

DOCKET NO: HH DFA166071228S

SUPERIOR COURT

SAKON, FRANCELIA
V.
SAKON, JOHN AJUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

9/8/2021

ORDERORDER REGARDING:
06/15/2021 651.00 MOTION FOR MISTRIAL

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

The defendant's principle argument for a mistrial is rooted in whether this court has jurisdiction. Specifically, the defendant claims that judgment has entered in this case and therefore, there are no pending matters to decide aside from his motions for contempt. The defendant further claims that a mistrial is appropriate because the Practice Book procedures have not been followed in so far as neither party has filed a request for leave to modify the judgment or a motion for sole custody.

The defendant has elevated form over substance in his motion for mistrial. The record reflects that for the past three and a half years, the issue of custody, regardless of the parties' marriage being dissolved by a judgment, is still an issue for the court to decide. On April 3, 2018, the parties entered into a bifurcated stipulated agreement (#214) that was accepted and made an order by the court, Prestley, J. In said agreement, the parties' marriage was dissolved. Of significance is that the parties, in this agreement, "acknowledge that as of the date hereof, they have been unable to resolve the issues related to custody, access and care of their minor child, Odin Sakon (age 6). The issues shall be resolved by subsequent proceedings after completion of the custody evaluation being conducted by Dr. Smith."

It is disingenuous for the defendant to now claim that this court has no jurisdiction because there are no pending motions related to custody for this court to act on. The parties have been clearly operating under the understanding that there were no final orders entered as to the custody of the child and that a contested hearing would be scheduled following the completion of Dr. Smith's evaluation. The defendant's pleadings since April 3, 2018, reflect a complete acknowledgement and understanding that the issue of custody would be decided at a future trial date. The custody issue was previously scheduled for trial on March 16 through March 20, 2020 at the Regional Family Trial Docket and on February 23, 2021 and March 4 and 5, 2021 for which both trial dates were continued. The parties are in the middle of a custody trial with this court. The defendant's subpoenas filed to the court reflect his understanding of the outstanding custody matters for this court to decide.

Finally, the timing of the plaintiff's motion for relocation and the testimony that the court heard on this issue during the custody trial is not a reason under the law to declare a mistrial. Dr. Smith's custody evaluation was filed to the court on December 6, 2019. The evaluation included a relocation analysis. The defendant has been aware of the plaintiff's desire to relocate for at least sixteen months before the custody trial commenced. A pleading filed before trial and the defendant's disagreement as to the form of the pleading does not rise to the level of the court issuing a mistrial. The defendant has not been harmed by the court hearing evidence on this issue. The custody hearing has not concluded, and more so, the defendant is in the middle of his cross-examination of Dr. Smith.

Based on the foregoing, the defendant's motion for mistrial is DENIED. The plaintiff's objection (entry #687) is sustained.

Judicial Notice (JDNO) was sent regarding this order.

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Judge: TAMMY NGUYEN-ODOWD

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