

DBD-FA-20-6035971-S

CAMRY N. BURKHART

V.

WILLIAM H. DAVIS, JR.

OFFICE OF THE CLERK
 SUPERIOR COURT
 2024 MAY -2 P 4:47
 JUDICIAL DISTRICT
 DANBURY
 STATE OF CONNECTICUT

SUPERIOR COURT
 JUDICIAL DISTRICT
 OF DANBURY
 AT DANBURY
 : MAY 2, 2024

MEMORANDUM OF DECISION

Before the court is a Motion for Modification (#200) filed by the defendant-father, on April 25, 2023. The motion was served on the plaintiff-mother on May 4, 2023. The court heard evidence on April 2, 2024. Upon careful consideration of the evidence presented and the pertinent statutory law, in particular, General Statutes § 46b-56 and the relevant case law and having observed the demeanor and assessed the credibility of the witnesses at trial, the court makes the following findings. All court findings are made by the preponderance of the evidence standard unless stated otherwise.

FACTS

On November 5, 2020, the court found that it is the best interest of the minor child that the parties share joint legal custody and that “both parties will have equal decision-making authority for all major decisions affecting the child including child’s education, his religious upbringing and non-emergency medical care.” Since this order entered, the parties displayed great difficulty communicating with each other and making decisions for their child, Liam J.D. The parties filed fifteen motions for contempt since the initial custody petition was filed. Two of the motions for

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contempt were filed by the plaintiff-mother and thirteen of the motions for contempt were filed by the defendant-father. Both parties request a modification that includes a holiday and vacation parenting-time order since they have not been able to reach an agreement on their own or with the help of family services. The court considered the evidence including the October 2022 evaluation that was completed by Family Services.

The minor child, Liam J.D., born on February 8, 2020, is four years of age. The minor child lives primarily with the plaintiff-mother, and he does not have any major medical issues. Liam is a happy child enjoys time with each of his parents. Liam is enrolled in a day care center that he loves. He enjoys horseback riding at the day care center. Liam gets along with his peers at the day care center. The plaintiff-mother is employed at Liam's day care center. The defendant-father was previously employed at the same day care center, and he testified that the relationship between management and himself is better now than before he left. Although no other day care has been clearly identified and the child is excelling in his current day care, the defendant-father has not agreed that Liam can continue attending this day care center.

The parties have different parenting styles and are frequently at odds with each other with the child present. The child's prior pediatrician office discharged the child as a patient due to the less-than-optimal parent-physician relationship, noting the hostile behavior displayed by Mr. William Davis to the office staff and management. The child's current pediatrician has identified the parent's relationship with each other as highly contentious. The parties seem unaware of how their interaction with each other affects the minor child.

The court considered each party's ability to follow court orders. The plaintiff-mother followed the court orders by attempting to include the defendant-father in the decision-making process for medical and educational issues. This has been difficult due to the defendant-father's

behaviors at medical appointments, lack of transparency, and resistance to making decisions. The court finds the plaintiff-mother's testimony on these issues credible.

The defendant-father did not follow child support orders resulting in an arrearage order. Despite having a child support arrearage, the defendant-father has funds to travel with the minor child for a trip to Disney World in Florida and has requested parenting time to travel to Jamaica with the child.

Neither party is willing to compromise and modify their parenting schedules so that the child can attend family events. When the defendant-father requested additional parenting time to attend his brother's wedding, the plaintiff-mother declined to allow this. When the plaintiff-mother requested a change in parenting time so that the child could attend a family wedding, the defendant-father declined. These are not isolated incidents; the parties are both inflexible with each other.

Since January of 2024 to April 2, 2024, the defendant-father was late in picking up or returning the child approximately twelve times. He was late for pick up or drop off anywhere from fifteen minutes to four hours. The defendant-father claims that he is often late due to traffic, however he has not adjusted his schedule to allow time for traffic delays. The court does not find the defendant's testimony excusing his tardiness credible. These delays impact the minor child when the child is awaiting the defendant-father's arrival for pick up and disrupts the child's sleep routine when he returns late.

The plaintiff-mother testified about her concerns with the child's well-being in the defendant-father's care for extended periods of time because he has not been transparent about where he lives, who lives with him and what the sleeping accommodations are for the child. Similar concerns were raised by the plaintiff-mother during the 2022 family service evaluation and remain

unaddressed. The defendant-father testified that he was not aware of a subpoena requesting an employment letter, a lease, proof of payment of medical expenses and day care expenses for the minor child. The court does not find this testimony credible. The defendant-father testified about his employment as a teacher, flexible work hours, housing, and housemates. The court does not find this testimony credible. The defendant-father has not provided proof of lease or employment to the plaintiff-mother despite his awareness of the plaintiff-mother's ongoing concerns.

The defendant-father testified that he enjoys time with his child, that his child enjoys time with him, and that the defendant-father engages the child in age-appropriate activities with his child. The court finds this testimony credible. The court finds that extending the defendant-father's parenting time is in the child's best interest.

The court finds that the parties' inability to communicate affects their ability to carry out the orders of the court and that this is a substantial change in circumstances. The animosity and delays in reaching medical and educational decisions are not in the child's best interest. The court finds that it is in the best interest of the minor child for the plaintiff-mother to have final decision-making authority. The court finds that modifying the current parenting plan orders is in the child's best interest. The court does not find that a fifty-fifty parenting time plan is in the child's best interest at this time.

ORDERS

1. The financial affidavits are unsealed.
2. **Legal Custody.** The plaintiff-mother and defendant-father shall have joint legal custody of the minor child, Liam J.D. The plaintiff-mother shall have final decision-making authority on

medical and educational issues after considering defendant-father's input. The defendant-father shall respond to a written request for input on medical and educational decisions within seventy-two hours. A lack of written response from defendant-father within seventy-two hours is to be considered a no opinion response and plaintiff-mother shall solely proceed without the defendant-father's input.

3. **Physical Custody.** The plaintiff-mother shall have primary physical custody of the minor child.
4. **Medical Appointments.** The parties shall notify each other, in writing, of the child's medical appointments. Both parties shall be entitled to attend the child's medical appointments regardless of parenting time designation.
5. **Child's Contact Forms.** The plaintiff-mother and the defendant-father shall be listed on the child's medical, day care and education contact forms. The plaintiff-mother and the defendant-father shall be listed as people authorized to pick up the minor child from school and listed as the child's emergency contact. The plaintiff-mother and the defendant-father shall have access to the child's online healthcare and school portals.
6. **Communication.** The plaintiff-mother and the defendant-father shall continue communicating regarding the minor child through Our Family Wizard app. If either party will be more than fifteen minutes late to pick up or drop off the minor child, they shall communicate this information to the other party in writing. A delay in pick up is considered forfeited time; a delay does not entitle the delayed party an opportunity to add the lost time to the end of the parenting time. If a party is more than thirty minutes late for a pick up, the parenting time may be canceled.

7. **Regular Parenting Time Schedule.** Beginning the weekend of May 17, 2024, the defendant-father shall have parenting time with the minor child on alternating weekends from Friday after school or extracurricular activity until Monday, return to school. If there is no school, the pick up and drop off shall be at the home of the plaintiff-mother. The defendant-father shall be responsible for all pick up and drop off transportation for this parenting time. If Monday is a holiday resulting in a day off from school, the defendant-father shall return the child at 6 p.m. on Monday, to the plaintiff-mother's home. The defendant-father shall have parental time with the minor child on Wednesdays when the defendant-father does not have weekend parenting time on the weekend following the Wednesday. Wednesday parenting time shall be from after school or extracurricular activity until 7:00 p.m. If there is no school or day care, then pick up and drop off shall be at the plaintiff-mother's home. The defendant-father shall be responsible for pick up and drop off transportation for this parenting time.
8. **Holidays.** The following holidays, school breaks and vacation parenting time listed in this decision shall supersede the regular parenting schedule.
 - a. **Mother's Day.** The plaintiff-mother shall have parenting time with the minor child on Mother's Day every year from 7 p.m. the Saturday prior, until Monday morning, return to school.
 - b. **Easter.** In odd-numbered years, the plaintiff-mother shall have parenting time with the minor child on Easter Sunday from 11 a.m. until 6 p.m.; the plaintiff-mother shall be responsible for transportation. In even-numbered years the defendant-father shall have parenting time with the minor child on Easter Sunday beginning at 11 a.m. until 6 p.m.; the defendant-father shall be responsible for transportation.

- c. **Father's Day.** The defendant-father shall have parenting time with the minor child on Father's Day every year from 7 p.m. the Saturday prior, until Monday morning, return to school.
- d. **February School Break.** In odd-numbered years, the defendant-father shall have parenting time with the child from school dismissal for the February school break until the child returns to school. In even-numbered years, the plaintiff-mother shall have parenting time with the child from school dismissal for the February school break until the child returns to school.
- e. **April School Break.** In odd-numbered years, the plaintiff-mother shall have parenting time with the child from school dismissal for the April school break until the child returns to school. In even-numbered years, the defendant-father shall have parenting time with the child from school dismissal for the April school break until the child returns to school.
- f. **Thanksgiving.** In odd-numbered years, the defendant-father shall have parenting time with the minor child on Wednesday prior to Thanksgiving from after school until Monday after Thanksgiving, returning to school, when the regular schedule shall recommence. In even-numbered years, the plaintiff-mother shall have parenting time with the minor child on Wednesday prior to Thanksgiving from after school until Monday after Thanksgiving, returning to school, when the regular schedule shall recommence.
- g. **Winter Break.** With the exception of Christmas Eve and Christmas Day, in odd-numbered years, the plaintiff-mother shall have parenting time with the child from school dismissal for the school winter break until the child returns to school. In even-numbered years, the defendant-father shall have parenting time with the child from school dismissal for the winter break until the child returns to school.

- h. **Christmas Eve and Christmas Day.** In even-numbered years, the plaintiff-mother shall have parenting time with the minor child on Christmas Eve from noon until noon on Christmas Day. The plaintiff-mother shall be responsible for pick up transportation. The defendant-father shall have parenting time on Christmas Day at noon until December 26 at noon when the winter break parenting-time schedule shall resume. The defendant-father shall be responsible for pick up transportation. In odd-numbered years, the defendant-father shall have parenting time with the minor child on Christmas Eve from noon until noon on Christmas Day. The defendant father shall be responsible for pick up transportation. The plaintiff-mother shall have parenting time on Christmas day at noon until December 26 at noon when the winter break parenting-time schedule shall resume. The plaintiff mother shall be responsible for pick up transportation.
- i. **Vacation Time.** Each parent shall be entitled to take the minor child on vacation for two weeks each calendar year during the school summer break. Vacation time must be in one-week increments and may be consecutive or non-consecutive. Each party shall provide written notice to the other of their vacation dates no later than May 15 of each year. The plaintiff-mother shall have priority of the vacation dates in even-numbered years. The defendant-father shall have priority of the vacation dates in odd-numbered years. Where travel will occur, the traveling parent shall provide the other with written notice of flights, airline, flight number, destination, contact information of the place the child will be staying, at least two weeks prior to the start of any vacation with the child. The traveling parent must allow reasonable contact between the child and the other parent during the vacation. It is not required that the parent travel to claim vacation time with the child.

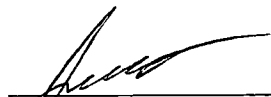
9. **Travel outside of Connecticut.** Excluding vacation parenting time, the plaintiff-mother and the defendant-father shall notify the other party in writing, twenty-four hours prior to any trip with the child outside of Connecticut, New York, or Massachusetts. The written notification shall include the name and address of accommodations and contact information. The minor child shall not travel internationally unless there is a written agreement by the plaintiff-mother and the defendant-father or a court order.
10. **Transportation and Inclement Weather.** Unless otherwise stated, the receiving parent is responsible for transportation of the child. If there is no school due to inclement weather, the exchange shall occur when roads are clear, and it is safe to transport the child, as determined by the parent transporting the child. If there is a delay in the exchange of fifteen minutes, the delayed parent shall notify the other parent in writing.
11. **Contact with child.** The plaintiff-mother and the defendant-father shall be entitled to contact the child when the child is in the care of the other parent, at reasonable times and frequencies.
12. **Social Invitations.** The plaintiff-mother and the defendant-father shall notify each other of the child's social invitations, such as peer party invitations, within twenty-four hours of learning of the invitation or event. The parent having parenting time during the invitation or event shall decide if the child will attend and respond to the invitation.
13. **School.** Neither parent shall remove the minor child from school, without written consent of both parents, when it is not their parenting time, unless there is an emergency. If there is not an agreement to attend parent-teacher conferences together, the plaintiff-mother and the defendant-father shall be responsible for scheduling their own parent-teacher conferences.
14. **Extracurricular Activities.** Both the plaintiff-mother and the defendant-father shall agree to any extracurricular activities in writing, prior to enrollment. Agreement must be to both the

activity, and the cost attributable to each the plaintiff-mother and the defendant-father. Once there is an agreement to an extracurricular activity, each parent will ensure that the minor child attends the activity unless the child or parent is ill or there is an emergency. Both the plaintiff-mother and the defendant-father's contact information shall be provided to the minor child's school and any extracurricular activity providers. The plaintiff-mother and the defendant-father are responsible for keeping themselves informed of the child's school related events and sports schedules. The plaintiff-mother and the defendant-father shall equally divide the number of tickets to any school related events or extracurricular events. The parties do not need an agreement to extra-curricular activities during their own parenting time as long as that parent is solely responsible for the cost of the activity.

15. **Public Activities.** The plaintiff-mother and the defendant-father shall be entitled to attend the child's school related activities, events, sporting events, extracurricular activity during or after school, including those activities not occurring during their parenting time. The plaintiff-mother and the defendant-father shall not prevent the other party from communicating with or taking photos with the child during these events simply because it is not the other parent's parenting time.
16. **Emergencies.** Each parent shall notify the other immediately in the event of an emergency or to discuss any issue concerning the health, education, and/or welfare of the minor child. If there is an emergency concerning the child, plaintiff-mother and defendant-father are to communicate by any means available and follow up within four hours in writing. Each parent shall be permitted to visit a child in the hospital or urgent care facility regardless of parenting time allocations.

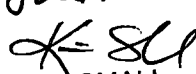
17. **Relocation.** The plaintiff-mother and defendant-father shall provide each other with ninety-day notice of any intended relocation from their current address. The parties shall exchange a copy of their lease or rental agreement with each other prior to a relocation and inform each other of the sleeping accommodations for the child at the new residence.
18. **Modification of Parenting Time.** The plaintiff-mother and defendant-father may modify parenting time, an alternative pick up or drop off location, or the parenting app, with a written agreement by both parties.
19. **Child Related Tax.** The plaintiff-mother and the defendant-father shall each be entitled to all tax dependency exemptions, deduction or credit claim available for minor child in alternating years; each party shall sign required tax forms to allow execution. The plaintiff-mother shall be entitled to all tax related claims in odd-numbered years. The defendant-father shall be entitled to all tax related claims in even-numbered years. If the plaintiff-mother or the defendant-father does not benefit from claiming a child as a dependent, that party shall notify the other so the other party may claim the child as a dependent.
20. **Parenting Education Classes.** The plaintiff-mother and the defendant-father shall complete a parenting education program no later than July 24, 2024.
21. All other requests are denied.

BY THE COURT


Figueroa Laskos, J.

Decision entered in accordance with the foregoing on May 2, 2024. Parties, Attorneys of record, and reporters of judicial decisions notified on May 2, 2024.

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KIM SMALL
ASSISTANT CLERK, JD