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ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-388

JULY TERM, 2006

Jane P. Heal	}	APPEALED FROM:
v.	}	Windham Family Court
John A. Hirsch	}	DOCKET NO. 267-8-94 Wmdm

Trial Judge: Katherine A. Hayes

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

Father John A. Hirsch appeals from the dismissal of his motion to modify child support. He raises numerous claims of error, although few that appear relevant to the order from which he appeals. We affirm.

The family court=s order reflects the following. In November 2001, father filed a motion to modify his child support obligation. The motion was not scheduled to be heard until January 2005 due to numerous intervening motions and appeals, most of which father filed. The January hearing was continued to March 11, 2005. The court clerk sent notice of the hearing date to all parties, including father, on January 19, 2005. The notice clearly stated that the hearing would be held on March 11, 2005 beginning at 9 a.m. and would continue for the entire day.

On the date of the hearing, father failed to appear. The parties waited for fifteen minutes and then called father at his home, which was located approximately twenty minutes from the courthouse. Father indicated that he thought the hearing was the following week and asked for a continuance. The magistrate denied his request, explaining that the court and the other parties had set aside the whole day for the hearing and, due to the court=s calender, the hearing could not be rescheduled at any time in the near future. The magistrate directed father to appear in forty-five minutes, by 10:15 a.m., and he agreed that he would be there.

Father did not arrive as directed. He called the court at approximately 10:10 a.m. and said that he was on his way, but he subsequently indicated that he was still at home. The magistrate waited until 10:21 and she then reconvened the proceedings. Mother then moved to dismiss father=s motion to modify, and she began to present evidence in support of her request. A staff attorney for the Office of Child Support (OCS), Ms. Semprebon, testified on mother=s behalf. Ms. Semprebon said that when she had seen father at the OCS office in early February she had referred to the hearing, which she thought was scheduled for March 31. Father corrected her, telling her that the hearing was on March 11. Mother also testified, and she submitted an affidavit that described an August 2001 conversation she had with father. Mother averred that father said he would Amake it very expensive@ for her if she made him continue to pay child support. Mother also submitted a copy of a bill for her attorney=s services.

Father arrived at the hearing at 10:31 a.m., at the conclusion of mother=s testimony. He was given a copy of mother=s affidavit, and he was allowed to cross-examine mother. Father also testified on his own behalf, stating that he had received notice that the hearing was on March 18 rather than March 11. Father said that he was unable to find a copy of that notice but his failure to appear was the result of an inadvertent misunderstanding. He thus maintained that it would be inequitable to dismiss his motion without reaching the merits. Attorney Semprebon was unavailable for cross-examination by the time father arrived, but father was provided with a summary of her testimony and given an opportunity to refute it. Father stated that he remembered his conversation with Ms. Semprebon in general but did not recall any discussion about the date of the next hearing. He stated that he could not have said that the hearing was on March 11 because he did not know that it had been scheduled for that date. At the very end of his testimony, father briefly mentioned for the first time that the final delay in his arrival had been due to Aheart symptoms@ suffered by his current mother-in-law.

The magistrate dismissed father=s motion to modify and made findings on the record. The magistrate found that father had been provided notice of the hearing on March 11 and had been aware of it, but he

nonetheless failed to attend. She also found that father failed to appear at the agreed-upon time even after mother=s attorney and OCS generously called him and the magistrate granted him a forty-five minute extension to appear. She found dismissal warranted by the facts.

Father appealed to the family court, which affirmed the magistrate=s decision. The court found the magistrate=s findings supported by the evidence, and it deferred to her assessments of the witnesses=s credibility. The court rejected father=s assertion that it would be inequitable to dismiss where his failure to appear was based on an inadvertent misunderstanding, finding it at odds with the magistrate=s finding to the contrary. The family court also rejected father=s attempt to introduce new evidence, specifically, two unsworn statements by father=s wife and mother-in-law, which stated that father=s delayed appearance was due to his mother-in-law=s heart problems. The court explained that it could not consider such evidence both because it was not presented to the magistrate below and because the statements were not made under oath. The court also noted the implausibility of the proffered excuse in light of the evidence below. The court similarly rejected father=s attempt to introduce an unauthenticated letter to the court administrator. It explained that, even if it were to consider the letter, it would not render the magistrate=s findings clearly erroneous. Father appealed.

