SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1127-21

S.R.,

Plaintiff-Respondent,

v.

L.N., JR.,

Defendant-Appellant.

Argued March 22, 2023 – Decided April 24, 2023

Before Judges Enright and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Cumberland County, Docket No. FD-06-0106-14.

L.N., Jr., appellant, argued the cause pro se.

Christine C. Cockerill argued the cause for respondent (Cockerill, Craig & Moore, LLC, attorneys; Christine C. Cockerill, on the brief).

PER CURIAM

Defendant L.N., Jr.[1] appeals from a December 1, 2021[2] order denying his motion to reconsider a September 23, 2021 order. The September 23 order compelled defendant to exercise supervised parenting time and engage in therapy to repair his relationship with the parties' son, A.N. (Andrew). We affirm.

I.

The parties were never married. Plaintiff S.R. gave birth to Andrew in January 2013. Pursuant to an August 31, 2015 order, the parties agreed to share joint legal custody of Andrew, with plaintiff designated as the parent of primary residence (PPR) and defendant named the parent of alternate residence (PAR). The order also provided defendant with parenting time three overnights per week.

In April 2021, plaintiff moved to suspend defendant's parenting time, based on allegations he physically and emotionally abused Andrew. She claimed defendant would hit Andrew when he did not do well at sporting events and that Andrew was scared to be with his father. Defendant opposed the motion

[1] We use initials for the parties and a pseudonym for their son to protect their privacy. R. 1:38-3(d)(3).

[2] The December 1 order was filed on that date but executed by the trial court on November 29, 2021.

and filed a cross-motion, seeking to reduce his child support obligations and modify the existing parenting time arrangements so he would be named Andrew's PPR.

On June 25, 2021, the trial court heard argument on the parties' cross-applications. During the hearing, plaintiff's attorney represented that plaintiff had arranged for Andrew to engage in weekly virtual counseling sessions to address the child's fear of defendant. Counsel also stated Andrew's counselor contacted the Division of Child Protection and Permanency (Division) to report defendant's alleged "inappropriate punishment" of Andrew.

To determine the name of the Division caseworker investigating the parties' case, the judge asked the parties to verify their addresses. After noting he "grew up" in an area near the street where plaintiff currently lived, the judge contacted a Division liaison by phone and asked about the status of any investigation. The liaison advised the judge the case was "in the system" but "fairly new," so no findings had been made.

Based on this information, the judge told the parties he would postpone the matter to afford the Division time to "provide the court with a report as to what's going on" and to "learn[] what the [child's] counselor ha[d] to say." The judge further ordered defendant to cooperate with Andrew's counselor if the

counselor wished to speak with him. Although the judge concluded there was "a factual dispute . . . as to whether or not [defendant's] parenting style include[d] excessive punishment," the judge temporarily suspended defendant's parenting time so he could "figure out what's going on and . . . create a strategy . . . with . . . professional assistance" to reunite defendant with Andrew. The judge also assured defendant, "[t]he goal . . . [was] to advance [his] parental interests."

After deciding any remaining issues should be held in abeyance, the judge entered a conforming order on June 28, 2021. Defendant neither appealed from nor timely sought reconsideration of this order.

On August 6, 2021, the parties returned to court without a report from the Division regarding its pending investigation. Following argument, the judge lifted the suspension on defendant's parenting time, allowed him to have supervised parenting time "a minimum of two days per week" and permitted defendant to attend Andrew's extracurricular activities, so long as the activities were in a public setting. Additionally, the judge ordered defendant to engage in reunification therapy with Andrew. Further, the judge required plaintiff's stepmother or a Division supervisor to supervise defendant's parenting time, and he ordered a Division representative to appear at the next hearing.

The judge entered a conforming order on August 13, 2021. Defendant neither formally appealed from nor moved for reconsideration of this order.

On September 2, 2021, the Division sent defendant a letter, informing him the allegations against him were deemed unfounded and the Division would not be providing further services to Andrew or defendant's family. When the parties and their respective counsel appeared in court on September 22 for a review hearing, a Division liaison also reported that the allegations of physical abuse against defendant were "unfounded." The liaison explained "there [were] no marks or bruises on the child" when the allegations were investigated, but defendant "was counseled about corporal punishment, and not to . . . use it, . . . [and] to be cautious about what he may do in dealing with . . . punishment." Additionally, the liaison stated Division staff "always reiterate the fact that corporal punishment is not against the law, however it's best to refrain from it."

Also, during the September 22 hearing, plaintiff's counsel told the judge reunification therapy had not occurred because the counseling entity chosen by the parties "was not able to accommodate it." Because the parties did not agree on whether defendant's parenting time should remain supervised, the judge elicited further input from their counsel about the parenting time dispute before stating, "[w]e know . . . dad engaged in behavior which upset the child. [The

Division] has led me to understand that occurred. . . . We have a child who has [been] somewhat alienated from his father, who causes [Andrew] to shudder when he sees him." The judge also noted he "tried to . . . enter an order that would create a therapeutic environment . . . to bring these people together" and the goal was to "find a way to get this child comfortable with his father in the future." Given that no counseling had occurred to date, the judge asked defendant's attorney "[w]hat kind of counselor" she thought defendant could access. Defendant's attorney proposed the name of a counseling facility and plaintiff's attorney confirmed plaintiff had no objection to the suggestion.

Accordingly, on September 23, 2021, the judge entered an order directing counsel for the parties to "look[] into family counseling services for [defendant] and the minor child, make an appointment, and notify the [c]ourt[]" about the arrangements made. The judge also directed the continuation of defendant's supervised parenting time, but he allowed defendant's sister to share in supervising responsibilities. Further, the judge ordered any "[o]utstanding relief shall be addressed at the next [c]ourt hearing."

On October 27, 2021, defendant filed an untimely motion for

reconsideration of the September 23 order.[3] The judge heard argument on the motion on November 29, 2021, despite finding the application was filed "significantly out of time," and two days later, he entered an order, denying the motion. On December 3, 2021, defendant moved to stay the December 1 order and to "revert back to the custody agreement" under the 2015 order. The following week, he filed a notice of appeal from the December 1 order. After the judge rejected defendant's request for a stay, we also denied defendant's application for a stay of the December 1 order pending appeal.

II.

On appeal defendant argues the trial court erred by: (1) not recusing itself; (2) failing to reinstate his parenting time after the results from the Division's investigation were provided; (3) failing to uphold due process; and (4) ordering therapy even though this was "against [his] religious freedoms as protected by the First Amendment of the Constitution and there is a complete lack of merit to suggest therapy." We are not persuaded.

[3] Under Rule 4:49-2, "a motion for . . . reconsideration seeking to alter . . . a judgment or order shall be served not later than [twenty] days after service of the judgment or order upon all parties."

Our review of a Family Part order is limited. See Cesare v. Cesare, 154 N.J. 394, 411 (1998). Generally, a trial court's findings "are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). Accordingly, "[w]e will reverse only if we find the trial judge clearly abused his or her discretion." Clark v. Clark, 429 N.J. Super. 61, 72 (App. Div. 2012). An abuse of discretion occurs when a trial court's decision "rested on an impermissible basis, considered irrelevant or inappropriate factors, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." Elrom v. Elrom, 439 N.J. Super. 424, 434 (App. Div. 2015) (internal quotation marks and citations omitted).

Similarly, we review a trial court's denial of a motion for reconsideration for an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (citing Kornbleuth v. Westover, 241 N.J. 289, 301 (2020)). However, we apply "[a] more exacting standard [in] our review of the trial court's legal conclusions," which we review de novo. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016).

Policy considerations also guide our review. "In custody cases, it is well settled that the court's primary consideration is the best interests of the children."

Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007) (citing Kinsella v. Kinsella, 150 N.J. 276, 317 (1997)). This best interest standard "protects the 'safety, happiness, physical, mental and moral welfare of the child.'" Beck v. Beck, 86 N.J. 480, 497 (1981) (quoting Fantony v. Fantony, 21 N.J. 525, 536 (1956)). Therefore, a Family Part judge has a parens patriae responsibility to consider the welfare of a child in resolving custody and parenting time disputes. See Fawzy v. Fawzy, 199 N.J. 456, 474-75 (2009). A decision concerning custody and parenting time is left to the sound discretion of the Family Part judge. See Randazzo v. Randazzo, 184 N.J. 101, 113 (2005).

While parents have a constitutionally protected, fundamental interest in raising their children without State interference, see Santosky v. Kramer, 455 U.S. 745, 753 (1982), "[t]he right of parents to the care and custody of their children is not absolute," V.C. v. M.J.B., 163 N.J. 200, 218 (2000). Accordingly, "a parent's custody and [parenting] time rights may be restricted, or even terminated, where the relation of one parent . . . with the child cause[s] emotional or physical harm to the child." Wilke v. Culp, 196 N.J. Super. 487, 496 (App. Div. 1984).

Family Part judges have "wide latitude to fashion creative remedies in . . . custody cases." Beck, 86 N.J. at 485; see e.g., E.S. v. H.A., 451 N.J. Super. 374,

388 (App. Div. 2017) ("[A] trial court may order . . . a parent to engage in effective counseling or therapy." (citation omitted)). Indeed, a Family Part judge may "make such order . . . as to the care, custody, . . . and maintenance of the child[]. . . as the circumstances of the parties and the nature of the case shall render fit, reasonable and just." N.J.S.A. 2A:34-23.

Guided by these principles, we decline to disturb the December 1, 2021 order denying defendant's reconsideration motion. As previously noted, a trial court's decision to deny a motion for reconsideration will be upheld on appeal unless the motion court's decision was an abuse of discretion. Granata v. Broderick, 446 N.J. Super. 449, 468 (App. Div. 2016). Reconsideration is appropriate in two circumstances: (1) when the court's decision is "based upon a palpably incorrect or irrational basis," or (2) when "it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

Here, defendant's merits brief provides no explanation as to how the judge mistakenly exercised his discretion in denying defendant's reconsideration motion. Therefore, any challenge to the December 1 order is deemed waived. See Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2023)

("It is, of course, clear that an issue not briefed is deemed waived."); see also Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011) (claims not addressed in merits brief deemed abandoned).

Next, we note we generally do not consider judgments or orders that are not designated in the notice of appeal. See R. 2:5-1(f)(2)(ii) (stating that a notice of appeal "shall . . . designate the judgment, decision, action or rule, or part thereof, appealed from"). Here, defendant identified only the December 1 order in his notice of appeal. But "an appeal solely . . . from the denial of reconsideration may be sufficient for an appellate review of the merits of the case, particularly where those issues are raised in the [case information statement (CIS)]." Fusco v. Bd. of Educ. of Newark, 349 N.J. Super. 455, 461 (App. Div. 2002).

Because defendant's CIS and merits brief address issues resulting from the entry of the August 13 and September 23, 2021 orders, such as recusal, religious freedom, due process, court-ordered therapy and supervised parenting time, and considering plaintiff responded to these issues in her merits brief, we briefly discuss them and the propriety of the August 13 and September 23 orders, mindful plaintiff "has not argued against our ruling on [their] validity." W.H.

Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 459 (App. Div. 2008).

In defendant's first and fourth arguments, he newly contends it was error for the judge not to recuse himself after the judge mentioned he was familiar with the area where plaintiff currently lived. Defendant also argues for the first time on appeal that the judge deprived him of his religious freedoms by ordering him to participate in therapy.

Appellate review is not limitless. "The jurisdiction of appellate courts rightly is bounded by the proofs and objections critically explored on the record before the trial court by the parties themselves." State v. Robinson, 200 N.J. 1, 19 (2009); see also Zaman v. Felton, 219 N.J. 199, 226-27 (2014). Thus, we need not address defendant's newly raised contentions because they were not previously raised in the trial court, are not jurisdictional in nature, and do not substantially implicate public interest. See Selective Ins. Co. of Am. v. Rothman, 208 N.J. 580, 586 (2012); Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973); Pressler & Verniero, Current N.J. Court Rules, cmt. 3 on R. 2:6-2 (2023). However, for the sake of completeness, we briefly comment on defendant's recusal and freedom of religion arguments.

First, defendant argues "[b]ias was shown" in plaintiff"s favor because the

judge made "comments about her housing development, which shows a connection," and the judge "made other comments regarding personal beliefs related to [defendant's] case." We disagree.

"A motion for recusal must be made to the judge sought to be disqualified." Magill v. Casel, 238 N.J. Super. 57, 63 (App. Div. 1990) ("[s]ubmission of a recusal motion to the challenged judge is not only required by statute and rule; it is also sound practice"); R. 1:12-2; N.J.S.A. 2A:15-49. Although a party may seek a judge's disqualification under Rule 1:12-2, recusal may also occur on the court's own motion when there is any "reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." R. 1:12-1(g). But it is essential for the moving party to demonstrate "prejudice or potential bias" to succeed on a motion for judicial qualification. State v. Flowers, 109 N.J. Super. 309, 312 (App. Div. 1970). Importantly, bias cannot be inferred from adverse rulings against a party. Strahan v. Strahan, 402 N.J. Super. 298, 318 (App. Div. 2008). Also, "[a] judge ordinarily is not disqualifiable because of his own life experiences." Homann v. Torchinsky, 296 N.J. Super. 326, 339 (App. Div. 1997) (citation omitted).

Additionally, a judge's withdrawal from a case "upon a mere suggestion"

of disqualification is improper. Panitch v. Panitch, 339 N.J. Super. 63, 66-67 (App. Div. 2001) (citation omitted). A judge should not step aside from a case "unless the alleged cause of recusal is known by [the judge] to exist or is shown to be true in fact." Hundred E. Credit Corp. v. Eric Schuster Corp., 212 N.J. Super. 350, 358 (App. Div. 1986). Governed by these standards and mindful of the full record, we are satisfied the judge had no reason to recuse himself.

Turning to defendant's freedom of religion argument, he states, "I do not, and have never, believed that therapy is needed due to my religious beliefs. Proverbs 3:5[,] it is better to take refuge in the Lord than to trust in man."

"Freedom of religion and the right of parents to the care and training of their children are to be accorded the highest possible respect in our basic scheme. But 'neither rights of religion nor rights of parenthood are beyond limitation.'" State v. Perricone, 37 N.J. 463, 472 (1962) (quoting Prince v. Massachusetts, 321 U.S. 158, 166 (1944)). And "in a court of equity, a child's best interests and general welfare must always come first." Hoefers v. Jones, 288 N.J. Super. 590, 608 (Ch. Div. 1994).

Although we do not ignore the fact defendant failed to assert any religious freedom claims in the various proceedings leading up to the entry of the December 1 order, even when he was represented by counsel, considering the

principles we have discussed, we are persuaded the judge properly elevated Andrew's best interests over the interests of his parents. Therefore, we perceive no basis to second-guess the judge's decision to have defendant engage in therapy and exercise supervised parenting time until defendant's relationship with Andrew was repaired. Moreover, based on the record, we cannot find the judge abused his discretion in concluding these protective measures were necessary to safeguard Andrew's happiness and wellbeing, due to the parties' ongoing parenting disputes.

For the same reasons, we also disagree with defendant that the judge should have lifted restrictions against defendant's parenting time once the Division determined the allegations of abuse against him were unfounded. As already discussed, although the Division ended its investigation in September 2021, concluding allegations of abuse against defendant were unfounded, a Division liaison reported defendant "was counseled about corporal punishment, and not to . . . use it, . . . [and] to be cautious about what he may do in dealing with . . . punishment." Based on this information, the arguments of counsel, and the judge's familiarity with the matter, the judge found defendant "engaged in behavior which upset the child" so that it was necessary to "find a way to get [Andrew] comfortable with his father in the future." Thus, the judge told

defendant, "[s]omething happened that has impacted your son's comfort with you, sir, and I want to get everybody past that so he becomes comfortable with you again. . . . So, let's start . . . unsupervised time when it's appropriate."

The judge also sought input from the parties' attorneys about the choice of a counselor before directing counsel to "look[] into family counseling services for [defendant] and the minor child." Further, in balancing the child's needs against the parties' interests, the judge permitted defendant's sister to share equally in supervising defendant's parenting time. Considering the judge's finding that Andrew remained fearful of defendant, we discern no error in the judge's exercise of his parens patriae authority in ordering defendant to engage in counseling and exercise supervised parenting time pending further review of the matter.

Finally, we need not extensively address defendant's due process arguments. "In general terms, '[d]ue process requires adequate notice and a fair opportunity to be heard.'" N.J. Div. of Child Prot. & Permanency v. K.S., 445 N.J. Super. 384, 390 (App. Div. 2016) (quoting N.J. Div. of Youth & Fam. Servs. v. M.Y.J.P., 360 N.J. Super. 426, 464 (App. Div. 2003)). Due process "is a flexible concept and calls for such procedural protections as the . . . situation demands." M.Y.J.P., 360 N.J. Super. at 464. Here, the parties were afforded

notice and had an opportunity to be heard on multiple occasions, either directly or through counsel, when they appeared for hearings before the trial court. Accordingly, we are persuaded defendant's due process rights were appropriately protected.

To the extent we have not addressed defendant's remaining arguments, they do not warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirm.