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JUN 04 2024

**SUPERIOR COURT
BRIDGEPORT**

DOCKET NO. FBT-FA-19-5042390-S : SUPERIOR COURT
 ADRIANNA VIGGIANO : JUDICIAL DISTRICT
 v. : OF BRIDGEPORT
 PAUL VIGGIANO : JUNE 4, 2024

MEMORANDUM OF DECISION

Defendant's Motion for Modification of Custody, Postjudgment (#188.00)

The present motion for modification of custody, postjudgment was filed on May 9, 2023, and was the subject of an evidentiary hearing on May 24, 2024. Both parties are represented by counsel and testified at the hearing, as did Jennifer Micalizzi of Family Services, and both parties complied with the Superior Court for Family Matters Standing Orders - Management Order for Trials, Hearings, Case Dates, and Resolution Plan Dates, Effective July 1, 2021. Because the defendant has established a that substantial change in circumstances has occurred since the issuance of the operative orders that warrants a modification, and that a modification is in the best interests of the minor child, the motion is granted.

I. FINDINGS OF FACT

The court has reviewed the court file in this action and finds the facts stated herein by a preponderance of the evidence, after having considered all credible evidence presented and having had had the opportunity to observe the demeanor and to assess the credibility of all witnesses. Judgment in this dissolution of marriage action was rendered on October 26, 2020, following trial. The parties share one minor child, Carlyanne Ruth Viggiano, born September 15, 2017. The judgment provided, in part, that the parties would share joint legal custody of the minor child, with the plaintiff having primary physical custody, and the defendant having parenting time on a set schedule. Following the rendition of judgment, the plaintiff filed an

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emergency ex parte custody application, which resulted in orders granting her sole legal custody of the minor child since May 24, 2021, with the defendant having supervised parenting time with the minor child. See order #168.00. Specifically, the defendant had two hours per week of supervised, in person parenting time on Tuesday evenings, and certain remote access to the minor child. See order #171.00. In November 2023, by agreement of the parties, the defendant's supervised parenting time expanded to three hours on Tuesdays and seven hours on Sundays. Since the issuance of order #168.00, the minor child has spent one overnight with the defendant, on May 11, 2024, by agreement of the parties.

The plaintiff resides in Fairfield and the defendant resides in Trumbull. The travel time between the parties' residences is approximately twenty minutes. The minor child is now six years old and is finishing first grade at a public school in Fairfield, where she also attends an afterschool program. By all accounts, the minor child has a good temperament, is comfortable with both parties, and is doing well in school. The minor child's school day begins at 8:55 a.m., ends at 3:25 p.m. and the afterschool program ends at 6:00 p.m., although she is usually picked up around 4:45 pm. The minor child is usually in bed between 8:00 p.m. and 8:30 p.m. and is asleep by 8:45 p.m.

Additional facts found will be set forth as necessary.

II. DISCUSSION

A. Standard of Review

The court may not change custody without holding an evidentiary hearing. *Kelly v. Kelly*, 54 Conn. App. 50, 57-58, 732 A.2d 808 (1999). 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. *Id.*, 55-56; *Hall v. Hall*, 186 Conn. 118, 439 A.2d 447 (1982); see also *Kennedy v. Kennedy*, 83 Conn. App. 106,

114, 847 A.2d 1104, cert. denied, 270 Conn. 915, 853 A.2d 530 (2004) (finding that the joint custody arrangement was no longer in the best interest of the children).

While a court may only modify a custody order after finding a material change in circumstances since the prior order of the court, the ultimate test is the best interests of the child. See *Pringleau v. Agosta*, 220 Conn. App. 248, 256 n.4, 297 A.3d 1012 (2023); see also *Stewart v. Stewart*, 177 Conn. 401, 408, 418 A.2d 62 (1979) (“in all the cases concerned with custody of minor children, the ultimate test is the best interests of the child”).

B. Substantial Change in Circumstances and Best Interests of the Minor Child

Based on the credible evidence before it, the court finds that there has been a substantial change in circumstances since the rendition of judgment that requires a modification.

Underlying the issuance of orders #168.00 and #171.00 in 2021 were facts related to or flowing from the defendant’s substance abuse at that time. At or about that time, the defendant had lost his job, was involved in multiple legal proceedings, which included the issuance of a protective order with the plaintiff as the protected person and was charged with violating that order. After leaving the marital residence, he moved back in with his parents. He was also only in the early stages of seeking help for substance abuse.

Over the past three years, however, the defendant has made great strides forward. Since June 2021, he has been administered drug tests at least monthly and all have come back negative, that is, none have shown the presence of any unprescribed drugs. In October 2023, the defendant secured employment as a contract employee and was hired for a permanent full-time position on May 6, 2024. In December 2023, the defendant rented his own one-bedroom apartment in Trumbull, Connecticut. Family Services conducted a home visit on December 23, 2023, at the hearing Jennifer Micalizzi expressed the opinion that the defendant’s apartment is suitable for the minor child to spend overnights with him. Based on the defendant’s testimony

regarding the apartment's layout and the manner in which he intends to utilize the space, the court finds that the defendant's apartment can accommodate the minor child spending more parenting time with the defendant, including overnights. Importantly, the plaintiff testified that, although she is concerned over how long the defendant's progress may last, she has no concerns with sharing joint legal custody with the defendant, nor with the defendant's ability to meet the minor child's needs while she is with him. The plaintiff also has no objection to the defendant having two weeks of uninterrupted parenting time with the minor child during the summer, as long as the weeks are not consecutive.¹ The plaintiff expressed a preference for a parenting time schedule that will minimize the minor child's transitions between the parties' residences, so that the minor child can settle into a good routine.²

Notwithstanding the positive developments over the last three years, however, a major hurdle remains. Over an extended period of time, the parties' communication regarding the minor child has been difficult. The plaintiff testified that her conversations with the defendant are often circular, and the defendant testified that the plaintiff is often not responsive to his inquiries regarding the minor child and is not forthcoming with information.

¹ In summer 2024, there are specific dates that each party would like to have as part of their parenting time with the minor child. The plaintiff wishes to have a week of summer vacation with the minor child from June 29 through July 6, and the defendant wishes to have the minor child with him from June 7 through 11 so that she can attend and serve as the flower girl at his cousin's wedding, and from August 20 through 25 so that the minor child can travel to Disney World with he and his mother.

² The court took judicial notice of a criminal action bearing Docket No. F02B-CR20-0338920-S, in which there is a standing criminal protective order in place until March 3, 2027, with the plaintiff as the protected person and the defendant the respondent, which provides that the defendant may not assault, threaten, abuse, harass, follow, interfere with or stalk the plaintiff, and that the defendant must stay away from the home of the plaintiff and wherever she shall reside. To date, when parenting time exchanges have happened at the plaintiff's residence, they have taken place curbside.

All things being equal, children are best served when they enjoy the love and companionship of both parents; see *Raymond v. Raymond*, 165 Conn. 735, 741, 345 A.2d 48 (1974); and this court encourages both parties to take all necessary steps to ensure that they are well, mentally and physically, for the benefit of their minor child. Going forward, it will be essential that both parties work to improve the quality of their communication and to better cooperate as they coparent. Doing so will not only make their lives easier, but more importantly it will benefit the minor child. Each party should also try to avoid burdening the other with unnecessary communication. While the parties must share necessary information regarding the minor child with each other, it is also incumbent on each of them to register to receive information directly from the minor child's school, afterschool care provider, or those running any extracurricular activities in which she may be involved.

It is also important that parenting time exchanges happen on time. The defendant has frequently returned the minor child to the plaintiff after the scheduled end of his parenting time, taking the position that he does not need to leave his home until the scheduled end of his parenting time. That is not correct. Parenting time transitions must take place at the designated time.

III. CONCLUSION AND ORDERS

The court has reviewed the court file, has fully considered the best interests of the minor child, the factors set forth in General Statutes § 46b-56, the relevant case law, the credible evidence before it, and the demeanor and credibility of the witnesses in making the findings set forth herein and in reaching the decisions reflected in the orders that issue below, which shall modify and replace the orders of custody issued after trial as reflected in the October 26, 2020 memorandum of decision (#146.00) and all orders issued on the plaintiff's application for

emergency ex parte order of custody (#163.00), including but not limited to orders #168.00 and #171.00.

A. Legal and Physical Custody

1. The parties shall share joint legal custody of their minor child. The plaintiff is awarded primary physical custody, with the parties having parenting time as set forth herein.

2. The parties shall confer and share decision-making authority on all major decisions relating to the minor child, which shall include decisions about her mental, emotional, or physical health; education and course of study; tutoring; religious upbringing; camp or other organized summer activity; use of social media and other technology; emergency and significant non-emergency medical or dental treatment; psychotherapy or other mental health treatment or counseling; engaging in sports, entertainment, or other school-related or extracurricular activities; and obtaining a passport and driver's license.

3. The primary factor to be considered when making a decision concerning the minor child shall be the best interests of the minor child.

4. **Day-to-Day Decisions:** Routine or day-to-day decisions shall be made by the party with whom the minor child is residing at the time a decision is required.

5. **Emergency Decisions:** Nothing herein shall prevent either party from making a bona fide emergency medical decision for the minor child without first advising the other party, so long as the party making the emergency decision advises the other party as soon as possible.

B. Parenting Time Schedule

1. The parties shall have parenting time with the minor child on the following schedule:

a. The defendant shall have parenting time with the minor child from Thursday, June 6, 2024 from the minor child's school dismissal or the end time of the minor child's afterschool program on that day, until Tuesday, June 11, 2024 at 7:30 p.m.

b. Commencing on Tuesday, June 18, 2024, the defendant shall have parenting time with the minor child every Tuesday. During the school year, the defendant's Tuesday parenting time shall start at the minor child's school dismissal or the end time of the minor child's afterschool program and shall end at 7:30 p.m. During the minor child's school summer vacation, the defendant's Tuesday parenting time shall begin at the conclusion of summer camp, or if none, at 5:30 p.m., and shall end at 7:30 p.m.

c. Commencing on Thursday, June 20, 2024, the defendant shall have parenting time with the minor child every other weekend. During the school year, the defendant's parenting time shall start at the minor child's school dismissal or the end time of the minor child's afterschool program on Thursday and shall end at 7:30 p.m. on the Sunday which is three days later. During the minor child's school summer vacation, the defendant's parenting time shall begin on Thursday at the conclusion of summer camp, or if none, at 6:00 p.m., and shall end at 7:30 p.m. on the Sunday which is three days later. If a federal or state holiday falls on a Monday immediately after the defendant's weekend parenting time, the holiday shall attach, such that the defendant's parenting time shall end at 7:30 p.m. on Monday.

d. The parties shall adhere to the following holiday parenting time schedule for the minor child, which shall supersede the ordinary parenting time schedule:

i. Mother's Day: The defendant shall not have parenting time on the weekend on which Mother's Day falls.

ii. Father's Day: The defendant shall have parenting time for the entirety of the weekend on which Father's Day falls, from Thursday until Sunday, as on his alternating weekends.

iii. Minor Child's Birthday: For purposes of these orders, the minor child's birthday shall be treated as a holiday, and both parties shall have parenting time with the minor child on that day; specifically, the party who did not have the child with him or her on the morning of the minor child's birthday shall have parenting time from 5:30 p.m. until 7:30 p.m. on that day.

iv. In even numbered years, the defendant, and in odd numbered years the plaintiff, shall have parenting time with the minor child from 8:00 a.m. until 7:30 p.m. on Thanksgiving Day, Christmas Eve, New Year's Eve, and New Year's Day (e.g., the defendant shall have parenting time from 8:00 a.m. until 7:30 p.m. on December 31, 2024, and the plaintiff shall have parenting time from 8:00 a.m. until 7:30 p.m. on January 1, 2025).

v. In even numbered years, the plaintiff, and in odd numbered years the defendant, shall have parenting time with the minor child from 8:00 a.m. until 7:30 p.m. on Christmas Day.

e. The parties shall adhere to the following summer vacation time schedule for the minor child, which shall supersede both the ordinary parenting time schedule and the holiday schedule. Each party shall be entitled to two non-consecutive weeks of vacation time with the minor child during her summer vacation from school, which such weeks shall run from Friday at the conclusion of summer camp, or if none, at 6:00 p.m., until 7:30 p.m. on the Sunday which is nine days later, as follows: (a) for Summer 2024, the plaintiff shall have summer vacation parenting time with the minor child from June 28 through July 7; (b) also for

Summer 2024, the defendant shall have summer parenting time with the minor child from August 16 through August 25; (c) also for Summer 2024, on or before June 21, the defendant may notify the plaintiff, in writing, of one additional week he selects, and on or before June 28, the plaintiff may notify the defendant, in writing, of one additional week she selects, from the weeks that remain; (d) in 2025 and odd-numbered years thereafter, on or before April 1, the plaintiff shall notify the defendant, in writing, of the one or two weeks she selects, and on or before May 1, the defendant shall notify the plaintiff, in writing, of the one or two weeks he selects, from the weeks that remain following the plaintiff's selection; and (e) in 2026 and even-numbered years thereafter, on or before April 1, the defendant shall notify the plaintiff, in writing, of the one or two weeks he selects, and on or before May 1, the plaintiff shall notify the defendant, in writing, of the one or two weeks she selects, from the weeks that remain following the defendant's selection; and (f) if either party fails to notify the other of the weeks selected in a timely manner, he or she shall forfeit the right to uninterrupted summer vacation time for that year.

f. Any parenting time not specifically addressed herein is awarded to the plaintiff, but the defendant may have additional parenting time as the parties may agree, in writing.

2. Each party shall use his or her best efforts to ensure that the minor child has been fed prior to returning the minor child to the other party at the end of his parenting time which ends at 7:30 p.m.

3. The defendant shall pick up and drop off the minor child for his parenting time, and when parenting time exchanges occur at the plaintiff's residence, they shall take place curbside, and the defendant shall not enter onto the plaintiff's property, including but not limited to the driveway, lawn, or curtilage.

4. Both parties shall use all reasonable efforts to ensure that parenting time exchanges take place on time, and if circumstances arise such that an exchange cannot occur on time, the party becoming aware of such circumstance shall notify the other party, in writing, immediately upon learning of such circumstance.

5. If the defendant is more than fifteen minutes late for any scheduled pickup, he shall forfeit that period of parenting time, and if the defendant is more than fifteen minutes late for any drop off, he shall forfeit his next scheduled parenting time, all absent written agreement of the parties to the contrary.

6. On any day when a party does not have in-person parenting time with the minor child, that party shall be entitled to reasonable virtual access to the minor child by telephone, video call, or other electronic means of contact, for a reasonable period of time and at a reasonable hour; however, neither party shall make unreasonable or excessive requests for communications with the minor child.

7. Each party shall provide clothes and other necessary supplies, including but not limited to non-prescription medications for the minor child's use during his or her parenting time, and the parties shall use their best efforts to cooperate in the purchase of more expensive items (e.g., winter coat, snow boots) in an effort to avoid duplicative purchases of such items. Prescription medications, school materials and the like shall travel with the child.

8. Each party shall cooperate with the other and use his or her best efforts to ensure that the minor child has schoolwork (e.g., homework or projects) completed on time and that the minor child has with her the materials necessary to attend to her schoolwork.

9. Each party shall only permit the minor child to be transported in a motor vehicle operated by an adult, who is properly licensed, in a motor vehicle which is properly registered and insured, and which is equipped with an age-appropriate child safety seat.

C. Communication and Our Family Wizard

1. The parties shall only communicate in writing, Our Family Wizard (OFW), as to all non-emergency matters concerning the minor child, and they shall share equally in the expense thereof. The parties shall not use OFW to communicate about any matters that do not concern the minor child. The foregoing shall not be construed to prohibit the parties from communicating about matters concerning the minor child by other means in addition to OFW in case of emergency.

2. The parties shall utilize the OFW calendar as set forth herein.

3. Any emergency situation involving the child shall be relayed by telephone or text message promptly, as well as by OFW when time reasonably permits, and each party shall keep the other informed as to a contact phone number where they can be reached in case of emergency.

4. If either party learns of any major illness, serious accident or other serious circumstance affecting the minor child's health or welfare, he or she shall promptly notify the other party.

5. Neither party shall communicate or send messages to the other through the minor child.

D. Access to and Sharing of Information Concerning the Minor Child

1. Both parties shall have access to all medical, dental, mental health and educational information about the minor child, and information about the minor child's extracurricular activities, and each party shall provide each other with any authorizations requested so as to allow both parties to obtain such information.

2. Both parties shall ask that the minor child's school send dual copies, one to each of them, of any communications from the school. If the school has an online portal, both parties shall be entitled to login credentials in order to access said information.

3. Both parties shall use their best efforts to sign up for emails, information distribution lists, or otherwise with respect to all school events or extracurricular activities in which the minor child is involved, so that they may each receive information directly, without having to rely on the other party to transmit information.

4. The parties shall use their best efforts to enter all events which the minor child is scheduled to attend, activities in which the minor child is expected to participate, and any and all appointments made for the minor child into the OFW calendar such that they are viewable by both parties. This includes, but is not limited to school events, medical appointments, and extracurricular activities. Entering the event, appointment, or activities on the OFW calendar shall be sufficient to put the other party on notice of same. Notwithstanding the foregoing, each party shall also notify the other, in writing, within a reasonable time after scheduling a medical appointment for the minor child.

E. Non-Disparagement

1. Both parties shall use their best efforts to foster a feeling of love and respect between the minor child and the other party.

2. Neither party shall say or do anything intended or likely to have the effect of estranging the minor child from the other, or the other's family, injuring the opinion of the minor child toward the other, or the other's family, or impairing the natural development of the minor child's love and respect for the other, or the other's family.

3. Neither party shall discuss any disagreements they might have on any matter in the presence of or within the hearing of the minor child, nor shall they otherwise disclose same to the minor child.

F. Travel

In the event either party wishes to travel overnight outside Connecticut with the minor child during his or her parenting time, that party shall provide the other with the following information, in writing, a reasonable time in advance: (a) the duration of the trip; (b) the name and address of each place where the minor child will spend each night; (c) landline telephone numbers, if applicable; (d) airline name(s), flight numbers, and times of departure if applicable; and (e) similar information as in the preceding clause with respect to other means of travel, such as rail or boat. In the event reservations are made for such travel, the party making the reservation shall notify the other party immediately after making the reservation. If no overnight stay is involved, the parties may, but are not required to, notify each other when traveling out-of-state with the minor child.

G. Relocation

1. In the event either party intends to relocate to a residence more than ten road-miles from his or her current residence in a direction that would put further distance between the parties, the party who intends to relocate shall notify the other of that intention, in writing, not less than ninety days in advance of the proposed relocation date. The foregoing shall not preclude either party from seeking or resisting any motion to this court concerning such relocation.

2. In the event either party intends to move from his or her primary residence, regardless of distance, the party intending to move shall notify the other of that intention, in

writing, not less than fourteen days in advance, which notice shall include the intended move date, the exact physical address and any mailing address, if different.

H. Parenting Education Program

Between the date of issuance of notice of this decision and August 15, 2024 each party shall register for and complete the parenting education program pursuant to General Statutes § 46b-69b and shall file a certificate of successful completion with the clerk of this court.

I. Effective date of orders

Unless otherwise specifically set forth herein, these orders are effective immediately.



Kowalski, J.