

DOCKET NO. FA-17-5007630-S : SUPERIOR COURT
CRISTAL MUNOZ : J.D. OF TOLLAND
V. : AT ROCKVILLE
JAMAL GILBERT : MAY 30, 2024

MEMORANDUM OF DECISION

Before the court are several post judgment motions. The first filed motion is defendant father's motion to modify the custody and parenting plan for the parties' two minor children, twin boys born July 2017. Said motion was filed on May 4, 2023. (Entry No. 109) Subsequently, the plaintiff also filed a motion to modify custody. (Entry No. 139)

The underlying custody and parenting plan was entered by agreement on July 18, 2018. At that time, the defendant was incarcerated. The agreement, which was entered as an order of the court, provided for joint legal custody with final decision making to the plaintiff. The plaintiff has primary residence, and the defendant was to have visitation once a week supervised by the plaintiff. There was no court activity for almost five years, from July 2018 through May 2023.

The defendant filed the present motion to modify seeking to eliminate the plaintiff's final decision making authority and to adopt a more specific parenting plan granting him regular unsupervised access with the children. (Entry No. 109) The matter was referred to family services for a comprehensive custody evaluation on June 1, 2023. A temporary order was entered on July 28, 2023 providing the defendant with parenting time on Sundays from 10 am to 4 pm, supervised by paternal grandfather. (Entry No.121)

Family services completed the comprehensive custody evaluation on Oct. 30, 2023. When the parties were unable to agree, the matter was scheduled for trial. Trial was held on 2/9/2024 and 4/19/2024. Plaintiff represented herself at trial while the defendant was represented by counsel. Both parties had an opportunity to testify, present evidence and call

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Notice of Memorandum sent on 5/30/2024 to:
- Reporter of Judicial Decisions
- Cristal Munoz - mail
- Jamal Gilbert - mail
- Cecil Gester - JDNO

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5/30/2024

and cross examine witnesses. Family relations counselor Adelaide Amoakoh testified at trial and was questioned by both parties. Her custody evaluation report was entered into evidence.

Between the first and second trial dates, the plaintiff filed two emergency applications for custody raising serious allegations of physical and psychological abuse. Both were denied after a hearing.

FACTS

The court finds the following facts by a preponderance of the evidence.

Family Relations Counselor Adelaide Amoakoh testified at the hearing regarding her investigation. In addition to interviewing the parties and the children, she gathered extensive information from collateral sources, including DCF, law enforcement, the children's medical providers, and mental health professionals.

The plaintiff has made numerous reports to DCF alleging that the defendant has threatened to harm the children, chased them with knives, and physically abused them. In total, there have been eleven complaints made to DCF. Five were accepted for investigation. None resulted in a substantiation of abuse or neglect. Because of the seriousness of the allegations, both boys were subjected to a forensic exam which found no evidence of physical abuse. DCF reported no concerns about the defendant's parenting and reported that the boys appeared happy and comfortable in his care. The plaintiff has also complained to police and even brought the boys to the police station to file complaints against the defendant. No arrests have been made.

The plaintiff has consistently asked for sole legal custody with no access for the defendant. She told the children that the defendant threatened to kill them and tried to hurt them when they were in her belly. She promised to find them a new father and stated that she would relocate so that the defendant cannot find them. There is evidence she has coached the children in order to influence their statements to DCF and others. The children have made statements such as "we are only supposed to get dad in trouble" or "mom told us to say this." When filling out contact forms for the children's school or medical providers, the plaintiff does not list the defendant as father or emergency contact.

Conversely, Ms. Amoakoh found no evidence that the defendant was coaching or manipulating the children. Ms. Amoakoh found no reason to continue to limit the defendant to short supervised visits or to exclude the defendant from decision making. She recommends joint legal custody, primary residence with the plaintiff and regular parenting time for the defendant consisting of every Wednesday after school and alternating weekends Friday to Monday. She also recommends that the parties share holidays and each have at least one week of exclusive vacation time with the children. Finally, she recommends that both parties and the children engage in therapy with a focus for the parties of improving the coparent relationship.

The defendant's pastor of 25 years testified at the hearing. His son is also good friends with the defendant. Until the plaintiff stopped facilitating the defendant's visitation in the summer of 2022, the defendant regularly brought the children to church and to the witness' house. He observed the children interacting with the defendant more than a dozen times. The children appeared comfortable and responded positively to the defendant. He never witnessed the defendant physically discipline the children and never saw the children display any fear.

The defendant's father, who has supervised the defendant's visits since July 2023, also testified. He described the children as happy to see their father when they get in the car and eager to sit next to him and talk to him. He has observed the defendant play with the children at home and in the community. The children appeared happy and comfortable in the defendant's care. He has never seen the children display any fear towards the defendant.

The defendant's father lived with both parties when the plaintiff was pregnant. He testified credibly that the parties argued a lot, and both would sometimes get physical. He recalled having to intervene to break up their arguments.

The defendant saw the boys the day he was released from incarceration on October 31, 2018 and regularly saw them on weekends after that, including unsupervised overnights at his apartment, until August 2022. He claims that the plaintiff cut off visitation when he refused to give her money for back to school supplies. She claims he simply stopped asking to see the children.

The defendant acknowledges that he stepped back and did not ask for visits for a few months hoping the defendant would come around after the financial dispute. In February 2023, he began asking to see the children. He saw the children once in February. Between April 2023 and July 2023, the plaintiff facilitated several visits which she supervised. The defendant complained that the plaintiff cut visits short, hovered over him and the children, and tried to control the visits. The plaintiff claims that the defendant often became verbally abusive towards her during the visits. On July 28, 2023, the court ordered visits every Sunday supervised by the defendant's father.

The defendant also complains that the plaintiff makes unilateral parenting decisions without consulting him, does not list him as the children's father or emergency contact, and withholds information from him. He testified credibly that he found out that the children were engaged in mental health therapy at the Wheeler Clinic through Ms. Amoakoh. The plaintiff never consulted or informed him.

The defendant acknowledges calling DCF three times but denies making other anonymous calls. She testified that, on February 10, 2023, the children disclosed to her that the defendant threatened and abused them. DCF conducted an investigation, including forensic exams and interviews of both children, and found no evidence to substantiate abuse or neglect. The defendant filed two emergency applications for custody based on these same allegations, both were denied after hearings. Police investigations found no probable cause to pursue charges. The court finds insufficient evidence to support the plaintiff's claims of abuse.

DISCUSSION

Custody and Parenting

Section 46b-56a provides that, where both parents request and agree to joint custody, there shall be a presumption that joint custody is in the best interests of the child. However, even absent agreement, the court may award joint custody if one party requests joint custody and the court finds under the facts and circumstances of the case that joint custody is in the best interests of the child. *Coleman v. Bembridge*, 207 Conn. App. 28, 41-44 (2021).

“Joint custody . . . requires mutual communication and cooperation—the willingness and ability on the part of each parent to voice its concerns and opinions, rationally consider and fairly weigh the views of the other parent, and, if the parties still cannot agree after such a dialogue, engage in a reasoned and mutually cooperative decision-making process.” *LaFontaine v. LaFontaine*, Superior Court, Judicial District of New Haven, Docket No. FA 03-0477510S, April 22, 2005; see *Jones v. Jones*, Superior Court, Regional Family Trial Docket Judicial District of Litchfield, Docket No. FA99-0078925 (March 13, 2000) (Munro, J.), (Joint custody “requires the court to first find that the parties are capable of reasoned communication . . . regarding important custodial decisions.”)

"Visitation rights are not wholly unrelated to the welfare of the children of divorced parents. Minor children are entitled to the love and companionship of both parents. For the good of the child, unless a parent is completely unfit, a decree should allow a parent deprived of custody to visit or communicate with the children under such restrictions as the circumstances warrant." *Raymond v. Raymond*, 165 Conn. 735, 741 (1974). A visitation dispute "is not one primarily to determine the rights of the respective parties but rather a determination of the best interests of the child or children." *Id.*

General Statutes § 46b-56 (c) provides in relevant part: “[T]he court shall consider the best interests of the child, and in doing so may consider . . . one or more of the following factors: (1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) any relevant and material information obtained from the child, including the informed preferences of the child; (4) the wishes of the child's parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (8) the ability of each parent to be actively involved in the life of the child; (9) the child's adjustment to his or her home, school and community environments; (10) the length of time that the child has lived in a stable and satisfactory environment and the

desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home *pendente lite* in order to alleviate stress in the household; (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child's cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers, but shall articulate the basis for its decision.”

