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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-209

MAY TERM, 2007

Wanda Ehlert	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Family Court
	}	
Carl D. Ehlert	}	
	}	DOCKET NO. 399-11-01 Wrdm
		Trial Judge: Harold E. Eaton, Jr.

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

Mother appeals the family court's order denying her motion to modify parental rights and responsibilities. Mother argues that the family court erred in concluding there was no real, substantial and unanticipated change in circumstances and that the court's findings are not supported by the evidence. We affirm.

The parties were divorced on October 24, 2002. Since that time and pursuant to an amended final order filed on November 13, 2002, the parties have shared physical and legal parental rights and responsibilities for their two minor sons, who were aged nine and eleven at the time. The parties agree that their shared arrangement worked well until 2005, when father relocated to Florida. The boys remained in Vermont with mother. On June 2, 2005, mother filed a motion to modify physical and legal rights and responsibilities, asking for sole custody of the children. In support of her motion, mother argued that father's move was a real, substantial and unanticipated change in circumstances because his distance prevented him from fulfilling his role in co-parenting the boys. Following a hearing, the family court concluded that father's move was not a real, substantial and unanticipated change of circumstances to warrant modification of parental rights and responsibilities. The court also directed the parties to utilize the mediation procedure included in their final divorce order to design a new parent-child contact schedule. Mother filed a motion to reconsider, which the court denied.

On appeal, mother contends that father can no longer co-parent the boys as he had previously done and thus the trial court erred in finding no substantial change of circumstances. Mother argues that although father contacts the children regularly by email and phone, this is not the same as in-person communication.

Mother's request presents a different factual scenario than that presented in our past

relocation cases. In most relocation cases, the custodial parent moves with the children to a different state. This move then prompts the noncustodial parent to seek modification of parental rights and responsibilities. See, e.g., Hawkes, 2005 VT 57, ¶¶ 2-6, 178 Vt. 161 (reciting facts of two relocation cases involving the custodial parent moving to a different state with the children). Here, father moved by himself to a different state, leaving mother with the children. Thus, in contrast to our previous cases, mother sought sole custody of the children based on her argument that father's move left her with more parental responsibilities, not less. Neither party disputes that mother is now responsible for fulfilling a much greater share of the children's daily needs. The issue is whether this rises to the level of a legal change of circumstances.

To modify an existing custody order, the requesting party must demonstrate a "real, substantial and unanticipated change of circumstances." 15 V.S.A. § 668. This threshold finding of changed circumstances is discretionary. Lane v. Schenck, 158 Vt. 489, 494 (1992). There are no fixed standards to determine whether relocation meets this threshold. Instead, the trial court must consider all of the circumstances, especially the effect of relocation on the children. Hawkes, 2005 VT 57, ¶ 10. Further, relocation is a substantial change in circumstances when it significantly impairs either parent's ability to exercise parental responsibilities. Id. ¶ 13.

The family court found that father's move was not a substantial change in circumstances. In support of its decision, the court found that father was still able to maintain regular contact with the children and that mother's custodial rights were not impaired because she had ongoing contact with the children. These findings do not fully address mother's argument. As explained above, mother does not argue that father's move is impairing her contact with the children, rather she argues that in practical terms father can no longer co-parent, and thus she is entitled to sole custody. We conclude that the question of whether father's move has impaired the parties' ability to co-parent hinges on their ability to communicate and, thus, continue to share parental rights and responsibilities. On this point, the court found that although communication between the parties had diminished since father's move, the parties were capable of communicating in a civil and courteous way concerning the children. Cf. Hoover v. Hoover, 171 Vt. 256, 259-60 (2000) (explaining that because mother and father were unable to resolve their conflict and reach an agreement that would allow them to continue co-parenting, that a change in the custodial arrangement was inevitable). Based on these findings, we conclude that mother can exercise her rights while still accommodating father's rights. Thus, we affirm the court's conclusion that there was no substantial change in circumstances to support modification of parental rights and responsibilities.[*]

[*] Although the family court found that there was no real, substantial and unanticipated change in circumstances sufficient to modify the custody arrangement, the court found that there was a change in circumstances sufficient to modify parent-child contact and ordered the parties to engage in mediation to modify their existing parent-child contact order. These findings are entirely consistent. As we have explained, the family court may find no change in circumstances for custody purposes and still determine that a relocation requires modification of parent-child contact because the burden to alter a parent-child contact schedule is not as high as the burden of showing changed circumstances for a change of custody. Hawkes, 2005 VT 57, ¶ 20.

Mother also argues that the family court's findings are not supported by the evidence. The family court has broad discretion in custody determinations, and we will not disturb its findings unless there is no credible evidence to support them. Sochin v. Sochin, 2005 VT 36, ¶ 4, 178 Vt. 535 (mem.). Mother's argument is that whereas before she equally shared responsibilities with father, now she has full responsibility for the day-to-day management of the boys. Thus, mother reasons, the court's finding that father is still able to co-parent is erroneous. We disagree. The trial court found that although father was not physically present as often as before, he was still able to remain involved in the children's every day lives through telephone and email communication. This finding was based on credible evidence and we will not disturb it.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice