

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-341

MAY TERM, 2008

Bridget Shover	}	APPEALED FROM:
	}	
v.	}	Chittenden Family Court
	}	
Gregory Shover	}	DOCKET NO. 25-1-06 Cndm

Trial Judge: A. Gregory Rainville

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

In this divorce case, father appeals the family court's order, establishing parental rights and responsibilities and parent-child contact in this divorce case. We affirm.

The parties married in 1997 and separated in the fall of 2005. Their daughter was born in January 2004. In November 2005, the parties entered into a temporary separation agreement under which they shared legal and physical parental rights and responsibilities. The family court maintained this agreement in a March 2006 temporary order. In May 2006, the parties signed a marital settlement agreement, but three months later, mother moved to vacate the order, alleging that father had coerced her into signing the agreement. Following the commencement of a hearing on mother's motion, the family court issued a January 2007 order, accepting the parties' stipulation to vacate the financial provisions of the marital agreement and to refer parent-child issues to a parent coordinator. After a March 2007 hearing addressing parental rights and responsibilities, the parties thereafter signed a new settlement agreement that resolved their financial issues.

In July 2007, the family court issued its decision, granting mother sole legal and physical rights and responsibilities and granting father parent-child contact amounting to approximately forty-three percent of the child's time. The court acknowledged that both parties loved their daughter and were highly capable of caring for her, but noted that mother had been the child's primary caregiver for nearly the first two years of her life, and further agreed with the parent coordinator that mother was more flexible in dealing with conflicts over child-care issues.

On appeal, father first argues that the family court abused its discretion by allowing the parent coordinator to testify as a rebuttal witness, considering that: (1) she had remained in the

courtroom after her initial testimony, despite the parties' oral agreement to sequester witnesses, and (2) she was asked to state her opinion on the parties' continuing discussions regarding alternative parent-child contact schedules. We find no merit in this argument. Under V.R.F.P. 4(s)(8), a parent coordinator "may be called by either party to testify, provided that the parent coordinator shall not be permitted to testify to statements made by a party that would otherwise be inadmissible as an offer of compromise under Rule 408 of the Vermont Rules of Evidence." Here, the parent coordinator was called by mother as a witness and testified about the recommendations in the report that she submitted to the court, which was admitted into evidence without objection. Similarly, after testifying, the parent coordinator remained in the courtroom without objection from father.

When mother called the parent coordinator as a rebuttal witness following the testimony of the other witnesses, father objected that there was no basis for recalling her unless the court had questions for her. The court indicated that it did have questions for her and, in response to father's complaint that she had remained in the courtroom while the other witnesses testified, the court reasoned that her capacity as a witness was different from the others. The court further reasoned that it wanted to hear from the parent coordinator as to whether the testimony of other witnesses had influenced her assessment of the most appropriate parent-child contact. We find no abuse of discretion in the court's decision to allow the parent coordinator to testify and indicate whether the testimony of other witnesses had altered her views as to the recommended parent-child contact. Cf. Johnson v. Johnson, 163 Vt. 491, 496 (1995) ("We encourage the family court . . . to control the direction of testimony in custody matters to obtain the most relevant evidence."). Moreover, we find no violation of Rule 4(s)(8) resulting from the rebuttal testimony. Father fails to cite to any testimony by the parent coordinator regarding statements that would have been inadmissible under V.R.E. 408.

Next, father argues that the superior court abused its discretion by considering his unfair financial dealings and other misconduct in determining parent-child contact. We find no merit to this argument insofar as the court plainly did not consider father's misconduct in establishing parent-child conduct. Rather, in determining that shared parental rights and responsibilities would not be in the child's best interests, the court cited some of father's past actions to support its conclusion that the parties' relationship was not based on mutual trust. Father is not challenging the court's award of sole legal and physical parental rights and responsibilities to mother. As for parent-child contact, the court indicated that it was giving father nearly half of the parent-child contact because of the close and loving relationship between him and his daughter.

Father argues, however, that the court abused its discretion by awarding him only forty-three percent of the parent-child contact even though the parties' longstanding temporary agreement had resulted in him initially having sixty percent of the parent-child contact and later having fifty percent. We find no abuse of discretion. The court gave father substantial parent-child contact, nearly fifty percent, and nothing in the record compels the conclusion that father was entitled to a full fifty percent. See Heffernan v. Harbeson, 2004 VT 98, ¶¶ 14-15, 177 Vt.

239 (recognizing that the family court has broad discretion in custody matters, and that “only so much contact is feasible when one parent retains sole physical custody”).

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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Brian L. Burgess, Associate Justice