

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-303

FEBRUARY TERM, 2006

Mark J. Horton	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Family Court
	}	
Ling Ling Dai Horton	}	DOCKET NO. 394-10-03 Wrdm

Trial Judge: Mary Miles Teachout

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

Mother appeals from the family court=s order determining parent-child contact schedule and division of marital property. We affirm.

Mother and father married in 1996. They spent the last year and a half of their marriage living separately, in opposite sides of the marital home. Mother and father had one daughter, who had just completed second grade at the time the divorce decree was entered.

The relevant portions of the trial court=s order are as follows. Considering evidence that mother was more active in making decisions regarding child=s education, and that communication between mother and father had broken down to such an extent that joint decision-making was no longer possible, the trial court awarded sole physical and legal custody to mother. Nonetheless, the court decided on a parent-child contact schedule that allowed child to spend half her time with mother and half her time with father. This decision was based on findings that both parents acted as primary care givers and were willing and capable of caring for the child, and that continuing maximum contact with both parents was in the best interest of the child. Regarding the division of marital property, the trial court awarded each party the assets they maintained separately, awarded father the marital home, and awarded mother a total of \$30,000 to be paid by father over ten years. The court noted that this division fairly reflected the parties= respective ownership interests in the home and other assets, and emphasized that this division, in combination with the parent-child contact schedule, would still allow child to spend a substantial amount of time in the home where she had grown up.

On appeal, mother first argues that father was awarded excessive parent-child contact. She asserts that the schedule is disruptive and that mother has been the primary care giver not only during child=s infancy but throughout her life. We review the family court=s decision on parent-child contact for an abuse of discretion. See Weaver v. Weaver,. 173 Vt. 512, 514 (2001). The family court=s finding that the parents shared daily

responsibility for the child after her infancy is supported by the record. Wife argues that the same factors that led the family court to award her sole physical and legal custody should have resulted in less contact between father and child. This argument ignores that the family court decided to vest decision-making power in only one parent because the parents could not cooperate in making decisions—not because father's decisions were worse or he was not equally capable of taking care of the child.

It is generally assumed that maximum contact with both parents is in the best interests of the child. See 15 V.S.A. ' 650 (A[I]t is in the best interests of [a] minor child to have the opportunity for maximum continuing physical and emotional contact with both parents, unless direct physical harm or significant emotional harm to the child or a parent is likely to result from such contact@); Cleverly v. Cleverly, 151 Vt. 351, 355 (1989) (in deciding visitation rights, family court must give primary consideration to welfare of child). Here, there is no evidence undermining the family court's conclusion that an equal amount of time with both parents is in the best interest of the child. Mother cites father's obligation to take care of his own, ailing father as a reason why he cannot provide sufficient attention to his daughter. But in fact, the trial court found the opposite, that father's role as care giver to his father meant that he was more available to interact with and care for the child. Finally, mother has not cited any evidence that the parent-child contact schedule will nullify the award of physical and legal custody to mother. Cf. Lane v. Schenck, 158 Vt. 489, 499 (1992) (holding that noncustodial parent's visitation rights should not automatically preclude custodial parent's move to another location, where move would result in increased opportunities for custodial parent and children).

Mother further argues that the family court erred in its division of the couple's marital property, specifically in awarding the marital home to father. We review the division of marital property for an abuse of discretion. Damone v. Damone, 172 Vt. 504, 510 (2001). Mother's basis for challenging the division is not clear. She contends that the trial court did not articulate reasons for its decision, but this contention is defeated by review of the transcript of the trial court's findings of fact and conclusions of law. The trial court carefully set out the historical interest of the parties in the property. In particular, the court found that father had acquired the property prior to meeting mother, that mother had contributed at least \$20,000 in cash to the property, but declined to be placed on the deed for the property because she did not want responsibility for the mortgage, and that there was only roughly \$18,000 worth of equity in the house. The trial court further took note of the fact that, under the parent-child contact schedule, the child would be able to spend substantial time in the home where she grew up, even though the home was not awarded to mother, the custodial parent. See Buxton v. Buxton, 148 Vt. 22, 24 (1987) (best interest of child should be considered in award of family home). The family court considered the relevant factors, adequately explained its assessment of those factors, and related that assessment to its ultimate decision on dividing the property.

There is no basis for finding an abuse of discretion with respect to either the parent-child contact schedule or the division of marital property.

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Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice