IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

C.N.,

Appellant,

v. Case No. 5D19-473

I.G.C.,

Appellee.

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Opinion filed March 6, 2020

Appeal from the Circuit Court
for Orange County,
Patricia A. Doherty, Judge.

Eric Tung, of Jones Day, Los Angeles, CA, Ana Maria Cristina Perez Soto, of Jones Day, Miami, C. Kevin Marshall, of Jones Day, Washington, DC, and Alexandra Drobnick, of Domestic Violence Legal Empowerment & Appeals Project, Washington, DC, for Appellant.

Judith M. Mercier, Kristin Royal and Daniel Kavanaugh, of Holland & Knight, LLP, Orlando, Amicus Curiae, for The Leadership Council for Child Abuse and Interpersonal Violence, and Child USA in Support of Appellant.

Wade P. Luther, of The Law Offices of Wade P. Luther, P.A., Orlando, for Appellee.

SASSO, J.

Mother appeals the trial court's timesharing modification order and raises several issues, none of which warrant reversal. As we will explain, the trial court's determination that modification was warranted in light of a substantial, material, and permanent change in circumstances is supported by competent substantial evidence. In addition, because section 61.13(3), Florida Statutes (2018) does not authorize or require the trial court to provide steps for reestablishing timesharing, the trial court's order was not legally deficient for failure to clearly delineate such contingencies.

PROCEDURAL AND FACTUAL HISTORY

The parties, who were never married, had a child in December 2012. After Father filed a paternity action, the parties reached an agreement as to timesharing, which was memorialized in a June 19, 2014 final judgment. For three years following entry of the final judgment, Mother had primary residential custody and majority timesharing, with the child spending approximately sixty percent of overnights with Mother and forty percent with Father. Thereafter, the parties began to experience difficulties co-parenting.

Throughout 2016 and into 2017, Mother began exhibiting behavior, characterized by Father as irrational and delusional, and by the trial court as unfounded and paranoid, regarding the safety of the child. Mother argued her behavior was justified by her suspicion that the child was being abused by Father and the child's daycare. The record further reflects that after multiple sources determined Mother's accusations of abuse were unfounded, Mother continued to react unreasonably to normal events. Ultimately, Mother unilaterally stopped Father's visitation and filed an emergency motion to suspend Father's visitation. In response, Father petitioned to modify the original order to reduce Mother's timesharing.

After multiple hearings and temporary orders, and the appointment of both a Guardian ad Litem ("GAL") and forensic evaluators for both parties and the child, the trial court conducted a two-day trial. The testimony adduced at trial demonstrated, inter alia, that Mother placed an audio recording device in the child's doll and sent the doll with the child during timesharing, tracked the child using iPhone tracking software during timesharing, stripped and photographed the child in a public place after a visit, surveilled and filmed the child's daycare from the street, and refused to accept the results of completed investigations. In addition, the child's GAL, following an extensive and thorough evaluation, concluded that there was no evidence to substantiate Mother's abuse allegations. Characterizing Mother's behavior as "unhealthy" and "problematic," the GAL recommended that Father be awarded majority timesharing and sole parental responsibility. The GAL further explained her belief that Mother "currently has the inability to effectively co-parent with Father."

The trial court issued a modification order switching primary residential custody to Father and reducing Mother's custodial time by almost two-thirds. The trial court's order also attached best interests findings pursuant to section 61.13(3). The trial court found there had been "a substantial, material and permanent change in circumstances since the last entry of a Final Judgment in this matter, and that it [was] in the best interests of the minor child to grant modification." In support thereof, the trial court noted first that Mother's demonstrated escalating hostility, unfounded suspicions, and paranoia, if continued, would cause significant parental alienation between the child and Father. The trial court further found that Mother's increasing level of suspicion and her unsupported and unfounded fears regarding Father and the child's daycare caused her to act in a

manner detrimental to the child and rendered her unable to effectively co-parent. The trial court found Mother's hostility toward Father increased so that it negatively impacted the best interests of the minor child.

STANDARD OF REVIEW

This Court reviews a trial court's modification judgment for an abuse of discretion. *Freeman v. Freeman*, 615 So. 2d 225, 226 (Fla. 5th DCA 1993) (citing *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980)). In doing so, we accept the trial court's findings of fact if they are supported by competent substantial evidence. *Scott v. Scott*, 109 So. 3d 804, 804 (Fla. 5th DCA 2012).

ANALYSIS

Modification of parenting plans, including timesharing schedules, is governed by section 61.13(3), Florida Statutes, which requires "a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child" before a parenting plan is modified. § 61.13(3), Fla. Stat. (2018). The statute also delineates factors the trial court must consider in determining best interests. *Id.* This requirement establishes "a presumption in favor of the reasonableness of the original decree" and recognizes the res judicata effect of the final judgment. *Korkmaz v. Korkmaz*, 200 So. 3d 263, 265 (Fla. 1st DCA 2016) (quoting *Wade v. Hirshman*, 903 So. 2d 928, 933-34 (Fla. 2005)).

Mother argues that the trial court based its modification order only on *potential* alienation, and therefore the order is insufficient as a matter of law because such a finding is irreconcilable with the statutory requirement of a "change" in circumstances. While we do not dispute Mother's characterization of the statutory requirement, we disagree that

the order was based only on speculation that harm to the child may occur. To the contrary, the trial court's order found that Mother's behavior "caused her" to act in a manner detrimental to the child and "rendered her unable" to co-parent effectively.[1] The trial court further found that the best interests of the minor child had been "negatively impacted." Thus, in addition to the trial court's stated concerns that Mother's behavior may cause alienation, it separately found that detriment to the child *had occurred*. The trial court explained that such detriment constituted a substantial, material, and unanticipated change in circumstances such that modification was in the child's best interests. And, the trial court's determinations are supported by competent substantial evidence. It makes no difference that the record may include competent substantial evidence that would support some other result. *Dusseau v. Metro. Dade Cty. Bd. of Cty. Comm'rs*, 794 So. 2d 1270, 1275 (Fla. 2001).

As a separate basis for reversal, Mother argues that even if modification was warranted, the trial court's order is still legally flawed. In support thereof, Mother argues that the trial court's order lacks any "concrete steps" or benchmarks that Mother could work toward to regain her lost timesharing, does not specify "what proof" the court would need from Mother, and does not say when Mother may petition the court to reestablish her timesharing rights.

Mother's argument fails to recognize, however, that section 61.13(3) provides a clear standard applicable to modifying parenting plans, including timesharing schedules, that neither authorizes nor requires the trial court to set forth the specific steps necessary

[1] Notably too, the trial court's determinations demonstrated a direct adverse impact on the child, and thus this case is about much more than merely the inability to co-parent.

to reestablish timesharing. *See Dukes v. Griffin*, 230 So. 3d 155 (Fla. 1st DCA 2017) (holding that outside of satisfying requirements of section 61.13, courts may not set forth another way, or other steps, for parents to modify unsatisfactory timesharing schedules); *Solomon v. Solomon*, 251 So. 3d 244, 248 (Fla. 3d DCA 2018) (Lagoa, J., concurring) ("While it is certainly understandable that a parent would want to know the specific steps necessary to restore time-sharing with his or her child . . . section 61.13(3) does not mandate the inclusion of such steps in a trial court's judgment or order."). Courts may not circumvent that standard by setting forth extra-statutory contingencies for modification. *See Cont'l Heritage Ins. Co. v. State*, 981 So. 2d 583, 585 (Fla. 1st DCA 2008) (noting that courts should not read additional requirements into statute); *see also Holly v. Auld*, 450 So. 2d 217 (Fla. 1984) (noting courts of this state are without power to construe statute in way that would "extend, modify, or limit" statute's express terms because doing so would be abrogation of legislative power).

We recognize that Mother's argument finds support in cases from other district courts, including *Perez v. Fay*, 160 So. 3d 459 (Fla. 2d DCA 2015) and *Ross v. Botha*, 867 So. 2d 567, 571 (Fla. 4th DCA 2004).[2] Collectively, those cases stand for the proposition that final judgments modifying timesharing must include the specific steps necessary to reestablish timesharing, and the trial court's failure to include such steps renders the judgment legally deficient. But we cannot endorse the displacement of a

[2] Mother also cites *Davis v. Lopez–Davis*, 162 So. 3d 19, 21 (Fla. 4th DCA 2014) (addressing lack of findings in final judgment) and *Grigsby v. Grigsby*, 39 So. 3d 453, 457 (Fla. 2d DCA 2010) (addressing lack of findings in temporary order).

legislatively supplied standard with a judicially created process. We therefore certify conflict with *Ross v. Botha*, 867 So. 2d 567, 571 (Fla. 4th DCA 2004) and similar cases.[3]

Because we conclude that the trial court is neither required nor authorized to impose requirements beyond the explicit provisions of section 61.13(3), we reject Mother's argument that the trial court's order here is legally insufficient for failing to set forth with more particularity the steps she must take in order to regain timesharing. Instead, as the trial court explained, the parties in this case may seek additional timesharing in the future upon the filing of a motion for modification based on the applicable statutory requirements.

CONCLUSION

In sum, the trial court's decision to modify the parties' parenting plan was based on the correct legal standard and supported by competent substantial evidence. Further, the trial court's order is not rendered legally insufficient for failing to provide Mother with specific steps to regain timesharing, and we certify conflict with cases holding otherwise. As a result, we affirm.

AFFIRMED; CONFLICT CERTIFIED.

ORFINGER and EDWARDS, JJ., concur.

[3] *T.D. v. K.F.*, 283 So. 3d 943, 947 (Fla. 2d DCA 2019); *Solomon v. Solomon*, 251 So. 3d 244, 246 (Fla. 3d DCA 2018).