

DOCKET NO. MMX CV 17-5009909-S : SUPERIOR COURT
EARLY, ALLANAH : J.D. OF MIDDLESEX
V. : AT MIDDLETOWN
CZAJA, DAVID : AUGUST 6, 2019

MEMORANDUM OF DECISION

The question before the court is whether the adoption agreement signed by the parties authorizes the defendants to cut off all contact between the plaintiff and M.¹ Because the agreement provides the defendants with discretion to modify its terms, in accordance with the best interests of the child, and the evidence confirms that the defendants made their decision based on M's best interests and in good faith, the defendants' conduct is authorized under the adoption agreement. The adoption agreement, however, is not terminated, but rather remains in effect until M reaches the age of majority.

FACTUAL BACKGROUND

The plaintiff, Allannah Earley, is the biological mother of ten-year-old child, M. M's biological father is Norman G. The defendants, David and Donna Czaja, are M's adoptive parents. The plaintiff and Mr. Czaja have an adult son together.

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Judicial District of Middlesex
State of Connecticut

¹ M is a minor child and, therefore, she will be referred to only by her first initial to protect her privacy.

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In January of 2009, the Department of Children and Families (DCF) removed M from the plaintiff's care, for five to six months, due to the plaintiff's alcohol use. On September 24, 2014, DCF again removed M from the plaintiff's care, and obtained an order of temporary custody. Subsequently, DCF filed a co-terminous petition for neglect and the termination of parental rights (TPR), naming the plaintiff and Norman as respondents. During the pendency of the TPR, M was placed with the defendants, who were licensed by DCF as foster parents. The defendants were considered "pre-adoptive" foster parents because they were willing to adopt M, if that option became legally available.

A trial on the TPR petition was scheduled for October 26-30, 2015. On October 26, 2015, Norman consented to the TPR, and it was accepted by the juvenile court. The next day, the plaintiff and the defendants entered into an open adoption agreement (Agreement), whereby the plaintiff consented to the TPR and voluntarily relinquished her parental rights.² The Agreement also provided for certain limited contact between the plaintiff and M, including that: (1) the defendants would maintain a post office box to receive correspondence from the plaintiff, which they would give to M at "their discretion based on the context of the communications and the best interests of the child;" (2) the plaintiff would provide the defendants with her current address, and they would send cards, pictures and/or letters to the plaintiff at least four times a year; and (3) the plaintiff could visit M once a month, only if in the best interest of M, based on the defendants' discretion, and under their supervision.

² On October 27, 2015, the DCF became the statutory parent for M, until she was legally adopted by the defendants on June 7, 2016.

The plaintiff commenced this action on October 30, 2017, claiming that the defendants have not allowed her to have contact with M, in violation of the Agreement.³ It is uncontroverted that after the plaintiff's parental rights were terminated, she had three DCF-supervised visits with M, in November and December of 2015. On April 3, 2019, at trial, this court heard from three witnesses including the plaintiff, the defendant, Mrs. Czaja, and Haddam Elementary School psychologist, Holly White.

Mrs. Czaja testified regarding what it was like when the plaintiff was having contact with M. Specifically, Mrs. Czaja said that the plaintiff had difficulty adapting to her new role, she would use adult language with M, and she would not call at the assigned dates and times. M was anxious whenever the plaintiff failed to call as scheduled, as well as before and after she had visits with the plaintiff. The DCF support team agreed with the defendants' decision to discontinue the plaintiff's visits with M. Additionally, Ms. Czaja said that M is fearful that she will run into the plaintiff.

Ms. White, whom the court deems to be quite credible, testified that she had daily contact with M's teachers, the defendants, and DCF. Additionally, she testified that in 2015, when M was still having contact with the plaintiff, M was in "crisis mode." She was essentially nonverbal and had numerous behavioral issues including that she would growl, hiss, throw markers, and kick over an easel. Ms. White also said that M had an incredible amount of anxiety before and after she was scheduled to have contact with the plaintiff—so much so, that it was blatantly obvious from M's behavior when a contact with the plaintiff was scheduled to take place. When the visits stopped, M

³ Specifically, the four-count amended complaint, dated August 23, 2018, alleges: (1) violations of the Agreement, pursuant to General Statutes § 17a-112; (2) breach of contract; (3) promissory estoppel; and (4) unjust enrichment.

dramatically improved and her severe behaviors decreased, and ultimately ceased. For example, she was no longer ripping the phone off of Ms. White's wall. After M was adopted in June of 2016, she was very excited and seemed relieved that the chapter was closed. In addition, M's behavior, verbal skills and social skills further improved. Ms. White said that M is "a completely different kid now" and excels both academically and socially. Ms. White also testified that M has no desire to see the plaintiff.

