

DOCKET NO: HHD-FA23-5081257-S : SUPERIOR COURT
MICHAEL WILSON, JR. : JUDICIAL DISTRICT OF HARTFORD
V. : AT HARTFORD
MOESHA MCKENZIE : June 3, 2024

FILED
JUN 03 2024
HARTFORD J.D.

MEMORANDUM OF DECISION

This custody application (#100.30) was filed by plaintiff on December 22, 2023. The parties appeared as self-represented individuals at hearing on May 16, 2024. The court heard testimony from the parties. The court also heard testimony from Family Relations Counselor, Stephanie Delconte. This matter was referred to Family Services for General Case Management to obtain records from the Department of Children and Families ("DCF"). The court has fully considered the rules of practice; full exhibits; testimony from the parties; the demeanor and credibility of the witnesses; applicable case law; and the criteria set forth in General Statutes §§ 46b-56, 46b-84, and 46b-215a in reaching the decisions reflected herein. The court also reviewed the parties' financial affidavits and child support guidelines.

As financial matters were in dispute, the court unsealed the financial affidavits pursuant to Practice Book § 25-59a (h).

FINDINGS OF FACT

The court makes the following findings of fact by a preponderance of evidence. The court has jurisdiction over this matter. The parties' only child together is D. (b. October 17, 2020), who is the subject of this custody application. The parties have had repeated involvement with DCF. On September 4, 2022, DCF became involved with the parties due to an incident at the plaintiff's home. The parties had worked out an informal

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parenting plan and the defendant was scheduled to have parenting time with the child during the weekend of the incident. However, defendant brought the child to plaintiff's home for him to care for the child. The parties engaged in a verbal altercation. Plaintiff alleged that as defendant was leaving in her car, she drove over his foot and placed the child in danger. DCF and police became involved and investigated the situation. DCF did not substantiate physical neglect against defendant.

On December 15, 2023, DCF received a referral due to the child having a scratch under her eye. DCF noted that the child had a bruise not a scratch. During the DCF investigation, the child stated that "mommy grabbed my eye." DCF implemented a safety plan wherein the child remained in the care of the plaintiff. Under the terms of the safety plan, defendant had supervised contact with the child. Defendant engaged in a parenting program. Upon completion of their investigation, DCF did not substantiate defendant for physical abuse. DCF vacated the safety plan on January 25, 2024.

On February 11, 2024, DCF received new allegations and opened a family assessment response action. Defendant is the owner of a hair salon called Moe Braids. Plaintiff brought the child to the defendant's salon to get her hair braided. The parties engaged in an altercation due to length of time it was taking the defendant to braid the child's hair. The altercation became physical, and defendant knocked the plaintiff's glasses off his face. The child was present during the verbal and physical altercation. Defendant was arrested and charged with Breach of Peace and Criminal Mischief. The charges remain pending. (H15N-CR24-0347703). DCF does not believe supervised visits are necessary as the defendant does not present a threat of harm to the child. DCF

believes the child is placed at risk when the parties are together. DCF did not take any legal action.

Plaintiff is thirty-one years old and is in good health other than minor issues with his knees and back. Plaintiff served in the United States Marine Corp. for approximately nine years and eight months. Plaintiff is due to graduate from culinary school in July. On February 19, 2024, plaintiff started a new job at CT Transit as a Service Planner. Plaintiff's work schedule is Monday through Friday from 8 am to 4:30 pm. He earns a \$1538 gross weekly income with a net weekly income of \$1120.00. (Doc. #116.00). Plaintiff owns a four-bedroom home in Vernon, CT. Plaintiff has one other child, a seven-year-old son, from a prior relationship, who resides with him during the weekdays and with his mother on the weekends.

Defendant is twenty-seven years old and is in relatively good health. Defendant has a certificate in cosmetology from Manchester Community College. Defendant is self-employed as a hairstylist. She own and operates a salon in Newington. Defendant has operated the salon for approximately five years. Defendant's gross annual income is \$52,000 per year. Defendant does not know her net annual or net weekly income. (Doc. #108). For approximately eight months in 2023, defendant also worked part-time in housekeeping at the Goodwin Hotel. Defendant does not have any other children and resides in a one-bedroom apartment in East Hartford. Defendant complied with the DCF recommendations and completed a parenting program in March 2024. She does not have any current involvement with DCF. Regarding defendant's criminal case, she returns to court on June 3, 2024. There is a protective order in place prohibiting the defendant from having contact with the plaintiff.

