

4/17/24
cc: RSD, Gordon, R. Fenner, M. Doull, Leisner

DOCKET NO: HHD-FA-23-5077459 : SUPERIOR COURT
CHRISTOPHER A. GORDON : JUDICIAL DISTRICT OF
VS. : HARTFORD AT
MEGAN M. DOULL : HARTFORD
: APRIL 17, 2024

MEMORANDUM OF DECISION RE: PLAINTIFF'S CUSTODY APPLICATION

(#100.30)

This is a custody application (#100.30) filed by plaintiff-father on April 3, 2023. The defendant lives in Massachusetts. On June 22, 2023, following a hearing and consultation with the Honorable Judge Sandman of Massachusetts, the court determined and ordered that Connecticut had jurisdiction of this matter. The court conducted a trial on February 7, 2024. The parties agreed to a vacation and holiday visitation schedule and by agreement, this was filed with the court on February 28, 2024. This agreement is approved and incorporated by reference into the judgment. The parties were represented by counsel. They both testified. The plaintiff and the defendant's fathers also testified. The court received and considered two exhibits from defendant.

-I-

FINDINGS

"The fact finding function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of the circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties..." (Internal quotation marks omitted.)

Cavolick v. De Simone, 88 Conn App. 638, 646, 870 A.2d 1147, cert. denied, 274 Conn. 906, 876 A.2d 1198 (2005). "The sifting and weighing of evidence is peculiarly the function of the trier [of fact]...The trier is free to accept or reject, in whole or in part, the testimony offered by either

SG Luciano

HARTFORD J.D.

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party... That determination of credibility is a function of the trial court.” (Citations omitted; internal quotation marks omitted.) *Heritage Square, LLC v. Eoanou*, 61 Conn. App. 329, 333, 764 A2d 199 (2001). “Credibility must be assessed... not by reading the cold printed record, but by observing firsthand the witness’ conduct, demeanor and attitude... [I]t is the [fact finder]... [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom.” (Internal quotation marks omitted.) *State v. Lawrence*, 282 Conn. 141, 155, 920 A.2d 236 (2007).

“It is the sole province of the trial court to weigh and interpret the evidence before it and to pass on the credibility of the witnesses... It has the advantage of viewing and assessing the demeanor, attitude and credibility of the witnesses and is therefore better equipped than we to assess the circumstances surrounding the dissolution action.” (Emphasis omitted; internal; quotation marks omitted.) *Zahringer v. Zahringer*, 124 Conn. App. 672, 679-80, 6 A.3d 141 (2010). Thus, in reaching its decision, the court has listened to the witnesses and assessed their credibility. The court has reviewed and considered the exhibits and given them the appropriate weight. The court has applied all applicable law and statutory criteria. The court unseals all financial affidavits and takes judicial notice of the pleadings in the court’s file. Accordingly, the court makes the following findings of fact.

The parties met through mutual friends in the summer of 2019. They became a couple in the fall of 2019. The defendant has lived in Massachusetts mostly all of her life. She resides in a house owned by her father. The minor child, subject of this custody application, was born in MA on April 6, 2021, and his mother’s MA address is noted on his birth certificate. The parties spent a considerable amount of time in Connecticut staying at plaintiff’s parents’ home, his recording

studio and later, at his house. He bought this house in January 2023. He testified that he purchased the house with the intention of it being the families' home. However, the relationship ended in April 2023. The parties have attempted to reconcile many times since April 2023. The defendant may in fact, be pregnant with plaintiff's child at this time. The plaintiff's intention has been for them to have times spent together and with a sense of family for his son. The defendant and the minor child live approximately an hour and a half away. Most of their shared parenting time appears to occur in Connecticut. Plaintiff's parenting time is every weekend from Friday at 5:00 p.m. through Sunday at 5:00 p.m. It appears that the parties communicate and collaborate fairly well regarding parenting time and adjusting it based on their needs. However, they have difficulty agreeing on other parenting issues and have different parenting styles. Both parties believe that the other is a good parent.

The plaintiff is a teacher in Bloomfield, Connecticut. The defendant is a nurse at Baystate Medical Center in Massachusetts. He earns approximately \$51,000/year. His net weekly income is \$833. The defendant's net weekly income is \$694. She testified that she works overtime "every few weeks". She works a swing schedule and her schedule varies.

This is the first and only child for both parties. The minor child, J.G., D.O.B. April 6, 2021, is three years old. He is non-verbal at this time but is otherwise healthy. The parties use some sign language to communicate with him. He had not been diagnosed with any conditions at the time of hearing. He is in a "birth to three" program in Massachusetts and also recently began working with speech therapists in Massachusetts. Both parties trust the others' parenting skills. The parties agree that they should have joint legal custody of their minor son. They each want primary physical custody. The plaintiff requests a flexible shared parenting plan with each parent having no less than alternating weekends from Friday after school until Sunday at 6:00 p.m. The

defendant is requesting that current visitation orders remain in place. The parties have filed an agreement regarding holidays and vacation time which have been approved and made orders of this court.

-II-

ORDERS

“The authority of a court to render custody, visitation and relocation orders is set forth in Connecticut General Statutes Section 46b-56. In making or modifying any order with respect to custody or visitation, the court shall...be guided by the best interests of the child... The best interests of the child include the child’s interests in sustained growth, development, well-being, and continuity and stability of its environment... The trial court is vested with broad discretion in determining what is in the child’s best interests.” (Footnote omitted; internal quotation marks omitted.) *Gina M.G. v. William C.*, 77 Conn. App. 582, 587-88, 823 A.2d 1274 (2003).

The court has carefully reviewed the evidence to determine the best interests of the child in light of the factors set forth in General Statutes Section 46b-56 and the relevant caselaw. Based on the foregoing and the preponderance of the evidence in its entirety, the court enters the following orders based on the child’s best interests.

A. CUSTODY AND PARENTAL ACCESS

1. Custody- The parents shall share joint legal custody of the minor child.

Primary residence shall be with the defendant.
2. Parental Access- Plaintiff shall have parenting time every Friday at 5:00 p.m. until Monday at 6:00 p.m. Holidays and vacation time, pursuant to the parties agreement, shall supersede the regular schedule. The parties shall meet at the Holyoke Mall Crossing, 98 Lower Westfield Rd., Holyoke, MA, to effectuate the

transfer of custody of the minor child.

3. Each parent shall have reasonable telephone contact with the minor child on days that he is in the other's care.
4. Parties shall immediately attend co-parenting counseling with a professional agreeable to both parties. The counselor shall have a location in/near Holyoke, MA, where counseling will be held. The discontinuation of counseling shall be based upon counselor's recommendation. Parties shall share equally in costs of counseling.
5. Parties shall communicate regarding the minor child through Appclose.
6. Each party shall keep the other reasonably informed as to the whereabouts of the child, especially in the event of out of state or foreign travel. If the child is traveling for more than 48 hours with the other party, the traveling party shall provide the other with a written itinerary including, address, dates of travel, telephone numbers and other pertinent information at least 30 days prior to departure.
7. Each party shall use all reasonable efforts to maintain and promote free and unhampered contact between the child and the other party. Neither party shall make any derogatory comments about the other to the minor child or where he may overhear such comments. Each party shall promote the natural development of the child's love and respect for the other.

B. Child Support

1. Based on Child Support Guidelines, the court finds the presumptive support amount payable by plaintiff to defendant is \$155 per week based on plaintiff's weekly net income of \$833 and defendant's weekly net income of \$694. However, the court finds that the application of the Guidelines amount would be inequitable/inappropriate in this matter based on total family support and the parenting plan/schedule. No child support is ordered.
2. The plaintiff shall provide medical and dental insurance for the minor child. Plaintiff to provide defendant with the necessary insurance card(s) immediately and provide her with documentation as to terms of coverage.
3. The parties shall share equally any unreimbursed medical, dental, psychological, etc., expenses for the minor child. This is a deviation from the guidelines which indicates 56% by defendant and 44% by plaintiff. The court finds that application of the Guidelines would be inequitable/inappropriate in this matter based on total family support and the parenting plan/schedule.
4. The parties shall share equally any work-related childcare expenses for the minor child. This is a deviation from the Guidelines which indicates 56% by defendant and 44% by plaintiff. The court finds that application of the Guidelines would be inequitable/inappropriate in this matter based on total family support and the parenting plan/schedule.


5. The parties shall share equally any previously agreed upon, extracurricular activities for the minor child. Agreement shall not be unreasonably withheld.
6. The parties shall alternate claiming the child as a dependent for tax purposes. The Defendant shall claim the child for tax year 2023.
7. The court finds that it is more likely than not that the parties would have provided post-majority educational support if the family had remained intact. The court hereby retains jurisdiction to determine at a later date, if necessary, whether to enter a post-majority educational support order and the terms of the order pursuant to Connecticut General Statutes Section 46b-56c.

C. Other

The defendant claims approximately \$3000 as contribution towards past unpaid medical bills for the minor child. Many of these pre-date this application for custody. The defendant has not provided plaintiff with copies of these bills nor any documentation for the payment requested. She has only made verbal requests for payment. She has failed to provide plaintiff with timely notice and documentation regarding the claimed bills. Defendant's request for plaintiff to provide payment is denied.

SO ORDERED

BY THE COURT,


Carrasquilla, J.