DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MELINDA D. HASSENPLUG,

Appellant,

v.

BRIAN HASSENPLUG,

Appellee.

No. 2D21-2729

June 29, 2022

Appeal from the Circuit Court for Pasco County; Joshua Riba, Judge.

K. Dean Kantaras II of K. Dean Kantaras, P.A., Palm Harbor, for Appellant.

Lindsey M. French of George & French, Dunedin, for Appellee.

LaROSE, Judge.

Melinda D. Hassenplug (Former Wife) appeals the final judgment dissolving her marriage to Brian Hassenplug (Former Husband). We have jurisdiction. *See* Fla. R. App. P. 9.030(b)(1)(A). Former Wife focuses on the trial court's decision to end the parties'

minor child's homeschooling and direct that she attend public school. Our record lacks competent substantial evidence to support this ruling.

Laudably, the trial court sought to minimize conflict and facilitate communication between the parties. Unfortunately, our record is bereft of evidence addressing our "paramount concern": the child's best interests. *Sabatini v. Wigh*, 98 So. 3d 244, 246 (Fla. 1st DCA 2012) ("The paramount concern in family law cases involving a child is the best interests of the child."). We reverse those portions of the final judgment pertaining to the child's schooling.[1] We do not decide what manner of education is in the child's best interests. The trial court, in the first instance, must make that assessment on remand. *See Duncan v. Brickman*, 233 So. 3d 477, 482 (Fla. 2d DCA 2017) ("For more than a decade, these parents have been in litigation over how to rear their child, and so it

[1] Issues I and II in this appeal are inextricably intertwined. In reversing and remanding for further consideration the portion of the final judgment requiring the child to attend public school (Issue II), we note that this necessitates reconsideration of the portion of the final judgment listing Former Husband as the minor child's school designation (Issue I). Consequently, we evaluate Issues I and II together. We affirm the final judgment in all other respects without further comment.

troubles us to leave them in this state of affairs. But we, as an appellate court, cannot fashion a parenting plan for A.L.D.").

Background

After seven years of marriage, Former Wife petitioned to dissolve the marriage. The parties have an eight-year-old daughter diagnosed with autism.

A Marital Settlement Agreement resolved most of the parties' legal issues. The trial court entered a partial final judgment and scheduled a July 2020 final hearing to address "[t]he remaining issues of child support, parental responsibility[,] and time-share [sic]." Before the final hearing, the parties agreed upon child support, shared parental responsibility, and equal time-sharing.

And so, the final hearing dealt with the outstanding issue of the child's schooling. *See D.M.J. v. A.J.T.*, 190 So. 3d 1129, 1132 (Fla. 2d DCA 2016) ("Where the final judgment reserves jurisdiction to determine school enrollment and the parties are unable to agree on the minor child's school, they are required to obtain a court order on the issue. 'In such a circumstance, the court must resolve the impasse by determining the best interests of the child.' " (first citing and then quoting *Dickson v. Dickson*, 169 So. 3d 287, 289–90

(Fla. 5th DCA 2015))); *e.g.*, *Otto-Jones v. Jones*, 69 So. 3d 986, 987 (Fla. 2d DCA 2011) (reversing an order requiring the parties' child to spend half the school year in private school and half in public school because "there was no evidence that this rotating school schedule [wa]s in the best interest of the child"); *Norris v. Norris*, 926 So. 2d 485, 488 (Fla. 2d DCA 2006) (reversing an order requiring placement of the parties' children in public school because the record did not support the contention that the public school was in the children's best interests).

Former Wife homeschooled the child since the child was four years old. Former Wife requested that the trial court continue home schooling for at least the next school year, after which she proposed enrolling the child in "a private school that can accommodate her . . . special . . . and unique needs." At the final hearing, Former Wife observed that the new school year was scheduled to start in a matter of weeks. Consequently, in Former Wife's view, continued home schooling would be in the child's best interests because it would provide the child with continuity and stability.

Former Husband is a commercial pilot. Former Wife has a credentialed and extensive background in the Pinellas County School District as an administrator, teacher, and trainer.

By all accounts, the child flourished in her homeschool setting. The Guardian ad Litem (GAL) described the child as "learning at or above expectations for her cognitive functioning." Former Wife and other witnesses extolled the benefits of keeping the child's routine unchanged. They also recommended that the child's educational setting allow for individualized attention and minimal distractions.[2]

At the conclusion of the final hearing, the trial court praised the parties for sharing time equally with the child and participating in her upbringing. However, the trial court recognized that the parties had communication problems. Seemingly, Former Wife refused to share information openly and honestly, thereby impeding fruitful co-parenting. The trial court reasoned that Former Wife's

[2] Former Wife testified that several days a week the child attended homeschooling cooperatives with other children outside of the home. The trial court received evidence that the typical public-school classroom might include up to two dozen other students; the homeschooling cooperatives have, at most, fourteen other students per classroom.

continued homeschooling would hamper Former Husband's ability to participate fully in their child's education.

To "level the playing field" and allow Former Husband to share an equal role in the child's education, the trial court ordered that Former Husband's address be utilized for school designation purposes.[3] Specifically, the trial court stated as follows: "[F]or school designation I will say that the school designation will be Odessa because that's where the father is zoned for, and I have to list a parent here, so I'm going to list the party as Mr. Hassenplug . . . ."

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[3] The trial court extolled the "very good job" the GAL had done in the case. In her testimony, the GAL described the "difficult and strained" communication between the parties:

> There are times when [Former Husband] wants to have a discussion about something and get more information, and [Former Wife] is very elusive or evasive about it. . . . There is kind of a power struggle going on here, and so if these parties are following a school mandate, [Former Husband] knows when he can go to the school, [Former Husband] knows how to participate in the school, but he gets to participate independent of [Former Wife]. . . . I just really think that the distress would be lessened because the discord between these parents would be substantially reduced if they were on a level playing field instead of this power and control thing.

The trial court also ordered the child to attend Odessa Elementary School for the 2021-2022 school year starting in August ("I'm saying that she's going to Odessa next year."), concluding that the public school offered the necessary special needs education programs. Unfortunately, those programs would not be put in place until the school completed its evaluation, at least sixty days after the child's enrollment.

The trial court apparently disregarded or minimized testimony from several witnesses who explained the special education needs of an autistic child; namely, that children with autism have a heightened need for stability and a corresponding necessity for reduced distractions, and an abrupt transition into a populated public school would have a negative impact on the child's educational, emotional, and mental welfare.

Analysis

"A trial court's decision regarding school designation is reviewed for abuse of discretion." *Johnson v. Johnson*, 313 So. 3d 651, 655 (Fla. 4th DCA 2021) (citing *Bruce v. Bruce*, 243 So. 3d 461, 464 (Fla. 5th DCA 2018)). This standard of review affords the trial court considerable leeway, because

> [i]f reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion. The discretionary ruling of the trial [court] should be disturbed only when [its] decision fails to satisfy this test of reasonableness.

Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980).

This deferential standard of review still requires that a trial court's decision be guided by what is in the child's best interests. *See* § 61.13(2)(c), Fla. Stat. (2020) ("The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child . . . ."); (3) ("For purposes of establishing . . . parental responsibility and creating . . . a parenting plan, . . . the best interest of the child shall be the primary consideration."); *e.g.*, *Scaringe v. Herrick*, 711 So. 2d 204, 205 (Fla. 2d DCA 1998) (Blue, J., specially concurring) (emphasizing the importance of the trial court's "fact-finding and decisional responsibilities" in determining the best interests of the child); *cf. Bainbridge v. Pratt*, 68 So. 3d 310, 313 (Fla. 1st DCA 2011) ("Although there is no statutory requirement that a trial court engage in a discussion as to each of the [section 61.13(3)(a), Florida Statutes (2010),] factors, a

discussion of the relevant factors can be helpful in determining whether the trial court's judgment is supported by competent, substantial evidence.").