DISCUSSION

"The elements of a breach of contract claim are the formation of an agreement, performance by one party, breach of the agreement by the other party, and damages." *Meyers v. Livingston, Adler, Pulda, Meiklejohn & Kelly, P.C.*, 311 Conn. 282, 291, 87 A.3d 534 (2014). "A contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms." (Internal quotation marks omitted.) *Issler v. Issler*, 250 Conn. 226, 235, 737 A.2d 383 (1999). "[A]ny ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms." (Internal quotation marks omitted.) *Isham v. Isham*, 292 Conn. 170, 182, 972 A.2d 228 (2009).

Here, the parties have stipulated that the Agreement is validly formed, and meets the statutory requirements of General Statutes § 17a-112, which governs postadoption agreements. Additionally, the parties agree that the Agreement gives the defendants substantial discretion regarding the plaintiff's contact with M, and it permits the defendants to modify the terms according to M's best interest. The plaintiff's main contention is that the defendants exceeded the discretion permitted under the Agreement because they cut off all contact between the plaintiff and M, which amounts a complete termination of the Agreement. Such termination, the plaintiff argues, is contrary to the parties' explicit intention that the Agreement remain in effect until M turns eighteen.⁴

The modification provision, at page three, section eight of the Agreement, provides that "[t]he Adoptive Parents retain discretion to modify any of the terms of this agreement if they reasonably believe it becomes contrary to the best interest of the child." The language of this provision is clear and unambiguous. It permits the defendants to make modifications to the Agreement. The only limitation, is that the changes must be in accordance with what the defendants reasonably believe to be the best interests of the child. The fact that the five page Agreement mentions the defendants' discretion five times, and three of these times, states that the defendants' decisions must take into account the "best interest of the child," further demonstrates that M's best interest is central to the Agreement, and the defendants were intended to be the ones determining what that is. The defendants' ability to modify the Agreement based on M's best interest, is the safety valve by which they can protect her mental, physical and emotional needs.

⁴ Page three, section seven provides: "[t]his Agreement shall remain in full force and effect for the child until the child reaches the age of majority."

Accordingly, to resolve the issue of whether the defendants' conduct was permissible under the Agreement, the court must answer two questions: (1) was the defendants' decision to cut off all contact between the plaintiff and M based on the reasonable belief that such contact was contrary to M's best interest; and (2) did the defendants exercise their discretion in good faith?

A

Best Interest Analysis

"There is a presumption that fit parents act in the best interests of their children." *Troxel v. Granville*, 530 U.S. 57, 68, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). "The best interests of the child include the child's interests in sustained growth, development, well-being, and continuity and stability of its environment." (Internal quotation marks omitted.) *Ortega v. Bholia*, 88 Conn. App. 457, 458, 869 A.2d 1261 (2005). The Connecticut Supreme Court has asserted, on multiple occasions, that in order for the court to grant a petition for third party visitation, against the wishes of a fit parent, the petitioner must establish by clear and convincing evidence that (1) "the petitioner has a relationship with the child that is similar in nature to a parent-child relationship;" and (2) "denial of the visitation will cause real and significant [emotional] harm to the child. . . . [T]hat degree of harm requires more than a determination that visitation would be in the child's best interest. It must be a degree of harm analogous to the kind of harm contemplated by §§ 46b-120 and 46b-129, namely, that the child is neglected, uncared-for or dependent." (Footnote omitted; internal quotation marks omitted.) *Fish v. Fish*, 285 Conn. 24, 38-39, 939 A.2d 1040 (2008), explaining *Roth v. Weston*, 259 Conn. 202, 789 A.2d 431 (2002); see also *Crockett v. Pastore*, 259 Conn. 240, 247-49, 789 A.2d 453 (2002).

Pursuant to General Statutes § 45a-731 (1),⁵ the defendants stand in the same legal position as biological parents. As such, because there is no allegation that they are unfit, they are presumed to have been acting in M's best interest when they determined that she should no longer have contact with the plaintiff. Moreover, the testimony of Mrs. Czaja and Ms. White suggests that the defendants' decision was, in fact, in M's best interest. When M was having visitation with the plaintiff, she was exhibiting severe behavioral issues. Once the contact between the plaintiff and M ceased, M's development and well-being noticeably improved.

Nevertheless, the plaintiff argues that not allowing her to have any contact with M is not in the child's best interest. Certainly, there is no indication whatsoever that any harm that M might suffer from not having contact with the plaintiff, would rise to the requisite level of her being "neglected," "un-cared for," or "dependent. In fact, the plaintiff herself testified that she agrees that M is now in a friendly, stable, loving and caring environment. As such, the plaintiff has not shown that the defendants did not act in M's best interest when they cut off contact between M and the plaintiff.

The court agrees with the plaintiff, however, that the Agreement cannot be terminated because it expressly provides that "[t]his Agreement shall remain in full force and effect . . . until the child reaches the age of majority." When the language of an agreement is unambiguous, it must be given effect according to its terms. See *Issler v. Issler*, supra, 250 Conn. 235. Furthermore,

⁵ Section 45a-731 (1), which describes the effects of a final decree of adoption, provides in relevant part: "All rights, duties and other legal consequences of the biological relation of a child and parent shall thereafter exist between the adopted person and the adoptive parent . . . Such adopted person shall be treated as if such adopted person were the biological child of the adoptive parent, for all purposes . . ."

because determining “the best interest of the child” is not a static decision, until M turns eighteen the defendants must reassess, from time to time, whether the plaintiff should have contact with M.

B

Duty of Good Faith and Fair Dealing

“[I]t is axiomatic that the . . . duty of good faith and fair dealing is a covenant implied into a contract or a contractual relationship. . . . In other words, every contract carries an implied duty requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement. . . . The covenant of good faith and fair dealing presupposes that the terms and purpose of the contract are agreed upon by the parties and that what is in dispute is a party’s discretionary application or interpretation of a contract term. . . . To constitute a breach of [the implied covenant of good faith and fair dealing], the acts by which a defendant allegedly impedes the plaintiff’s right to receive benefits that he or she reasonably expected to receive under the contract *must have been taken in bad faith.*” (Emphasis in original; internal quotation marks omitted.) *Landry v. Spitz*, 102 Conn. App. 34, 42, 925 A.2d 334 (2007). “Bad faith in general implies both actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive. . . . Bad faith means more than mere negligence; it involves a dishonest purpose.” (Internal quotation marks omitted.) *Id.*, 42-43.

The facts do not indicate that there was any dishonest purpose behind the defendants’ decision to modify the Agreement. The defendants have stated that a best interest analysis was the basis for their decision, and the Agreement is clear that the plaintiff’s contact with M was dependent on this analysis. In other words, the plaintiff could have only reasonably expected to have contact

with M, if the defendants determined that it was in M's best interest. Moreover, the suggestion that the defendants' acted in bad faith fails to account for the fact that people other than the defendants, specifically Ms. White, noticed behavioral changes in M that directly corresponded with when M was having contact with the plaintiff.

To the extent that the plaintiff argues that the defendants' decision to not provide her with written updates about M is not a reasonable modification, because it does not affect M's best interest, the evidence is to the contrary. Specifically, when the plaintiff was informed that the defendants had determined that contact with M was no longer appropriate, the plaintiff attempted to pass communication to M, through a third party. Consequently, the defendants have legitimate concerns that any information given to the plaintiff about M will result in further efforts to circumvent the defendants and contact M, thus, interfering with the defendants' fundamental liberty interest in the care, custody and control of their child. See *Troxel v. Granville*, supra, 530 U.S. 65. Furthermore, page three, section five of the Agreement, which is the provision discussing the correspondence the defendants would send to the plaintiff, provides in relevant part: "[t]he Adoptive parents may modify or suspend visits if the Birth Parents do not comply with the terms of this agreement." By attempting to communicate with M through a third party, the plaintiff failed to comply with the terms of the Agreement, which, in itself, gives the defendants a reason for making the modifications they did.

For the foregoing reasons, the court finds that: (1) the defendants have not breached the Agreement; (2) the defendants' modifications comport with the duty of good faith and fair dealing; and (3) the Agreement is not terminated and the defendants have the responsibility, until M turns

eighteen, to reassess her best interests and determine if contact with the plaintiff would be appropriate.

Frechette

FRECHETTE, J. 8-6-19