

Docket No. DBD-FA-225018342-S

SUPERIOR COURT

BRANDON DeJESUS

OFFICE OF THE CLERK
SUPERIOR COURT J.D. OF DANBURY

V.

2024 MAY -3 P 100 DANBURY

ALICIA L. CAPOZZIELLO

JUDICIAL DISTRICT
DANBURY May 3, 2024
STATE OF CONNECTICUT

MEMORANDUM OF DECISION

Before the Court are three Post Judgement Motions for Modification, (#118, #129, and #134) and two Post Judgment Motions for Contempt (#117 and #135) The motions for modification seek modification as to custody and visitation/parenting time. The court heard evidence on January 9, 2024. The plaintiff, plaintiff's counsel and defendant all appeared remotely on January 9, 2024.

Defendant's Post-Judgment Motion for Modification, Entry #118

Plaintiff's Post-Judgment Motion for Modification, Entry #129

Defendant's Post-Judgment Motion for Modification, Entry #134

Upon careful consideration of the evidence presented and the pertinent statutory law, in particular General Statutes §§ 46b-56(a), 46b-56(b), 46b-56(c), 46b-56a, 46b-56d and the relevant case law, and having observed the demeanor and assessed the credibility of the witnesses at trial, the court finds and orders as follows. All court findings are made by the preponderance of the evidence standard unless specifically stated otherwise.

The main source of evidence at trial was the testimony of the parties, making their credibility especially critical. "The fact-finding 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 [the appellate courts]." *Lupien v. Lupien*, 192 Conn. 443, 445, 472 A.2d 18 (1984).

"The court has continuing jurisdiction over a custody decree . . . and the noncustodial parent retains the option to move to modify custody based on a substantial change in circumstances affecting the welfare of the children." *Cookson v. Cookson*, 201 Conn. 229, 236 (1986). However, in modifying visitation, there is no requirement that the court find as a

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113.00

threshold matter that a change in circumstances has occurred. *Szczerkowski v. Karmelowicz*, 60 Conn. App. 429, 433 (2000).

The court may not change custody without holding an evidentiary hearing. *Kelly v. Kelly*, 54 Conn. App. 50, 57-58 (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. Hall*, 186 Conn. 118 (1982). "The burden is on the party seeking modification to show the existence of a substantial change in circumstances." *Jaser v. Jaser*, 37 Conn. App. 194, 204 (1995).

A finding of a material change in circumstances must be based on circumstances that have arisen since the previous order of custody. "If such a material change is found, the court may then consider past conduct as it bears on the present character of a parent and the suitability of that parent as custodian of the child." *Simons v. Simons*, 172 Conn. 341, 342-43 (1977).

The court must then make the necessary findings that a change of custody would be in the best interest of the child.

There is one child: Jayden Ryder DeJesus (DOB 04/14/2020). Custody and parenting was addressed by the Judgment (Entry #116) dated July 1, 2022. The parties were granted joint legal custody with shared physical custody. The parents were to have equal, or approximately equal, parenting time with the minor child. Each parent was to have reasonable telephone contact with the child and was entitled to two weeks of non-consecutive summer vacation with the child.

Since the entry of the Judgment (Entry #116), the plaintiff-father relocated to the State of Florida where he has full-time employment and intends to permanently reside. This is a substantial change of circumstances.

There is an existing child support order issued by the State of Florida in Docket No. 2001896302. This court will not enter orders pertaining to child support.

Orders

1. The plaintiff and defendant shall maintain joint legal custody of the minor child.
2. Primary physical custody of the minor child shall be with the defendant-mother.
3. The parties shall confer with each other regarding the health, education, welfare, and religious upbringing of the minor child. Neither party shall make unilateral decisions regarding said topics without prior consultation with the other parent. Major decisions regarding the child's health, growth, and development, course of study, extent of travel

away from home, choice of school, choice of camp, non-emergency medical treatment, lessons, psychotherapy or like treatment, part or full-time employment, purchase or operation of a motor vehicle, participation in hazardous sports or activities, religious upbringing, and significant changes in social environment shall be considered, discussed, and agreed to by both parties.

4. Each parent shall have responsibility for the child during his or her parenting time. When the child is scheduled to be with the mother, she is the on-duty parent and when the child is scheduled to be with the father, he is the on-duty parent. The on-duty parent shall make decisions about the day-to-day care and control of the child. Such day-to-day decisions shall include but not be limited to: the child's social schedule, the child's diet, and disciplining the child. This on-duty decision making is not to be confused with legal custody decision making concerning the health, education, welfare, and religious upbringing of the child. These more significant decisions shall continue to be made jointly by the parties.
5. Absent an emergency, if a parent learns of any illness or accident affecting the child's health, that parent shall promptly notify the other. Each parent shall be entitled to complete, detailed information from any pediatrician, physician, dentist, consultant, or specialist attending to the child. Each parent shall have the right to notify the pediatrician, physician, dentist, consultant, or specialist of his or her desire for copies of any and all written information. Additionally, each parent shall have the right to consult with any medical, dental, health, psychiatric, psychological, or any other mental health or medical professionals concerning the child. If either parent brings the minor child for treatment at an Emergency Department, Emergency Room, Hospital, Urgent Care Center or similar facility without the knowledge and consent of the other parent, the treating parent shall be solely responsible for all out of pocket and/or unreimbursed medical bills associated with the visit.
6. Each parent shall be entitled to complete information and notices from any school attended by the child, or any program that the child attends and shall be entitled to be furnished with copies of all reports or records with respect to the minor child's education. Each parent shall have the right to notify the school of his or her desire for copies of all written

information and notices. Additionally, each parent shall have the right to consult with any teachers, counselors or administrators concerning the child.

7. The plaintiff shall have parenting time with the minor child every summer for two consecutive weeks between July 1st and August 15th. The plaintiff shall propose the two consecutive summer weeks to the defendant by June 1st. If the plaintiff's proposed two weeks are not agreeable to the defendant, the parties shall work together in good faith to identify two consecutive weeks. The plaintiff shall inform the defendant, in writing, where the child will be during his summer parenting time no later than June 1st. During the plaintiff's summer visitation time, the plaintiff shall make the minor child available for daily phone calls or video calls with the defendant between 7:00 pm and 7:30 pm or such other time as the parties agree. The plaintiff shall respond to the defendant's phone calls and text messages as soon as possible when he has the minor child.
8. The plaintiff is entitled to two additional non-consecutive weeks of visitation throughout the course of the year. The parties shall work together in good faith to identify these two weeks.
9. The plaintiff is responsible for all travel costs incurred to get the minor child to and from his visitation. The child must be accompanied by a parent or a third party acceptable to both parents at all times when traveling.
10. The plaintiff is entitled to flexible visitation with the minor child in Connecticut during the remainder of the year. This visitation shall be determined in consultation with the defendant. Overnight visitations are permitted.
11. Prior to any travel with the child outside of the United States, the traveling parent shall provide the other parent with the itinerary for the trip, (including airline flights, if any, hotel addresses and phone contact information) at least ninety (90) days in advance and seek the express written consent of the non-traveling parent. Prior to any travel with the child which is within the United States and outside the state of Connecticut, for a period that exceeds twenty-four (24) hours, the traveling parent shall provide the other parent with at least twenty-four (24) hours' notice of the trip and shall provide contact information to the other parent, including an address, unless the child will be traveling by plane in which case the traveling Parent shall provide thirty (30) days' notice in writing. The traveling parent shall facilitate contact between the child and the non-traveling parent, if requested by the non-

traveling parent or by the child as outlined in this Judgment. Notwithstanding the foregoing, neither parent shall take the child out of the country without both parents' prior written consent; consent shall not be unreasonably withheld.

12. The plaintiff shall be entitled to phone or video calls when the minor child is not in his custody every Monday, Wednesday and Friday evening between 7:00 pm and 7:30 pm or such other time as the parties agree. The defendant shall make all reasonable efforts to make the minor child available for and have access to these calls.
13. The defendant shall provide to the plaintiff a one paragraph update as to the child each week via email. The update shall include information relating to the minor child's education, development and non-emergency health issues.
14. The parties shall use e-mail, text message, and telephone as a primary means of communication between each other. Each parent shall respond to an e-mail, text message, or a phone message from the other parent within 24 hours of receipt of same.
15. Each parent shall refrain from doing anything to estrange the child from the other parent. Neither parent will disparage the other to the child, or in a way the child would readily ascertain disparaging comments or information. Neither parent shall act in such a way as to hamper the free and natural development of love and respect between the parent and the child. Additionally, each parent shall utilize his or her best efforts not to allow third parties to disparage the other parent in the presence of the child.
16. The plaintiff shall be entitled to claim the minor child as a tax exemption/credit for even years and the defendant shall be entitled to claim the minor child as a tax exemption/credit for odd years.

Defendant's Post-Judgment Motion for Contempt, Entry #117

A postjudgment contempt proceeding requires that the contempt complaint and summons be served upon the alleged contemnor. *Allred v. Allred*, 132 Conn. App. 430, 436 (2011), cert. denied, 303 Conn. 926 (2012).

The court may not hold a party in contempt on a basis not alleged in the opposing party's motion for contempt. *Chang v. Chang*, 197 Conn. App. 733, 748 (2020). "[T]he purpose of the [motion] is to put the [party alleged to be in contempt] on notice of the claims made, to limit the issues to be decided, and to prevent surprise." (Internal quotation marks omitted.) *Id.*, 751; see also *Leonova v. Leonov*, 201 Conn. App. 285, 316 (2020).

There is no proof of service showing that the summons was served upon the alleged contemnor. In addition, it is not clear in the motion as to what the basis is for the alleged contempt.

The motion is denied.

Defendant's Post-Judgment Motion for Contempt, Entry #135

The underlying motion for contempt was filed on 07/21/2023 (Entry #135). Proof of service is in the file (Entry #135.03) showing service made upon the plaintiff on 08/08/23.

The Custody/Visitation Judgment (Entry #116) provides that each parent is entitled to two non-consecutive weeks of vacation each summer. The defendant claims in her motion for contempt that the plaintiff violated the Judgment in the summer of 2023 by having custody/visitation of the minor child for longer than two weeks.


The court must find that the defendant violated the order by clear and convincing evidence. Brody v. Brody, 315 Conn. 300, 316 (2015).

"Noncompliance alone will not support a judgment of contempt." Prial v. Prial, 67 Conn. App. 7 (2001). "[A] court may not find a person in contempt without considering the circumstances surrounding the violation to determine whether such violation was wilful." Wilson v. Wilson, 38 Conn. App. 263, 275-76 (1995).

There was testimony as to a written agreement and verbal discussions between the parties extending the plaintiff-father's summer visitation.

The motion is denied.

BY THE COURT



Fox, J.

Decision entered in accordance with the foregoing
on May 3, 2024. Parties, attorney of record, and
Reporter of judicial decisions notified on May 3, 2024.
Kim Smee, Assistant Clerk
KSL 5/3/2024