On appeal, father asserts that the court erred in dismissing his motion to modify. More specifically, he argues that: (1) his late arrival at the hearing was due to a health crisis involving his mother-in-law; (2) the family court misquoted a sentence from wife=s affidavit; (3) the letter he presented to the court administrator was not Aunauthenticated@ and should have been admitted; (4) a court employee improperly altered a court record concerning his motion to deviate; (5) if he had been able to present a letter to the court administrator, the magistrate may have reached a different conclusion regarding his credibility; (6) the court lacked jurisdiction to consider a post-judgment motion that he filed; and (7) he should have been allowed to present oral argument to the family court.

These arguments are all without merit. As an initial matter, we note that father repeatedly refers to documents that were not part of the record below. We do not consider these materials on appeal. See Hoover v. Hoover, 171 Vt. 256, 258 (2000) (Supreme Court=s review on appeal is confined to the record and evidence adduced at trial; Court cannot consider facts not in the record). In a similar vein, we do not address father=s arguments that are outside the scope of the order from which he appeals. Thus, we do not address his arguments concerning the family court clerk, his motion for parent-child contact, his motion to deviate, or his request to recuse the family court judge. None of these matters are properly before this Court. We similarly do not consider his assertion that the family court lacked jurisdiction to consider a post-judgment motion that he filed. Father fails to explain how he suffered any prejudice from the court=s consideration of this motion, which apparently was a motion for reconsideration.

Father=s remaining arguments are equally without merit. Pursuant to V.R.C.P. 41(b)(2), the court was authorized to dismiss father=s motion based on father=s failure to prosecute, his failure to comply with the civil rules, or his failure to comply with Aany order of court.@ See V.R.F.P. 4(a)(1) (applying Vermont Rules of Civil Procedure to family court proceedings); V.R.F.P. 8(b) (stating that magistrate proceedings are governed by V.R.F.P. 4). As recounted above, the magistrate found that father had notice and was aware of the hearing date. He failed to appear at the scheduled hour. Even after the court granted him a continuance, he failed to appear as directed. In light of the lengthy and presumably costly delays caused in large part by father, and given his failure to obey the court=s direct order to appear, the magistrate acted within her discretion in dismissing father=s motion. We reject father=s attempt to relitigate the facts found by the magistrate and affirmed by the family court. The findings are supported by the evidence, and we will not disturb them on appeal. See Kanaan v. Kanaan, 163 Vt. 402, 405 (1995) (trial court=s findings entitled to wide deference on review because it is in unique position to assess the credibility of witnesses and weigh the evidence presented).

We similarly reject father=s assertion that the family court should have accepted two unsworn affidavits and a letter to the court administrator. Father=s appeal to the family court was Aon the record@ pursuant to V.R.F.P. 8(g)(4), and thus he was not entitled to introduce new evidence. As to father=s remaining arguments, the record shows that father did not request oral argument below pursuant to V.R.F.P. 8(g)(3)(D). Having failed to make such a request, we reject his assertion that he was harmed by the absence of oral argument. Finally, father provides no record support for his assertion that the family court misquoted mother=s affidavit. In any event, in light of the evidence below, any error in this regard would be harmless.

We have considered all of the arguments discernable in father=s brief and find them all without merit. To the extent father raises other arguments on appeal that relate to the order from which he appeals and that rely on evidence in the record below, his brief is so inadequate that we cannot discern them and therefore do not address them. See Johnson v. Johnson, 158 Vt. 160, 164 n.* (1992) (Supreme Court will not consider

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arguments not adequately briefed).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice