

DOCKET NO. FBT-FA-21-5046316-S : SUPERIOR COURT
DERVAL FORREST : JUDICIAL DISTRICT
v. : OF BRIDGEPORT
RENNEISHA COLEMAN : MAY 7, 2024

FILED

MAY 07 2024

SUPERIOR COURT
BRIDGEPORT

MEMORANDUM OF DECISION

***Plaintiff's Motion for Contempt, Postjudgment (#120.00);
Plaintiff's Motion for Modification of Custody, Postjudgment (#122.00);
Defendant's Motion for Modification of Custody, Postjudgment (#128.00); and
Plaintiff's Motion for Modification of Custody and Child Support, Postjudgment (#135.00)***

Before the court are four postjudgment motions that were the subject of an evidentiary hearing on May 6, 2024 at which both parties testified. Three are motions for modification. With respect to those motions, the court finds that the parties have established a substantial change in circumstances since the rendition of judgment that warrants a modification of the judgment, and that a modification is in the best interests of the minor child. Accordingly, the court shall issue appropriate orders. With respect to the remaining motion, the plaintiff's motion for contempt, the court finds that the plaintiff has failed to satisfy his burden of proof, and that motion shall be denied.

I. FINDINGS OF FACT

The court has considered the credible evidence before it, has reviewed the court file in this action and finds that the following facts have been established by a preponderance of the evidence.

The parties share a minor child, who is eleven years old and is in fifth grade. The minor child has a good relationship with both parties, and both are actively involved in the minor child's life. The minor child is doing well in school, and, outside of the classroom, enjoys playing baseball. In accordance with the judgment rendered on May 19, 2022 (#118.00), the

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parties share joint legal custody of the minor child, with the defendant enjoying primary physical custody and the plaintiff having open and flexible parenting time as determined by mutual agreement of the parties. The judgment incorporated the parties' dissolution agreement (#106.00) and custody agreement and parenting plan (#107.00).¹ By order #130.00, the family support magistrate issued a child support order, effective January 9, 2024.²

In the plaintiff's motion for contempt, postjudgment (#120.00), he asserts that the defendant has failed to provide him with the minor child's school or medical records despite his requests, and that the defendant chooses when he can spend time with and speak with their minor child. In the plaintiff's motion for modification of custody, postjudgment (#122.00), the plaintiff asserts that a substantial change in circumstances has occurred since the rendition of judgment in that the defendant has failed to provide him with the minor child's school or medical records and that the defendant unreasonably limits his parenting time with the minor child. In the plaintiff's motion for modification of custody and child support, postjudgment (#135.00), the plaintiff requests that he be awarded shared physical custody, where each party would be with the minor child approximately one-half of the time, and that neither party be required to pay child support to the other.³ In the defendant's motion for modification of custody, postjudgment (#128.00), she claims that circumstances have substantially changed since the rendition of judgment, in part, because the plaintiff does not pick up and drop off the

¹ The court recommends that both parties review and refamiliarize themselves with their agreement that was incorporated into their divorce judgment.

² The defendant testified, and the plaintiff conceded, that the plaintiff has not made any direct child support payments since the issuance of order #130.00, but the issue of child support is not before the court today.

³ Motion #135.00 states that circumstances in the case have changed substantially since the rendition of judgment due to "50/50 parental." However, the custody orders in the judgment as set forth herein have not been modified. Nevertheless, at the hearing, the plaintiff stated that he is seeking shared custody.

minor child as agreed and does not speak with her about issues concerning the minor child, and seeks to be awarded sole legal and physical custody.

In the months leading up to the date of the hearing, the minor child has been spending the majority of his time with the defendant, who has shouldered most of the child-rearing responsibilities. The plaintiff has been enjoying parenting time with the minor child two or three weekends per month, from Friday evening until Sunday evening. At present, the plaintiff is unemployed, and the defendant works full-time from 7:00 a.m. to 3:00 p.m. Monday through Friday and every other weekend.⁴ The plaintiff handles the minor child's transportation for the plaintiff's parenting time. The defendant takes issue with the fact that the plaintiff often returns the minor child to her late on Sunday evening, unfed. The defendant is also justifiably upset that the plaintiff is not honoring his child support obligation and does not contribute to other expenses associated with the minor child. The plaintiff testified that he often does not respond to the defendant's communications because when he does so it devolves into an argument. The minor child has a mobile phone at his disposal. Neither party has completed the parenting education program.

Additional facts found will be set forth as necessary.

II. DISCUSSION

A. Motions for Modification

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.*

⁴ The defendant is scheduled to work the weekend of May 11, 2024 and every other weekend thereafter.

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 *Prioleau 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”).

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. Specifically, since the rendition of judgment, the ability of the parties to communicate effectively and agree upon a parenting time schedule that is in the best interests of the minor child has seriously deteriorated. Accordingly, the court will fashion orders that it finds to be in the best interests of the minor child, and which will hopefully provide a framework that will allow the parties to coparent more effectively going forward. The court encourages each party to focus less on his or her complaints with the other, and focus more on what is in the best interests of their minor child.

B. Motion for Contempt

In order for a moving party to prevail on a motion for contempt, that party must prove, by clear and convincing evidence, the existence of a clear and unambiguous court order and a wilful violation of that order. See *Puff v. Puff*, 334 Conn. 341, 365, 222 A.3d 493 (2020). If the moving party establishes this twofold prima facie case, the burden of production then shifts to the alleged contemnor to provide evidence in support of the defense of an inability to comply with the court order or another valid defense. *Id.* Based upon the credible evidence before it,

the court finds that the judgment is clear and unambiguous and that the defendant had notice of the order, but further finds that the plaintiff has failed to prove a wilful violation of the judgment. Accordingly, the motion for contempt shall be denied.

III. CONCLUSION AND ORDERS ON MOTION FOR MODIFICATION, POSTJUDGMENT (#122.00; #128.00 and #135.00)

The court has fully considered factors set forth in General Statutes § 46b-56, the relevant case law, the evidence, 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 the court finds to be in the best interests of the minor child:

A. Continued Validity of Dissolution of Marriage Judgment

All provisions of the dissolution of marriage judgment remain in full force and effect unless modified by the orders herein.

B. Parenting Time Schedule

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

a. Commencing on Wednesday, May 15, 2024, on every Wednesday, from 5:00 p.m. until 8:00 p.m., and the plaintiff shall be responsible for providing the minor child with dinner and shall use his best efforts to ensure that the minor child's school assignments are completed.

b. Commencing on Friday, May 11, 2024, and every other weekend thereafter, the applicant shall have parenting time with the minor child from Friday at 5:00 p.m. until Sunday at 7:00 p.m., and the plaintiff shall return the minor child to the defendant on Sunday bathed and fed, and the plaintiff shall use his best efforts to ensure that the minor child's school assignments are completed.

c. Summer Vacation: each party shall be entitled to two non-consecutive weeks of vacation time with the minor child during his summer vacation from school, which such weeks shall run from 5:00 p.m. on Friday until 7:00 p.m. on the Sunday which is nine days later, as follows:

i. for Summer 2024, on or before May 24, the plaintiff shall notify the defendant, in writing, of the one or two weeks he selects, and on or before June 7, the defendant shall notify the plaintiff, in writing, of the one or two weeks she selects, from the weeks that remain following the plaintiff's selection;

ii. in even-numbered years thereafter, on or before April 1, the plaintiff shall notify the defendant, in writing, of the one or two weeks he selects, and on or before May 1, the defendant shall notify the plaintiff, in writing, of the one or two weeks she selects, from the weeks that remain following the plaintiff's selection;

iii. in odd-numbered years, on or before April 1, the defendant shall notify the plaintiff, in writing, of the one or two weeks she selects, and on or before May 1, the plaintiff shall notify the defendant, in writing, of the one or two weeks he selects, from the weeks that remain following the defendant's selection; and

iv. 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.

2. The plaintiff shall be responsible for picking up and dropping off the minor child at the beginning and end of his parenting time.

3. 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.

4. If the plaintiff is more than fifteen minutes late for any scheduled pickup, he shall forfeit the period of parenting time that was to follow, absent written agreement of the parties.

5. 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.

6. Each party shall provide the other with the minor child's cell phone number and each party may have reasonable contact with the minor child via telephone or video chat during the other party's parenting time and during the minor child's normal waking hours.

7. All parenting time not otherwise provided for in the foregoing schedule is awarded to the defendant, but the plaintiff may have additional parenting time as the parties may agree, in writing.

8. 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.

C. Communication and Our Family Wizard

1. The parties shall only communicate in writing, via 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. Each party shall use his or her best efforts to respond to a message from the other within a reasonable time, but all messages requesting a response shall be replied to within twelve hours.

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

D. Information Sharing


In addition to the obligations already imposed by Section D of the parties' custody agreement and parenting plan (#107.00) incorporated into their marital dissolution judgment, each party shall, upon request, provide the other with all contact information related to the minor child's medical providers, school, extracurricular activities, and the like.

E. Parenting Education Program

On or before August 1, 2024, each party shall complete the statutorily required parenting education program and shall file a certificate of successful completion with the court.

IV. ORDER ON MOTION FOR CONTEMPT, POSTJUDGMENT (#120.00)

Motion #120.00 is DENIED.


Kowalski, J.