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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-063

AUGUST TERM, 2010

Christine West	}	APPEALED FROM:
	}	
	}	
v.	}	Washington Family Court
	}	
	}	
Christopher Glaser	}	DOCKET NO. 392-10-07 Wndmp
		Trial Judge: Mary Miles Teachout

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

In this parentage action, father appeals from the family court's January 21, 2010 modified order concerning the parties' parental rights and responsibilities. We affirm.

The parties have two children born in October 2005 and June 2007. In November 2007, the family court issued an order awarding mother sole parental rights and responsibilities and awarding father parent-child contact. Beginning in July 2009, both parties filed several motions concerning parental rights and responsibilities. On September 29, 2009, the family court issued a temporary order giving father continuous parent-child contact while mother left for Florida to explore opportunities there with her husband. On November 17, 2009, the court issued another temporary order allowing mother to take the children to Florida until December 22, 2009, the date of the scheduled motions hearing. Following the hearing, in which the parties represented themselves and the two children were represented by an attorney, the court issued a modified order maintaining sole legal and physical parental rights and responsibilities with mother in Florida and awarding father parent-child contact for two months in the summer and at other times during the school year. Father appeals from that order, arguing that (1) the court denied him due process by not allowing him to present witnesses, and (2) the evidence does not support the court's decision to allow mother to move to Florida with the children and thereby deprive him of equal time with them.

We find no basis to overturn the family court's decision. Regarding father's first argument, the court queried both parties on the content of the proffered testimony from their witnesses. Mother wanted to present the testimony of her mother and her husband, but the court concluded that the proffered testimony would be cumulative in nature or would involve only hearsay. Father wanted his aunt to verify his testimony that mother was yelling at one of the children on one occasion when he was on the phone with her. He also wanted his mother to testify that the children were not in car seats on multiple occasions when in mother's care. Finally, father could not recall exactly what the content of his sister's testimony would be, but he thought that it would have something to do with the behavior of the kids. The court concluded that this proffered testimony would also be cumulative or would involve hearsay and would not add any material evidence to the case. We conclude that the court acted within its discretion in determining that the proffered testimony was cumulative and unnecessary. See V.R.E. 403 (trial

court may exclude needless presentation of cumulative evidence); cf. V.R.E. 611(a) (allowing trial court to exercise reasonable control over presentation of evidence); Varnum v. Varnum, 155 Vt. 376, 390 (1990) (affirming trial court's use of Rule 611(a) to set limits on testimony).

Regarding the second issue, father contends that the family court abused its discretion by not awarding him parental rights and responsibilities insofar as he presented evidence that mother had not followed up on critical health-related appointments for the children, that he had seen bruises on the children allegedly inflicted by mother's husband, and that mother had moved several times in the past year. Upon review of the record, including the transcript of the December 29, 2009 hearing, we conclude that the family court did not abuse its discretion in denying father's motion to transfer parental rights and responsibilities to him. See Lane v. Schenck, 158 Vt. 489, 499 (1992) (to prevail on motion to modify parental rights and responsibilities, noncustodial parent has burden to demonstrate that children's best interests would be so undermined by relocation with custodial parent that transfer of custody is necessary). Both parents raised significant issues of concern related to the other parent, including allegations of abuse and neglect, but ultimately it was for the trial court to determine the best interests of the children. See Price v. Price, 149 Vt. 118, 121 (1987) (custody determinations must be made on basis of children's best interests and not fault of parties). As the trier of fact, it was the court's prerogative to assess the credibility of the witnesses and weigh the evidence. See Chick v. Chick, 2004 VT 7, ¶ 10, 176 Vt. 580 (mem.) (we afford trial court wide discretion in custody matters because court is in unique position to assess credibility of witnesses and weigh evidence). The evidence did not compel the court to transfer parental rights and responsibilities to father; rather, there was evidence supporting the court's decision to maintain parental rights and responsibilities with mother. Accordingly, we decline to disturb the family court's decision. See Porcaro v. Drop, 175 Vt. 13, 18 (2002) (we will not disturb decision that reflects family court's reasoned judgment based on record evidence).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice