

DOCKET NO UWY-FA-19-6047892-S : SUPERIOR COURT
STATE OF CONNECTICUT
SUPERIOR COURT
SAVANNAH LUCIANI : JUDICIAL DISTRICT OF WATERBURY
2024 MAY 29 A 10:19
V. JUDICIAL DISTRICT AT WATERBURY
OF WATERBURY
KEVIN GABER : MAY 29, 2024

MEMORANDUM OF DECISION

The parties, who were never married, are the parents of two minor children, Hudson, D.O.B. 1/12/2013 and Elorah, D.O.B. 8/2/2015. The original parenting plan, entered by agreement of the parties (#143 6/16/21), gives the parents joint legal custody, with primary physical custody vesting in the plaintiff mother(mother). The defendant father(father) has parenting time every other weekend from Friday to Sunday and a two-hour weekday visit. For summers, the schedule flips, with mother having every other weekend and a weekday visit. The parties are also supposed to have a daily call with the children when they are not in their care.

This matter is before the court on plaintiff's post-judgment motions, #175, Motion for Contempt, #177 Motion for Modification, Child Support and Custody and #188 Motion for Contempt. Child Support being at issue, the parties' financial affidavits are ordered unsealed. Evidence was received and the court took judicial notice of the file. The court heard testimony from both parties, Kacian Fabish, the parties' coparenting counselor and Attorney William Brown, the court appointed guardian ad litem.

The Court has carefully considered the testimony, assessed the credibility of the parties and contemplated the information within the context of the arguments of the parties. The Court has also reviewed and considered relevant case law, applicable rules, and statutory provisions,

including the criteria contained in General Statutes Section 46b-46, 46b-56b and 46b-56(c) and was guided by the best interests of the child.

#175, Motion for Contempt

This motion alleges that the defendant father (father) failed to follow court orders requiring the parties to share information about the children, specifically where they were going to summer camp, and failed to foster free and open communication between the children and the mother. He is also alleged to have not paid \$841.87 in extracurricular expenses for the children. The court reviewed AppClose text communication submitted as evidence at the hearing. During the summer of 2023, mother repeatedly asked the father where the children would be attending camp while in his custody. No answers appear in the texts and Father admits that he never provided the names of the camps. It is also clear from both the testimony and the texts that father does not comply with the order that the children should have daily phone contact with the non-supervising parent. This includes not having the children call their mother on Christmas Day. Father did not claim that he was unable to comply with these orders or that the court orders were unclear.

Regarding the extracurricular expenses, there was testimony indicating that father made some payments towards the extracurricular activities around the time of the hearing. He agrees that he owes \$58.50 for field trip expenses.

#188 Motion for Contempt

This motion alleges that father violated Article 4 of the custody agreement dated June 16, 2021 by cancelling the children's enrollment in his employer health insurance plan. The 2021 order obligates both parents to provide health insurance for the children. Testimony of the parties

indicated that the children were covered by the father's plan as the main insurance. Mother had secured HUSKY insurance for supplemental coverage. Father does not deny that he disenrolled the children from his plan and that he did not discuss this with the mother. He unilaterally decided that the employer plan was too expensive and that the children should be insured by the mother through HUSKY. Even by father's own testimony, the cost of the employer plan was less than 7.5% of his income, which is the threshold for HUSKY and part of the original court order.

In reviewing claims of contempt, the court must find that the defendant violated a court order by clear and convincing evidence. Brody v Brody, 315 Conn 300, 105 A.3d 887 (2015). The court must conduct a three part analysis: Was there a clear court order, was there a violation of that order and was the violation willful? For each claim raised, the court orders were clear and unambiguous. Father does not claim they were not. He has not argued that he was unable to comply with the orders. He simply chose to disregard the orders. The defendant father is found to be in willful contempt of the court's orders.

#177 Motion for Modification, Child Support and Custody

Mother seeks to modify the custody and child support orders. She requests sole legal custody of the minor children, a change to the summer parenting schedule and a modification of the child support based on the Connecticut Child Support Guidelines.

Under the original custody orders (#143) communication was to occur using AppClose. The agreement spelled out a list of appropriate responses to be used and provided that parties would respond within 48 hours of an initial communication and 24 hours for a second response if one was required. The parties agreed to work with a coparenting counselor to improve their communication.

Kacian Fabish, the parties' co-parenting counselor testified credibly that Mr. Gaber made no progress in therapy. She described him as rude and combative both in therapy sessions and in his communication with the mother. Ms. Fabish established guidelines for the parties to use in their App Close communication. Mother is reported to have made progress, using the guidelines to help control her emotional responses to Mr. Gaber. Father did not follow the guidelines. He failed to cooperate with the scheduling of appointments and the parties were eventually discharged from co-parenting therapy.

