

DOCKET NO: HHD-FA23-5079346-S : SUPERIOR COURT

ISMAEL MEDERO : JUDICIAL DISTRICT OF HARTFORD

v. : AT HARTFORD

STEPHANIE DEMELLO : JUNE 10, 2024

FILED
JUN 10 2024
HARTFORD J.D.

MEMORANDUM OF DECISION RE: PLAINTIFF'S CUSTODY APPLICATION (#100.30) AND AMENDED CUSTODY APPLICATION (#119.00)

This action involves a custody application (#100.30) filed by the Father, Ismael Medero, on August 14, 2023, and an amended custody application (#119.00) filed by the Father on March 7, 2024. The court conducted a trial over three days.¹ The parties were represented by counsel, except for the first day of trial when the Mother was self-represented. The court heard testimony from the parties and a witness (Sarah Norell) and received exhibits as evidence. The court also received and reviewed the financial affidavits, child support guidelines, and proposed orders submitted by the parties.

FINDINGS

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"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. DeSimone*, 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

¹ March 20, 2024, April 12, 2024, and April 18, 2024.

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reject, in whole or in part, the testimony offered by either 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 A.2d 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 parties’ financial affidavits, child support guidelines, and proposed orders. The court has reviewed 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 had an approximately ten (10) year relationship and have two (2) minor children: Sharleice Medero (DOB: 09/26/2014); and Amyah Medero (DOB: 08/02/2016). Connecticut was the home state of the minor children at the time of the filing of the application. The minor children are receiving HUSKY Health Insurance.

The Father ended the parties' relationship in June 2023 due to the Mother's substance abuse issues. Thereafter, the Mother, on or about July 14, 2023, removed the minor children from the family home located in Hartford and began living in a domestic violence shelter in New Haven. In turn, the Father filed an application for emergency ex parte order of custody, which was granted by the court on August 23, 2023. As a result, the Father was awarded temporary legal and physical custody of the minor children, with no visitation granted to the Mother. On September 5, 2023, the court entered interim orders allowing the Mother to have weekend visitation with the minor children and referring the matter to Family Relations for a comprehensive evaluation. However, the comprehensive evaluation was never completed due to the Mother's failure to appear for her scheduled appointments.

Thereafter, the Father filed a second application on October 13, 2023, alleging, amongst other things, that the Mother's visitation with the minor children was unsupervised and taking place in hotels. She had represented that the visits would take place at the shelter and be supervised by its staff. After a contested hearing, the second application was granted by the court on October 13, 2023, with the Father, once again, being awarded temporary legal and physical custody of the minor children, with no visitation granted to the Mother.

On November 9, 2023, the parties entered into a temporary agreement that superseded the ex parte orders of October 13, 2023. The agreement provided that the Father would continue to have sole legal custody and primary residence of the minor children. However, the Mother was to have the following access with the minor children: "Mother shall have supervised access with the children on Saturdays and Sundays, times to be mutually agreed upon by the parties. The third party supervisor will be Sarah Norell or an otherwise mutually agreed upon third party." Also, the Mother was not to have any overnight parenting time. Ms. Norell lives in East Hartford and is a friend of the Mother. The parties have been operating under these temporary orders ever since.

The Mother now has an apartment in New Haven that she shares with her boyfriend. She has been employed at Subway for the last 8 months and was recently promoted to supervisor. Prior to her employment at Subway, the Mother did not work during the parties' relationship. The Father continues to live with the minor children in Hartford. He is employed by the Community Renewal Team. Neither party has access to a motor vehicle, instead relying on Uber.

Since the entry of the temporary orders on November 9, 2023, the Mother has visited with the children only 4 to 6 times, excluding random meetings at the children's bus stop. As such, the Mother's visits with the minor children have not been consistent. There are many conflicting reasons for her less-than-consistent visitation, which include, but are not limited to, Ms. Norell's lack of availability. The Father remains concerned regarding the Mother's struggles with substance abuse, which includes a recent relapse. These concerns are justified given the Mother's history and erratic behavior,

some of which was displayed during trial. The Mother remains on methadone, as well as other prescribed medications. She completed an intensive outpatient program and continues to receive mental health and substance abuse treatment through the "ROOT" program and a therapist. The Mother claims to also undergo random drug testing with negative results.

The Father seeks joint legal custody and primary residence of the minor children, without any increase to access, beyond supervised visitation, being afforded to the Mother. Conversely, the Mother seeks joint legal custody, with increased access to include overnights. However, she agrees that the Father should continue to have primary residence of the minor children. By his amended application, the Father also seeks an order of weekly child support.

The Mother having more consistent parenting time with the minor children is important. However, overnight visitation may be appropriate after more consistent parenting time, as well as the Mother's continued adherence to sobriety and her treatment plan. The court finds that overnight visitation, at this time, would not be in the best interests of the minor children. After additional, consistent supervised time, it would be appropriate to transition to unsupervised time in a public location.

The Mother's financial affidavit indicated that she was working less than full-time hours. Also, the Mother was recently promoted to supervisor, but did not know what, if any, pay increase she may receive as a result. At trial, the Mother, through counsel, stipulated to an imputed weekly wage of \$628.00 (minimum wage), as set forth in the Father's submitted Guidelines, dated March 5, 2024 (#121.00), which results in a net weekly income of \$524.00. Based upon his gross weekly income of \$875.00, the

Father's net weekly income is \$727.00. These figures result in a presumptive current support of \$160.00 per week.

II

ORDERS

"The authority of a court to render custody, visitation and relocation orders is set forth in General Statutes § 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 minor children in light of the factors set forth in General Statutes § 46b-56 and the relevant case law. Based on the foregoing and the preponderance of the evidence as a whole, the court enters the following orders:

A. Custody and Parental Access

1. Custody. The parties shall share joint legal custody of the minor children, Sharleice Medero (DOB: 09/26/2014) and Amyah Medero (DOB: 08/02/2016). The Father shall have primary physical custody of the minor children.
2. Parental Access. Mother shall have continued supervised parenting time/access with the minor children on Saturdays and Sundays, at times to be mutually agreed upon by the parties. The third-party supervisor shall be

Sarah Norell, or an otherwise mutually agreed upon third-party. The Mother shall not leave the minor children alone with the third-party supervisor during her parenting time. Commencing January 1, 2025, Mother's parenting time/access shall transition to and become unsupervised and be held at the Hartford Public Library (Downtown location) or other public location mutually agreed upon by the parties, so long as she remains compliant with the orders set forth in paragraph C.e. below. The aforesaid unsupervised parenting time/access shall be every Saturday for a minimum of four (4) hours, at times to be mutually agreed upon by the parties. The Mother shall not remove the minor children from the State of Connecticut during her parenting time/access.

3. Transportation. The Father shall be responsible to transport the minor children to the locations established for the Mother's parenting time. The Mother shall be responsible for her transportation to the locations.
4. Vacation. Beginning in 2024, the Father shall be entitled to three (3) non-consecutive weeks of vacation time with the minor children. The Father shall notify the Mother in writing of his desired vacation weeks no later than June 15th each year. A week shall be defined as a Sunday through the following Saturday. Said vacation time may interrupt the Mother's parenting time.
5. Affections. Each parent shall use all reasonable efforts to maintain and promote free and unhampered contact, including phone contact, between the minor children and the other parent. Neither parent shall make any derogatory comments about the other to or within the hearing of the minor

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

6. Decisions. Each parent shall have a full and active role in making any decisions in the minor children's lives, including, but not limited to, education, religious training and practices, camps, major medical treatment (including psychological and psychiatric), and dental treatment (including orthodontic). These orders shall not prevent either parent from making a bona fide emergency medical decision for a minor child without first consulting with the other parent, so long as the other parent is informed and consulted as soon as is practicable given the nature of the emergency. The parents shall consult with each other regarding all major decisions in the minor children's lives and shall provide each other with any authorizations requested to allow both parents to obtain medical and educational information about the minor children. Each parent shall notify the other of pending events concerning the minor children's medical conditions, education, extracurricular activities, religious and social life, and shall provide the other with copies of any documents in his or her possession relating to these areas. In reaching any major decisions pertaining to a minor child, the parents shall be guided by the best interests of the child. Neither parent shall unreasonably withhold consent to a proposed major decision pertaining to the minor children.

7. Co-Parenting Application. The parents shall utilize the AppClose co-parenting application (or another mutually agreed upon co-parenting application) to communicate as to all matters concerning their respective parenting time, notifications required by these orders, and related issues, and shall share equally in the expense thereof. Each parent shall respond to any requests made by the other parent within forty-eight (48) hours of such request. Any parent who schedules an educational, therapeutic, or medical appointment for a minor child shall notify the other parent within twenty-four (24) hours of scheduling the appointment, including the provider's name, address, telephone number, and the nature of the appointment. Each parent shall notify the other by telephone of any emergency situation involving a minor child, to be followed, when circumstances reasonably allow, by additional notification via the co-parenting application. The parties shall communicate with one another in a respectful manner, both in person and in writing. The parties shall refrain from emotional outbursts, the use of expletives, insults, and other denigrating or dismissive language in their communication with each other. Under no circumstances shall the parties discuss adult matters with the children, in their presence, or within earshot. The parties shall not involve third-party agencies, such as the police, in coparenting issues, absent an emergency. Each party has a continuing responsibility to provide a current residential, mailing, or contact address and contact phone number to the other parent.

8. Child Support. Based upon the Child Support Guidelines, the court finds the presumptive child support amount payable by the Mother to the Father is \$160 per week. However, the Mother shall pay to the Father weekly child support of \$50, commencing Friday, June 21, 2024. The current support amount does not follow the Guidelines, and constitutes a downward deviation, due to the expense incurred by the Mother to travel to her parenting time/access. It is in the best interests of the minor children to have more consistent parenting time/access with the Mother, and the reduced amount of weekly support should serve to allow or facilitate same. Said child support order is subject to immediate wage withholding. The Mother shall be responsible for completing the appropriate wage withholding forms and providing them to her employer. The Mother is responsible to make all child support payments directly to the Father until the wage withholding order takes effect. The court finds that no arrearage is currently owed by the Mother to the Father.
9. Unreimbursed Expenses. Pursuant to the Child Support Guidelines, the Father shall be responsible for 71% of any unreimbursed medical expenses and work-related childcare expenses. The Mother shall be responsible for 29% of any unreimbursed medical expenses and work-related childcare expenses. These expenses shall be reconciled monthly.
10. Health Insurance. The parties shall provide medical and dental insurance coverage for the minor children by applying for and keeping HUSKY Health Insurance until either party can obtain coverage that is available at a

reasonable cost (5% of net income for a low-income parent or 7.5% of net income for a parent who is not low-income according to the Guidelines). The provisions of General Statutes Section 46b-84(e) are hereby incorporated by reference as if more fully set forth herein.

B. Legal Fees

Each party shall be responsible for the payment of his or her own legal fees.

C. Other


- a. All other previously filed and pending applications and motions are hereby denied.
- b. Unless otherwise specifically set forth herein, these orders are effective immediately.
- c. A trial was held in the above-captioned case at which financial issues were in dispute. Accordingly, the automatic sealing of the parties' sworn statements of income, expenses, assets, and liabilities filed with the court pursuant to Practice Book Section 25-30 is terminated in accordance with Practice Book Section 25-59A(h) with respect to all such sworn statements now on file with the court.
- d. The parties shall complete the parenting education program within sixty (60) days of the date of this order. No post-judgment motions may be filed by either party, excluding emergencies, until a certificate of completion of the program has been filed by the moving party with the court.
- e. The Mother shall continue counseling/therapy with her current provider(s) until no longer therapeutically necessary. The Mother shall continue to

undergo random drug testing as it may be available or required by her providers or programs and share the results of same with the Father. The Mother shall not consume any alcohol, illegal substances, or non-prescribed medications or drugs within 24 hours of her parenting time/access with the minor children.

- f. The court shall retain jurisdiction to enter an educational support order pursuant to General Statutes Section 46b-56c.
- g. Commencing with the tax year 2024, the parties shall each claim a minor child for tax purposes every year. When the oldest is no longer eligible, the parties shall continue to alternate claiming the younger minor child, with the Mother claiming in the odd years and the Father in the even years.

SO ORDERED.

BY THE COURT,


Chadwick, J.