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Judgment Affirmed in Part, Reversed in Part by [Battistotti v. Suzanne A.](#), Conn.App., May 15, 2018

2016 WL 8669893

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Stamford–Norwalk at Stamford.

Marco BATTISTOTTI

v.

Suzanne AARONSON

FA144027535

|

November 18, 2016

CORRECTED¹ MEMORANDUM OF DECISION

[Tindill, J.](#)

*1 This is a custody action instituted by the Plaintiff on June 11, 2014. The Defendant was served on June 19, 2014 at her usual place of abode. The Court has jurisdiction to enter orders in this action. The Plaintiff and Defendant are living apart. The Plaintiff is the father and the Defendant is the mother of Leonard Michael Aaronson, born June 11, 2014; acknowledgement of paternity was executed and signed in court on May 14, 2015. Neither party nor the minor child has been the recipient of state or municipal assistance. Trial took place over the course of ten days between May 2015 and May 2016 (May 13, May 14, May 15, June 17, June 19, December 10, December 11, and December 17, 2015, and May 4 and May 10, 2016). The Plaintiff was *pro se* throughout the trial;² the Defendant was represented by counsel. The minor child's court-appointed guardian *ad litem*³ was present for each day of the trial and testified regarding her ward's best interests. A total of sixty-six exhibits were introduced—fifty-seven by the parties and nine by the Court. In addition to the guardian *ad litem*, a witness and both parties testified. The Court took judicial notice of relevant portions of the court file.

The Court has carefully considered all of the testimony, thoroughly reviewed each piece of evidence, and has taken into account the argument of the Plaintiff and counsel for the Defendant. The Court has also reviewed and considered relevant case law, rules, and statutory provisions, including the criteria contained in [C.G.S. §§ 46b–56, 46b–56a, 46b–56b, 46b–56c, and 46b–56d](#), and was guided by the best interests of the child based on the credible evidence in order to make its orders and findings.

FINDINGS

1. It is in the minor child's best interest to have a healthy relationship with both the Plaintiff father and the Defendant mother.

2a. The Defendant mother has rebutted the presumption of joint legal custody of [C.G.S. § 46b–56a](#) by a preponderance of the evidence.

b. Joint legal custody is not in the minor child's best interests as the parties have, since his birth, consistently demonstrated an inability and unwillingness to effectively co-parent.

c. The high level of conflict and mistrust between the parents and sheer volume and frequency of charges, allegations, and complaints by both parents to various local, state, and federal authorities has the potential to do irreparable harm to the minor child.

3. At the time trial in the instant matter concluded, the minor child was 23 months old. His temperament and developmental needs as a toddler are such that it is in his best interests to live with his mother and spend significant, quality time with his father.

*2 4. The Defendant mother, more so than the Plaintiff father, demonstrates the capacity and disposition to understand and meet the needs of the minor child. For example, the Defendant hired a registered nurse to assist her in caring for her newborn son. Further, in spite of her failed romantic relationship with the Plaintiff, the Defendant made repeated attempts to provide the Plaintiff with appropriate parenting time. The Plaintiff, on the other hand, has exhibited a considerable lack of knowledge and understanding of the needs of his son as a newborn, infant, and toddler. While his parenting skills improved with supervision, the evidence reveals that his singular focus on what he perceives to be the failings of the Defendant appears to diminish his capacity for recognizing and prioritizing the developmental needs of his son. See Plaintiff's Exhibits 2, 8, 16, 22, 31, 32, and 33; see Defendant's Exhibits A, F, R, S, and T.

5. The minor child cannot articulate an informed preference for a custody arrangement and parenting schedule at his age. There is no evidence that he should not spend time with the Plaintiff father.

6. The Plaintiff father seeks joint legal and shared physical custody; the Defendant mother proposes sole legal custody with a parenting schedule for Plaintiff. The Defendant proposes certain restrictions regarding transportation and location of the Plaintiff's parenting time that she believes are essential to address the child's safety.

7a. The child has bonded significantly with the Defendant mother and his maternal grandparents; he has no siblings.

b. The Plaintiff father has endeavored to establish a bond and healthy relationship with his son. Their relationship continues to improve as the Plaintiff exercises more visitation and the child grows. The Plaintiff's efforts have been hindered for several reasons: his poor relationship with the child's maternal grandparents and caretakers hired by the Defendant, his arrest on August 22, 2014 for Disorderly Conduct which prohibited contact with his infant son for nearly four months, the vitriolic relationship the parties have cultivated, and his own failure to take advantage of parenting time offered by the Defendant or facilitated by the guardian *ad litem*.

8a. The Defendant mother is the parent most willing and able to facilitate and encourage a healthy relationship between the Plaintiff and the child. See Plaintiff's Exhibits 2, 5, 6, and 14; see Defendant's Exhibits R, S, and T.

b. Both parents demonstrate a respect for court orders.

9. The Plaintiff engages in manipulation and coercive behavior in an effort to involve the child in the parents' dispute. See Plaintiff's Exhibits 24, 31, 32, and 33; see Defendant's Exhibits F, Q, and R. The Defendant too has engaged in behavior that indirectly affects the child by jeopardizing the Plaintiff's immigration status and legal relationships. See, for example, Plaintiff's Exhibits 3 and 7; Defendant's Exhibit N.

10a. Both parents have the ability to be actively involved in the life of the child.

b. The Plaintiff father's ability to be actively involved in person could be affected at some point in the future by the result of immigration proceedings currently pending regarding his status in the United States.

11. The child has adjusted well to his home, daycare, and community environments.

12a. The child has lived in a stable and nurturing environment with the Defendant mother and his maternal grandparents since his birth. It is in his best interests to maintain continuity in that environment.

b. Both parents currently offer stable home environments. The Plaintiff rented and renovated an apartment in proximity to the Defendant's and child's residence to be able to spend time with him. The stability of the Plaintiff's Greenwich, Connecticut apartment, however, could be impacted in the future by the result of the Plaintiff's immigration proceedings.

13a. Both parents appear to be in good physical health. The Plaintiff offered testimony about some significant health issues which required treatment and surgery prior to the child's birth. There is no evidence of a physical disability of either parent.⁴

*3 b. There is no evidence of [mental disability](#) of either parent. The Court denied the Plaintiff's *pendente lite* motion (# 165)⁵ for a psychological evaluation of the Defendant.

14. The minor child is the son of an American mother and an Italian father. He has been exposed to the Latino culture and language by a caretaker hired by the Defendant.

15. There has been an impact on the child as a result of the Plaintiff's arrest for a family violence crime (as defined by [C.G.S. § 53a-182](#)) in that he did not have contact with his father for a significant amount of time. This negatively affected the child and Plaintiff's ability to bond during a formative period in the child's infancy.

16. The minor child has not been abused or neglected, as defined respectively in [C.G.S. § 46b-120\(6\)](#) and (7).

17. Neither party, as of May 10, 2016, had participated in the parenting education program. The six-hour program currently required [C.G.S. § 46b-69b](#) is insufficient to address the co-parenting needs of the parties with respect to the child.

18. The Court does not have sufficient evidence to make the requisite findings pursuant to [C.G.S. § 46b-56c](#) regarding an educational support order.

19. The Plaintiff has a minimum net annual earning capacity of \$174,356.00.

20. The Defendant has met her burden of proving by clear and convincing evidence that the Plaintiff has violated a clear court order regarding payment of unreimbursed, uninsured medical expenses. The Plaintiff is found to be in willful contempt. The Court finds that the Plaintiff owes the Defendant at total amount of \$27,210.24 in unreimbursed medical expenses and work-related childcare expenses for the period of June 11, 2014 through May 10, 2016.

21. Both the hourly fee charged and amount of time spent on behalf of the minor child by Attorney Jacquelyn Conlon, guardian *ad litem* from January 1 through April 30, 2016 are reasonable.

TRIAL ORDERS

1. Custody

- a. The Defendant mother shall have sole legal custody of the minor child.
- b. Primary physical custody of the child shall be with the Defendant mother. The Defendant mother shall have final decision-making authority over educational, medical, and religious matters concerning the child.

2. Parenting

- a. The Plaintiff father shall have *no less than* (in other words, a minimum of 17 hours) the following parenting time, beginning September 12, 2016:

Week 1 (week of September 12, 2016):

Monday and Wednesday—3:45 p.m. to 6:00 p.m.; Saturday—9:00 a.m. to 6:00 p.m.;

Sunday—9:00 a.m. to 12:30 p.m.

Week 2: Monday and Wednesday—3:45 p.m. to 6:00 p.m.

Holidays/Special Occasions (Easter, Thanksgiving, Christmas, the child's birthday, and the Plaintiff's birthday): 9:00 a.m. to 12:30 p.m. in even-numbered years; 2:30 to 6:00 p.m. in odd-numbered years. The holiday/special occasion parenting time supersedes the Plaintiff's regular parenting time.

Other days/times for the Plaintiff's parenting time must be by written (electronic mail or text communication will suffice) mutual agreement of the parties.

- *4** b. The Plaintiff's parenting time shall occur in Greenwich, Connecticut. The Plaintiff shall not remove the child from Greenwich nor the state of Connecticut.

- c. The Plaintiff shall not drive the minor child anywhere, for any reason, without a valid driver's license from Connecticut or another state and an order of the Court. The Plaintiff shall give the Defendant 24-hour advance, written (electronic mail or text communication will suffice) notice of his intention to transport the child in any moving vehicle, public or private, within Greenwich, Connecticut. Said advance, written notice shall include confirmation that the vehicle is properly licensed, registered, and insured.

- d. The Defendant or her designee shall transport the child to and from the Plaintiff's apartment at 30 Lincoln Avenue, Greenwich, CT. The Defendant shall be 100% responsible for all costs associated with transportation of the child to and from the Plaintiff's Greenwich residence for his parenting time.

3. Guardian *ad litem*

- a. Attorney Jacquelyn Conlon shall continue to serve as guardian *ad litem* for the minor child until further order of the Court.
- b. The parties shall work to resolve any dispute or conflict regarding the minor child by mediation first with the guardian *ad litem* prior to filing a motion with the Court. The cost and fees associated with mediation of disputes with the guardian

ad litem shall be split equally by the parents. In the event that a motion is filed and litigated after unsuccessful resolution of the dispute or issue regarding the minor child, the party who prevails in court shall be reimbursed his/her 50% for the guardian *ad litem* fees.

c. Fees and costs for the guardian *ad litem*'s services, if any, pursuant to # 3b above and # 4b below are to be submitted on a monthly basis by affidavit to the Court and the parties.

d. The guardian *ad litem*'s motion for fees (# 164) is granted. The parties shall pay the \$49,617.40 in outstanding guardian *ad litem* fees as follows: \$45,890.95 by the Plaintiff, \$3,726.45 by the Defendant. Said fees shall either be paid in full by each party in their respective amounts no later than October 14, 2016 or the parties shall have a written, agreed-upon installment plan with Conlon McGlynn, LLC for full payment no later than October 14, 2016. Any additional fees owed for services between December 8, 2014 and January 1, 2016 may be placed on a short calendar docket for a hearing at the request of the guardian *ad litem*.

4. Co-parenting Counselor/Coordinator

a. In lieu of the parenting education course required by C.G.S. § 46b-69b, the parties are ordered to work with a co-parenting counselor/coordinator selected by the guardian *ad litem* for a minimum of six months.

b. The guardian *ad litem* shall offer the parties no less than three options for said co-parenting counselor/coordinator in writing no later than October 1, 2016. The options presented for the co-parenting, counselor/coordinator shall be based on the guardian's own independent research and work on behalf of her ward in the instant case since her appointment. The parties shall notify the guardian *ad litem*, in writing, no later than one week from receipt of the options of their choice of the co-parenting counselor/coordinators options. In the event the parties do not agree on one of the co-parenting counselor/coordinator options, or do not agree in writing within one week (without good cause as determined by the guardian *ad litem*), the guardian *ad litem* shall select and notify the co-parenting counselor/coordinator of her choice.

*5 c. The parties shall schedule their first appointment/session with the co-parenting counselor/coordinator within one week of their notification of the selection.

d. The topics of counseling/coordination of the co-parenting sessions shall include, but not be limited to, effective communication between parents living apart, information on the developmental stages of children, adjustment of children to parental separation, dispute resolution and conflict management, guidelines for visitation, stress reduction in children and cooperative parenting. Length and frequency of the co-parenting sessions with the parties shall be determined by counselor/coordinator.

e. Fees for co-parenting sessions shall be paid for equally (50/50) by the parties.

5. Notice of Issues Concerning the Child

The parties shall continue to inform the each other of the child's progress and activities each week via electronic mail. Such weekly communications shall focus on the child's activities, care, developmental milestones, education, and medical need/concerns. The Defendant mother shall include in her weekly communications, as well as in co-parenting sessions with the counselor/coordinator pursuant to # 4(a) above, information and decisions (if any) related to the child's care, education, medical needs/concerns, and religious issues.

6. Child Support

a. In accordance with the Connecticut Child Support Guidelines (Court Exhibit A, attached*), the Plaintiff father is ordered to pay \$253.00/week as child support to the Defendant mother beginning September 12, 2016. Said support shall be paid by wire transfer from the Plaintiff's account to the Defendant's, the same manner in which *pendente lite* child support was paid.

b. The Plaintiff is ordered to pay 49% of any work-related child care and 49% unreimbursed/uninsured medical, dental, therapeutic, optical, medical device, pharmaceutical, surgical, psychological, psychiatric, and orthodontic expenses; the Defendant is ordered to pay 51% of said expenses. The percentage allocation is in accordance with the Connecticut Child Support Guidelines. The Defendant shall provide receipts and/or invoices for said expenses to the Plaintiff on a monthly basis via electronic mail. The Plaintiff shall pay his 51% in the same manner as he pays child support (See order # 6a above) no later than two weeks from receipt of said receipts and/or invoices.

c. The Defendant's motions for contempt (# 159 filed *pro se* on December 14, 2014 and # 177 filed by counsel for the Defendant on March 20, 2015) are granted.

(i.) The Defendant's request for attorneys fees for motion # 159 is denied. The Defendant requests attorneys fees for motion # 177; however, no affidavit of fees incurred for the preparation and prosecution of the motion was submitted. The Court, therefore, declines to make such an award.

(ii.) The Plaintiff shall pay the Defendant \$849.48 no later than November 30, 2016. Said amount represents the Plaintiff's 20% of unreimbursed medical expenses and work-related childcare he owed pursuant to the Court's (Shay, J.) July 14, 2014 order through March 20, 2015. The Plaintiff shall pay the remaining \$26,360.76⁶ arrearage of unreimbursed medical expenses and work-related childcare he owes the Defendant in three installments of \$8,786.92 each on December 30, 2016, March 3, 2017, and April 28, 2017. Arrearage installment payments shall be by wire transfer to the Defendant's account used to receive child support. See order # 6a above.

*6 d. Counsel for the Defendant shall submit to the Court and provide to the Plaintiff a calculation and accounting, along with documentation, of the child support arrearage claimed from June 11, 2014 by September 30, 2016.

7. Educational Support

The Court lacks jurisdiction over the entry of an educational support order pursuant to [C.G.S. § 46b-56c](#).

8. Health Insurance

a. The Defendant mother shall continue to provide and maintain health insurance for the minor child.

b. The provisions of [C.G.S. § 46b-84\(e\)](#) are hereby incorporated by reference.

9. The parties and guardian *ad litem* shall report to the Court on August 31, 2017 regarding 1) whether the parenting plan ordered herein remains in the minor child's best interests, 2) the status of any pending immigration proceedings against the Plaintiff, 3) whether the Plaintiff has secured a valid U.S. driver's license, 4) co-parenting counseling/coordination sessions.

All Citations

Not Reported in A.3d, 2016 WL 8669893

Footnotes

- 1 Inadvertent references to Plaintiff instead of Defendant and vice versa, the minor child referred to in the plural, omitted findings, and various grammatical and calculation errors are corrected herein. The Court also included a mechanism for the Plaintiff father's payment of unreimbursed medical expenses and work-related child care, corrected the order regarding the Defendant's motions for contempt, and vacated the educational support order pursuant to [C.G.S. § 46b-56c](#).
- 2 The Plaintiff was represented by Schoonmaker, George and Blomberg, P.C. when he instituted the instant action. On December 1, 2014, the Plaintiff filed an appearance in addition to the Schoonmaker firm. On February 27, 2015, he filed a *pro se* appearance in lieu of his counsel pursuant to a stipulation resolving a motion to withdraw. See # 157, # 157.01, and # 162.
- 3 Attorney Jacquelyn Conlon, of Conlon & McGlynn, LLC, was appointed by agreement of the parties on September 22, 2014. See # 135.
- 4 The Defendant did not litigate her *pendente lite* motion (# 125) for drug and alcohol testing of the Plaintiff.
- 5 Plaintiff filed three separate *pendente lite* motions for a psychological evaluation of the Defendant; one filed at the inception of the instant action when he was represented by counsel (# 118), and two *pro se* filings (# 152 and # 165). The first two such motions were not litigated.
- 6 Arrearage June 11, 2014 through May 10, 2016 of \$27,210.24 less \$849.48 arrearage payment ordered pursuant to order # 6c(ii).

*Editors Note: The referenced Court Exhibit A, pg. 6, par. # 6a, has not been reproduced.