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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-464

JULY TERM, 2010

Jessica Morway	}	APPEALED FROM:
	}	
v.	}	Washington Family Court
	}	
Patrick Rayta	}	DOCKET NO. F252-7-06 Wmdm
		Trial Judge: Mary M. Teachout

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

Mother Jessica Morway appeals pro se from the family court's September 2009 order denying her motion to modify parent-child contact. We affirm.

As an initial matter, we deny mother's motion to dismiss father's brief. We also clarify that the only decision on appeal is that issued by the family court in September 2009. Mother makes numerous arguments concerning the court's March 2009 decision that transferred sole physical rights to father. Mother's appeal of that order was dismissed by this Court in January 2010 due to mother's failure to comply with filing deadlines. Mother's motion to reinstate her appeal was denied. The family court's March 2009 decision is therefore final and binding on mother, and we do not address any challenges to that decision here.

We thus turn to the facts. Mother and father are the parents of B.R., born in April 2006. Mother and father had a brief relationship and never married. Mother was awarded legal and physical parental rights in January 2007, and she was the child's primary caregiver for several years. Mother is an alcoholic, and her drinking escalated in 2008. She attempted residential treatment in March 2008, but left the program and resumed drinking. Mother was arrested in July 2008 for driving while intoxicated with one of her other children in the car. The following day, a police officer found mother lying unconscious in a park. Mother smelled of alcohol, and she was taken into protective custody and later transported to the hospital. She was charged with disorderly conduct based on an incident that allegedly occurred at the hospital.

In mid-July 2008, father filed an emergency motion to modify parental rights. The parties reached a temporary stipulation and agreed that mother would enter a residential treatment program and father would assume temporary care of B.R. In October 2008, mother moved to modify the temporary order. The following day, however, mother was arrested for driving while intoxicated; her blood alcohol level was more than three times the legal limit. Mother was also cited for resisting arrest. Mother again stopped drinking, and in January 2009 she moved into a three-bedroom apartment. Father has had steady employment for a long period as well as secure long-term housing. He is a single parent to his two other children by a previous partner, and the court found that he was a sober, stable, and supportive force in the child's life.

In March 2009, the court found that there had been a real, substantial, and unanticipated change in circumstances due to the escalation of mother's drinking and her pending criminal charges. Based on numerous findings, the court concluded that it was in B.R.'s best interests that father have primary physical rights. Because the parties could not agree on a specific visitation schedule, the court created a schedule to allow for "frequent ongoing contact with both parents." It recognized that because father worked during the week, it was important that weekends be alternated. It thus ordered that the child be with each parent on alternating weekends from Thursday afternoon through Sunday evenings, and on alternating Tuesday and Wednesday afternoons until 7:00 p.m. The court noted that this schedule may need to be revised once mother found employment and determined her work hours. As noted, mother's appeal from this order was dismissed.

In July 2009, mother filed a motion to modify parent-child contact. She sought visitation every weekend, and she also sought to pick up the child earlier during her weekday visits. Mother alleged that the current schedule was not workable for her due to transportation issues. At the hearing, mother recounted that she was working in Berlin, rather than Barre as she had been previously, and she had to take the bus to pick up the child in Barre, and then return to her home in Montpelier. She complained that this left her with less time with the child than when she had been working in Barre and had access to a job shuttle. Mother acknowledged at the hearing that she had missed numerous scheduled visits with the child, sometimes without notice to father. At the close of the hearing, the court denied the motion. It found that mother failed to establish a real, substantial, unanticipated change of circumstances since the court's previous order. The court recognized that the form of mother's transportation had changed, but observed that this change was based on mother's voluntary decision to take a different job. Although it was not ideal for the child to be spending a lot of her time with mother on the bus, the court concluded that the parties' overall circumstances had not changed. The court emphasized that Vermont law was specifically designed to discourage parties from coming to court every time there was an adjustment in their home or work schedule. The court suggested that the parties try to reach an agreement about the transportation issue. On the record, father proposed that his daycare provider drop off the child at mother's home, but mother rejected this proposal. Mother appealed the family court's order.

As noted, we address only those arguments that directly relate to the court's September 2009 decision that denied mother's request to modify visitation. We do not address mother's numerous challenges to the court's March 2009 order or to any other court order. Mother asserts that the court erred by finding no substantial change in circumstances. She offers the following statements to support her position: (1) the visitation schedule was never presented to ensure parents' availability; (2) father has "continuously interfered [with the] visitation schedule"; (3) the court failed to consider the child's best interests; (4) father refuses to share legal rights; and (5) the court did not consider the opportunity for maximum physical and emotional contact for the child. While the context is not clear, mother also asserts that the family court denied her an equal and fair hearing.

We review the family court's decision only for abuse of discretion, mindful that mother bore the burden of proving changed circumstances below. Gates v. Gates, 168 Vt. 64, 67-68 (1998). The court must find changed circumstances before it can "move on to the question of what arrangement is in the best interests of the child." Id. at 69. As we have explained, "[t]his two-step approach ensures that the Legislature's intent to keep the best interests of the children paramount is satisfied by precluding courts and opposing parties from easily changing final orders and, thereby, causing disruption in the children's lives." Id.

Mother fails to show that the court abused its discretion here. The court reasonably concluded that the change in mother's mode of transportation was not significant enough to constitute a real, substantial, and unanticipated change in circumstances. None of mother's arguments undermine this conclusion. It is difficult to understand the thrust of mother's argument about the court ensuring parents' availability in creating the original schedule, and mother does not elaborate. In fact, the family court had to create the original visitation schedule itself because the parties were unable to work out a mutually acceptable schedule. This finding is part of the court's March 2009 order, and it is not subject to appeal here. The court made no finding in its September 2009 order that father interfered in mother's visitation time, and the issue of whether there should be a change in the division of legal rights was not before the court at the September 2009 hearing. The court did acknowledge mother's complaints regarding her ability to contact father. The court noted that there should be a way for communication to occur, and that the parties should make every effort to exchange information so as to benefit the child. While mother appears to suggest that the court should have taken a different course, it is well-established that the family court, not this Court, must weigh the evidence. Cabot v. Cabot, 166 Vt. 485, 497 (1997).

Mother's remaining arguments are equally unavailing. The family court acted appropriately in not considering the best-interests portion of the analysis, having found no changed circumstances. Gates, 168 Vt. at 69. Mother did not argue below that the visitation schedule failed to maximize the child's contact with each parent, nor does she explain how this argument relates to her position regarding changed circumstances. See Bull v. Pinkham Eng'g Assocs., 170 Vt. 450, 459 (2000) ("Contentions not raised or fairly presented to the trial court are not preserved for appeal."); In re S.B.L., 150 Vt. 294, 297 (1988) (appellant bears burden of demonstrating how trial court erred in a way warranting reversal, and Supreme Court will not comb record searching for error); see also V.R.A.P. 28(a)(4) (appellant's brief should explain what the issues are, how they were preserved, and what appellant's contentions are on appeal, with citations to the authorities, statutes, and parts of the record relied on). We note, however, that the existing visitation order does maximize both parents' contact with the child, and it is consistent with the statutory goal cited by mother. See 15 V.S.A. § 650 (Legislature finds maximum physical and emotional contact with both parents following divorce is in best interest of minor children, "unless direct physical harm or significant emotional harm to the child or a parent is likely to result from such contact"). Finally, mother's suggestion that she was treated unfairly at the hearing is wholly unsupported by the record. We find no grounds to disturb the court's decision.

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