2015 WL 279345
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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

Deborah Ann WEISS, Plaintiff–Respondent,
v.
Eric S. WEISS, Defendant–Appellant.

Submitted Jan. 13, 2015.
|
Decided Jan. 23, 2015.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FM–20–803–08.

Attorneys and Law Firms

Eric S. Weiss, appellant pro se.

LaRocca Hornik Rosen Greenberg & Blaha, PC, attorneys for respondent (Frank J. LaRocca and Matthew Gerber, on the brief).

Before Judges FISHER, NUGENT and ACCURSO.

Opinion

PER CURIAM.

***1** Defendant Eric S. Weiss appeals from aspects of two post-judgment orders entered by the Family Part on May 22 and July 8, 2013 in favor of his ex-wife, plaintiff Deborah Ann Weiss. Specifically, defendant appeals from the provisions of those orders denying his motions to require their son to attend tutoring at Sylvan Learning Center and ordering instead that: plaintiff as parent of primary residence shall make any and all final decisions as to the boy's tutoring; have the boy attend summer school; set aside the parties' property settlement agreement; and have the court recuse itself. He also appeals from an award to plaintiff of $4500 in counsel fees.

The parties were divorced on April 1, 2009 following a six and a half-year marriage. They have two young children, one experiencing some learning disabilities. In the five years following their divorce, the trial court heard over fifty-two motions and orders to show cause. The Family judge noted that the volume of those filings provided her ample perspective to judge that defendant filed the bulk of the application before her in bad faith, and that he was "needlessly coming to court without appropriately trying to work out issues with the plaintiff." Defendant raises the following issues on appeal.

POINT I: THE COURT ERRED IN DENYING DEFENDANT'S RIGHT TO PARTICIPATE IN THE EDUCATIONAL DECISION FOR THEIR SPECIAL NEEDS SON DESPITE HAVING JOINT CUSTODY AND THE CUSTODY AGREEMENT SPECIFICALLY CALLS FOR JOINT DECISION MAKING ON EDUCATION.

A. The Court erred in deciding what type of education [their] special needs son should be receiving as a "day to day decision PPR" analysis and not a "best interest analysis" on the issue.

B. Given the undisputed remarkable results that "Sylvan" produced, the Court erred in not ordering the [S]ylvan education to continue. In the alternative as there may be material facts in dispute, the Court erred in not ordering a Plenary hearing to determine what type of education is the best interest given the needs of [their] child.

C. The Court erred in not ordering [their] son to continue with the Wilson Method which is designed to teach reading to dyslexic children that "Sylvan Learning Center" was provided giving the recommendations for a child with Dyslexia.

POINT 2: THE COURT ERRED IN MODIFYING [THE] CUSTODY AGREEMENT IN ORDERING PLAINTIFF TO MAKE ALL EDUCATIONAL DECISIONS REGARDING [THEIR] SPECIAL NEEDS SON IN CONTRADICTION TO THE RECOMMENDATIONS OF THE BEST INTEREST EVALUATOR DR. MONTGOMERY.

POINT 3: THE COURT ABUSED ITS DISCRETION IN GRANTING AN ATTORNEY FEE AWARD.

A. The Court's true intent was to further limit Defendants access to the Courts to enforce his rights.

The Court performed no analysis on the extra cost associated with any alleged bad faith of the parties.

B. Plaintiff's unclean hands forbids an attorney fee award.

C. Plaintiff lacked standing to ask for attorney fees as she has not been paying attorney fees.

***2** POINT 4: THE COURT ERRED IN ALLOWING PLAINTIFF TO REMOVE [THEIR] SON FROM SUMMER SCHOOL.

A. The Court erred in not ordering Plaintiff to have their special needs son attend summer school.

B. The Court erred in not sanctioning Plaintiff for removing [their] child from summer school without discussion or notification.

C. The Court erred in ordering [defendant does] not have the right to make summer school decision for [their] child.

POINT 5: THE COURT ERRED IN REFUSING TO SET ASIDE AN UNJUST PROPERTY SETTLEMENT AGREEMENT WHICH WAS A PRODUCT OF COERCION, FRAUD, AND MUTUAL MISTAKE.

POINT 6: THE COURT ERRED IN NOT RECUSING HERSELF DUE TO CLEARLY DISPARATE AND BIASED TREATMENT AGAINST DEFENDANT.

Our review of the record convinces us that none of these arguments is of sufficient merit to warrant discussion in a written opinion. *R.* 2:11–3(e)(1)(E). Judge Dupuis carefully explained her reasons for each item of relief she either granted or denied.

With regard to defendant's contention that the court should have convened a plenary hearing, the judge noted on the record that "[o]ne of the criteria for joint legal custody is the ability of the parties to interact with one another." Although expressing her "dismay[ ] by how the interaction is going so poorly on so many levels," and acknowledging that the parties were "incrementally" edging toward the necessity of a plenary hearing, the judge was not convinced that such was warranted at the time she considered the motions.

Defendant has given us no reason to second-guess that determination. *See Hand v. Hand,* 391 *N.J.Super.* 102, 111–12, 917 A.2d 269 (App.Div.2007). We affirm the orders under review substantially for the reasons expressed by Judge Dupuis in her rulings from the bench on May 22 and July 8, 2013 and in her written statement of reasons accompanying the order entered on May 22, 2013.

Affirmed.

All Citations

Not Reported in A.3d, 2015 WL 279345