Indeed, the child's best interests are the polestar guiding the trial court's decisions in these matters. *Snyder v. Snyder*, 685 So. 2d 1320, 1321 (Fla. 2d DCA 1996) (citing *Burgess v. Burgess*, 347 So. 2d 1078, 1079 (Fla. 1st DCA 1977)); *e.g., Andrews v. Andrews*, 624 So. 2d 391, 392 (Fla. 2d DCA 1993) ("Decisions affecting child custody require a careful consideration of the best interests of the child." (citing § 61.13, Fla. Stat. (1991))). And so, section 61.13(2)(b)3.b., Florida Statutes (2020), requiring that a parenting plan contain a designation of residence for school registration, "must [also] be made based on 'the best interests of the child.' " *Bruce*, 243 So. 3d at 464 (quoting *Schwieterman v. Schwieterman*, 114 So. 3d 984, 987 (Fla. 5th DCA 2012)).

The trial court's examination of the best interests of the child requires consideration of a nonexhaustive list of factors affecting the child's welfare and interests. § 61.13(3). Although the trial court need not address each factor independently, at a minimum, it must find that its school designation is in the best interests of the

child. This finding must be stated on the record or contained in the final judgment. *Clark v. Clark*, 825 So. 2d 1016, 1017 (Fla. 1st DCA 2002). Although the final judgment recites such a finding, our scouring of the record finds nary any support. We cannot discern whether and why public schooling is in the child's best interests.

The child appears to be flourishing in her current environment. However, the trial court's school designation seems premised on diminishing the parties' discord which, the trial court reasoned, would allow Former Husband to participate more fully in the child's education. We are certain that the trial court sought to tamp down the parties' apparent power struggle. This is a praiseworthy goal. Yet, we search, without success, for how this goal advances this young child's best interests.[4] *See* § 61.13(3) ("Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family . . . .").

[4] Nothing in our record indicates that Former Wife's behavior toward Former Husband harmed the child or impeded the child's developmental or educational progress.

The trial court's effort to broker peace and foster communication between the parties does not inform us as to the polestar consideration-the child's best interests. And the trial court may not shirk its responsibility to the child in making this determination. *Cf. Lane v. Lane*, 599 So. 2d 218, 219 (Fla. 4th DCA 1992) ("It is undisputed, and should be indisputable, that a trial court's responsibility to the child cannot be abdicated to any parent, any expert. That heavy responsibility mandates that a court is not bound by any agreement between parents, nor by the opinions of any expert or group of experts."). On this record, we are not convinced that the trial court adequately considered the child's best interests in making its school designation decision.

Unfortunately, conflict between the parties is all too customary in dissolution cases. The trial court, a stranger to the family, is placed in the unenviable position of making potentially life-changing decisions affecting the child. In the discharge of our duty, however, we must ensure that the record reflects the trial court's paramount decisional consideration, the child's best interests. *See, e.g.*, *Bazan v. Gambone*, 924 So. 2d 952, 957 (Fla. 3d DCA 2006) ("[O]ther than the tense relationship which exists between the

parents, there is nothing in the record, by allegation or evidence, that would tend to establish that the child's best interests justify changing custody. Paramount in this consideration are the best interests of the child, rather than the best interests of any particular parent or relative." (citations omitted)). The trial court's ruling lacks the necessary evidentiary support sufficient to satisfy our concerns that such a change is in the child's best interests.

Conclusion

We reverse the portions of the final judgment concerning the child's schooling and remand for further proceedings consistent with this opinion. Again, we do not opine upon what educational setting meets the child's best interests. In all other respects, we affirm.

Affirmed in part, reversed in part, and remanded.

CASANUEVA and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.