The child is healthy and does not have any developmental delays or special needs. The child attends daycare at the Academy of Learning in Vernon. The child currently resides with the plaintiff during the week. Defendant has parenting time with the child every weekend. Defendant picks the child up from Academy of Learning on Friday afternoon. Defendant then returns the child to the Academy of Learning on Monday morning.

Additional findings of fact are stated or incorporated as applicable in the discussion, conclusion and orders set forth in this decision.

RELEVANT CASE LAW

Trial Court's Role

"It is well established that [i]n a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony. . . . The credibility and the weight of expert testimony is judged by the same standard, and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible." (Internal quotation marks omitted.) *Caciopoli v. Lebowitz*, 131 Conn. App. 306, 327, 26 A.3d 136 (2011), *aff'd*, 309 Conn. 62, 68 A.3d 1150 (2013). "Nothing in our law is more elementary than that the trier is the final judge of the credibility of witnesses and of the weight to be accorded their testimony." *Morande v. Newman Lincoln-Mercury, Inc.*, 5 Conn. App. 423, 423, 499 A.2d 78 (1985), citing *Morgan v. Hill*, 139 Conn. 159, 161, 90 A.2d 641 (1952).

"The factfinding function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties, which is not fully reflected in

the cold, printed record which is available to [appellate courts].” *Lupien v. Lupien*, 192 Conn. 443, 445, 472 A.2d 18 (1984).

Best Interest of the Child

In deciding custody matters, the court is guided by § 46b-56 (a), which provides in relevant part: “In any controversy before the Superior Court as to the custody or care of minor children... the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children if it has jurisdiction under the provisions of chapter 815p. Subject to the provisions of section 46b-56a, the court may assign parental responsibility for raising the child to the parents jointly, or may award custody to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. . . .”

In deciding the best interest of the child, the court may consider, but is not limited to, seventeen factors set forth in § 46b-56 (c).¹ “[I]n matters involving child custody, and,

¹ General Statutes § 46b-56 (c) provides: “In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors: (1) The physical and emotional safety of the child; (2) the temperament and developmental needs of the child; (3) the capacity and the disposition of the parents to understand and meet the needs of the child; (4) any relevant and material information obtained from the child, including the informed preferences of the child; (5) the wishes of the child’s parents as to custody; (6) 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; (7) 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; (8) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents’ dispute; (9) the ability of each parent to be actively involved in the life of the child; (10) the child’s adjustment to his or her home, school and community environments; (11) 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; (12) the stability of the child’s existing or proposed

by implication, visitation rights, [although] the rights, wishes and desires of the parents must be considered it is nevertheless the ultimate welfare of the child [that] must control the decision of the court." (Internal quotation marks omitted.) *Ridgeway v. Ridgeway*, 180 Conn. 533, 541, 429 A.2d 801 (1980). The court has considered all of the relevant statutory criteria set forth in Connecticut General Statutes § 46b-56 in reaching the decisions herein.

DISCUSSION

The parties both agree to share joint legal custody of the child. However, the parties each seek primary residence of the child. The parties have demonstrated that they are unable to effectively communicate with each other regarding the child. Moreover, the parties have a history of conflict resulting in DCF involvement. The most recent conflict between the parties in February 2024 was witnessed by the child. The court is concerned by the defendant's actions during this most recent event. However, plaintiff's actions also contribute to the conflict between the parties. Neither party has been able to take any responsibility as to how their actions contribute to the conflict. The parties fail to recognize that their conflictual relationship may place the child at risk

residences, or both; (13) 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; (14) the child's cultural background; (15) 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; (16) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (17) 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."

of harm. While the child appears to be resilient, the court is concerned that the parties' conflict with each other will adversely impact the child. The parties must learn to effectively co-parent to ensure the child continues to develop in a healthy and appropriate manner.

CONCLUSION

The court has entered orders that are in the best interest of the minor child in consideration of all of the relevant statutory factors set forth in § 46b-56.

ORDERS

A. Custody and Parental Access

1. Custody. The parties shall have joint legal custody of the minor child. The primary residence of the minor children shall be with the plaintiff. The parents shall consult with each other and attempt to reach an agreement on all major decisions regarding the medical, health care, mental health, dental, and educational needs of their child. If the parties are unable to reach an agreement, plaintiff shall have final decision-making authority with respect to the medical, health care, mental health, dental, and educational needs of the minor child.
2. Parental Access. Defendant shall have parenting time with the child from Friday after daycare through Monday morning every weekend. The defendant shall pick up the minor child from the child's daycare provider, which is currently the Academy of Learning in Vernon, every Friday. Defendant shall have the child for the entire weekend until drop off at the daycare provider Monday morning. If the child's daycare provider is

closed on Monday or Friday, the parties shall exchange the child at the Vernon Police Department.

3. AppClose. When the defendant is no longer prohibited from having contact with the plaintiff, the parties shall utilize AppClose to communicate as to all matters concerning their minor child, including their respective parenting time, notifications required by these orders, and related issues. Each parent shall notify the other by telephone of any emergency situation involving the minor child, to be followed, when circumstances reasonably allow, by telephone and additional notification via AppClose.
4. Both parents shall be involved in their child's upbringing and are entitled to all information and records concerning their child's education and health. Both parties shall have access to the child's academic, medical, hospital and health records. The parties shall notify each other of all pending events concerning the minor child's medical conditions, education, extracurricular activities, religious and social life. The parties shall both be able to attend and be present in any health, school, or extracurricular activities of the child even when the event does not occur during their defined access time.
5. Holidays.
 - a. Each year, the minor child shall be with Mother on Mother's Day, and with Father on Father's Day from 9 a.m. until 7 p.m.
 - b. The plaintiff shall have the minor child on Thanksgiving from Thursday at 10 a.m. until Friday at 10 a.m. in even numbered

years. The defendant shall have the minor child on Thanksgiving from Thursday at 10 a.m. until Friday at 10 a.m. in odd numbered years.

c. The plaintiff shall have the minor child on Christmas Eve from 2:00 p.m. to Christmas day at 12:00 p.m. on even numbered years. The defendant shall have the minor child on Christmas Eve from 2:00 p.m. to Christmas day at 12:00 p.m. on odd numbered years.

d. The plaintiff shall have the minor child on Easter from 10 a.m. until 6 p.m. on odd numbered years. The defendant shall have the minor child on Easter from 10 a.m. until 6 p.m. on even numbered years.

6. Summer Vacation. Each parent may elect up to two (2) weeks of summer vacation. Such weeks may be taken consecutively. Each parent must give thirty (30) days' notice, in writing, of their intent to vacation with the child. In the event of a scheduling conflict, plaintiff's first choice will prevail in odd-numbered years and defendant's first choice will prevail in even numbered years.

7. Each parent shall keep the other reasonably informed as to the whereabouts of the child. In the event of an out-of-state trip, the parent who is traveling with the child or arranging the travel shall provide the other parent, at least 30 days prior to departure, with a written itinerary including, as applicable, dates of travel, destinations, telephone numbers, addresses, flight information, lodging accommodations, and other pertinent information. The other parent

shall not use such information in a manner which unreasonably interferes with the traveling parent's or child's privacy or enjoyment of the trip.

8. Affections. Each parent shall use all reasonable efforts to maintain and promote free and unhampered contact, including telephone or Facetime contact, between the minor child and the other parent. Neither parent shall make any derogatory comments about the other to or within the hearing of the minor child. Neither parent shall say or do anything intended or likely to have the effect of estranging the minor child from the other parent, injuring the opinion of the minor child toward the other parent, or impairing the natural development of the minor child's love and respect for the other parent.
9. Relocation. Neither parent shall relocate with the child outside the State of Connecticut without prior order of the court permitting such relocation. If either parent plans to move from the town in which he or she is then residing to another town within the State of Connecticut, such parent shall provide the other with at least thirty (30) days written notice of the change of address.

B. Child Support

1. Child Support Payments and Unreimbursed Expenses. The court adopts the prior order issued on January 19, 2024 (Doc. #110) regarding child support and unreimbursed expenses.
2. Medical Insurance. Both parties shall provide medical and dental insurance for the benefit of the child if it is available to them at a reasonable cost which is defined as no more than 7.5% of their income.

The provisions of General Statutes § 46b-84 (e) are incorporated by reference.

3. Taxes. The parents shall alternate claiming the child as a dependent/child tax credit for all federal and state income tax purposes, with plaintiff claiming the child in odd tax years and defendant claiming the child in even tax years. On or before January 15th of each year, the parties shall sign and provide to the other parent a declaration required by the IRS (Form 8332), to implement the terms of this order.

C. Dissemination

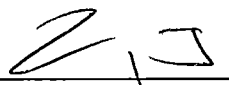
Neither party shall allow their child to review or receive a copy of this decision.

- D. Parenting Education.** The parties shall complete the parenting education program within 30 days of the date of this judgment.

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

SO ORDERED.

BY THE COURT,



Larock, J.