SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1235-21
A-1134-22

G.P.,

Plaintiff-Respondent,

v.

G.R.,

Defendant-Appellant.

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Argued April 30, 2024 – Decided May 28, 2024

Before Judges Mayer, Paganelli and Augostini.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FD-02-0697-18.

Gustavo Robles, appellant, argued the cause pro se.

Kevin Raul Kieffer argued the cause for respondent (Central Jersey Legal Services, Inc., attorneys; Kevin Raul Kieffer, on the brief).

PER CURIAM

In these appeals, calendared back-to-back and consolidated for purposes of this opinion, defendant G.R. appeals from orders dated September 30, 2021; November 18, 2021; July 19, 2022; and October 17, 2022.[1] We affirm all four orders.

We glean the facts and procedural history from the motion records. Plaintiff G.P. and defendant have a minor child in common. The parties never married. In August 2020, the Division of Child Protection and Permanency (DCP&P) "substantiated" defendant for the sexual abuse of the child.[2] As a result of the substantiation, defendant was prohibited from having contact with the child.

In March 2021, plaintiff and the child moved to a different town in New Jersey. On June 2, 2021, the parties—represented by counsel—entered into a consent order. In pertinent part, the consent order provided: (1) the parties

[1] We use initials pursuant to Rule 1:38-3.

[2] An allegation is "substantiated" if there is evidence a child is "abused or neglected," as defined under N.J.S.A. 9:6-8.21, and "either the investigation indicates the existence of any of the circumstances in N.J.A.C. 3A:10-7.4 or substantiation is warranted based on consideration of the aggravating and mitigating factors listed in N.J.A.C. 3A:10-7.5." N.J. Div. of Child Prot. & Permanency v. V.E., 448 N.J. Super. 374, 388 (App. Div. 2017).

would continue to share joint legal custody of the child; (2) both parties would have input and joint decision-making ability as to the child's health, education and well-being, and shall confer with one another in writing; and (3) temporary physical custody would remain with plaintiff.

In addition, the parties' consent order provided a plan for defendant and the child to engage in reunification therapy. The consent order, in part, provided: (1) the appointment of a reunification therapist; (2) the submission of documentation to the therapist, including evaluations conducted by Audrey Hepburn Children's House and Bergen Family Center; (3) the adoption of recommendations from the reunification therapist and the child's therapist; and (4) the allowance of supervised parenting time for defendant at the end of the first sixty days of reunification therapy "unless contraindicated by the child's therapist or reunification therapist."

Moreover, the consent order provided that "either party [wa]s afforded the ability to file the requisite application with the [c]ourt to address custody and parenting time issues based upon changed circumstances."

On August 31, 2021, defendant filed an order to show cause (OTSC). Defendant sought to re-enroll the child in the school system where the child resided before plaintiff relocated to another town. The trial court heard oral

arguments from the parties. Defendant argued plaintiff enrolled the child in the new school system without conferring with him and therefore violated the parties' consent order. Plaintiff argued defendant knew she and the child moved to a new town and the new school enrollment was in the child's best interest because: (1) the child did not want to remain in his former school system; (2) the child suffered from panic attacks; and (3) the child's therapist recommended a "new atmosphere" and "new beginning."

In ruling on defendant's motion, the trial court found:

> plaintiff violated the terms of the consent order just entered a few months ago, as she failed to confer with the defendant on education issues.
>
> . . . .
>
> In addition, th[e] child went to preschool and grades one through five in [the former town]. Therefore, the . . . minor child ha[d] contacts and stability in that education system and, although plaintiff allege[d] that the therapist for the child recommend[ed] a move regarding a new beginning[] in a different location, . . . plaintiff ha[d] failed to provide any documentation to support this position . . . .

The trial court entered an order requiring plaintiff to re-enroll the child in his former school and to comply with the reunification process.

On September 30, 2021, the parties appeared in court for the return of the OTSC. Prior to the hearing, the trial court received the DCP&P documents and conferred with the parties' counsels in chambers before going on the record.

At the outset of the hearing, the judge—without objection—summarized the DCP&P documents. As pertinent to the child's school enrollment, the judge stated the documents disclosed: (1) the child's therapist reported that the child was terrified of returning to his former school, and it would have been inappropriate to send him into an environment that triggered his post-traumatic stress disorder and anxiety due to defendant's sexual abuse; (2) the child's psychiatrist was concerned the child was being forced to return to his former school—noting the child experienced "anxiousness, panic attacks, and restless nights" as a result of being told he would be re-enrolled—and the psychiatrist consequently prescribed medication and additional therapy visits; and (3) the child stated he did not want to be re-enrolled; was afraid of returning; and was experiencing stomach sickness, restless nights, diarrhea, vomiting, and panic attacks.

In addition, as pertinent to defendant and the child engaging in reunification therapy, the judge stated the records disclosed: (1) the child did not want to interact with defendant anytime soon; and (2) the child's therapist

reported the child consistently stated he did not want to see defendant, did not feel safe with him, and feared him. Therefore, the therapist recommended no parenting time between the child and defendant. Moreover, defendant underwent a psychological evaluation. The recommendation following the evaluation was that defendant have "no contact [with the child] until [defendant] ha[d] progressed in treatment and in consultation with [the child]'s treating clinician."

The judge considered the hearing to be a "summary proceeding." Therefore, she declined "to take testimony" but considered the DCP&P documents and therapists' recommendations because those documents were "quite detailed." Defendant did not object to the manner of proceeding and "understood" the judge "obviously [would give] a lot of credibility and credence" to the documents and recommendations.

Defendant "vehemently objected" to the child's new school enrollment. Without addressing the content of the documents or the recommendations provided to the judge, defendant argued plaintiff violated the parties' consent order by failing to communicate and unilaterally making the enrollment decision. As to reunification, defendant acknowledged the recommendations against reunification were unrefuted and recognized the consent order "clearly

indicate[d] that reunification w[ould] not take place until such time as a therapist . . . recommend[ed] that it take place."

The judge stated she was guided by the "best interest of the child standard." As to parenting time and reunification, the judge considered the documentation, including the parties' consent order that required input from the child's therapist, and found the child was "clearly not ready for reunification" with defendant. As to the child's new school enrollment, the judge, again relying on the documentation, determined it was best for the child to remain in the new school. While the judge admonished plaintiff for her unilateral action, she recognized plaintiff was torn between a court order—requiring re-enrollment of the child—and the child's reaction to re-enrollment and the contrary recommendation of the child's therapist.

The September 30, 2021 court order provided, in pertinent part: (1) the child would remain in the new school; (2) defendant's parenting time would be suspended; (3) reunification therapy could commence by consent; (4) both parties could communicate with the child's treatment providers; and (5) all other provisions of the parties' consent order would remain in full force and effect.

Defendant filed a motion for reconsideration of the September 30, 2021 order. On the return date of the motion—November 18, 2021—the trial court

heard the parties' oral arguments. Defendant, appearing pro se, stated his motion focused "specifically" on the child remaining in the new school. He argued reconsideration was necessary because the judge: (1) accepted the facts in the DCP&P documents; (2) did not give an "opportunity for an additional doctor to review and provide their rational[e] or opinions"; and (3) the child's providers' recommendations were based on the child's stated but unproven symptoms.

Further, defendant contended there was "no movement" in terms of reunification. He argued the process, "for whatever reason," was stalled and engaging in reunification therapy would allow him to exercise parenting time.

The judge denied reconsideration, finding defendant's arguments were no different than those made on September 30, 2021. The judge concluded: (1) there was "no change in any circumstances at th[at] juncture" and she had not made her prior decision on a "palpably incorrect or irrational basis" or "failed to consider competent evidence." The judge stated the evidence admitted at the September 30, 2021 hearing was "considered without objection."

In June 2022, defendant filed a new OTSC. In part, he alleged the "child [wa]s being manipulated and coerced from attending and participating in court ordered [r]eunification therapy." Among numerous other reliefs, defendant

sought the implementation of reunification therapy and immediate parenting time.

On July 19, 2022, defendant appeared pro se before the trial court on an emergent application to compel the "reunification process pursuant to the [parties'] consent order and for immediate parenting time." He noted there was "some type of information" provided by the reunification therapist, although he "did[ no]t have full time to review it."

The judge stated she had the reunification therapist's "reunification intake summary assessment." Without objection, the judge stated the report indicated it was "the position of the psychologist . . . that th[e] case [wa]s not appropriate at th[at] time for reunification." Further, and again without objection, the judge stated the summary assessment indicated:

> [I]t [wa]s the position of th[e] psychologist that th[e] case [wa]s not appropriate for reunification at th[at] time for several reasons.
>
> []Of importance [wa]s that the current treating psychiatrist, . . . and current therapist, . . . recommend [the child] have no contact with his father, based mostly on [the child's] current and past symptoms of anxiety and trauma.[]
>
> []Further, [the child] d[id no]t wish to see his father at th[at] time, although he did state that he might be willing to meet with his father when he was older,

> especially if his father [wa]s accountable for his actions and apologetic.
>
> []Lastly, [plaintiff] ha[d] taken a protective stance and d[id] not want the reunification between [defendant] and the [child to] proceed and her support would be needed to facilitate th[e] process.[]

The judge noted the summary assessment indicated plaintiff and defendant were compliant with reunification therapy.

Applying the legal standard for the grant of emergent relief, the judge found no "immediate or irreparable" harm would befall defendant and therefore denied emergent relief. The judge relisted the matter in the ordinary course for consideration of defendant's other requested reliefs.

The parties returned to court on October 17, 2022. Without any objection from defendant's counsel, the judge extensively reviewed the parties' history, including the opinions of the providers involved in the DCP&P matter. Further, the judge relied on the parties' consent order regarding their agreed upon process for reunification. In relevant part, the judge found plaintiff and defendant complied with their obligations for reunification therapy, but determined the therapy could not commence because it was not recommended by the parties' medical providers and the child did not, at that time, want to engage in therapy with defendant.

On appeal, defendant challenges the trial court orders of September 30, 2021; November 18, 2021; July 19, 2022; and October 17, 2022. He requests that we conduct a de novo "review of the facts and evidence of this record and case." We discern defendant's pro se argument is the trial court erred by failing to hold plenary hearings before entering the orders as required under N.J.S.A. 9:2-4 and Rule 5:8-6. Therefore, he requests the orders be vacated and the matter be remanded for plenary hearing. Alternatively, defendant contends this Court should order: (1) the return of the child to his former school system; (2) compliance with reunification therapy; and (3) temporary physical custody of the child should be granted to him.

We begin our discussion with a review of the principles governing our analysis. "We review [a] Family Part judge's [factual] findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). Therefore, factual "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 283 (quoting Cesare, 154 N.J. at 411-12).

"A more exacting standard governs our review of the trial court's legal conclusions." Ibid. "[W]e do not pay special deference to [the trial court's] interpretation of the law . . . . [T]he trial court is in no better position than we are when interpreting a statute or divining the meaning of the law." Ibid. (third alteration in original) (quoting D.W. v. R.W., 212 N.J. 232, 245 (2012)). "Accordingly, we review the trial court's legal conclusions de novo." Ibid. (citing D.W., 212 N.J. at 245-46).

We review a trial court's decision not to conduct a plenary hearing for abuse of discretion. See Costa v. Costa, 440 N.J. Super. 1, 4 (App. Div. 2015). It is well-established "a plenary hearing is only required if there is a genuine, material and legitimate factual dispute." Segal v. Lynch, 211 N.J. 230, 264-65 (2011). "In some cases, there is clearly a need for an evidentiary hearing to resolve custody or parenting time issues." Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007). "In many cases, however, where the need for a plenary hearing is not so obvious, the threshold issue is whether the movant has made a prima facie showing that a plenary hearing is necessary." Id. at 106.

Pursuant to the plain error rule, where an error has not been brought to the trial court's attention, we will not reverse on the ground of such error unless the error is "clearly capable of producing an unjust result." R. 2:10-2.

Applying these well-established principles, we conclude there is no merit in defendant's arguments. First, in several respects, defendant argues for us to substitute the trial court's factual findings with our own. Considering our deferential view of the judge's factual findings, and because we are convinced the judge's factual findings were supported by adequate, substantial, and credible evidence in the record, this argument is unavailing.

Moreover, our de novo review of the judge's legal conclusions reveals no error. Defendant argues the hearings on September 30, 2021; November 18, 2021; July 19, 2022; and October 17, 2022 were deficient because: (1) the judge failed to abide by N.J.S.A. 9:2-4; and (2) since this was a contested custody matter plenary hearings were required under Rule 5:8-6. We reject these arguments as meritless.

First, we agree with defendant that our State's public policy is "to assure minor children of frequent and continuing contact with both parents." N.J.S.A. 9:2-4. Nonetheless, the New Jersey Supreme Court has held "parental right[s] must, at times, give way to the State's parens patriae obligation to ensure that children will be properly protected from serious physical or psychological harm." Watkins v. Nelson, 163 N.J. 235, 246 (2000) (citing In re Guardianship of K.H.O., 161 N.J. 337, 347 (1999); In re Guardianship of J.C., 129 N.J. 1, 10

(1992)). Here, the judge correctly concluded the public policy favoring parental rights was not warranted due to: (1) the substantiated finding that defendant sexually abused the child; (2) the child's wishes and physical and mental conditions; and (3) the recommendations of the medical providers.

Second, Rule 5:8-6 requires the court to "set a hearing date" if it "finds that the custody of children is a genuine and substantial issue." Defendant argues that since the parties were engaged in a "contested custody case," plenary hearings were required regarding the child's custody; reunification therapy; and the child's new school enrollment.

As to the physical and legal custody of the child, the parties resolved those issues in the June 2, 2021 consent order. The parties' consent order allowed either party to file an "application with the court to address custody and parenting time issues based on changed circumstances." Indeed, "[a] party seeking to modify custody must demonstrate changed circumstances that affect the welfare of the child[]." Hand, 391 N.J. Super. at 105 (citing Borys v. Borys, 76 N.J. 103, 115-16 (1978); Sheehan v. Sheehan, 51 N.J. Super. 276, 287 (App. Div. 1958)).

Defendant failed to present any evidence of a factual dispute to support a changed circumstance regarding the child's custody. In the absence of such

evidence, defendant failed to make a prima facie showing that a plenary hearing on the issue of custody was required. Therefore, we are satisfied the judge did not abuse her discretion in failing to hold a plenary hearing as to the child's custody.

Moreover, the parties' consent order provided reunification therapy as the gateway to defendant's supervised parenting time. The reunification plan required: (1) the reunification therapist to be provided "with a background of the issues associated with th[e] case, including evaluations"; (2)"[t]he reunification therapist [to] speak with the child's therapist regarding recommendations"; and (3) the reunification therapy to commence "unless contraindicated by the child's therapist or the reunification therapist." Following the provisions in the consent order, the medical professionals recommended against reunification therapy. In addition, defendant's psychological evaluation recommended defendant and the child have no contact and indicated the child was not ready to meet with defendant.

Defendant presented no evidence of a factual dispute to support the commencement of reunification therapy. In the absence of such evidence, defendant failed to make a prima facie showing that a plenary hearing was

required regarding reunification therapy. Therefore, the judge did not abuse her discretion in failing to hold a plenary hearing as to reunification therapy.

Finally, defendant argues a plenary hearing was required concerning the child's school enrollment. Defendant argues plaintiff enrolled the child in the new school without conferring with him in violation of the parties' consent order. Indeed, the trial court found plaintiff violated the parties' consent order.

However, the trial court relied on the reports provided by the child's medical providers and determined enrollment in the new school was in the child's best interest. Defendant failed to proffer any evidence enrollment in the child's previous school was in his best interest or that the new school was somehow lacking. Under these circumstances, defendant failed to make a prima facie showing that a plenary hearing was required regarding school enrollment. Therefore, we are convinced the judge did not abuse her discretion in failing to hold a plenary hearing as to school enrollment.

Although we conclude the judge did not abuse her discretion by declining to conduct plenary hearings on these issues, we note that defendant, both while he was represented by counsel and acting pro se, never objected to the trial court's reliance on the submitted documents in lieu of conducting plenary hearings. Even if we assumed the failure to hold a plenary hearing was an error,

which we do not, based on the weight of the unrefuted documentary evidence, we are satisfied there was no unjust result.

Under these circumstances, we are convinced the judge did not err in entering the orders of September 30, 2021; November 18, 2021; July 19, 2022; and October 17, 2022 without holding plenary hearings. "Of course, our decision is without prejudice to [defendant]'s right to seek relief from the court in the event of subsequent conditions or circumstances affecting the welfare of the child[]." Hand, 391 N.J. Super at 112.

To the extent we have not addressed any of defendant's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.