RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2757-21

K.J.U.,

Plaintiff-Appellant,

v.

R.M.S.,[1]

Defendant-Respondent.

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Argued May 24, 2023 – Decided August 10, 2023

Before Judges Accurso and Vernoia.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Ocean County, Docket No. FD-15-0490-18.

[1] We use initials and pseudonyms to refer to the parties, their minor child, and related family witnesses to protect their privacy and because we refer to records of proceedings arising under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, as well as medical and psychological records related to child custody and parenting time determinations. Those records are not subject to public disclosure under Rule 1:38-3(d)(3) and (9).

Rachel S. Cotrino argued the cause for appellant (Law Office of Rachel S. Cotrino, LLC, attorneys; Rachel S. Cotrino and Amy Sara Cores, on the briefs).

Kristin S. Pallonetti argued the cause for respondent (Law Office of Steven P. Monaghan, LLC, attorneys; Kristin S. Pallonetti, on the brief).

PER CURIAM

Plaintiff K.J.U. and defendant R.M.S. are the biological parents of a son, W.S-U. (Will), who was born in 2017. The parties separated a few months after Will's birth and, at various times since, have been involved in court proceedings concerning Will's care and custody. Plaintiff presently appeals from a Family Part order denying her motion for permission to permanently relocate with Will from New Jersey to Oklahoma, as well as an order denying her subsequent motion for permission to temporarily relocate to Oklahoma. Based on our review of the record, the parties' arguments, and the applicable legal principles, we vacate the trial court's orders denying relocation and remand for further proceedings.

I.

Although this matter comes before us as the result of a dispute between Will's parents, resolution of the issues presented by plaintiff's relocation motion requires an analysis of what is in Will's best interests. See generally Bisbing v.

Bisbing, 230 N.J. 309 (2017). As such, we begin with a brief description of Will's circumstances, and the extraordinary care that is required to address his special needs, to provide context for our determination of whether the court correctly determined the requested relocations are not in his best interests.

Will is legally blind and suffers from numerous and significant medical, developmental, and behavioral issues. His growth is stunted; he does not produce hormones from his thyroid and pituitary glands; and he has limited verbal language skills requiring therapy with a speech pathologist.

At age five, he weighs over seventy pounds. He suffers from Septic-optic dysplasia and Chiari malformation of the skull. He requires the administration of daily medications, including an injection. Although he currently attends a public school and has an individualized education program, his school has advised it is incapable of meeting his special and educational needs and is seeking an alternative placement to better address those needs. The school directed plaintiff home school Will while it sought an alternative placement, but Will is permitted to continue to attend the school at present only because the New Jersey Department of Education has so ordered pending a determination of a more suitable placement.

During the hearing held by the trial court on her motion to relocate with Will to Oklahoma, plaintiff described the challenges presented by Will's special needs and the extraordinary care and attention required to address those needs during a typical day. Plaintiff described a typical day in Will's life as follows:

> I'll start in the mornings, then I can just go into the night. Mornings are either good or bad, depending on when we go wake up [Will] in the morning. If he's had a consecutive couple of hours of sleep, great. If not -- But almost every morning [Will] has a breakthrough and wets the bed. So that results in bringing him downstairs, bathing him even before getting his medications together or breakfast.
>
> So with that, [Will] gets a bath. Then we prepare breakfast together. He's administered all of his medications. And then we try to do some sort of activity to entertain him as the day goes on until his bus comes.
>
> But [Will] is a wild card, you never know what you're going to get. You could be getting a toy launched at your head or spitting, flailing on the ground[,] and just overall destruct. So days can come and go where they're good and they're bad.
>
> And then getting [Will] onto the bus is another challenge. Because trying to get this kid dressed is like wrestling a gorilla. He doesn't like clothes, so that's a difficulty. And then shoes and socks are a completely different realm for him that is not his cup of tea.
>
> So we're trying to wrestle him to get him dressed. And then he's eager to run out the door, which he has mastered the deadbolt now which is utterly terrifying.

> And then he usually makes us wait outside at least [fifteen] minutes before the bus comes, no matter rain or shine. He just wants to run up and down the driveway, throw rocks, hit my car. And then he goes to school.

Plaintiff explained Will attends school for less than two hours each day. The bus picks him up at 1:00 p.m. and brings him home by 3:00 p.m. Plaintiff further explained the balance of a typical day after Will returns home from school:

> [S]ometimes school is good, sometimes school is bad. I get phone calls every now and then[;] [Will] has had an accident. He fell, hit his head or something. And then he comes home and that's another issue is him on the bus. He has been having a lot of behaviors lately. With everything going on he's not really adjusting to the changes.
>
> So he takes all of his shoes and socks off. And he is now the last kid off the bus because they can't control him. So he's now last kid off the bus. And he started spitting in the aide's face as a rebellion I guess. He's just not happy with what's going on.

Plaintiff also described what she characterized as a "bad" day for Will:

> If you want a bad day, I can give you a bad day too. A bad day is little to no sleep. And going upstairs and finding [Will] playing in his feces. So that means he takes his diaper off, he rolls in it. He throws it. It's on his face, it's under his nails.
>
> So as you can imagine I [am] trying to grab a child that is covered in his own feces and wrangle him into the

> bathtub to try to hose him down and get whatever off I can before I initially start scrubbing him. So that just sets the pace for that day.
>
> So that day is filled with behaviors[;] I may not even be able to get him to eat his breakfast. And I have to trick him into taking his medication. And then that's just literally the tone for the day. [Will] is going to have all sorts of behaviors. It could be spitting, flailing, hitting himself, hitting you. It's just[. . . .]
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> And then we manage to get him on the bus. Because that little bit of school time that he does get is some type of structure for him. But getting him off the bus is worse than it was. He's flailing, dropping weight on the ground, hitting you, spitting on the aides.
>
> And at that point you have to pick a [seventy-six-] pound child up and just throw him over your shoulders just to get him in the house where he's just screaming, biting you. And he just doesn't want any part. And it's utterly exhausting.
>
> And then trying to get him to bed with his shot. He's very reluctant now. He doesn't want it. He knows, you say (indiscernible) he's like all done, all done. I'm all done.
>
> But at the end of the day the kid needs to get his shot. It's part of his disability. So it takes the two of us to hold him down and wrestle him. He's [seventy-six] pounds and he's only getting stronger and bigger. So we're just trying to get what we can done.

Plaintiff's description of Will's typical day is based on more than five years' experience. She has been his primary caregiver since his birth.

Plaintiff and defendant dated and then resided together at plaintiff's parent's home after Will was born. They separated a few months later, and defendant moved out of plaintiff's parent's home. After defendant moved out, plaintiff and Will continued to reside with plaintiff's parents, D.U. (Doris) and K.U. (Ken).

Doris is an experienced pediatric registered nurse. Ken is employed as a corporate trainer. Doris first noticed issues with Will's eyes in the months following his birth, and Doris and Ken were actively involved in seeking and obtaining medical examinations and treatment for Will after his disabilities and special needs were first diagnosed and thereafter. They provided care for Will in their home, took him for medical appointments, and provided support to plaintiff in her efforts to care for Will before and after plaintiff and defendant separated and defendant moved out of their home.

In December 2017, plaintiff applied for sole legal custody of Will and for an order establishing defendant's child support obligation. On February 15, 2018, the court entered an order granting the parties joint legal custody of Will, designating plaintiff as the parent of primary residence, and establishing

defendant's child support obligation at $124 per week effective December 20, 2017.[2]

In May 2018, police arrested defendant and jailed him for three days in connection with a domestic violence incident involving another individual. Later that year, in October 2018, plaintiff filed for a temporary restraining order against defendant pursuant to the PDVA. The transcript from the hearing on plaintiff's application for the final restraining order (FRO) reflects, among other things, that defendant "started sending [plaintiff] very vulgar text messages saying that he was harming animals[,]" as well as unspecified "photos of bodily injury." Plaintiff also indicated defendant would "drive pas[t] [her] job, call [her] job[,]" and "had just gotten more violent" toward her.

On October 17, 2018, the court entered an FRO against defendant following a hearing at which he failed to appear. The FRO provided that all custody and parenting time issues between the parties would be resolved in the

[2] The record on appeal does not include the February 15, 2018 order. However, in its written decision denying plaintiff's relocation application, the trial court explained that, on February 15, 2018, a different judge entered an order granting the parties joint legal custody, designating plaintiff as the parent of primary residence, and establishing defendant's child support obligation. In their briefs on appeal, neither party disputes the trial court's finding concerning entry of the February 15, 2018 order.

previously filed non-dissolution proceeding that resulted in the February 15, 2018 order granting the parties joint custody of Will.

Four months later, in February 2019, plaintiff moved for sole legal and residential custody of Will. Plaintiff appeared before the trial court on the motion's return date. Defendant did not file opposition to plaintiff's motion, nor did he appear for the motion hearing.

On March 14, 2019, the trial court granted plaintiff's motion, awarding her sole legal and residential custody of Will. The trial court granted plaintiff "sole decision[al] authority with respect to [Will's] medical, educational and general welfare issues." The court further found as fact that defendant had not had any contact with Will "in over [six] month[s]" and accordingly suspended defendant's parenting time until further order from the court.[3] Defendant did not appeal from or otherwise challenge the trial court's March 14, 2019 custody order.

In September 2021, thirty months after the trial court granted plaintiff sole legal and residential custody of Will, defendant filed a motion for dissolution of the FRO. Defendant also separately moved for joint legal custody and an order

[3] The record on appeal does not include a transcript of the March 14, 2019 proceeding.

requiring: plaintiff consult with defendant concerning all decisions regarding Will's medical treatment; the parties utilize a holiday parenting time schedule; Will spend two non-consecutive weeks of vacation with each party; and a reduction of defendant's child support obligation. Defendant's notice of motion did not include a request for a change in residential custody.

In support of the motion, defendant submitted a certification stating he had not seen Will for a period of twenty-one months dating back to Thanksgiving 2019.[4] Defendant generally described his relationship with plaintiff, noting she continued to see him following entry of the FRO and asserting she refused to provide him access to the child, allegedly as a means of controlling him and his access to their son.

Plaintiff filed opposition to defendant's motion and cross-moved for permission to relocate with Will to Oklahoma. In her certification supporting the cross-motion, plaintiff detailed Will's medical, developmental, and behavioral issues; described a typical day in Will's life and the attention and care required each day to address his needs; and explained that, in defendant's absence, her parents had played an extensive role in Will's care since his birth

[4] Defendant also explained that, on June 13, 2020, he was charged with violating the FRO by sending text messages to plaintiff's cellphone. The record on appeal does not include the disposition of those charges.

and until January 14, 2022, when Doris and Ken moved to Broken Arrow, Oklahoma in connection with Ken's work.

Plaintiff represented defendant has never been a caregiver for Will and has never been alone with him. Plaintiff further noted defendant did not appear for the hearing which resulted in the entry of the March 14, 2019 order awarding her sole legal and residential custody of Will and suspending defendant's parenting time. Plaintiff also explained defendant failed to appear for the FRO hearing.

Plaintiff further represented her request to relocate to Oklahoma was based on "sheer necessity." She explained her father had been transferred to Oklahoma and Will's "extra[]ordinary needs" required the assistance of other adults, including her parents, who, as noted, had assisted with Will's care since his birth and until the two moved to Oklahoma in January 2022. Plaintiff further highlighted she would arrange to enroll Will in a school district in Oklahoma where her parents live and plans to enroll Will at the nearby Oklahoma School for the Blind, which will provide programs addressing his special-educational needs.

Plaintiff also expressed a willingness to allow therapeutic visitation between Will and defendant with a trained medical professional. She explained

defendant's access to Will could be expanded over time if defendant followed through with the initial steps of establishing their relationship in an appropriate and safe manner. Plaintiff noted defendant's failure to participate in the prior Family Part proceedings in the custody and domestic violence matters as evidence defendant had for many years chosen to "have no meaningful role in [Will's] life."

Plaintiff also addressed defendant's request for dissolution of the FRO, acknowledging she had contact with defendant following the order's entry but explaining she did so out of desperation during trying times Will was hospitalized. She explained defendant "bec[a]me[] abusive and manipulative" when the two communicated during those times and dismissing the FRO would "require [her] to relive the hardships . . . [she] endured while under [d]efendant's control." Plaintiff also emphasized that, in defendant's request to dismiss the FRO, he "attempt[ed] to minimize his erratic and abusive behavior." Plaintiff further claimed defendant once "broke into [her] parents' home, caused a loud and nearly violent incident with [her] father," and "bit" her during the incident.

In the certification supporting his September 3, 2021 motion, defendant sought joint legal custody and a regular schedule of joint physical custody of Will. Defendant asserted he is "now" capable "of handling all of [Will's] needs

in relation to his disability" and, as such, sought "to be involved in every aspect of parenting him" moving forward.

On February 2, 2022, the trial court entered an order requiring the parties attend "the Courthouse Mediation Program for issues of child custody, parenting time[,] and [plaintiff's] removal application." The order also required the parties to communicate using the Our Family Wizard App and instructed "[t]he parties shall refrain from [using] any type of inappropriate language or harassment" in their communications. The order further provided defendant the opportunity "to have two (2) FaceTime visits with [Will] each week pending further order of the court." The order anticipated "[t]hese visits may be brief as the child is quite young and easily distracted." In a separate order also dated February 2, 2022, the trial court granted defendant's request to dismiss the FRO.[5]

On March 2, 2022, the trial court held a plenary hearing on plaintiff's request to relocate with Will to Oklahoma. Plaintiff called defendant as a witness, testified on her own behalf, and also presented her parents, Doris and Ken, as witnesses. Defendant testified on his own behalf. Both parties presented numerous exhibits.

[5] The record on appeal does not include a transcript of the proceeding that resulted in the court's dismissal of the FRO.

On April 8, 2022, the court issued a written decision supporting an order denying plaintiff's relocation request. In its legal analysis, the court first found plaintiff's relocation request was governed by N.J.S.A. 9:2-2, noting the statute prohibits the relocation of a child out of this State by a parent who is divorced, separated, or living apart from the child's other parent "unless the court, upon good cause shown, shall otherwise order."[6] The court reasoned the statute "requires a showing of cause before a court will authorize the permanent removal of a child to another state without the consent of both parents . . . ."

The trial court noted the Supreme Court's decision in Bisbing established the legal standard for determining cause under N.J.S.A. 9:2-2. According to the trial court, its determination of plaintiff's relocation request required that it conduct a "best interests analysis pursuant to N.J.S.A. 9:2-4 and other relevant considerations." N.J.S.A. 9:2-4 includes a list of factors that must be considered in making a custody determination. N.J.S.A. 9:2-4(c). The court further found it was required to determine whether the requested relocation was in Will's best interests based on an analysis of the N.J.S.A. 9:2-4(c) factors. See Bisbing 230

[6] By its express terms, the statute applies to "the minor children of parents divorced, separated[,] or living separate, and such children are natives of this State, or have resided five years within its limits." N.J.S.A. 9:2-2.

N.J. at 338 (providing the standard for deciding relocation disputes arising under N.J.S.A. 9:2-2 and instructing that "cause" permitting permanent relocations should "be determined by a best interests analysis in which the court will consider all relevant factors set forth in N.J.S.A. 9:2-4(c), supplemented by other factors as appropriate.").

The court then considered and made findings under each of the N.J.S.A. 9:2-4(c) factors. The court determined the factors weighed against granting plaintiff's relocation request and entered an order denying plaintiff's cross-motion for permission to relocate with Will to Oklahoma.

The court's order also noted there were additional requests for relief presented by the parties' motions and directed the parties' attorneys confer and advise the court in writing as to which issues were resolved. The order further provided the court would schedule a status conference to address any outstanding unresolved issues identified by counsel. The order also directed that its prior orders would remain in full force and effect to the extent they were not inconsistent with the denial of plaintiff's relocation request.

Thus, following entry of the April 8, 2022 order denying plaintiff's relocation motion, plaintiff continued to enjoy sole legal and residential custody of Will; the parties were required to continue to communicate concerning Will

through the Our Family Wizard App; and defendant's parenting time remained limited to two FaceTime interactions with Will each week. Plaintiff appealed from the court's order.[7]

While her appeal from the April 8, 2022 order was pending, plaintiff filed an order to show cause in the Family Part seeking an order permitting her to: "temporarily relocate with the parties' son to Oklahoma pending the decision from the Appellate Division, or further order of th[e] [trial] [c]ourt"; "register [Will] at the School for the Blind in Oklahoma"; and compel defendant "to contribute to the cost of the special education attorney and special needs advocate[.]" Plaintiff averred in her certification supporting her application that "the current situation is an emergency" because "[Will] will suffer irreparable harm if action is not taken immediately to put him in an in-school educational placement."

[7] The court's April 8, 2022 order denying plaintiff's cross-motion for permission to relocate does not constitute a final order appealable as of right. R. 2:2-3. As the court expressly stated in the order, other issues remained for resolution based on the requests for relief contained in defendant's motion and plaintiff's cross-motion. We note plaintiff's Case Information Statement on appeal inaccurately represents the April 8, 2022 order from which the appeal is taken disposed of "all the issues as to all the parties in this action." Given the importance of the resolution of this matter to the parties and to Will, we opt not to dismiss the appeal as interlocutory. Instead, we consider plaintiff's notice of appeal as a motion for leave to appeal and grant the motion. Piscataway Twp. v. S. Wash. Ave., LLC, 400 N.J. Super. 358, 366 (App. Div. 2008).

In her certification supporting the order to show cause application, plaintiff explained that since the plenary hearing on her initial relocation application, "[Will] has continued to regress" in the absence of the additional care previously provided by her parents. Plaintiff stated the public school Will now attends "is essentially trying to force [him] out of the school system" and "recommended home instruction until they can find an appropriate in-school setting" for Will because the school cannot accommodate the range of Will's needs and provide the complexity of the care required to address his needs in an educational setting.

According to plaintiff, "there are no programs in New Jersey that currently have the ability to properly attend to [Will]." Plaintiff further averred she "cannot afford" to forgo work to home school Will in the way Will's school urges. Plaintiff stated the Oklahoma School for the Blind, however, "is able to take [Will] immediately and can fully meet his educational needs." Plaintiff submitted she is "out of time and out of options for [Will]."

Plaintiff further indicated in her order to show cause application that defendant's FaceTime "video visitation has been inconsistent" and defendant "missed his video time with [Will] just yesterday" — that is, the day prior to the October 6, 2022 filing date of her order to show cause application — and caused

"[Will] [to] wait[] over an hour for [defendant] to call . . . ." Plaintiff further explained "[d]efendant never called or notified us that he was not going to participate in Face[T]ime" that day and "has done basically nothing" since entry of the April 8, 2022 order denying relocation.

The trial court denied plaintiff's order to show cause application. The day following entry of the order denying the application, we granted plaintiff's application for permission to file an emergent motion. Plaintiff then moved for a limited remand for the trial court to consider the merits of her order to show cause application for leave to temporarily relocate with Will to Oklahoma. We granted plaintiff's motion.

On the limited remand, the court conducted a plenary hearing. Plaintiff testified on her own behalf and called as witnesses: defendant; Will's case manager in his school district; Will's "special needs advocate"; and a special education attorney representing plaintiff and Will in their ongoing dispute with Will's school district about its request he be home schooled or placed in an alternative school setting.

In part, plaintiff testified she had remarried and now lived with her new husband in a home he owned. Plaintiff explained she was not employed because she had lost her position when she resigned in anticipation of moving to

Oklahoma at the time her initial relocation motion was filed. As a result, and because her parents had moved to Oklahoma and were no longer available to provide care for Will, plaintiff was unable to work because she was required to provide full-time care for Will.

Plaintiff explained her plan was to temporarily move to Oklahoma, reside with her parents, and obtain employment there with the assistance of her parents as caretakers for Will while she worked. In addition, her husband intended to sell his home in New Jersey and move to Oklahoma where he would obtain new employment. She further explained her husband assisted in providing care for Will in New Jersey when he was not working.

In its written decision denying plaintiff's request for permission to temporarily relocate to Oklahoma, the court summarized the testimony and evidence and noted plaintiff's application was founded on the claim Will's "school district was requesting that the child be home-schooled due to recent behavioral issues . . . , while the school district located an out of district placement" that "would meet all his needs."

The court also found plaintiff failed to make a showing of irreparable injury because her counsel had obtained a "stay put" order allowing Will to continue to attend his current school until an appropriate alternative placement

is found. The court rejected plaintiff's claim Will would suffer irreparable injury by effectively compelling his continued attendance at a school in a district that sought an alternative placement because it admittedly lacked the ability to address his special and educational needs. The court also found plaintiff's relocation request was not founded on a settled legal right because plaintiff did not establish Will would be accepted to the Oklahoma School for the Blind and plaintiff was otherwise using the application as a means of relitigating the denial of her prior relocation application.

The court further found plaintiff did not make a preliminary showing of a reasonable likelihood of success on the merits of her claimed entitlement to relocate to Oklahoma. Last, the court concluded the balance of the hardship between plaintiff and defendant favored a denial of plaintiff's request. The court reasoned that plaintiff will not be required to home school Will and the child will be permitted to remain in a school environment until an alternative placement is found in New Jersey. The court noted "[p]laintiff will still be responsible for assisting the local school district with locating a program for" Will, "[d]efendant will have the opportunity to become more involved in the educational issues . . . if he chooses to do so," and plaintiff will not suffer any significant hardship "if the status quo remains in place."

The court also found that if temporary relocation is permitted, plaintiff would relocate with Will and plaintiff's husband; Will may not be admitted to the Oklahoma School for the Blind; and defendant will lose any possibility of supervised visitation with Will unless he travels to Oklahoma. The court found plaintiff had failed to provide defendant notice concerning the issues with the school district, and, as such, there was little likelihood she would include defendant in discussion of any of Will's educational issues in Oklahoma.

The court's order denied plaintiff's application for temporary relocation. Plaintiff timely appealed from the order in an amended notice of appeal. On appeal, we therefore consider plaintiff's challenges to the April 8, 2022 order denying permanent relocation and the November 30, 2022 order denying temporary relocation of Will.

II.

Our review of a family court order is limited. See Cesare v. Cesare, 154 N.J. 394, 411 (1998). "Discretionary determinations, supported by the record, are examined to discern whether an abuse of reasoned discretion has occurred." Ricci v. Ricci, 448 N.J. Super. 546, 564 (App. Div. 2017) (citing Gac v. Gac, 186 N.J. 535, 547 (2006)). An abuse of discretion occurs when a trial court's decision "rested on an impermissible basis, considered irrelevant or

inappropriate factors, failed to consider controlling legal principles[,] or made findings inconsistent with or unsupported by competent evidence." Elrom v. Elrom, 439 N.J. Super. 424, 434 (App. Div. 2015) (internal quotation marks and citations omitted).

"[W]e do not defer on questions of law." N.J. Div. of Youth & Fam. Servs. v. V.T., 423 N.J. Super. 320, 330 (App. Div. 2011). We conduct a de novo review of a trial court's legal conclusions and interpretations of the law. Ricci, 448 N.J. Super. at 565. "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995). These standards guide our analysis.

The scope of an appellate court's review of Family Part factfinding is limited. N.J. Div. of Youth & Fam. Servs. v. L.J.D., 428 N.J. Super. 451, 476 (App. Div. 2012). The Family Part's factual findings "are binding on appeal [only] when supported by adequate, substantial, credible evidence." O'Connor v. O'Connor, 349 N.J. Super. 381, 400-01 (App. Div. 2012) (quoting Cesare, 154 N.J. at 411-12). "'"[W]here the focus of the dispute is . . . alleged error in the trial judge's evaluation of the underlying facts and the implications drawn therefrom," the traditional scope of review is expanded.'" N.J. Div. of Youth &

Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007) (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188-89 (App. Div. 1993)).

However, "even in those circumstances we will accord deference unless the trial court's findings 'went so wide of the mark that a mistake must have been made.'" Ibid. (quoting C.B. Snyder Realty, Inc. v. BMW of N. Am., Inc., 233 N.J. Super. 65, 69 (App. Div. 1989)). Stated differently, we will "disturb the factual findings . . . of the trial judge [if] . . . convinced . . . they are so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice[.]" Rova Farms Resort, Inc. v. Invrs. Ins. Co. of Am., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)).

Plaintiff argues the court erred by applying the Bisbing standard to her permanent relocation application because the Court in Bisbing addressed a dispute over relocation between parents that shared residential custody of the child with whom the movant parent sought to relocate. Plaintiff claims the Bisbing standard is inapplicable here because she has been Will's parental caregiver since his birth; defendant has never served as Will's caregiver; and she has had sole legal and residential custody of Will since the court's entry of the March 14, 2019 order. Plaintiff therefore contends the court erred by applying

the Bisbing standard for determining whether she established the requisite "cause" for relocation under N.J.S.A. 9:2-4(c). We disagree.

N.J.S.A. 9:2-2 governs the disposition of a parent's request to permanently relocate with a child to another state. Dever v. Howell, 456 N.J. Super. 300, 308 (App. Div. 2018). More particularly, the statute provides:

> When the Superior Court has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated[,] or living separate, and such children are natives of this State, or have resided five years within its limits, they shall not be removed out of its jurisdiction against their own consent, if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the court, upon cause shown, shall otherwise order. The court, upon application of any person in behalf of such minors, may require such security and issue such writs and processes as shall be deemed proper to effect the purposes of this section.
>
> [N.J.S.A. 9:2-2 (emphasis added).]

The statute "requires a showing of 'cause' before a court will authorize the permanent removal of a child to another state without the consent of both parents or, if the child is of 'suitable age' to decide, the consent of the child." Bisbing, 230 N.J. at 323 (quoting N.J.S.A. 9:2-2). A showing of cause for relocating out of state is required "under N.J.S.A. 9:2-2 to 'preserve the rights of the noncustodial parent and the child to maintain and develop their familial

relationship.'" Bisbing, 230 N.J. at 323 (quoting Holder v. Polanski, 111 N.J. 344, 350 (1988)). A removal petition presents the "problem" of "balanc[ing] those rights [of the noncustodial parent] with the right of the custodial parent to seek a better life for himself or herself in this or another state." Holder, 111 N.J. at 350.

In Bisbing, the Court redefined the standard for determining cause permitting the out-of-state relocation of a parent and their child under N.J.S.A. 9:2-2 in the context of a dispute between parents sharing residential custody. 230 N.J. at 311-13. The Court explained that, in "making the sensitive determination of 'cause,'" a trial court "must weigh 'the custodial parent's interest in freedom of movement as qualified by his or her custodial obligation, the State's interest in protecting the best interests of the child, and the competing interests of the noncustodial parent.'" Id. at 323 (quoting Holder, 111 N.J. at 350). We have further explained that "under N.J.S.A. 9:2-2, '"cause" should be determined by a best interests analysis in which the court will consider all relevant factors set forth in N.J.S.A. 9:2-4(c), supplemented by other factors as appropriate.'" Dever, 456 N.J. Super. at 313 (emphasis added) (quoting Bisbing, 230 N.J. at 338).

N.J.S.A. 9:2-4(c) sets forth fourteen factors a court must consider in making a custody determination.[8] "[T]he primary and overarching consideration" of the analysis of the factors in N.J.S.A. 9:2-4 "is the best interest of the child." Kinsella v. Kinsella, 150 N.J. 276, 317 (1997); see also Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007) ("Custody issues are resolved

[8] In pertinent part, N.J.S.A. 9:2-4(c) provides as follows:

> In making an award of custody, the court shall consider but not be limited to the following factors: the parents' ability to agree, communicate[,] and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; the interaction and relationship of the child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of children.
>
> [N.J.S.A. 9:2-4(c).]

using a best interests analysis that gives weight to the factors set forth in N.J.S.A. 9:2-4(c).").

Although the Court in Bisbing addressed a relocation dispute between parents that shared custody of their child, 230 N.J. at 313, we are unpersuaded its holding is inapplicable here simply because plaintiff and defendant do not share custody of Will. Such a conclusion would require that we ignore the reasoning supporting the Court's decision to abandon the prior standard, as established in Baures v. Lewis, 167 N.J. 91, 118-20 (2001), for determining whether there is cause for a relocation under N.J.S.A. 9:2-2.

In Baures, a determination of cause for a relocation under N.J.S.A. 9:2-2 was in part based on which parent served as the parent of primary residence. 167 N.J. 118-20. Thus, "[u]nder Baures, a parent with primary custody seeking to relocate the children out of state over the objection of the other parent" was required to "demonstrate only that there [was] a good-faith reason for an interstate move and that the relocation '[would] not be inimical to the child's interests.'" Bisbing, 230 N.J. at 312 (quoting Baures, 167 N.J. at 118).

In Bisbing, the Court "consider[ed] whether to retain the Baures standard as the benchmark for contested relocation determinations decided pursuant to N.J.S.A. 9:2-2." Id. at 328. The Court rejected Baures's reliance on a party's

status as the parent of primary residence as a primary or determinative factor in finding cause for a relocation under N.J.S.A. 9:2-2. Id. at 328-335. The Court explained "[t]he provision of the custody statute at the center" of relocation disputes "is N.J.S.A. 9:2-2" and trial courts "should conduct a best interests analysis to determine 'cause' under" the statute. Id. at 323, 335.

The Court recognized a motion for relocation as a custody determination under "the custody statute[,]" N.J.S.A. 9:2-1 to -12.1. Id. at 323. The Court further held the analysis of a relocation request is not based simply on a party's status as either a parent of primary residence or something else,[9] but instead shall be determined, at least in part, on an analysis of the factors otherwise required for a custody determination under N.J.S.A. 9:2-4(c). Id. at 335.

Moreover, because N.J.S.A. 9:2-2 governs all requests to relocate "minor children of parents divorced, separated[,] or living separate," and the statute requires parents seeking permission to relocate to establish "cause" to do so, Bisbing's requirement that "cause" should be determined "by [conducting] a best

[9] The Court noted that N.J.S.A. 9:2-4 "affords the Family Part a range of [custodial] options to serve the needs of children and their families." Id. at 321. The options include "'[j]oint custody of a minor child to both parents,' '[s]ole custody to one parent with appropriate parenting time for the noncustodial parent,' and '[a]ny other custody arrangement as the court may determine to be in the best interests of the child.'" Id. at 321 (quoting N.J.S.A. 9:2-4(a), (b), (c)).

interests analysis in which the court shall consider all relevant factors set forth in N.J.S.A. 9:2-4(c), supplemented by other factors as appropriate[,]" applies here irrespective of whether plaintiff and defendant shared legal and residential custody like the parties in Bisbing. 230 N.J. at 338; see also N.J.S.A. 9:2-4a (providing "in any action concerning children undertaken by a State department, agency, commission, authority, court of law, or State or local legislative body, the best interests of the child shall be a primary consideration."). Thus, in our view, the Court's reasoning in Bisbing makes clear a party's status as the custodial parent or otherwise is not dispositive of the determination of whether there is "cause" for a relocation required under N.J.S.A. 9:2-2. We therefore reject plaintiff's claim the court erred by applying the Bisbing standard to its determination of plaintiff's relocation applications.

That is not to say the custodial arrangement that has existed between plaintiff and defendant is irrelevant or should be ignored to the extent it is relevant to a determination of Will's best interests. For example, the court's longstanding March 14, 2019 order embodied a determination it is in Will's best interests that plaintiff have sole legal and residential custody of him, and it is undisputed plaintiff has effectively and exclusively fulfilled the responsibilities without defendant's assistance or involvement. Plaintiff's status as Will's

custodial parent, and the court's prior determination it was in Will's best interests that plaintiff have sole legal and residential custody of him, clearly and plainly constitute relevant circumstances pertinent to a determination as to whether plaintiff established cause for her and Will's relocation under N.J.S.A. 9:2-2. See, e.g., N.J.S.A. 9:2-4(c) (providing in part a court must consider "the interaction and relationship of the child with its parents" in the assessment of a child's best interests).

And, concomitantly, defendant's limited involvement in Will's care and custody; defendant's actions and failure to act to contest the 2019 award of sole legal and residential custody to plaintiff and suspension of his parenting time; defendant's long delay in seeking a change in custody; and defendant's reasons for his actions and inactions present circumstances that must be considered in determining whether there is cause for the requested relocation under Bisbing's best interests standard. See e.g., ibid.; see also N.J.S.A. 9:2-4(c) (providing in part a court must consider "the parents willingness to accept custody;" "the stability of the home environment offered;" and "the extent and quality of the time spent with the child . . . subsequent to the separation" in the assessment of a child's best interests). Moreover, as the Court explained in Bisbing, "[i]n the best interests analysis, the parent of primary residence may have important

insights about the arrangement that will most effectively serve the child." Id. at 335. Of course, "[t]he parent of alternate residence may similarly offer significant information about the child." Ibid.

We also observe defendant moved for a change in custody prior to the filing of plaintiff's motion for permission to relocate with Will to Oklahoma, but defendant's motion has not been addressed or decided by the court. Indeed, the court has not even determined whether defendant demonstrated a sufficient showing of "'a change in circumstances warranting modification' of the custodial arrangements" embodied in the court's March 14, 2019 order granting sole custody to plaintiff such that defendant is entitled to a plenary hearing on his change of custody application. Costa v. Costa, 440 N.J. Super. 1, 4 (App. Div. 2015) (quoting R.K. v. F.K., 437 N.J. Super. 58, 63 (App. Div. 2014)). Absent such a showing, the court may properly deny defendant's motion for a change of legal and residential custody without conducting any hearing concerning custody. See ibid.

In our view, given the procedural posture of this matter when the court conducted the plenary hearing on plaintiff's permanent relocation application, it erred by failing to address defendant's motion for a change in custody either by denying the application based on a determination defendant failed to

demonstrate a change in circumstances, or by addressing the merits of the motion with or without a plenary hearing as appropriate if defendant made a showing of changed circumstances. The status of the custody arrangement between the parents and the attendant circumstances resulting from the arrangement necessarily constitute an additional "other factor[,]" Bisbing, 230 N.J. at 338, that a court must consider in determining a child's best interests where a parent seeks judicial approval of a relocation.

Indeed, it is well established a best interests analysis under N.J.S.A. 9:2-4 "requires the court to consider any and all material evidence[,]" Kinsella, 150 N.J. at 317, and "must be based on all circumstances, on everything that actually has occurred, on everything that is relevant to the child's best interests[,]" In re Baby M., 109 N.J. 396, 456 (1988). The Court in Bisbing similarly recognized the best interests analysis required for a determination of cause for a relocation under N.J.S.A. 9:2-2 is not limited to the N.J.S.A. 9:2-4(c) factors. The Court explained, "[a] number of the statutory best interests factors will be directly relevant in typical relocation decisions and additional factors not set forth in the statute may also be considered in a given case." Bisbing, 230 N.J. at 335. The Court instructed that courts "will consider all relevant factors set forth in

N.J.S.A. 9:2-4(c), supplemented by other factors as appropriate" to determine cause under N.J.S.A. 9:2-2. Id. at 338.

Additionally, and as noted, a determination of cause for a relocation under N.J.S.A. 9:2-2 also requires a weighing of "the custodial parent's interest in freedom of movement as qualified by his or her custodial obligation, the State's interest in protecting the best interests of the child, and the competing interests of the noncustodial parent." Id. at 323 (emphasis added) (quoting Holder, 111 N.J. at 350). Bisbing therefore dictates consideration of the custodial obligations of the parents in a determination of cause for relocation under N.J.S.A. 9:2-2. Under the circumstances presented here, that dictate required the court to determine and consider the parties' custodial status, which necessitated the court's disposition of defendant's motion for a change of custody, to properly conduct the analysis required to determine whether plaintiff established cause for relocation under the Bisbing standard.

Under Bisbing, the court was also required to consider and weigh the custodial parent's — that is, plaintiff's — interest in "freedom of movement as qualified by . . . her custodial obligation[.]" Ibid. The trial court erred by failing to address this essential element of the requisite analysis under Bisbing, ibid., or make any findings concerning same.

In Bisbing, the Court quoted from its decision in Holder for the proposition that a court "must weigh 'the custodial parent's interest in freedom of movement as qualified by his or her custodial obligation,'" as part of the determination of cause for relocation under N.J.S.A. 9:2-2. Ibid. (quoting Holder, 111 N.J. at 334). In Holder, the Court noted the assessment of a parent's interest in freely relocating to another state requires consideration of

> the prospective advantages of the move, including its capacity for maintaining or improving the general quality of the life of both the custodial parent and the child[]; the integrity of the custodial parent's motives in seeking to move, as well as the noncustodial parent's motives in seeking to restrain the move; and whether a realistic and reasonable visitation schedule can be reached if the move is allowed.
>
> [Holder, 111 N.J. at 350 (citing Cooper v. Cooper, 99 N.J. 42, 56-57 (1984)).]

However, the focus of the assessment of a parent's freedom of movement "should not be on the benefits that will accrue to the custodial parent but on the best interests of the child[] and the preservation of [the child's] relationship with the noncustodial parent." Id. at 350; see also Bisbing, 230 N.J. at 335 (explaining a best interests analysis is required to determine whether there is the requisite "cause" for relocation under N.J.S.A. 9:2-2). In any event, the trial court's decisions on plaintiff's relocation applications are simply, and

erroneously, bereft of any findings, analysis, or weighing of plaintiff's interest in freedom of movement as qualified by her custodial obligation.

Measured against these principles, we are persuaded the trial court erred in its analysis of plaintiff's motion for permission to permanently relocate to Oklahoma with Will. We reach that conclusion for three separate, but equally dispositive reasons.

First, as we have explained, the court erred by failing to first consider and address defendant's motion for a change in custody. In our view, a determination of that motion was required to allow the court to correctly decide plaintiff's relocation motion based on a current assessment of the parties' custodial arrangement as a factor in its determination of Will's best interests under the Bisbing standard. 230 N.J. at 323 (quoting Holder, 111 N.J. at 350) (explaining a "court 'must weigh "the custodial parent's interest in freedom of movement as qualified by his or her custodial obligation, the State's interest in protecting the best interests of the child, and the competing interests of the noncustodial parent"'" in the "sensitive determination of 'cause'" under N.J.S.A. 9:2-2).

Second, the court erred as a matter of law by conducting an incomplete analysis of the factors required for a proper determination of whether plaintiff established cause to relocate under the Bisbing standard. The trial court

reviewed each of the N.J.S.A. 9:2-4(c) factors as directed in Bisbing, and made finding as to each, but erroneously ended its putative analysis of Will's best interests there. That is, the court limited its assessment of whether relocation to Oklahoma would be in Will's best interests to an examination of only the N.J.S.A. 9:2-4(c) factors, even though Bisbing requires more.

As we have explained, contrary to Bisbing's plainly stated requirements, the court did not consider, make findings on, or weigh plaintiff's "interest in freedom of movement as qualified by . . . her custodial obligation" in its analysis. 230 N.J. at 323. Instead, the court consistently focused primarily on "the competing interests of" defendant in establishing a relationship with Will as determinative of the child's best interests. For example, in assessing Will's needs under one of the N.J.S.A. 9:2-4(c) factors — "the needs of the child" — the court noted Will "requires caretakers, parents, grandparents, and educators who are trained to understand the depth and breadth of his disabilities and are [able] to respond to his needs on a regular basis." The court then incongruously failed to consider or account for the care plaintiff and her parents have already ably provided to Will in the fulfillment of those needs and instead determined this "critical factor" weighs against relocation because defendant "must be given the opportunity to implement and facilitate a relationship with" Will,

presumably so defendant might also be able to properly address Will's needs at some point in the future.

To be sure, the court was required to consider defendant's interest in establishing a relationship with Will, and, indeed, an important consideration in determining a relocation motion is the maintenance and development of a familial relationship between the child and the parent opposing the motion. Ibid. But Bisbing requires consideration of the custodial parent's interest in freedom to relocate and a weighing of that interest and the other parent's competing interest in establishing a relationship with Will in determining what is in the child's best interests. Id. at 323. Here, the analysis of the parties' competing interests effectively and incorrectly ended in defendant's favor when the court failed to recognize or consider plaintiff's interest in freedom to relocate at all and instead focused primarily on defendant's interest in establishing a relationship with Will[10]

[10] In its analysis of other N.J.S.A. 9:2-4(c) factors, the court similarly focused exclusively on defendant's interest in establishing a relationship with Will and, in doing so, failed to consider plaintiff's interest in freedom of movement in contravention of the Bisbing standard. For example, in its assessment of the interaction and relationship of Will with his parents, see N.J.S.A. 9:2-4(c), the court determined the factor weighed against plaintiff's relocation request because defendant required an opportunity to establish a relationship with Will, but, again, the court failed to recognize, consider, or weigh plaintiff's interest in freedom of movement as qualified by her custodial obligation. Id. at 323.

The court's failure to consider and weigh plaintiff's interest in its analysis under Bisbing requires that we vacate the court's orders denying plaintiff's relocation motions and remand for further proceedings. A court abuses its discretion when it "fail[s] to consider controlling legal principles" and, as a result, makes a misguided legal determination based upon an incomplete analysis under the governing legal standard. See Elrom, 439 N.J. Super. at 434. That is precisely what took place here.

The third reason we are compelled to vacate the court's orders is the court's analysis of the N.J.S.A. 9:2-4(c) best interests factors is erroneously based on numerous findings of fact that are "inconsistent with or unsupported by competent evidence." Ibid. In many instances the court also overlooked relevant, undisputed, competent evidence in the motion record and made findings inconsistent with such evidence.

For example, a consistent theme throughout the court's findings supporting its analysis of the N.J.S.A. 9:2-4(c) factors is the court's determination that defendant has been precluded, presumably by plaintiff and her parents, from actively participating in Will's care and custody. Based on that finding, the trial court reasons that many of the N.J.S.A. 9:2-4(c) factors favor a denial of plaintiff's relocation request because defendant must be given

an opportunity to establish a relationship with Will that the court found was previously denied in various ways by plaintiff and her parents.

For example, in its consideration of whether plaintiff and defendant can agree, communicate, and cooperate in matters relating to Will under N.J.S.A. 9:2-4(c), the court found the factor found weighed "heavily" in favor of denying plaintiff's relocation application because the court determined plaintiff would be less inclined to communicate with defendant concerning Will's health and well-being in Oklahoma "particularly when she would again be residing with her parents for the foreseeable future."

We note that in its assessment of this factor, the court did not consider that plaintiff has had no obligation to "agree" with defendant on issues related to Will since the entry of the March 14, 2019 order granting her sole legal and residential custody of the child. Stated differently, the court did not consider whether the parties needed to "agree" on issues related to Will as required under the N.J.S.A. 9:2-4(c) factor or that the court's long-standing order granting plaintiff sole custody of Will rendered the ability-to-agree factor one that did not favor denial of the relocation motion. Plaintiff and defendant need not reside in close proximity to facilitate agreements concerning the decisions affecting Will because plaintiff is vested with the sole authority to make such decisions.

Similarly, in its assessment of the N.J.S.A. 9:2-4(c) factor examining "the parties' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse[,]" the court found "[d]efendant was denied parenting time by . . . [p]laintiff for a significant period of time without any reason offered and was never included in any decisions regarding medical care for the child." Based on that finding, the court gave the factor "significant weight to disallowing" the requested relocation to Oklahoma.

Also, in its assessment of "the interaction and relationship of the child with its parents and siblings" under the N.J.S.A. 9:2-4(c), and in support of its determination the factor weighs against plaintiff's relocation application, the court again relied on a finding that although plaintiff and her parents, Ken and Doris, "have clearly molded their lives around that of the child . . . , they have done so to the exclusion of [defendant], whose rights are certainly superior to those of the maternal grandparents."

The court's repeated finding plaintiff and her parents prevented defendant from establishing and maintaining a parental relationship with Will is not supported by substantial competent evidence and is undermined by the undisputed evidence and the court's orders. As a result, the court's legal

conclusions that certain of the N.J.S.A. 9:2-4(c) factors weigh against plaintiff's relocation motions may not be sustained. Elrom, 439 N.J. Super. at 434.

Defendant testified plaintiff's parents played a significant role in Will's care during the few months defendant lived at their home after Will was born and thereafter following defendant's move out of the home. Defendant felt plaintiff's parents were overbearing in their involvement in Will's care.

There is no evidence, however, that defendant took any action to assert his authority as Will's father to disengage plaintiff's parents from their active and important roles in first recognizing Will's disabilities, and caring for the child as necessary, including by arranging for medical examinations and treatment, and at times relieving their daughter of the substantial responsibilities of caring for a special needs child after defendant left their home and the child's care solely in plaintiff's hands.

The court's findings suggest plaintiff's parents were intrusive interlopers in their care of Will, and in some manner interfered with defendant's active participation in Will's care and custody, when the evidence does not support any such conclusion. To the contrary, the undisputed evidence established plaintiff's parents filled the void left by defendant's voluntary absence from involvement in Will's life and aided their daughter in the challenges presented by a newborn

with significant medical issues and disabilities during times plaintiff worked; her attempt to shoulder the responsibilities of caring for a newborn; her post-partum depression; and her addressing the burdens of cancer treatments.

The court's findings concerning plaintiff and her parents, and its conclusion defendant was precluded from developing a parental relationship with Will, also ignores that on March 14, 2019, a court order vested plaintiff with sole custody of Will and suspended defendant's parenting time in part based on a finding defendant had not seen Will during the prior six months, and, presumably, it was in Will's best interests that plaintiff bear sole responsibility for Will and defendant bear none. Thus, plaintiff and her parents did not preclude defendant from participating in Will's life; rather, the court determined defendant should have no role in Will's life by granting plaintiff sole custody and suspending defendant's parent time. And defendant, apparently content with that result, took no action concerning his loss of custody and parenting time for almost two-and-a-half years.

There is no evidence establishing plaintiff or her parents prevented defendant from taking action to challenge the court's March 14, 2019 order. The court's oft-repeated and relied upon finding plaintiff and her parents precluded

defendant's participation in Will's care and custody ignores these critical undisputed facts.

In addition, for a significant period of time, the FRO barred defendant from having any contact with plaintiff and parenting time with Will. The court discounts the significance of the FRO, noting plaintiff and defendant saw each other occasionally while the FRO was in place. The court, however, ignored the FRO barred defendant from contacting plaintiff, and there was no provision in the FRO requiring that plaintiff communicate with defendant concerning Will. In addition, when the parties met and communicated while the FRO was in place, it was defendant, and not plaintiff, who violated a court order.

In finding plaintiff or her parents prevented defendant from establishing a relationship with Will, the court also overlooked that defendant did not oppose plaintiff's application for sole legal and residential custody of Will, or the entry of the FRO, and the court granted plaintiff sole legal and residential custody because defendant did not satisfy his responsibilities pursuant to the February 15, 2018 Family Part order awarding him shared custody of Will.

In finding defendant "was never included in any decisions regarding medical care" for Will, the court failed to recognize the March 14, 2019 order granted plaintiff sole authority over such decisions. Again, it wasn't plaintiff or

her parents that precluded defendant's participation. To the contrary, the court's March 14, 2019 order, which continues to govern the parties' custodial arrangement, directs that defendant has no role to play in those decisions. That order was entered without objection by defendant and without any challenge for almost three years. Defendant's failure to object to the entry of the order granting plaintiff sole decision-making authority over Will constitutes, in our view, a concession of that authority to plaintiff. In other words, plaintiff exclusively exercised and exercises that authority not because defendant was precluded from doing so, but instead because defendant conceded she, and not he, should do so.

In sum, the court's finding defendant was in some manner precluded by plaintiff or her parents from establishing a relationship with Will — a finding essential to many of the court's conclusions concerning the N.J.S.A. 9:2-4(c) factors — is unsupported by substantial credible evidence. We decline to defer to that finding or the legal conclusions that flow therefrom under N.J.S.A. 9:2-4(c) and N.J.S.A. 9:2-2. See Rova Farms Resort, Inc., 65 N.J. at 484; see also Elrom, 439 N.J. Super. at 434.

For those reasons, we are convinced the court erred in its analysis and findings concerning the N.J.S.A. 9:2-4(c) factors under the Bisbing standard. In

addition to the two previously addressed alternative bases supporting our determination the court erred in making its determination of Will's best interests under Bisbing, those reasons provide a separate, but equally dispositive basis to vacate the court's orders denying plaintiff's relocation motions and remand for further proceedings.[11]

We therefore vacate the court's orders and remand for further proceedings not inconsistent with this opinion. We recognize plaintiff's motion for temporary relocation was founded on different and more recent circumstances than those presented at the initial plenary hearing, but the court's decision on the motion for temporary relocation was based in part on its findings on the original application. Since, for the reasons we have explained, the court erred in making its findings on the original application, we conclude vacatur of the order denying plaintiff's motion for temporary relocation and a remand on that application is appropriate as well.

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[11] In addressing the court's unsupportable finding defendant was precluded from establishing a relationship with Will, or providing parental care to the child, by plaintiff or her parents, we do not suggest the court's other findings concerning the N.J.S.A. 9:2-4(c) factors are supported by substantial credible evidence. We limit our discussion to that finding because it alone sufficiently permeates the court's analysis of the N.J.S.A. 9:2-4(c) factors and, as a result, the court's best interests determination under the Bisbing standard, such that it alone warrants vacatur of the court's orders denying plaintiff's relocation motions under N.J.S.A. 9:2-2.

III.

In Morgan v. Morgan, the Court observed, "there is abundant support for the proposition that a remand in a removal case should be sufficiently broad in scope to permit consideration of the 'living record.'" 205 N.J. 50, 68-69 (2011) (quoting Holder, 111 N.J. at 354). So too here, we recognize that, "with the passage of time, the evidence adduced in the earlier proceedings may have changed[,]" id. at 69 (citation omitted), and, therefore, a remand for reconsideration of the applications based on new hearings to provide "the parties with the opportunity to submit such . . . evidence as may be warranted in light of our opinion and in light of the passage of time" is needed, Mamolen v. Mamolen, 346 N.J. Super. 493, 504 (App. Div. 2002).

In light of the need for a new hearing, or new hearings, and because the trial court expressed opinions, weighed evidence, "and may have a commitment to h[er] findings, we conclude . . . it is appropriate the matter be assigned to a different judge." See Carmichael v. Bryan, 310 N.J. Super. 34, 49 (App. Div. 1998). The remand court shall conduct such proceedings, allow discovery, and hold such hearings as it deems appropriate based on the evidence and arguments of the parties. The remand proceedings shall be conducted as expeditiously as possible to protect Will's best interests and the urgency presented by his

circumstances and compelling needs. This opinion shall not be construed as expressing an opinion on the merits of plaintiff's motions for relocation, defendant's motion for a change of custody, or any other motions pending before the trial court.

To the extent we have not addressed any particular arguments presented by the parties, we conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Vacated and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION