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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2015-271

FEBRUARY TERM, 2016

Emily Walker (McRae)	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
v.	}	Family Division
	}	
	}	
Samuel McRae	}	DOCKET NO. 236-7-08 Frdm
		Trial Judge: Howard E. Van Benthuysen

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

Mother appeals pro se from the trial court's denial of her motion to modify parental rights and responsibilities. We affirm.

Mother and father are the parents of a minor child. An initial parentage order was issued in March 2009, and numerous motions have been filed since that date in this high-conflict case. The most recent parental-rights order was issued in December 2013, based on the parties' stipulation. That order provided that the parties would share legal rights for the child, and it vested sole physical rights for him with father. The issue of contact between mother and child was left "as agreed to by the parties."

In early 2015, mother filed a motion to enforce parent-child contact and a motion to modify parental rights and responsibilities. She asserted that there had been a change in circumstances because father was using the vague visitation schedule to punish her and the child. Following a May 2015 hearing, the court denied mother's motions. It found as follows. At the time of the hearing, mother and her family were living with friends who had taken them in. It was not clear how long that arrangement would last, nor were the friends identified. Both mother and child receive services from Northwestern Counseling Support Services (NCSS). Although mother asserted that father somehow "coerced" her into signing the 2013 stipulation concerning parental rights, she provided no evidence to support this contention.

The court found that, notwithstanding the lack of a set visitation schedule, mother had been seeing the child on Friday and Sunday every weekend, but not overnight due to her work schedule. Although mother complained that father was depriving her of parent-child contact, the evidence showed that she had been having regular visits, and that her last visit occurred just four days before the hearing. During 2014, mother saw the child virtually every weekend. There was only one visit that mother was not granted, which occurred on February 20, 2015. The court found that the crux of the problem might lie in the fact that mother's current husband committed substantiated physical abuse of the child; therefore, he could not be left alone with the child.

Based on this record, the court concluded that mother failed to show that there had been a real, substantial, and unanticipated change in circumstances since the last, or controlling, order

issued. As set forth above, the evidence showed that during the prior eighteen months, mother had been seeing the child regularly, and that father had denied her one visit during that entire time. Although mother's work situation had improved and she was near to the top of the Section 8 housing waiting list, those facts did not constitute a substantial unforeseen change in circumstances. The child was living with father in a stable situation. The court concluded that mother failed to show any meaningful change, let alone a substantial one. It thus denied her motions. The court also ordered that the child have no unsupervised contact with mother's husband. Finally, the court noted that the parties had agreed during the hearing to a certain temporary visitation schedule, and they agreed that their NCSS workers would assist the parties in coming up with a more permanent long-term parent-child contact schedule. This appeal followed.

After mother filed her notice of appeal, she filed a motion to reconsider with the trial court. The court found that mother offered substantial new evidence in her filing that was not presented or argued to the court at the May 2015 hearing. The court indicated that it would give father an opportunity to consider and discuss this evidence with mother, and see if the parties could reach an agreement on mother's proposed parent-child contact schedule. Following a hearing, the court issued a decision on mother's motion in December 2015. It found most of the facts undisputed and/or agreed to by the parties. It set a long-term parent-child contact schedule pursuant to the parties' agreement, and it lifted the supervision-requirement for mother's husband.

Mother's brief on appeal was submitted before the court issued its December 2015 decision. She argues that the court should have found that father was alienating the child from her, and that this was not in the child's best interests. She sets forth her version of the facts, and states that "abuse and neglect are present in [father's] household." Finally, she argues that the court erred by refusing to allow her to submit certain evidence, apparently concerning the improvements her current husband had made in improving his parenting skills and other matters.

We find no basis to reverse the court's decision. As we have often repeated, the court may modify a parental rights and responsibilities order only upon a showing of "real, substantial, and unanticipated change of circumstances." 15 V.S.A. § 668(a). This threshold finding is required before the court may consider whether a modification is in the child's best interests. The moving party bears "a heavy burden to prove changed circumstances," and the court has discretion in determining if changed circumstances exist. Spaulding v. Butler, 172 Vt. 467, 476 (2001).

Mother fails to show that the court erred in reaching its decision here. Although mother obtained permission to have the audio of the hearing submitted as part of the record, she fails to provide any citation to the audio record to support her claims. "When audio . . . recordings are part of the official record in place of a transcript, the parties must, when referring to the record of the audio- . . . recorded proceedings in their briefs, provide references that include the number of the audio . . . recording as well as the date (if more than one date), hour, minute, and second when the reference begins." V.R.A.P. 28(e) (emphasis added). This Court will not peruse the record searching for error. See In re S.B.L., 150 Vt. 294, 297 (1988) ("It is the burden of the appellant to demonstrate how the lower court erred warranting reversal. We will not comb the record searching for error."); see also V.R.A.P. 28(a)(4)(A) (argument on appeal shall contain citations to "parts of the record on which appellant relies"). By failing to provide any record support for her claims, mother has failed to show any basis for disturbing the court's decision. We note, moreover, that the issue that appears to have been driving mother's motions—the lack of a set visitation schedule—has now been remedied by agreement.

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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Marilyn S. Skoglund, Associate Justice