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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-454

APRIL TERM, 2009

April DaSilva	}	APPEALED FROM:
	}	
v.	}	Chittenden Family Court
	}	
	}	
Brian K. Prim, Sr.	}	DOCKET NO. 372-5-04 Cndm
		Trial Judge: Mary G. Harlow

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

Mother appeals pro se from the family court's denial of her motion to modify parental rights and responsibilities. She argues that the court erred in finding no real, substantial and unanticipated change of circumstances. We affirm the family court's decision.

The parties are the parents of K.P., born in May 1998. Father has sole legal and physical parental rights pursuant to a January 2005 court order. In March 2007, mother filed a motion to modify parental rights and responsibilities, recounting her inability to communicate with father, as well as expressing her concerns about K.P.'s medication regime, weight gain, health, and social development. Mother's motion was denied. In July 2008, mother filed another motion to modify, raising similar issues. Following a hearing, the court denied mother's request. It made the following findings. The parties have different parenting styles and they have never been able to communicate effectively regarding K.P. Mother was frustrated that father did not follow her parenting advice. Mother sought to have K.P. enroll in certain extracurricular education classes, for example. Father was initially resistant, although he contacted K.P.'s school for additional information about these programs. K.P. did eventually attend these programs, although his participation has since been scaled back. The court found that, although mother believed these classes were important, there was no evidence that they were appropriate or necessary for K.P.

Mother also expressed concerns about K.P.'s health, particularly his weight gain. She questioned whether K.P.'s medications were causing him to gain weight and she asserted that father did not provide K.P. with enough physical activity. Mother believed she could provide K.P. with a better lifestyle, and that father was not addressing K.P.'s needs. The court acknowledged that mother expressed genuine concern for K.P., but it found that father was also genuinely concerned about the child and that he had been involved with the school and medical and mental health care providers to furnish the services that K.P. needed. While mother believed father was defensive and unresponsive to her concerns, father found mother's approach to be aggressive and confrontational. The court found it clear that these were not parents for whom joint decision-making was appropriate or even possible at this time. It ultimately concluded that mother's concerns did not rise to the level of a real, substantial and unanticipated change of

circumstances that would warrant modification of parental rights and responsibilities. It thus denied mother's motion. Mother appealed.

Mother argues that she presented sufficient evidence to show changed circumstances. She reiterates the same concerns about father's parenting style and the parties' inability to communicate that she raised at the hearing below. Mother also suggests that she was not provided enough time at the hearing to present her case, and that the court erred in denying her request for a forensic evaluation.

We find no error. The party moving for a modification of parental rights and responsibilities must demonstrate a real, substantial, and unanticipated change in circumstances. 15 V.S.A. § 668. The family court has discretion in deciding whether this threshold requirement has been satisfied. Wells v. Wells, 150 Vt. 1, 4 (1988). We have recognized that there are "no fixed standards to determine what constitutes a substantial change in circumstances"; instead, the family court should be "guided by a rule of very general application that the welfare and best interests of the children are the primary concern in determining whether the order should be changed." Id. (quotation omitted). On review "we will not disturb the court's determination unless its exercise of discretion was on grounds or for reasons clearly untenable, or the exercise of discretion was to a clearly unreasonable extent." Meyer v. Meyer, 173 Vt. 195, 197 (2001).

We find no abuse of discretion here. Mother raises the same concerns on appeal that the family court considered and rejected below. The family court recognized that mother cared about K.P. and believed she could provide K.P. with a better lifestyle. At the same time, it found that father was involved in the child's life, maintained regular communication with K.P.'s school and medical providers, and was meeting the child's needs—all, essentially, to the same degree as when the final parental rights and responsibilities order issued. Mother particularly urged that the child's weight gain was new and unanticipated, but the court noted that there was no medical evidence to establish that the weight resulted from any want of care on father's part. While mother pointed to a move to a different neighborhood as isolating and new, the court noted that the household remained unchanged and that father arranged for the child to attend extracurricular socialization sessions. Given such findings supported by the evidence, as well as the fact that the parties had a longstanding inability to communicate with one another, it concluded that mother's concerns did not rise to the level of a real, substantial, and unanticipated change of circumstances. While mother urges us to reconsider the evidence and reach a different conclusion than the family court, this we will not do. It is for the family court, not this Court, to weigh the evidence and assess the credibility of witnesses. In re A.F., 160 Vt. 175, 177 (1993). The court did not err in concluding that mother failed to demonstrate changed circumstances.

Mother next asserts that the court erred in finding that there was no evidence presented from K.P.'s educators or medical and mental health providers. Mother argues that she presented the court with all of K.P.'s medical and school records, and she suggests that these records show that father is incapable of meeting K.P.'s needs. Mother misreads the court's finding. The court found no evidence from these individuals to show that K.P.'s school program was inappropriate or that father was not involved in the child's program and treatments, or that he was otherwise not following recommendations given to him by K.P.'s education or health providers. The record supports this finding, as well as its finding that father was meeting the child's needs.

Mother next argues that father's attorney mislead her by indicating that several of K.P.'s doctors would testify at the hearing, when they in fact did not. She asserts that she was denied the opportunity to fully present her case because of delays caused by an unavailable trial judge and by father's attorney. Mother does not identify any specific evidence that she was denied the opportunity to present. More importantly, mother did not raise either of these objections below, and we therefore do not address them. Bull v. Pinkham Eng'g Assocs., 170 Vt. 450, 459 (2000). The record shows that both parties were provided ample opportunity to present their positions.

Finally, we find no error in the court's denial of mother's request for a forensic evaluation. The record indicates that in September 2008, mother moved to schedule a hearing for the purpose of a forensic evaluation due to the "complexity of this case" and the various issues she raised in her motion to modify. She indicated that this would allow for a "fair, neutral look at the entire situation," unlike the upcoming hearing on the merits of her motion to modify. Father opposed the request, noting that a three-hour hearing on the motion to modify was scheduled for October 10, that the child's physician and psychiatrist were expected to testify, and that a forensic evaluation would be redundant. He indicated that the evaluation would be time-consuming and expensive. The court denied mother's motion "at this time," indicating that it would not delay the hearing to allow for completion of the forensic evaluation. The court stated, however, that if the evidence at the hearing suggested the need for a forensic evaluation, mother's request would be reconsidered. At the October hearing, the court reiterated that it would revisit the ruling on the forensic evaluation if, based on the evidence developed at the hearing, further information was necessary to enable the court to render its decision on the modification request. As recounted above, however, the court did not find sufficient evidence to warrant modification of parental rights, and it implicitly found that a forensic evaluation was not necessary. In light of the evidence presented at the hearing, the court acted well within its broad discretion in so deciding. Cf. Mansfield v. Mansfield, 167 Vt. 606, 607 (1998) (mem.) (family court has broad discretion in custody matters, including discretion to accept or disregard evaluation reports).

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice