NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2938-09T2

LISSETTE DELGADO,

Plaintiff-Appellant,

v.

JOHN FISHER,

Defendant-Respondent.

Argued October 27, 2010 - Decided November 19, 2010

Before Judges Sapp-Peterson and Simonelli.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FD-13-469-06.

Amy Sara Cores argued the cause for appellant (Hoffman, Schreiber & Cores, attorneys; Ms. Cores, on the brief).

Edward P. Fradkin argued the cause for respondent.

PER CURIAM

Plaintiff Lissette Delgado appeals from that part of the January 15, 2010 Family Part order requiring the parties to equally share in driving responsibilities to effectuate defendant's parenting time and denying her request for counsel fees. We affirm.

Plaintiff and defendant John Fisher are not married. They have a daughter, born in 2005. A January 24, 2008 order established defendant's parenting time and required the parties to equally share in driving responsibilities for that purpose. An October 29, 2008 consent order modified defendant's parenting time to every other weekend, from Friday at 7 p.m. to Sunday at 4 p.m., and on alternating Thursdays from 6 p.m. to 8 p.m. The order also modified the parties' transportation obligations as follows:

> 3. So long as the plaintiff resides in Belmar, New Jersey, and the defendant resides in Forked River, New Jersey, the defendant shall pick up the minor child at the plaintiff's residence at 7 P.M. on Friday. On Sundays, the plaintiff shall pick up the minor child at the defendant's residence at 4 P.M. On Thursdays, the defendant shall pick up the minor child at the plaintiff's residence at 6 P.M., so the defendant may take her to dinner and the defendant shall return the minor child to the plaintiff's residence no later than 8 P.M.
>
> 4. If either party moves from their residence and the distance between the parties increases to more than 50 miles, the increased distance shall be considered a change of circumstances and the parties agree to coordinate a new parenting-time exchange location. If the parties are unable to agree on a location, they agree to seek mediation prior to any application to the Court.

A June 26, 2009 order again modified defendant's parenting time and made him solely responsible for the child's transportation. The order also required defendant to contribute toward day care expenses, maintain life insurance, and continue to provide medical insurance for the child.

In August 2009, plaintiff moved from Belmar to Rutherford. Defendant lived in Forked River and his girlfriend lives in Manalapan. Beginning in August 2009, plaintiff shared in the driving responsibilities for defendant's parenting time. This arrangement continued until December 2009, when plaintiff filed a motion in aid of litigant's rights seeking to enforce the October 29, 2008 order and compel defendant to assume the driving responsibilities. Plaintiff also sought to enforce that part of the June 26, 2009 order requiring defendant to contribute to day care and medical insurance expenses and provide life insurance for the child, among other things.

In opposition, defendant certified that plaintiff had moved more than 180 miles round-trip from his residence. He claimed that when he picked up his daughter on Friday nights at 5:30 p.m., it sometimes took three hours to complete the journey to Rutherford due to traffic, which interfered with the already very limited parenting time he enjoys with his daughter every other weekend. Defendant also certified that he had been

unemployed since March 2009 and was still unemployed, told plaintiff he would pay what he owed when he received certain insurance proceeds, and had obtained the required life insurance.

Prior to the motion's return date, defendant had paid everything he owed. He explained at oral argument that he had advised plaintiff he had suffered a work-related injury and he would pay her what he owed from an expected settlement.

The trial judge held defendant in violation of litigant's rights pursuant to the June 26, 2009 order for failing to make the required payments. As for the transportation issue, the judge noted the animosity between the parties, concluded that "there's not going to be a heck of a lot of cooperation between the parties," and ordered them to equally share the driving responsibilities. The judge did not award plaintiff counsel fees, but instead permitted plaintiff to obtain an ex parte bench warrant for defendant's arrest for future violations of any of the court's orders. The judge memorialized his decision in the January 15, 2010 order. This appeal followed.

On appeal, plaintiff contends that the trial judge abused his discretion by modifying the parties' transportation agreement contained in the October 29, 2008 order, although

neither party requested a modification, and by failing to award her counsel fees and costs. We disagree.

It is well-settled that Family Part judges have special expertise in dealing with family-type matters. O'Donnell v. Singleton, 384 N.J. Super. 141, 144 (App. Div. 2006). We are bound to uphold a Family Part judge's decision absent evidence that it "was so wide of the mark as to constitute an improper exercise of his discretion." Ibid. Further, "[i]n the absence of an abuse of discretion, we will not interfere with a Family Part judge who has exercised an acquired expertise to resolve a [family] dispute," ibid., as here, regarding a parent's driving responsibilities to effectuate the other parent's parenting time. Ibid. Applying this standard, we discern no reason to disturb the judge's rulings.

As for the transportation issue, the October 29, 2008 order required the parties to equally share driving responsibilities as long as plaintiff lived in Belmar and defendant lived in Forked River. If either party moved more than fifty miles from the other party's residence, a change in circumstances automatically arose. At that point, neither party was absolved of equally sharing in driving responsibilities; rather, the parties were required to attempt to agree upon a new exchange location and seek mediation prior to any court application if

they could not agree. Accordingly, by seeking to make defendant solely responsible for their child's transportation, plaintiff implicitly sought to modify the October 29, 2008 order. The judge, therefore, properly considered the issue.

More importantly, the judge did not modify the October 29, 2008 order; he enforced it. Defendant's evidence indicates that plaintiff moved more that fifty miles from his current residence.[1] The parties could not agree on a new exchange location and, given their animosity toward each other, as the trial judge aptly noted, mediation would have undoubtedly been fruitless. Thus, we are satisfied that the judge properly addressed the transportation issue, and the resolution he reached is reasonable.

Finally, there was no abuse of discretion in the denial of plaintiff's request for counsel fees and costs. Plaintiff did not establish her need, defendant's ability to pay, or the reasonableness and good faith of her position on the transportation issue. See Williams v. Williams, 59 N.J. 229, 233 (1971); R. 5:3-5(c).

Affirmed.

[1] We find disingenuous plaintiff's use of the MapQuest "shortest distance" mileage calculation of 49.06 miles, while ignoring the MapQuest "shortest time" mileage calculation of 52.28 miles.