

DOCKET NO.: WWM-FA 21-6021124-S

BRYAN KENNEY

V.

HILL, MARLENE

FILED

MAY 30 2024

**SUPERIOR COURT
JUDICIAL DISTRICT OF WINDHAM**

SUPERIOR COURT

J.D. OF WINDHAM

AT PUTNAM

May 30, 2024

MEMORANDUM OF DECISION

Before the court are various motions regarding the custody, access, and care of the parties' minor child. The parties appeared for a hearing on November 9, 2023, which was thereafter continued to January 24, 2024; February 7, 2024; and March 25, 2024.

The court has fully considered the applicable statutes including but not limited to General Statutes §§46b-54 and 46b-56, as well as the case law, testimony, evidence, the demeanor and credibility of the witnesses, and proposed orders in making the findings of fact and entering the orders that issue in this decision. The court makes the following findings by a preponderance of the evidence, except for the rulings related motions for contempt which require the court to find the defendant violated a clear and unambiguous order of the court by clear and convincing evidence.

FINDINGS OF FACT

The plaintiff initiated the underlying custody action on January 14, 2021, and final judgment was entered on June 3, 2022 (148.00). Since final judgment entered, the parties have filed four post judgment motions for modification and twelve motions for contempt. Most of the motions were filed by the plaintiff.

Copies mailed to all parties Counsel of record on 5/30/2024. J. P. Sullivan, AC

The parties met in 2016 and ended the relationship in and around July 2020. The parties share joint legal custody of their minor child, Brielle, born in 2018. The plaintiff works full time and resides in Thompson, Connecticut, with his wife, daughter Brooke, from a prior relationship, and when he has access, Brielle. The defendant resides in Thompson, Connecticut with her daughter from a prior relationship, Vivianna, and the minor child, Brielle. The defendant mother was injured in March of 2023 and has post-concussive syndrome, a spinal injury, and remains on medical leave.

The motions before the court highlight challenges between the parties including the ability to co-parent, parental control, attempts at parental alienation, failure to create a nurturing and loving relationship with the other parent, substance misuse, extracurricular activities, significant others, and interference with parental time.

The court finds the final judgment entered on June 3, 2022 (148.00) and the agreement of the parties signed on January 13, 2023 (163.00) and made an order of the court (162.01), are clear and unambiguous.

Additional findings of fact are incorporated into the discussion and orders set forth herein.

DISCUSSION

Both parties seek modification of the court order regarding custody; the father seeks a shared custodial arrangement, and the mother requests sole custody of the minor child. The parties are ardent advocates for their position as it relates to the minor child and each base their motions, in part, on the allegation that the other is unwilling to co-parent.

In modifying custody, the moving party must show the existence of a substantial change of circumstances since the last court order. See, *Jaser v. Jaser*, 37 Conn. App. 194, 204 (1995); *Emerick v. Emerick*, 28 Conn. App. 794, 802, cert. denied, 224 Conn. 915 (1992); *Walshon v. Walshon*, 42 Conn. App. 651 (1996); *Hall v. Hall*, 186 Conn. 118 (1982). Once the movant meets their burden the court must then turn to whether the change in custody arrangement is in the best interest of the child. See, *Kennedy v. Kennedy*, 83 Conn. App. 106, 114, cert. denied, 270 Conn. 915 (2004). The "best interest of the child" standard is the ultimate basis of a court's custody decision. *Perez v. Perez*, 212 Conn. 63 (1989).

The plaintiff's motion for modification (169.00) requests a shared custodial plan. The parties access plan was based on the mother's work schedule and the father's contention is that after her injury the defendant removed plaintiff's access as she was not working. This unilateral action by the defendant changed the plaintiff's access from thirteen nights per month to six. In addition, the agreement entered in January 2023 provided the plaintiff a right of first refusal to care for the child in the event the defendant was working. Since the defendant was and is not working, the plaintiff no longer has the right of first refusal, which also impacts his access time with the minor child. The plaintiff provided credible testimony regarding the impact of the mother's actions on his access with their daughter.

The father's motion for modification (180.00) requests specific relief related to allegations that the mother is using alcohol and illegal substances, refuses to co-parent, is co-dependent with the minor child, does not follow the court order, yells at the child, interrogates the child, introduces child to multiple romantic partners, and the phone calls with the defendant are disruptive. The plaintiff provided credible testimony regarding the facts as alleged in his motion.

The court finds the father has met his burden of proof and has established a substantial change in circumstances since the last court orders in that his access with the minor child has been reduced.

The mother's motion for modification (179.00) requests sole legal custody and a specific visitation schedule. The motion indicates that the parental relationship has broken down and the parties cannot co-parent, the plaintiff's wife attends parent teacher meetings, the father has resumed drinking, and the Monday overnights with the plaintiff are disruptive to the minor child's schedule.

To support her position the mother and witnesses Jessica Anderson, Lyndsay Jones, and Sherry Decelles, testified that the minor child's behavior changed over the past four to six months. Specifically, the child is angry, talks back to her mother, hit her mother, and has what was described as meltdowns. They all attribute this change in behavior to the father and his wife. However, Ms. Decelles, who is the grandmother of the defendant's older daughter, testified that Brielle went from helpful to mouthy, noting that she switched places with Vivianna who was mouthy and now helpful. This testimony indicates to the court that there may be other reasons for the child's change in behavior. The court notes that this change in behavior was a surprise to the plaintiff.

The parent who does not have access with the child was entitled to two calls daily, at 8:00am and 7:00pm. Both parties credibly testified that there have been issues with the calls including third party interference, distraction by the custodial parent and/or third parties, yelling at the child, parent, or third-party coaching of the child, disparaging by the other parent, and too much noise during the call. In addition, calls are late or do not occur. As a result of missed

Monday morning calls, and a failure of the father to respond to text messages, the mother drove to the father's house to make sure the minor child was okay. As a result, on November 22, 2023, the plaintiff filed an application for relief from abuse (WWMFA235015953) which was denied after a hearing on the merits.

During a subsequent hearing the court assisted the parties in changing the time to 7:00am. This seemed to work though the calls are shorter than the mother would prefer and sometimes late.

The plaintiff's wife, Veronica, is a cause of tension and discomfort for the defendant which in turn impacts the father's access with the minor child and the parties' ability to co-parent. The plaintiff and Veronica started dating in 2020. The defendant testified that thereafter Veronica impersonated her and sabotaged a relationship she was in at that time. The defendant further testified that she believes the plaintiff and the minor child appear to ask for permission from Veronica before engaging with the defendant. The plaintiff refuted this testimony and indicated the defendant made the situation worse by taking photos of the parties and the minor child, knowing that the plaintiff's wife did not like seeing the photos.

The minor child's extracurricular activities also cause conflict. The mother selected a dance studio in Massachusetts, as her older daughter attended classes there and she was familiar with the studio. The child has missed a few classes while in father's custody, which the mother contends this is intentional and not in the child's best interest. The plaintiff had a rationale for several of the missed classes. The father noted that enrollment in the Massachusetts dance studio impacts his parenting time and if she was enrolled in the Thompson dance studio it might be easier for all parties and not disrupt his parenting time.

The father enrolled the child in the Girl Scouts/Daisies, in a troop which was co-led by his wife. The father intentionally did not inform mother of this fact. When the defendant learned Veronica was the leader, she confronted the plaintiff, and he indicated that Jessica was the leader and Veronica was the co-leader. The mother credibly testified that Jessica was not present at any of the meetings she attended. The mother took this as another sign of his dishonesty. Further instigating issues, Veronica ignored the mother during the meetings. Ultimately the mother decided not to continue with Girl Scouts/Daisies as the meetings end at 6:45 and they would have to leave by 6:15pm to prepare for the child's bedtime. The court did not find the latter testimony credible.

The mother requests the court prohibit Veronica from attending parent teacher conferences, from being alone with the minor child, facilitating the child getting on/off the bus, or picking up the child from school. The defendant, without discussing with the plaintiff, engaged in conversations with the school and bus company to remove Veronica from the emergency contact and school pick up lists, and attempted to reroute the bus so that the minor child was not alone with Veronica after school.

The court finds it is not in the child's best interest to exclude Veronica from playing an active role in the child's life.

To ensure that the child can have a positive relationship with each parent, the court finds that it is in the best interest of the child that the parties have joint legal custody, and a shared access schedule.

Motions for Contempt

To be successful on a motion for contempt, the moving party must prove by clear and convincing evidence that there was a clear and unambiguous order of the court, of which the party opponent had knowledge; that the party opponent failed to abide by the court's order; and the non-compliance was willful. See, *Brody v. Brody*, 315 Conn. 300, 316 (2015); and *Wilson v. Wilson*, 38 Conn. App. 263, 275-76 (1995).

Both parties act in accordance with their individual interpretations of the court's orders. They want to hold the other accountable for compliance with the court orders, while at the same time fail to follow the same orders. The court finds that the parties had knowledge of the clear and unambiguous orders of the court specifically the judgment (148.00) and post judgment agreement (163.01).

The court finds that the defendant had knowledge of the following clear and unambiguous orders of the court:

1. "The parties shall also keep one another reasonably informed of the whereabouts of the child." See, judgment, section 2.
2. "The parties further agree that they shall exert every reasonable effort to foster feelings of love and respect between the child and the other parent. Neither parent shall do anything, nor shall they allow third parties to do anything, which may estrange the child from the other parent nor injure the child's opinion of their mother or father nor in any way act in such a way as to hamper the free and natural development of the child's love and respect for the other party." See, judgment, section 2.
3. "Both parties shall respond to the other's texts about the child's care during his or her parenting time as soon as is practicable." See, judgment, section 5b.

4. "The parties shall ensure the minor child gets to her extracurricular activities and related events during their parenting time. In the event the party cannot bring the child or find transportation to the activity during their parenting time, they shall contact the other party 48 hours or more prior to the event and allow the other party (or third party) to bring the child to said activity." See, agreement, section 2.
5. "Third parties shall not interfere with the child's phone calls with the other parent." See, agreement, section 8.
6. "When the minor child is traveling or on vacation, the parents shall be afforded the opportunity to have two (2) calls per day but shall be flexible on call times and shall agree to the times the day before." See, agreement, section 10.

The court finds that the defendant failed to follow the clear and unambiguous orders of the court in that she failed to tell the plaintiff the minor child's whereabouts while on a sleepover; disparaged and engaged in an activity which may injure the child's opinion of the father and his wife by adding stickers over the wife's face on the minor child's family project; disparaged and engaged in activity which may injure the child's opinion of the father and his wife by calling them lazy on the phone with the minor child; failed to respond to texts from the father during her parenting time; failed to bring the minor child to Girl Scouts/Daisies, and did not give the father the opportunity to bring the minor child to the activity; allowed a third party (cousin) to interfere with the phone calls; and failed to provide the father calls while on vacation.

Based on the evidence presented, the testimony of the parties, and the credibility and demeanor of the witnesses, the court finds, by clear and convincing evidence, the defendant's non-compliance was willful. The orders issued herein incorporate the court's contempt findings.

The court finds the plaintiff failed to abide by the following clear and unambiguous court orders:

1. "The parties shall also keep one another reasonably informed of the whereabouts of the child." See, judgment, section 2.
2. "The parties further agree that they shall exert every reasonable effort to foster feelings of love and respect between the child and the other parent. Neither parent shall do anything, nor shall they allow third parties to do anything, which may estrange the child from the other parent nor injure the child's opinion of their mother or father nor in any way act in such a way as to hamper the free and natural development of the child's love and respect for the other party." See, judgment, section 2.
3. "Both parties shall respond to the other's texts about the child's care during his or her parenting time as soon as is practicable." See, judgment, section 5b.
4. "In the event that either parent travels with the minor child outside the State of Connecticut for a period which includes (1) or more overnights, the traveling parent shall provide the other parent with a written travel itinerary including but not limited to the method of travel and other necessary information regarding travel, the lodging information, and a telephone number where the child can be reached by the non-traveling party seven (7) days prior to the schedule vacation." See, judgment, section 8.
5. "The parties shall ensure the minor child gets to her extracurricular activities and related events during their parenting time. In the event the party cannot bring the child or find transportation to the activity during their parenting time, they shall contact the other party 48 hours or more prior to the event and allow the other party (or third party) to bring the child to said activity." See, agreement, section 2.

6. "Third parties shall not interfere with the child's phone calls with the other parent." See, agreement, section 8.
7. "When the minor child is traveling or on vacation, the parents shall be afforded the opportunity to have two (2) calls per day but shall be flexible on call times and shall agree to the times the day before." See, agreement, section 10.

The court finds that the plaintiff failed to follow the clear and unambiguous orders of the court in that he failed to tell the defendant the minor child's whereabouts while on a sleepover; disparaged and engaged in an activity which may injure the child's opinion of the mother by telling the minor child he didn't want to hear the mother's voice; allowed a third party to disparage and engage in activity which may injure the child's opinion of the mother by allowing his wife to say "someone needs make-up"; failed to respond to texts from the mother during her parenting time; failed to give the mother seven days' notice of a vacation to Disney; failed to bring the minor child to dance, and did not give the mother the opportunity to bring the child to the activity; allowed a third party (wife) to interfere with the phone calls; and failed to provide the mother calls while on vacation.

Based on the evidence presented, the testimony of the parties, and the credibility and demeanor of the witnesses, the court finds, by clear and convincing evidence, the plaintiff's non-compliance was willful. The orders issued herein incorporate the court's contempt findings.

Counseling

Pursuant to General Statutes 56b-56(i), "[t]he court may order either or both of the parents and any child of such parents to participate in counseling and drug or alcohol screening, provided that such participation is in the best interests of the child." *Foster v. Foster*, 84 Conn.

App. 311, 323 (2004) (the "unambiguous statutory language," added in 2002, gives courts the authority to order post-judgment counseling).

The parties clearly love their child, and both want to co-parent however, they have been unable to co-parent as effectively as they individually desire. Their relationship and the tensions between defendant and plaintiff's wife, impact their ability to discuss and work through their challenges. As such, the court finds it is in the best interests of the minor child for the parents to engage in co-parenting therapy with a provider of their choosing.

Both parties believe that the other is using alcohol and/or illegal substances. During the parties' relationship they used alcohol and illegal substances together and at some point, the plaintiff's alcohol use increased. His behaviors during the time of active substance use are the cause of defendant's distrust. The parties provided credible testimony that there are genuine concerns that the other party continues to use alcohol and/or illegal substances. The court finds it is in the best interest of the minor child to order the parties to participate in a drug and alcohol testing.

The father requests that the court order psychological exams for the defendant mother to prove that she can, with her injuries, care for the minor child. The plaintiff credibly testified that despite her injuries, she has an active life, loves to ski, and is fully engaged in being a mother. As such the court will not require a psychological examination or certification from a medical professional regarding her ability to care for the minor child.

Guardian Ad Litem

Prior to appointment of a Guardian Ad Litem, the court must find either: that it would be in the best interest of the child; General Statutes § 46b-54 (a); or that the custody, care,

education, visitation, or support of a child is in actual controversy. General Statutes § 46b-54

(b). If the parties do not agree on the appointment, the court should appoint a GAL only when, in the court's discretion, reasonable efforts to resolve a dispute of the parties concerning custody, care, education, visitation or support of a child has been made. General Statutes § 46b-54 (c).

The court heard testimony regarding the child's behavior, concerns about parenting, co-parenting, and ongoing tension between the parties and impact of same on the minor child. The court finds that it is in the best interest of the minor child to appoint a GAL.

CONCLUSION

Throughout the multiple days of hearings, the court heard ample testimony regarding each of the motions and finds the testimony of the plaintiff to be more credible than the defendant.

The court finds that the orders issued herein are in the best interest of the parties' minor child. The court finds that the child is best served by having equal access with both parents, a set access schedule, and the ability to enjoy extracurricular activities that align with her desires.

Given the motions filed, and the orders entered herein, the court will require the parties to submit a Request for Leave prior to filing new motions for modification and motions for contempt. This will allow the parties to fully engage in co-parenting therapy and allow the GAL to conduct his work. The restriction will be in place for a period of six months.

ORDERS

1. Custody and Access:

- a. The parties shall share joint legal custody of the minor child.
- b. The mother shall have primary residence.
- c. The access schedule shall be as follows:
 - i. The mother shall have the minor child from Sunday at 2:00pm through Thursday morning at school drop off or 2:00pm if no school.
 - ii. The father shall have the minor child from Thursday after school, or 2:00pm if no school, through Sunday at 2:00pm; on the first, third, and fourth week of the month. Week one shall be defined as beginning the first Thursday of the month.
 - iii. Pickups and drop offs shall be at the school. If there is no school, the parent beginning access shall pick up the minor child at the other parent's home.
- d. Summer access shall follow the regular schedule unless mutually agreed to by the parties in writing.
- e. Should the parties have scheduling conflicts with pick up and drop off or if they must change their access days, absent emergency, they shall give the other parent notice of no less than forty-eight (48) hours.
- f. The parties shall not unilaterally change access but instead access changes shall be made by mutual agreement of the parties, in writing.

- g. The parties shall not unreasonably withhold consent to access changes based on family functions including birthdays, special events, and/or major life activities of relatives/close friends.

2. Telephone Access with the Minor Child

- a. Each parent shall be entitled to telephone/video calls with the minor children when they do not have access.
- b. Should they elect, the parent without access shall have a ten-minute call with the minor child at 7:00am and 7:00pm on those days they do not have access. The calls shall not interfere with school or extracurricular activities.
- c. The parties shall give each other no less than forty-eight (48) hours' notice, absent emergency, if they will be unavailable to facilitate the call, or need to change the time of the call.
- d. The party with access shall not record the call, and shall not distract, interfere with, or make any comments, disparaging or otherwise, while the minor child is enjoying the call with her other parent.
- e. The parties shall ensure that any third parties present during the parental call shall similarly not record the call, and shall not distract, interfere with, or make any comments, disparaging or otherwise, while the minor child is enjoying the call with her other parent.

3. Holidays/Special Occasions

- a. Easter: The plaintiff father shall have access with the minor child in even numbered years from 10:00am until 6:00pm and the defendant mother shall have access with the minor child in odd numbered years from 10:00am until 6:00pm.

- b. Mother's Day: Mother's Day shall be with mother from 10:00am until 6:00pm.
- c. Memorial Day: The parties shall alternate parenting time with the minor child for Memorial Day from Friday prior to Memorial Day after school or at 2:00pm to the Tuesday following the holiday when the child shall return to school or the mother at 2:00pm, with the mother having even numbered years and the father having odd numbered years.
- d. Father's Day: Father's Day shall be with father from 10:00am until 6:00pm.
- e. Labor Day: The parties shall alternate parenting time with the minor child for Labor Day from Friday prior to Memorial Day after school or at 2:00pm, to the Tuesday following the holiday when the child shall return to school or the mother at 2:00pm, with the father having even numbered years and the mother having odd numbered years.
- f. Thanksgiving: The defendant mother shall have access with the minor child in even numbered years from 10:00am until 6:00pm and the plaintiff father shall have access with the minor child in odd numbered years from 10:00am until 6:00pm.
- g. Christmas eve: The defendant mother shall have access with the minor child in even numbered years from 10:00am until 6:00pm and the plaintiff father shall have access with the minor child in odd numbered years from 10:00am until 6:00pm.
- h. Christmas Day: the plaintiff father shall have access with the minor child in even numbered years from 10:00am until 6:00pm and the defendant mother shall have access with the minor child in odd numbered years from 10:00am until 6:00pm.

4. Vacations

- a. Commencing for the defendant mother in 2024 and continuing until the child reaches seven years old, the parties shall each be entitled to have the minor child for two non-consecutive weeks during the summer. When the child reaches the age of seven, the parties shall each be entitled to have the minor child for three non-consecutive weeks during the summer.
- b. Neither party shall elect a week of vacation if they intend to work any portion of that week.
- c. In even numbered years, the defendant mother shall have first selection regarding which weeks she intends to take and shall notify the plaintiff father of her selection by March 15; thereafter, the plaintiff father shall notify the defendant mother of his selection by April 15. In odd numbered years, the reverse shall happen with the plaintiff father having the first selection regarding vacation weeks.
- d. The vacation weeks shall be six consecutive nights and shall begin at 8:00am on the first day and end at 6:00pm on the last and shall include Monday through Friday attached to each party's regular scheduled weekend unless otherwise agreed to in writing.
- e. Failure to notify the other party regarding their vacation weeks prior to the March 15 or April 15 deadlines shall not result in a waiver of the right to exercise vacation but rather the waiver of the right of first preference.
- f. Neither party shall elect a vacation week that will interfere with holiday access.

5. Extra-Curricular Activities

- a. The parties shall discuss and agree upon extra-curricular activities in which the child is interested in enrolling. Consent shall not be unreasonably withheld.
- b. The parties shall share the cost of agreed upon extra-curricular activities equally (50%/50%).
- c. The parties shall be responsible for bringing the child to and from any agreed upon extracurricular activity during their parenting time.
- d. A party enrolling the child in an extracurricular activity that is not agreed upon shall be responsible for paying for the extracurricular activity. The other parent will not be responsible financially and will not be obligated to bring the child to said activity during their parenting time. Should there be a conflict, agreed upon activities shall take priority over those that are not agreed upon.
- e. The parties shall not schedule an extracurricular activity that is not agreed upon during the other parents scheduled parenting time.

6. Communication

The parties shall communicate through text messaging, only about the minor child and co-parenting classes.

7. Guardian Ad Litem

- a. The court appoints Attorney Andrew Ewalt as Guardian Ad Litem with all duties.
- b. The parties shall share equally (50%/50%) the retainer and any costs associated with the GAL's service.
- c. The parties shall fully and promptly comply with all requests of the GAL.

8. Life Insurance

The mother shall provide the father documentation confirming that she has a life insurance policy as required by the original custody judgment (148.00) and the agreement of the parties (163.01), within fourteen days of this order.

9. General Parenting

- a. Both parents and their contact information shall be provided to the school and if necessary, the school bus company. Each parent shall be entitled to add one additional party as an emergency contact, and/or alternative pickup/drop contact for the minor child. Neither parent shall unilaterally remove the other parent, or secondary contact, from said lists.
- b. Each parent shall have a continuing responsibility to provide a residential, mailing, or contact address and telephone number to the other party.
- c. Each parent shall promote a healthy, beneficial relationship between the minor child and the other parent and will not disparage, demean, criticize, or speak negatively in any manner that would damage the relationship between either parent and the minor child. This includes not allowing third parties to disparage the other parent in the presence or within earshot of the minor child.
- d. Neither parent shall discuss adult issues or this case with the child or do anything that may estrange the child from the other parent or injure the child's opinion of the other parent, nor act in such a way as to hamper the free and natural development of the child's love and respect for the other parent.
- e. Each parent shall take all steps necessary to ensure that they are both listed as the child's parents on all medical, educational, and extracurricular activity forms.

- f. The parties shall be equally entitled to all information regarding the minor child's progress in school and shall have equal rights to inspect and receive the child's school records, and to participate in and attend the child's school events.
- g. The parties shall be equally entitled to all information regarding the minor child's medical records and shall have equal rights to inspect and receive medical records, and to participate in and attend the child's medical appointments. The term medical includes but is not limited to medical, dental, orthodontic, ophthalmological, optical, pharmaceutical, psychological, psychiatric, therapeutic, and hospital expenses.
- h. Except as otherwise agreed, neither parent shall plan activities for the child during the time the child is to be with the other parent without advance consent of the other parent.
- i. Neither parent shall abuse alcohol, prescription medication or use illegal drugs when the minor child is in their care.

10. Co-Parenting Therapy

The parties shall engage in co-parenting therapy with a provider of their choice.

11. Toxicology Tests

- a. The parties shall participate in a 7-panel hair follicle drug toxicology test and a hair follicle EtG alcohol test.
- b. The parties shall use Labcorp or Paymer Associates.
- c. The plaintiff father shall pay for all testing.

12. Request for Leave

For a period of six months, the parties shall file a Request for Leave prior to filing a motion to modify or motion for contempt.

SO ORDERED.

BY THE COURT,

A handwritten signature in black ink, appearing to read 'K. DeMeola', written over a horizontal line.

Judge Karen L. DeMeola