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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-311

FEBRUARY TERM, 2005

Mary Davenport	}	APPEALED FROM:
	}	
v.	}	Caledonia Family Court
	}	
Dennis Davenport	}	
	}	DOCKET NO. 238-10-02 Cadm
		Trial Judge: Walter M. Morris

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

Father, appearing pro se, appeals the Caledonia Family Court's final divorce order dividing the parties' property and granting mother sole custody of the parties' minor son, subject to father's right to parent-child contact. We affirm.

The parties married in 1987, had one child together, and separated in 2002. During the parties' marriage and following their separation, mother served as the child's primary care provider. Father, a successful business owner, supported the family financially.

In April 2004, the parties engaged in mediation in an attempt to settle all of the contested issues in the divorce. Retired Superior Court Judge Alden T. Bryan agreed to serve as the mediator. Both parties were represented by counsel at the mediation session, which lasted from approximately 9:00 a.m. to 6:00 p.m. The parties reached an agreement, which they signed, on all but two relatively minor financial matters.

Father regretted signing the mediated agreement and sought to be excused from it. Father claimed that he was tired and hungry by the end of the mediation session, that he did not understand the binding nature of the agreement or its terms, and that his attorney and the mediator pressured him to sign it. Father's attorney subsequently withdrew from the case with the court's approval. Following a status conference on April 9, 2004, the court announced that it would address the validity and enforceability of the parties' settlement at the final divorce hearing. The final hearing would also address the parties' competing claims for parental rights and responsibilities.

The final hearing occurred on June 17, 2004. The court stated its findings on the record after taking evidence about the mediation session and the issue of parental rights and responsibilities. Concluding that father was bound by the settlement agreement he signed, the court explained that father failed to show that he was coerced into the settlement. The court also found that the agreement was not unconscionable on its face because it did not result in a disproportionate share of the parties' property to one spouse or the other. Further, the court noted that father is a savvy businessman and that he understood what he had agreed to. On the issue of parental rights and responsibilities, the court determined that mother's role as primary care provider tipped the scales in her favor for sole custody. The court set a schedule for father's contact with the child that included every other weekend, three weeks during the summer, and certain holidays. Dissatisfied with the outcome, father filed the present appeal.

Father's brief appears to raise four issues.[*] First, father asks the Court to revisit the issue of parent-child contact

because he did not express himself well at the final hearing and was not able to get his points across. We decline to do so. As an appellate court, we review trial court decisions for error only. See Hoover v. Hoover, 171 Vt. 256, 261 (2000) ("It is not what appellate judges would have done had they been the trier of fact that governs in an appeal."). This Court may not consider new evidence, assess the credibility of witnesses, or re-weigh the evidence admitted at trial. That role is reserved for the family court as trier of fact. LaMoria v. LaMoria, 171 Vt. 559, 561 (2000) (mem.).

Second, father challenges the court's order directing him to pay $1,000 per month in child support, claiming financial impossibility. That portion of the family court's order was based on the settlement father signed. The family court found the agreement valid and enforceable after taking evidence from the parties. Father argues, however, that he should not be bound by the agreement because he did not know that mother's attorney sent information to the mediator before the mediation session. Father asserts that receiving the information tainted the mediator's neutrality. In addition, father claims he was never told that the settlement agreement he signed was irrevocable.

The record shows that both parties sent information to the mediator about their respective claims in the divorce. Providing information to a mediator about the dispute to be mediated is standard practice and, without more, is not cause to disqualify a mediator or to question his neutrality. Moreover, although father claims he was unaware that mother's attorney wrote the mediator, father's attorney received a copy of the letter in question. After considering father's claims and the evidence admitted during the final hearing, the court concluded that the settlement agreement was

> a valid and binding contract entered into by both parties knowingly and voluntarily, with awareness of the properties in issue, without fraud or coercion or duress or non-disclosure of material circumstance. And the agreement was entered into with the advice and assistance of competent counsel, long familiar with the parties, the case, the issues, [and] the property at stake.

Under the circumstances, father has not demonstrated any error in the court's conclusion that father is bound by his agreement, including his assent to pay $1,000 in monthly support. Accordingly, we find no error.

Third, father challenges the court's order on issues related to the marital home. For example, the court ordered father to remove dog kennels, runways, and fences on the property upon thirty days notice by mother to remove the items. The order requires father to pay for all costs related to the removal and restoration of the land to its natural state. Father argues that he cannot afford those costs, particularly in light of the $1,000 monthly child support obligation. At trial, father's only evidence on this issue was his own testimony that mother should remove the items on the property because he did not think he could afford it. The trial court rejected father's claim after considering all of the evidence. That was the trial court's prerogative as trier of fact. Id. No error appears.

Finally, father asks us to consider an issue that "has not been looked into or heard." We do not address this argument because, as father admits, it was not raised or decided by the family court. See Berlin v. Berlin, 139 Vt. 339, 340 (1981) (Supreme Court will not review issues that were not raised in the family court).

Affirmed.

BY THE COURT:

_____

Paul L. Reiber, Chief Justice

_____

John A. Dooley, Associate Justice

_____

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned

---

[*] As with many pro se briefs filed with this Court, father's does not meet the basic requirements of our rules. The brief lacks clear references to the record, citations to supporting legal authority, and an explanation of how the issues argued on appeal were preserved in the family court. V.R.A.P. 28(a). To the extent that father's brief raises additional issues, we do not address them because they are inadequately briefed.