does not have the ability to agree, communicate, cooperate and essentially co-parent with

¹ We use the parties' initials, and we impound the record, to protect the family's privacy and safeguard the children from further psychological harm.

² Defendant's appeal raised an additional issue, concerning his entitlement to a credit for overpayment of child support. However, after oral argument of this appeal, the parties submitted to this court a document signed by both counsel, reciting that the issue was resolved, and providing that "the Appellant is hereby entitled to a credit in the amount of \$7,172.82 for overpayment of child related expenses." We consider that document to be a binding settlement agreement on the overpayment issue.

the plaintiff." Instead, "[defendant] has in significant ways shown that he will purposefully act unilaterally, act to the detriment of the children's best interest[s] so that his own way prevails, or that plaintiff's way does not prevail."

Judge Siegal concluded that the only way to mitigate the harm was to designate plaintiff as the parent of primary residence and to give plaintiff sole legal authority to make final decisions about the children's health, education, and welfare. The judge awarded defendant parenting time, and an opportunity to provide plaintiff with comments on any proposed significant decisions about the children's health, education, and welfare.

On this appeal, both sides accept Judge Siegal's factual findings.³ Both sides acknowledge that N.J.S.A. 9:2-4(c) gave Judge Siegal discretion to craft a hybrid custody arrangement in the children's best interests. Defendant does not challenge the provision of the order designating plaintiff as the parent of primary residence, or the provisions detailing his parenting time. However, he argues that, once the trial court granted the parties joint legal custody, the court was also required - as a matter of

³ Illustrating the narrowness of his appeal, defendant's statement of facts is four pages long. His legal argument focuses solely on alleged legal errors in the judge's decision, without referring to her factual findings.

law - to give him equal participation in making decisions about the children's health, education, and welfare. In her cross-appeal, plaintiff argues that defendant's conduct was so demonstrably counterproductive and harmful to the children that the trial judge should have granted her sole legal custody.

We review child custody decisions for abuse of discretion. Pascale v. Pascale, 140 N.J. 583, 611 (1995); Nufrio v. Nufrio, 341 N.J. Super. 548, 555 (App. Div. 2001). Family Part judges have "wide latitude to fashion creative remedies in matrimonial custody cases." Beck v. Beck, 86 N.J. 480, 485 (1981). In an appropriate case, the Family Part may restrict the rights of a parent who has joint legal custody. See D'Onofrio v. D'Onofrio, 344 N.J. Super. 147, 157-58 (App. Div. 2001).

We owe deference to the expertise of Family Part judges in crafting child custody arrangements. See Cesare v. Cesare, 154 N.J. 394, 412 (1998). We also defer to a trial judge's feel for the case, based on the judge's opportunity to observe the witnesses testify and evaluate their demeanor and credibility. See *ibid.* In this case, Judge Siegal spent weeks listening to the testimony of these parties and their witnesses, and she was in the best position to craft a custody arrangement that would serve the children's best interests. See Palermo v. Palermo, 164 N.J. Super. 492, 498 (App. Div. 1978).

The evidence in this case is amply detailed in Judge Siegal's opinion. She found plaintiff to be a credible witness and did not find defendant's testimony credible. We need not repeat the judge's specific descriptions of defendant's self-centered, unreasonable, and counterproductive approaches to parenting time and to decision-making about the children. The judge's choice to grant plaintiff sole final decision-making authority was overwhelmingly supported by the evidence. Judge Siegal's decision to grant the parties joint legal custody, rather than giving plaintiff sole legal custody, was supported by expert testimony. The judge also thoroughly discussed the statutory child custody factors set forth in N.J.S.A. 9:2-4(c). Given the facts found by Judge Siegal, we find no abuse of her discretion in fashioning the custody arrangement detailed in the June 3, 2015 order.

We affirm on the appeal and the cross-appeal substantially for the reasons stated in the judge's comprehensive opinion. The parties' respective arguments do not warrant further discussion.

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