

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-476

APRIL TERM, 2005

Patricia Tallman	}	APPEALED FROM:
	}	
	}	
v.	}	Lamoille Family Court
	}	
Dorick Tallman II	}	DOCKET NO. 62-4-03 Ledm
	}	

Trial Judge: Edward J. Cashman

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

Mother Patricia Tallman appeals pro se from the family court’s order, which affirmed its previous award of custody of the parties’ children to father Dorick Tallman II and its dismissal of a final relief-from-abuse order against father.\* Mother argues that the court’s findings are not supported by the evidence, and its conclusions are not supported by its findings. Father has not filed a brief despite a January 2005 order from this Court to do so. We find the court’s conclusions sufficiently supported by the record, and we therefore affirm.

Mother and father are the parents of two minor children. The parties divorced for the second time in November 2003, and the family court awarded custody of the parties’ children, then aged six and eight, to father. The court also dismissed a relief-from-abuse order against father as improvidently granted. Mother appealed to this Court, and we reversed and remanded for additional findings. Tallman v. Tallman, No. 2003-525 (Vt. July 1, 2004) (unpublished mem.).

After a hearing at which additional evidence was received, the family court affirmed its original order and set out additional findings. As to its dismissal of the relief-from-abuse order, the court explained that there was no credible evidence in the record of any painful touch—assault—or threat of assault. It stated that an eyewitness to the alleged assault had testified at the hearing, and she had made a convincing record that wife had fabricated the assault incident. The court noted that the parties had been engaged in an extended cycle of domestic dysfunction, resulting in extended separations and dislocation of the children. It explained that the parties had married and divorced one another twice, and they had been involved in repeated litigation over relief-from-abuse orders, almost all of which had proved to be groundless. The court stated that mother’s history of groundless litigation prompted a conclusion that father had a reasonable fear that continuation of the relief-from-abuse order would prompt mother to provoke contact, thereby resulting in criminal charges against father. The court concluded that the continuation of the order under these circumstances would create a further injustice, and it therefore upheld its order dismissing the final relief-from-abuse order as improvidently granted.

Turning next to its custody award, the court reviewed the criteria set forth in 15 V.S.A. § 665(b), and made findings with respect to each factor. The court found that the parties had experienced a tumultuous relationship over the years, marrying and divorcing each other more than once. It explained that mother had repeatedly left the marital home during the marriage, and she often signaled her departure by filing a petition for a relief-from-abuse order. The court found that the history of these orders showed that mother did not have adequate evidence to support her claims. The

court stated that mother had moved four times in the last three years, from place to place with little long-term stability. The court also found that mother had an inconsistent work history, and she had a medical history of long-term anxiety. As the court explained, mother's propensity to abandon domestic settings transcended the marriage—she had recently been involved in another relationship leading to marriage, and after ninety days of marriage, she was getting divorced, and was looking for a new home. The court explained that mother's repeated leaving, and the accompanying litigation, had created substantial disruption for the children—they had left their home, their association with their father, and other important family members. The court found that the children's lives with mother had been marked by instability, and placing the children with mother would create further disruptions in the children's lives.

The court found that father, in contrast, had weathered the disruptions of the marriage and remained focused on the care of the children. He had attempted to provide stability for the family, and he had maintained the family home under difficult circumstances. He withstood a criminal prosecution for domestic assault that had ended in an acquittal. He improved the condition of the family home and he provided direct and consistent care to the children. The court found that father appeared to be better suited to provide for the children's everyday needs, and he was more capable of maintaining a healthy relationship with mother. The court also found that the children were doing well with father, and they had also developed a strong and healthy attachment to father's parents, who lived nearby. The court rejected mother's assertion that father was abusing regulated drugs, finding the claim unsupported by the record.

Based on its findings, the court concluded that, on balance, father was the more stable and more caring custodian of the parties' children. It thus reaffirmed its earlier award of sole parental rights and responsibilities to father. Mother appealed, arguing that the family court's findings are not supported by the record, and its findings do not support its conclusions. While mother correctly asserts that many of the court's findings are not supported by evidence in the record, the court's most significant findings are supported, and these findings support the court's conclusion that an award of parental rights and responsibilities to father is in the children's best interests.

The trial court has broad discretion in making a custody determination. Payrits v. Payrits, 171 Vt. 50, 52-53 (2000). The court must consider all relevant evidence, including statutory factors, and its decision must be based on the children's best interests. 15 V.S.A. § 665(b); Gilbert v. Gilbert, 163 Vt. 549, 553 (1995). On review, "we will not set aside the family court's findings if supported by the evidence, nor its conclusions if supported by the findings." Payrits, 171 Vt. at 53 (quotations omitted). In conducting our analysis, we view the evidence in the light most favorable to the prevailing party, and disregard the effects of modifying evidence. Hoover v. Hoover, 171 Vt. 256, 258 (2000).

In this case, the court's decision turned on its finding that father was better able to provide consistent care and stability for the children. This finding is supported by the evidence. Neither party disputes the tumultuous marital history described by the court. Mother testified that she and father first married in June 1996, and divorced in November 1999. They remarried in February 2000, and separated in March 2001. Mother filed for divorce, and the parties separated between March 2001 to December 2001. They reunited in December 2001, and mother withdrew her divorce petition. They remained together until April 2003. The record shows that, while married to father, mother repeatedly filed relief-from-abuse petitions, all of which were ultimately dismissed, with the exception of the order currently on appeal. A jury acquitted father of domestic assault. Mother acknowledged that, during the marriage, she repeatedly left the marital home, and moved to different locations. Between 2001 and 2004, mother moved her primary residence four times. It appears that in 2001, she moved from Colchester to Cambridge, and then to Wolcott. In June 2003, she moved to Jeffersonville, and in February 2004, she moved to Cambridge. During this time, the children switched schools several times. Mother testified to the short duration of her most recent marriage, as well as the fact that she was again looking for new housing. Based on the evidence, the court reasonably concluded that mother's behavior resulted in instability for the children, and her repeated filings of relief-from-abuse petitions served to isolate father from the children.

The court found that father was more capable of providing the children with stability. Father testified that he had remarried, and the children were happy with their living situation. Father's parents lived nearby and the children saw them almost daily. Father also stated that he had improved the family home to make it better suited for the children. Father testified that mother said mean things about him to the children while they were in her care. Father acknowledged using drugs in the past, but testified that he had been in counseling and he was no longer using drugs.

Father indicated that he had not worked for three-and-one-half years prior to the hearing due to a shoulder disability but he stated that he had since recovered and was back at work. He testified that he had a full-time job with a company for which he had worked on-and-off for approximately twenty years. The court found that father had remained focused on the children during difficult periods in the marriage, and it concluded that father's behavior demonstrated his soundness. We defer to the family court's findings because that court is in a "unique position to assess the credibility of witnesses and weigh the evidence." Payrits, 171 Vt. at 53 (internal quotation marks and citation omitted). The court conclusion that father could offer the children a more stable environment than mother is supported by evidence in the record, and the court did not abuse its discretion in concluding that awarding custody of the children to father was in the children's best interests.

Mother next argues that the court erred in dismissing the relief-from-abuse petition against father. She asserts that the court's findings are not supported by the evidence. We disagree. The record supports the court's finding that no assault occurred. As noted above, an eyewitness to the encounter, April Flood, testified about the incident. She stated that mother had brought a boyfriend over to her house, and apparently, a minor saw mother having sex with this individual. Father learned of this, became upset, and came to Ms. Flood's home looking for the children. Ms. Flood testified that she did not see father touch mother. She later stated that father had come to her house; mother was standing in the doorway, and father brushed by mother, looking for the children. Ms. Flood testified that father hadn't intentionally pushed mother, or punched her. While mother asserts that father did abuse her, the family court found Ms. Flood's account of the incident credible. We will not disturb this assessment on appeal. Id. We find no error in the court's dismissal of the relief-from-abuse order.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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

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\* Mother was represented by counsel at the hearing on remand.