

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-313

MAY TERM, 2006

Trudy Manning	}	APPEALED FROM:
	}	
	}	
v.	}	Lamoille Family Court
	}	
Louis LaFountain	}	
	}	DOCKET NO. 34-3-00 Ledm

Trial Judge: Howard E. VanBenthuyzen

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

Mother appeals the decision of the family court modifying parental rights and responsibilities as to the parties= daughter. Mother has not demonstrated that the family court abused its discretion, and we affirm.

The following facts were found by the family court. Daughter, born June 27, 1991, was conceived during a brief romance between mother and father, and daughter=s existence was concealed from father for eight

years. After mother told father of daughter=s existence, the parties stipulated to a parent-child contact order that allowed daughter to spend every weekend with father for the past five years, and the parties agreed that, on the whole, daughter spent about 48% of her time with father and 52% with mother. In light of increased tensions between mother and father, subsequent orders in the case required that daughter not be removed from Vermont. Nonetheless, mother moved with daughter to North Carolina in March 2005 without telling father or the court. Father initiated a number of investigations and proceedings in an attempt to locate his daughter. The family court issued a temporary transfer of legal and physical rights and responsibilities to father. A hearing on father=s request to modify parental rights and responsibilities was held on July 6, 2005, which both mother and father attended. On July 7, 2005, the family court ordered daughter into father=s custody.

In support of its order, the family court emphasized that daughter Aappears to have a good and loving relationship with both parents@ and that daughter had enjoyed stability in the co-parenting arrangement in Vermont. The court further noted that father has been very interested in daughter since learning of her existence, has spent substantial time with daughter over the past five years and has been involved in important aspects of her life. When mother moved daughter to North Carolina, however, she unilaterally severed the connection between father and daughter. Daughter does not have social, familial or other connections in North Carolina; rather, daughter=s social and familial connections are in the Morrisville, Vermont area. While the move to North Carolina was financially advantageous for mother, the court found that mother Aconceded that the move was not in [daughter=s] best interests in that it pulled her out of the school she had been in for the last several years, took her away from her friends and schoolmates, and separated her from her grandparents, father and all other family.@ The family court found that aspects of mother=s testimony (for example, that father had abused daughter) were not credible. The court further determined that A[f]ather has a better ability and disposition here to meet [daughter=s] needs for educational support and stability.@ Perhaps most significantly, the family court found that while father is inclined to foster a positive relationship between mother and daughter, mother is not supportive of daughter=s relationship with father. The family court concluded that father had established an unforeseen change in circumstances through mother=s move to North Carolina, and that it was in daughter=s best interests to remain in Vermont with father.

On appeal, mother sets forth a myriad of arguments. These arguments can be fairly summarized as falling into one of two categories: (1) the family court erred in crediting husband=s testimony while concluding that portions of wife=s testimony were not credible, and (2) there was insufficient evidence in support of the family court=s conclusion that awarding parental rights and responsibilities to father was in daughter=s best interests.^[1]

The family court enjoys broad discretion in determining parental rights and responsibilities. @ Osmanagic v. Osmanagic, 2005 VT 37, & 5 (mem.). We will disturb the family court=s findings only if, viewing the record in the light most favorable to the prevailing party and excluding the effect of modifying evidence, there is no credible evidence in the record to support the findings. @ Id. We will not overturn the family court=s legal conclusions so long as they are supported by its findings. @ Id. The analysis in a custody modification case involves a two-step inquiry. Sochin v. Sochin, 2005 VT 36, & 5 (mem.). First, the party seeking modification must show that there has been a A >real, substantial and unanticipated change of circumstances= @ justifying reexamination of the custody arrangement. Id. (quoting 15 V.S.A. ' 668). Second, A the moving party must show that the proposed modification would be in the best interests of the child. @ Id. & 6 (citing 15 V.S.A. ' 668).

Mother does not appear to challenge the family court=s conclusion that her relocation to North Carolina was a real, substantial and unanticipated change in circumstances permitting the family court to reconsider the allocation of parental rights and responsibilities.^[2] Instead, the focus of mother=s argument is the family court=s conclusion that custody with father was in daughter=s best interests. Under 15 V.S.A. ' 665(b), there are nine factors that a trial court must consider in assessing the best interests of the child, although these factors need not be recited in the court=s findings and conclusions. Osmanagic, 2005 VT 37, && 6, 8. These factors, among others, include the relationship of the child with each parent, the ability and disposition of each parent to meet the child=s present and future developmental needs, and the ability of the parents to cooperate with one another. 15 V.S.A. ' 665(b).

Mother challenges the evidentiary support for the trial court's factual findings related to these factors. For example, she implies that father is not capable of providing for daughter financially and emotionally and that father's testimony should not be trusted. These points may be arguable, but mother fails to demonstrate that the family court lacked credible evidence to support its findings. The reason the family court is afforded wide discretion in custody matters is because the court is uniquely positioned to assess the credibility of witnesses and weigh the evidence. Chick v. Chick, 2004 VT 7, & 10, 176 Vt. 580 (mem.). Accordingly, we will not reweigh the evidence and exercise our own judgment to reverse the family court, as mother in essence asks us to do. Id.; Root v. Root, 2005 VT 93, & 15 (mem.) (A mother's credibility was a matter for the trial court's consideration, and we do not review it.).

Mother also challenges the court's ultimate assessment that placement with father was in daughter's best interests. This conclusion, however, is amply supported by the family court's factual findings:

It is in [daughter's] best interests that she remain in her father's custody. This assures the greatest possible stability for her both [sic] residential, economic, and educational, and keeps her connected to her father, both Parties' extended families, and her friends and school structure. The father here clearly has the stronger disposition and ability to foster a positive relationship between the child and the other parent, and he has demonstrated a greater and more positive ability to foster educational and residential stability for this child.

Even if all other factors were equal, a parent's superior ability to understand and support the child's need for a positive relationship with the noncustodial parent may tip the balance. See Chick, 2004 VT 7, & 9 (affirming family court award of custody to father where father was more supportive of children's relationship with mother than mother was of their relationship with father).

Finally, while a change in custody is often experienced as a violent dislocation by the child, here, the violent dislocation occurred when daughter was suddenly uprooted and moved to North Carolina. See Sochin,

2005 VT 36, & 7 (noting that a change of physical custody is Aviolent dislocation@). By contrast, remaining with father in Vermont offered greater stability in terms of social and familial connections, as well as academic and extracurricular activities. Sundstrom, 2004 VT 106, & 37 (noting value of stability in child=s life).

The family court did not abuse its discretion.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice

^[1] Mother refers in passing to the fact that there was no court-appointed guardian ad litem present at the July 6, 2005 hearing, but does not describe any negative consequences of this alleged error.

[2]

In any case, relocation that significantly disrupts a child=s existing relationship with one parent and the deterioration of parental cooperation qualify as real, substantial and unanticipated changes in circumstances. Hawkes v. Spence, 2005 VT 57, & 12, 178 Vt. 161 (recognizing that relocation necessitates reassessment of custodial arrangement where parenting responsibilities are shared); Maurer v. Maurer, 2005 VT 26, & 8 (mem.) (recognizing that parties= inability to share parental rights and responsibilities@ may constitute changed circumstances). Further, interference with a noncustodial parent=s visitation rights may also constitute a change in circumstances sufficient to justify modification of a parental rights and responsibilities order. Sundstrom v. Sundstrom, 2004 VT 106, & 29, 177 Vt. 577 (mem.). There is no question that it was within the family court=s discretion to find a sufficient change in circumstances under these facts.