SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3067-22

TAHEERAH SCRUGGS,

Plaintiff-Respondent,

v.

WENTWORTH GRAYMAN,

Defendant-Appellant.

Submitted May 29, 2024 – Decided June 28, 2024

Before Judges Gooden Brown and Puglisi.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FD-07-1712-20.

Wentworth Grayman, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

In this one-sided appeal, defendant Wentworth Grayman appeals from the Family Part's May 25, 2023 order denying reconsideration of its March 8, 2023

order granting plaintiff Taheerah Scruggs's motion to modify the parties' parenting time agreement to permit a third party to pick up the child. We affirm.

The parties have a child together, born in August 2019. On plaintiff's application, the court established defendant's paternity and entered a custody and child support order on June 4, 2020. The resulting Uniform Summary Support Order (USSO) set forth a detailed parenting time schedule, with "[e]xchange times and locations to be consistent with past practices," but did not indicate what those past practices were.

On May 3, 2022, plaintiff filed a motion to modify the order to permit her cousin to pick up the child for custody exchanges when plaintiff was unavailable to do so. Defendant filed a cross-motion to modify the order to have the right of first refusal if plaintiff were unavailable, to which plaintiff filed a reply.

The court adjourned the motion to have the parties attempt to resolve their issues through their respective counsel, which was unsuccessful. On March 7, 2023, Judge Aldo J. Russo heard the motion, considered the sworn testimony of both parties, and issued an oral decision on the record. After noting he was required to consider the circumstances at the time that order was entered, the judge found:

> The problem is, I don't know what the circumstances were when Judge Passamano entered

> [the June 4, 2020] order. But it is a detailed order. Which needs some modification based upon [what] has occurred in the last [two] years. Okay. Everybody keeps forgetting that the child is at–-is at the core of all this. And it's the child that has to have structure. Well, what [defendant] is proposing is—doesn't—in my opinion, doesn't give structure to the visitation schedule because the times are going to consistently change. And when the child is expecting to go home to eventually be with his mother, and is still at the father's house, this still might cause some confusion.
>
> So, I don't find a change in circumstances with respect to not allowing somebody else to pick up the minor child. So both parties may have assistance with picking up the minor child at the specified time as ordered in the June 4[], 202[0] order. However, parties may deviate from the times, but any deviation from the times must be in writing and agreed to by the parties. Okay. In addition, I do find that the order needs to be modified when it comes to certain times when each party is entitled to the right of first refusal. If a party is on vacation or is not going to be exercising overnight visitation with the minor child, the other party will have the right of first refusal.

The next day, the judge entered a USSO in conformance with his decision:

> For the reasons set forth in the record, both parties may have assistance with picking up the minor child at the specified time ordered on June 4, 2020. However, the parties may deviate from the times, but any deviation must be in writing and agree[d] to by the parties in writing. If there is no agreement, this order and the June 4, 2020 order control.
>
> In addition, if a party is on vacation and/or will not be exercising overnight visitation, the other party

> shall be advised in writing and shall have the right of first refusal.

On March 10, 2023, defendant filed a pro se motion for reconsideration arguing the prior order violated his parental rights. The judge heard and denied the motion on May 24, 2023, finding it did not set forth grounds for reconsideration under Rule 4:49-2:[1]

> [T]he [c]ourt did not change the June 4[], 2020 order. It simply expanded it to allow the parties the convenience of a third party to pick up the child. It did not change anybody's parenting time. It did not give anybody else visitation. The [c]ourt is not convinced that [plaintiff's cousin] picking up the child amounts to visitation. The [c]ourt is also not convinced that it is taking away parenting time from [defendant]. And for those reasons, [defendant]'s motion for reconsideration is denied.

This appeal follows, in which we are guided by a deferential standard of review. We review a trial judge's decision on whether to grant or deny a motion for rehearing or reconsideration under Rule 4:49-2 (motion to alter or amend a judgment order) for an abuse of discretion. Branch v. Cream-O-Land Dairy,

[1] A motion for reconsideration is reserved "for those cases which fall into that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

244 N.J. 567, 582 (2021). "The rule applies when the court's decision represents a clear abuse of discretion based on plainly incorrect reasoning or failure to consider evidence or a good reason for the court to reconsider new information." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2024).

Our scope of review of Family Part orders is also narrow. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We "accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters," Harte v. Hand, 433 N.J. Super. 457, 461 (App. Div. 2013) (quoting Cesare, 154 N.J. at 412), and we will not overturn the Family Part's findings of fact when they are "supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 412. We also will not disturb the Family Part's factual findings and legal conclusions that flow from them unless they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Ricci v. Ricci, 448 N.J. Super. 546, 564 (App. Div. 2017) (quoting Elrom v. Elrom, 439 N.J. Super. 424, 433 (App. Div. 2015)). We review a Family Part's legal determinations de novo. Id. at 565.

Defendant raises the following issues on appeal:

> POINT I
>
> [PLAINTIFF] FAILED TO MEET HER BURDEN OF PROOF.

POINT II

THE JUDGE ACTED AS [PLAINTIFF]'S ADVOCATE AND WAS BIAS[ED] FOR HER CAUSE AND NOT IN THE CHILD'S BEST INTERESTS.

POINT III

THE JUDGE ERRONEOUSLY INFRINGED ON [DEFENDANT]'S FEDERALLY PROTECTED PARENTAL RIGHTS WITHOUT PROVIDING [HIM] WITH DUE PROCESS.

Having considered defendant's contentions in light of the applicable law, we conclude they lack sufficient merit to warrant extended discussion in a written opinion, R. 2:11-3(e)(1)(e), and affirm substantially for the reasons set forth by Judge Russo. We add only the following comments.

To establish a prima facie case for modification of a parenting time or custody order, the party seeking modification must show "changed circumstances" to establish that the party's current arrangement under the existing order is no longer in the best interest of the child. Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007). Thus, the moving party has the burden. R.K. v. F.K., 437 N.J. Super. 58, 63 (2014). "In order to determine whether the circumstances have so changed since the original judgment as to warrant a modification, a court must have some knowledge or information as to the

circumstances which existed on the date of the original judgment." Sheehan v. Sheehan, 51 N.J. Super. 276, 287-88 (1958).

Plaintiff's motion to modify the parties' custody order only sought to permit her cousin to pick up the child for custody exchanges. While the prior order did not identify or limit individuals who could pick up or drop off the child, this issue nevertheless became a point of contention between the parties, as the parties detailed in their moving papers. Although defendant argued the child should remain with him until plaintiff became available to pick up the child—his "right of first refusal"—the judge considered and rejected this option as not being in the best interests of the child because it would result in inconsistencies and confusion in the child's parenting time schedule.

In denying the subsequent motion for reconsideration, the judge reiterated he was not ordering third-party visitation or altering the existing parenting time schedule, but rather simply permitting both parties flexibility in transporting the child to and from their parenting time. Because the judge's practical, commonsense order was supported by the evidence in the record and was in the best interests of the child, we discern no abuse of discretion that would warrant our intervention.

Affirmed.