Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-318

JANUARY TERM, 2004

Michelle A. Choiniere	APPEALED FROM:
v.	Chittenden Family Court
Neil Aguiar	DOCKET NO. F386-5-99 Cndm
	Trial Judge: Linda Levitt

In the above-entitled cause, the Clerk will enter:

Father appeals from an order of the Chittenden Family Court denying his motion to modify parent-child contact for failure to demonstrate a real, substantial, and unanticipated change of circumstances. We affirm.

Father and mother have three minor children who are between the ages of nine and five. In May 2000, the Chittenden Family Court entered a final divorce order, which it subsequently modified after the parties= unsuccessful attempt at mediation. The modified order, issued in November 2001, set out a detailed schedule on contact between father, the noncustodial parent, and the parties= three children. In the order, the family court noted the stress the children had been experiencing as a result of their parents= divorce and their disputes over parent-child contact. The schedule allows father time with the children during the week and every other weekend. The two oldest children are scheduled for overnights with father, and the youngest will have overnight stays when she reaches the age of six. The court also set forth a summer vacation schedule and a schedule for birthdays and holidays.

In June 2003, father moved, pro se, to change the visitation schedule again. His motion explained that he changed jobs and has a new work schedule. Father wanted the children to spend more time with him as an equitable matter. Father did not file a sworn affidavit providing the specific facts that supported his motion, however. By entry dated June 17, 2003, the court denied father= s request. It found no substantial, real, or unanticipated circumstances to justify modifying the parent-child contact schedule. Father responded by filing this appeal.

Appearing pro se in this Court, father argues that the court abused its discretion by denying his motion. He asserts that his work schedule changed and therefore the court should have heard evidence on what parent-child contact schedule would meet the children= s best interests. Father argues that legislative policy favoring liberal parent-child contact supports his claim for more time with the children.

We review the family court= s decision here for an abuse of discretion. See Lane v. Schenck, 158 Vt. 489, 494 (1992) (threshold change of circumstances determination is discretionary decision for family court on motion to modify). Section 668 of Title 15 allows the court to modify an order on parental rights and responsibilities if the movant demonstrates two criteria: (1) that a substantial, real, and unanticipated change of circumstances occurred, and (2) modifying the order serves the children= s best interests. 15 V.S.A. ' 668. The court may consider the second prong of ' 668 B what is in the children= s best interests B only if it makes the initial critical finding of unanticipated, substantial, and real changed circumstances. Pill v. Pill, 154 Vt. 455, 459 (1990); see also V.R.F.P. 4(j)(4) (if a modification hearing must be held, court may bifurcate it to determine threshold issue of changed circumstances, and if it finds no change, court may dismiss motion without reaching its merits). To facilitate the court= s disposition of a post-judgment motion to modify, V.R.F.P. 4(j)(2) requires the movant to support his motion with an affidavit, which must provide A specific

facts sufficient to warrant the required findings.@ V.R.F.P. 4(j)(2), (3).

Applying those well-established principles to this case, we find no abuse of the trial court= s discretion by denying father= s motion. Father did not support his motion with an affidavit or with specific facts alleging that father= s new work schedule was a substantial change of circumstances that would preclude adherence to the existing parent-child contact schedule. While father= s change of employment may have been unanticipated, according to the court= s order, his work hours were not a factor in crafting the schedule it set forth in the November 2001 order. We note that in crafting the schedule the court observed: .

The children need stability and predictability in their lives. Although the children enjoy being with the Defendant, he has unknowingly caused them to suffer needless anxiety. The Court will set out a visitation schedule which will allow reasonable contact with the Defendant, which will be predictable, and which will attempt to minimize the children= s anxiety.

To the extent that father claims he was entitled to a hearing on his motion, the claim is without merit. Even if father had requested a hearing, which his motion failed to do, the court may decide a motion to modify without holding a hearing if it concludes that no material factual dispute exists. V.R.C.P. 78(b)(2); see V.R.F.P. 4(a) (making rules of civil procedure applicable to family proceedings except where noted). There was no factual dispute in this case. As father= s employment was immaterial to the court= s decision on parent-child contact, the mere allegation that the employment changed, without more, falls short of the real and substantial change contemplated by ' 668. There was no error.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Paul L. Reiber, Associate Justice