Attorney William Brown was appointed as guardian ad litem for the two minor children and was a credible witness. He also served as guardian ad litem during the original custody action in 2020. The guardian ad litem reviewed records from DCF, the children's pediatrician and their schools. He spoke to the coparenting counselor and to the son's therapist. He has met with the children and observed them with both parents.

Attorney Brown testified that the father is at fault for the parties' inability to communicate. He has observed that the father remains angry at the mother for moving to Simsbury and appears unable to interact without being belittling or dismissive. The guardian ad litem spoke to the coparenting counselor and the son's therapist, who observed the same behavior. The GAL concluded that father had failed to productively participate in the coparenting therapy and was not committed to changing his behavior. Attorney Brown saw no indication that the mother was attempting to alienate the children from the father. He recommends that sole legal custody be awarded to the mother. He testified that this was in the children's best interest because the parties are unable to effectively communicate, even on critical issues relating to the children. He recommended that the summer schedule change to provide a week on week off parenting time. Neither party objected to this change.

Mother claims that an award of sole legal custody is in the best interest of the minor children as she is unable to coparent with Mr. Gaber. She testified that he often fails to communicate or respond to her, even when it addresses important educational or medical information. She claims that father's responses are rude, dismissive and generally not responsive to the issues presented.

Mother submitted lengthy AppClose records documenting the communication between the parties. The court has reviewed all the records submitted. They support her claim that the father is responsible for the current communication issues. The texts include many instances of father berating the mother and calling her names. He often does not reply to her communication, even when it relates to medical appointments or health issues for the children. When mother reaches out to request her court ordered contact with the children, she is ignored, even on major holidays or while father is on vacation out of state with the children.

Father objects to the granting of sole legal custody to the mother. Mr. Gaber expresses dissatisfaction with the status and method of communication between the parties. His emails to almost everyone involved with this matter are replete with complaints that he is not receiving information in the format that best meets his needs. He does not like using AppClose, complaining that the written communication does not give him personal, timely, information on his children. Father alleges that mother is alienating him from the children and not providing sufficient updates on their daily activities. However, he does not utilize the school portals to obtain educational information, believing that mother should be communicating directly to him with updates.

Father admits that he often does not respond to mother's communication. He believes that monitoring App Close is burdensome and expects the mother to call and to provide

continuous reminders about activities and information regarding the children. A consistent theme during father's testimony is that all the parties' problems could be fixed with a direct conversation. He acknowledged that his conduct was a barrier to direct communication, conceding that his texts with mother were rude and combative. Father offered no indication that he would change his behavior.

Child Support Guidelines were submitted by the mother, indicating a presumptive support obligation on the father of \$317 per week. Father did not contest the amount or object to the modification of the support order.

In custody matters, the standard of proof is preponderance of the evidence. *Cookson v. Cookson*, 201 Conn. 229, 239-40, 514 A.2d 323 (1986). General Statutes § 46b-56 (a) provides in relevant part: “[i]n any controversy before the Superior Court as to the custody or care of minor children, ..., the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children if it has jurisdiction under the provisions of chapter 815p.” In modifying custody the court must either find a material change of circumstances or that the order sought to be modified was not based on an evidentiary determination as to the best interest of the child.” *Cookson v. Cookson*, 201 Conn. at 236 514 A.2d at 326 (1986).

There has been a substantial change in circumstances. The parties were discharged from coparenting counselling and the communication has not improved. The parents' inability to interact negatively impacts the daily lives of the minor children. Father is substantially responsible for the current issues between the parties. Despite the efforts of the co-parenting counselor, he continues to speak disparagingly to the mother. He testified to wanting a “normal”

parenting relationship, but he appears to be incapable of conducting himself in a manner that allows for productive communication about the children.

He claims that mother has alienated his children from him. This is not supported by the evidence. The AppClose communication shows that mother regularly offers him extra time with the children and keeps him updated on important events. He will either not respond or reply with a dismissive or belligerent text.

While father seeks to have mother provide him with constant updates and reminders, he clearly feels no obligation to reciprocate. He consistently denies the mother her court ordered phone calls with the children, including on Christmas Day. He fails to respond or ignores the mother's efforts to communicate to the detriment of his children. For example, he ignored clear communication in AppClose about the daughter's summer homework and then blamed the mother for not sending reminders. The children are no longer involved in extracurricular activities because father refused to pay or would not cooperate with scheduling.

Parenting requires a constant series of decisions regarding the care and upbringing of children. Some of these decisions are critical, involving medical care and treatment. Some are simple, such as what birthday party the child will attend. The best interest of the children requires that these decisions be made in a timely and thoughtful manner. The father has not shown an ability to work cooperatively with the mother to make decisions or coparent the children. The App Close communication, the testimony of the counselor and the GAL indicate that the mother is best able to put aside her feelings and act on behalf of the children. It is in their best interest for sole legal custody to vest in the mother. Father should engage in individual counseling to address his anger and resentment and to explore how he can modify his behavior so he can more fully participate in their upbringing.

ORDERS:

1. **Motion #177 is granted.**
2. Sole legal custody of the minor children Hudson Gaber and Elorah Gaber shall vest in their mother, Savannah Luciani.
3. Both parties shall promptly communicate to the other any and all significant events or changes in the lives of the minor children including educational matters, religious activities, medical dental and psychological conditions or treatment and participation in sports or extracurricular activities. Mother shall provide father with timely notice of any decision or change she proposes in any significant non routine aspect of the life of either child and will allow father the opportunity to be heard. Father will respond within 24 hours. Mother shall consider Father's input in good faith. After such consideration, mother will have sole decision-making authority on all such matters. During their actual period of physical custody, either parent shall have authority to decide non-significant routine matters and to act in the children's best interest in emergencies.
4. Child support is ordered consistent with the Connecticut Child Support Guidelines in the amount of \$317 per week.
5. Father shall engage in individual counselling in an effort to gain insight as to how his anger towards the mother interferes with his ability to communicate on behalf of his children. Father must have engaged in such therapy for a period of at least six months prior to filing any motion to modify the custody orders.
6. The children's participation in extra curricular activities shall not be considered a non-routine matter subject to sole legal custody decision making. The current orders will remain in effect, whereby each parent must respond to any request or inquiry about an

extracurricular activity within 48 hours. Failure to respond within the time frame will be considered an agreement and will incur liability for the cost of the activity in accordance with any relevant court orders.

7. The parties will be equally responsible for the cost of the children's extracurricular activities. There shall be an annual cap of \$1500, which can be increased by mutual agreement.
8. Each parent shall have unrestricted access to the children's medical, educational dental and psychological information. Outside an emergency or a last-minute change in schedules, each parent is responsible for keeping themselves up to date on these issues. During the school year, father shall continue to have parenting time one night a week for two hours and every other weekend from Friday to Sunday. During the summer school break, the parties shall alternate weeks on a "week on, week off" basis commencing with the first full week of summer break. The first full week of summer break is defined as beginning Friday at 6 pm following an entire week of no school. The week on week off shall continue through the last Friday of the week, one full week before the beginning of the Fall term of school.
9. During the summer schedule, each parent shall be responsible for their own scheduling and for the cost of any camps, childcare or other related activities. On Sunday of each week, the parent with parenting time shall provide the other parent the name and location of any camp or childcare the children will attend. This communication should be done using AppClose. Both parents shall be listed as emergency contacts for any of the children's summer activities.

10. At all times, the minor children will have access to a phone or other device to communicate with the other parent. The children may communicate with the other parent any time they desire, within reason and the parents shall not interfere with or discourage this contact.
11. During the summer schedule, the non-resident parent shall have a call with the minor children on Sunday, Tuesday and Thursday morning no later than 9:30 am. The resident parent shall initiate the call with the minor children. During the school year, the call shall be at 9:30 am on Saturday. During the school year, father shall also have a call with the children between 6:30 and 7:30 pm on Thursdays. He shall initiate the call. If the call is missed, mother shall ensure that the children make one attempt to return the call.
12. The minor child Hudson shall remain in counselling with his present counselor until such time as he is discharged. Both parents shall comply with any requests from the counselor to participate, alone, together or with the minor child.
13. Both parents shall follow doctor's advice and recommendations regarding the children's allergies and shall ensure that others that care for the children at their direction do the same, including but not limited to partners, family members caretakers, school and camp personnel.
14. Neither parent shall co-sleep with the children. Both parents shall at a minimum have a separate bedroom space for their opposite sex minor child.
15. For the New Year's holiday, In the even years, Father shall enjoy parenting time with the minor children from December 31 at 6 pm through January 1 at 6 pm and mother shall enjoy the same holiday period in the odd years.

16. **#175 Motion for Contempt** is granted. Father is ordered to pay \$58.50 to mother within 5 days of this order.

17. **#188 Motion for Contempt** is granted. If he has not already done so, father shall immediately reinstate the children on his employer health care plan. He shall reimburse the mother for 100% of any costs incurred due to a lack of insurance coverage caused by his eliminating the employer insurance. Mother shall provide receipts within 30 days and father shall make payment within 30 days of the receipts being provided. In addition, he shall pay \$750 in attorney fees directly to Attorney Mary Brigham for the cost of litigating the contempt motions.

18. All orders not modified herein shall remain in full force and effect.

SO ORDERED.

BY THE COURT,



RAPILLO, J.

5-29-24 Copies mailed this date to:
Atty. Mary Piscatelli Brigham
Kevin Gaber (self-rep.)
Atty. William RJP Brown (GAL)
Reporter of Judicial Decisions (emailed)
Support Enforcement
Lawrence Assist. Clerk