SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1305-21

MARTIN SAMMY,

Plaintiff-Appellant,

v.

JENNIFER VICENTE,

Defendant-Respondent.

Submitted October 24, 2022 – Decided July 7, 2023

Before Judges Whipple and Smith.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Burlington County, Docket No. FD-03-1092-17.

Martin Sammy, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Plaintiff Martin Sammy appeals a December 1, 2021 order denying his application to modify a parenting time order. The trial court found that plaintiff

failed to show changed circumstances. We affirm for the reasons set forth below.

The parties are not married, but share a child, Mikayla, now age 6. The parties have a contentious litigation history, marked by their repeated motions to establish, then modify, custody and parenting time arrangements for Mikayla.

The record shows that joint custody and shared parenting time was established via consent on March 13, 2017. The Family Part's corresponding fourteen paragraph written order memorialized a detailed plan which outlined a four-week cycle of parenting time for plaintiff, while designating defendant parent of primary residence. The plan contained specific days, times, and pick-up/drop-off locations for the parties. The order included mandatory counseling, as well as dispute resolution strategies for the parties to employ as needed. Mikayla's state of residence was established as New Jersey and plaintiff agreed to pay $580 per month towards defendant's car and insurance costs in lieu of child support. Civil restraints were imposed on defendant, restricting her from approaching plaintiff, including at his workplace, or harassing him via electronic means.

Over the next several years, various orders were entered in the Family Part affecting parenting time. Orders were entered as the result of repeated motions,

most by the plaintiff, on September 22, 2017, November 9, 2017, November 13, 2017, December 26, 2017, January 12, 2018, March 8, 2018, April 5, 2018, February 10, 2020, April 1, 2020, April 9, 2020, May 20, 2020, June 3, 2020, September 1, 2020, September 10, 2020, November 6, 2020, November 18, 2020, and finally, March 3, 2021.

We narrow our focus to orders germane to our opinion. On February 10, 2020, the Family Part denied plaintiff's application to modify custody, finding plaintiff failed to meet his burden to show changed circumstances. The court continued the shared joint custody arrangement imposed in 2017. The court also continued the weekend parenting time schedule already in place, maintaining the pick-up and drop-off locations and times. However, the court modified the weekday parenting time schedule, finding the existing schedule "no longer workable." The court modified the four-week weekday parenting time cycle, ordering the parties to plan their summer schedules and coordinate with each other no later than April 20 of each year. The court imposed a mandatory summer schedule in the event the parties failed to reach agreement. The court denied defendant's application to bar contact between plaintiff's girlfriend and Mikayla, but barred plaintiff's mother from contact with the child, citing a previous domestic violence action. The court placed no restrictions on the

parties traveling with Mikayla during their parenting time, and they were ordered to communicate with each other about travel plans in advance.

On April 9, the court addressed another application by plaintiff, this time addressing the burgeoning COVID-19 pandemic, then in its earliest and most uncertain stages. The court suspended in-person parenting time, but ordered that plaintiff have "liberal and reasonable electronic . . . contact with the child." The summer of 2020 included a series of applications by plaintiff to the court to adjust and manage the digital communication schedule with his daughter and include his other children on the calls.

In fall 2020, as families all over the country were making difficult decisions regarding whether to educate their children in school or at home, the parties disagreed on what to do for Mikayla. Plaintiff informed Mikayla's school district he wanted in-person learning. Defendant informed the same school district she wanted to school Mikayla at home. Unsurprisingly, this impasse led to defendant's order to show cause application seeking relief as to who would make the school decision for Mikayla in September 2020. Plaintiff opposed the motion with a voluminous certification and multiple exhibits.

On September 19, 2020, the Family Part made findings and ordered that defendant, as parent of primary residence, would decide the question of in-

person or at-home schooling for Mikayla. The court next ordered a plenary hearing to decide the schooling issue for January 2021 and beyond. In November 2021, plaintiff filed an order to show cause with restraints, seeking across the board relief from the extant custody and parenting time order. The court denied the emergent relief, but it ordered plaintiff's motion be scheduled for the plenary.

The Family Part held the plenary on January 28, 2021, addressing the full scope of the February 10, 2020 order.[1] The record shows the parties appeared pro se and testified at great length on all issues. Those issues included, but were not limited to, the following: the impact of COVID-19 on Mikayla's school attendance and parenting time; communication and coordination between the parties; defendant's "blocking" cellphone contact between Mikayla and plaintiff's girlfriend's phone; transportation sharing by the parties; the need for ongoing COVID-19 related restrictions on parenting time; summer parenting time; and sibling visitation.

On March 3, 2021, the Family Part issued a twelve-page, sixteen paragraph order. It rejected plaintiff's application for modifications to the

[1] We note the February 10, 2020 order was slightly modified during the summer months of 2020 to accommodate parenting time changes necessitated by the COVID-19 pandemic.

February 10, 2020 custody and parenting time order. The court found plaintiff had not met his burden to show a change in circumstances warranting modification for: the parenting time schedule; the summer parenting time schedule; the digital communications schedule, including FaceTime; pick-up/drop-off and related transportation arrangements; and communications for general scheduling and family travel. Noting that the parties had not addressed the cellphone blocking issue before, the court ordered defendant to stop blocking plaintiff's girlfriend's number on Mikayla's cellphone. The court also permitted plaintiff's mother to have contact with Mikayla so long as plaintiff was present to supervise. The court also ordered that CDC social distancing guidelines be followed at all times around the child.

On December 1, 2021, plaintiff moved once more for modification of the parenting time order. He sought the modification in part to assure Mikayla's attendance at his upcoming wedding, and also presented his impending marriage as the factual basis for his change in circumstances argument. A Family Part judge conducted a hearing, which, despite the judge's best efforts, devolved into an on-the-record negotiation between the parties over how best to ensure Mikayla's attendance at the wedding.

The judge rejected the modification application, finding plaintiff did not make a showing of changed circumstances warranting permanent modification. Defendant consented to a one-time modification of the parenting time schedule in order to facilitate Mikayla's participation in plaintiff's wedding. Plaintiff now appeals, contending the Family Part erred by rejecting his motion to modify parenting time on December 1, 2021.

We generally defer to factual findings made by family courts when such findings are "supported by adequate, substantial, credible evidence." Ricci v. Ricci, 448 N.J. Super. 546, 564 (App. Div. 2017) (quoting Spangenberg v. Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015)). With this deference, the family courts' findings "will only be disturbed if they are manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence." N.H. v. H.H., 418 N.J. Super. 262, 279 (App. Div. 2011) (quoting Crespo v. Crespo, 395 N.J. Super. 190, 193-94 (App. Div. 2007)).

A parent seeking to modify a parenting time schedule "bear[s] the threshold burden of showing changed circumstances which would affect the welfare of the children." Todd v. Sheridan, 268 N.J. Super. 387, 398 (App. Div. 1993) (citing Sheehan v. Sheehan, 51 N.J. Super. 276, 287 (App. Div. 1958)). Changed circumstances are evaluated based on those existing at the time the

prior parenting time order was entered. Donnelly v. Donnelly, 405 N.J. Super. 117, 127-28 (App. Div. 2009).

Plaintiff argues that the Family Part committed error by rejecting his application for modification of the custody and parenting time order in place at that time. Applying the principles outlined above, we disagree. The trial judge reviewed plaintiff's certifications, heard argument, and found plaintiff did not show changed circumstances. Our careful review of the entire record, including the exhaustive plenary hearing of January 28, 2021, leads us to conclude there was sufficient credible evidence in the record to support the findings of the Family Part on December 1, 2021. We discern no abuse of discretion.

Plaintiff's other arguments, asserting that he was not afforded a full and fair opportunity to be heard on his parenting time claims, are belied by the ample record. They lack sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed. We do not retain jurisdiction.