Ultimately, “the court shall enter orders . . . that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests.” General Statutes § 46b-56 (b).

This is an extremely difficult case. The plaintiff has repeatedly alleged that the defendant has threatened to kill the children, chased them with a knife and committed acts of sexual abuse. If true, such actions would not only shock the conscience but be grounds for prohibiting any contact between the defendant and the children. However, a thorough DCF investigation, including forensic exams and interviews of the children, found insufficient evidence to support these claims. DCF reported to family relations that they have no concerns about the defendant’s parenting. The plaintiff has also filed complaints with the police, even taking the children to the police station to make statements against their father. No arrests have been made. The family services comprehensive custody evaluation found no evidence that the children are afraid of the defendant and no evidence to support the plaintiff’s claims. The evaluator did find evidence that the plaintiff inappropriately involves the children in adult conflict, coaches them to speak negatively about the defendant to get him in trouble and refuses to include the defendant as an equal parent in decision making or information sharing.

This raises the prospect that the plaintiff is knowingly encouraging the children to make false allegations against their father, and by doing so exposing them to repeated DCF and police involvement, including interviews and even physical exams by strangers. This would equally shock the conscience and be a form of abuse itself. It is also possible that the plaintiff latched onto something the children said, amplified it and convinced herself that the defendant is a threat to the children.

It is virtually impossible for this court to know exactly where the truth lies. Child protection and law enforcement agencies with the power and authority to investigate such claims have found no basis to substantiate or pursue the plaintiff's allegations. Based on the record before it, the court finds insufficient evidence to support the plaintiff's claims. There is evidence that the children love the defendant, are closely bonded with him, feel comfortable in his care and that he interacts with them in an age and developmentally appropriate way. Both the children and the defendant are legally entitled to a healthy meaningful parent-child relationship that includes regular unsupervised and uninterrupted parenting time.

The plaintiff continues to request sole legal and physical custody of the children. The defendant supports the recommendations of Ms. Amoakoh for joint legal custody with primary residence with the plaintiff and regular parenting time for the defendant. The court finds no basis for effectively terminating the defendant's right to coparent and maintain a relationship with his children. Doing so would not be in their best interests.

The court has serious concerns about the plaintiff's willingness and ability to support the defendant's relationship with the children, insulate the children from parental conflict and put the children's best interests above her personal feelings towards the defendant. While the court finds her credible in that she appears to be genuinely concerned for the children, there is simply no credible evidence to support her concerns despite several independent investigations. The court hopes she can learn to trust the defendant again, as she has in the past, and put her own feelings aside for the good of the children.

ORDERS

Having heard the parties, considered the testimony and evidence presented, weighed the credibility of the witnesses, and applied the relevant statutory criteria and legal precedent, the court finds the following orders to be fair, equitable and in the best interests of the children.

1. Custody: The parties shall have joint custody of the minor children Isaiah J. Munoz-Gilbert, date of birth, July 9, 2017 and Josiah J. Munoz-Gilbert, date of birth, July 9, 2017. The parties shall cooperate and communicate to make joint decisions concerning the health, education and welfare of the children, including but not limited to school placement, daycare, religious upbringing and medical care and shall keep each other informed regarding the health, education and welfare of the children.

2. The Plaintiff mother shall have primary residence of the minor children.

3. The Defendant father shall have parenting time on alternating weekends commencing the weekend starting June 7th, from Friday after school or work until Monday morning drop off at school. The first weekend shall be supervised by Jamal Gilbert, Sr. Thereafter, defendant's parenting time shall be unsupervised.

The Defendant father shall have additional parenting time every Wednesday from 5pm until 7pm.

4. All pick ups and drop offs shall be at school or daycare when possible. Otherwise, and unless otherwise agreed, the Defendant father shall pick up the minor children from the Plaintiff mother's home at the beginning of his parenting time. The Plaintiff mother shall pick up the children at either the paternal grandparents' home or the Defendant's home at the end of the Defendant/ father's parenting time. Defendant/father will text Plaintiff/mother to let her know where to pick-up the minor children.

All exchanges shall be outside the home and brief. Neither party shall engage in any unnecessary communication during exchanges and neither shall attempt to resolve or discuss parenting disputes or concerns.

5. The following holiday schedule shall supersede the regular parenting schedule.

The parents shall alternate access with respect to all major holidays on an annual basis as follows. In addition, unless otherwise specified, parenting times shall be arranged by mutual agreement:

During odd years (2023, 2025, and every odd year thereafter)

Thanksgiving: reserved for the mother.

Christmas Eve/Christmas Day: the father shall have access on December 24th from 12:00pm until December 25th at 12:00 pm. The mother shall have access on December 25th from 12:00 pm until December 26th at 12:00 pm.

Easter: reserved for the mother.

Mother's Day and Father's Day shall be reserved for the respective parent from 10 am until 6 pm unless otherwise agreed.

Independence Day: reserved for the father.

Labor Day: reserved for the mother.

During even years (2024, 2026, and every even year thereafter)

Thanksgiving: reserved for the father.

Christmas Eve/Christmas Day: the mother shall have access on December 24th from 12:00 pm until December 25th at 12:00 pm. The father shall have access on December 25th from 12:00 pm until December 26th at 12:00 pm.

Easter: reserved for the father.

Mother's Day and Father's Day shall be reserved for the respective parent from 10 am until 6 pm unless otherwise agreed.

Independence Day: reserved for the mother.

Labor Day: reserved for the father.

Each parent shall be entitled to one week of exclusive vacation time with the children per year. Each parent shall provide the other parent with notice at least 30 days in advance of the scheduled vacation time they intend to take. It is further recommended that both parents shall make reasonable efforts to inform the other parent in advance of travel information requested such as emergency telephone numbers, addresses of hotels, etc.

6. The children shall be permitted contact with either parent by telephone/video calls during the other parent's access times, which will be arranged by mutual agreement. It is further recommended that each parent shall not restrict or impede the children's ability to have contact with the other parent.

7. All communication regarding parenting the minor children including, but not limited to, routine educational, social, and medical issues shall be made in writing utilizing text messaging. All communications shall be brief, clear, and child focused. The parents shall respond to any inquiry, comment, questions, or concern in a timely manner, generally within 24 hours, and immediately for emergencies.

8. Neither party shall withhold access to the children as a form of punishment for the children, or the other parent.

9. The mother shall engage in mental health counseling to address and resolve personal issues in hopes of developing a positive co-parenting relationship.

10. The father shall engage in mental health counseling to address and resolve personal issues in hopes of developing a positive co-parenting relationship.

11. The minor children shall immediately be enrolled in ongoing individual counseling. Both parents will support the children's respective therapeutic interventions and avail themselves to the therapist, which will be at the provider's discretion. If deemed therapeutically appropriate by the children's therapist, or their school, the children shall engage in services related to speech therapy, behavior therapy, and any other modality of services recommended by the provider. Both parents will support the intervention(s) and avail themselves to the therapist/provider, which will be at the provider's discretion.

12. Neither parent, nor their respective significant other shall denigrate the other parent online, in front of the children or involve them, to any degree, with adult issues including, but not limited to, Court involvement, financial matters, or any conflict that exists between them.

13. Any changes or modifications regarding the access schedule may be arranged by mutual agreement of the parents. The parties shall cooperate in making reasonable adjustments in light of work, extracurricular, family and other commitments.

14. Neither party shall relocate more than 20 miles from their current residence absent the written agreement of the parties or court order.

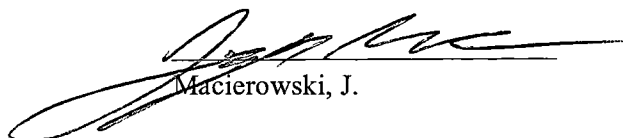
15. Any party who has not completed the parenting education program shall do so within 60 days and shall file a certificate of completion with the court. Neither party shall file a motion to modify these orders until the certificate of completion has been filed.

These orders resolve all outstanding motions.

Defendant's motion for contempt (Entry No. 110), plaintiff's motion for contempt (Entry No. 124), and defendant's motion for sanctions (Entry No. 136) are all denied for failure to meet the burden of proof.

SO ORDERED:

BY THE COURT


Macierowski, J.