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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-010

AUGUST TERM, 2005

Sarah Clark	}	APPEALED FROM:
	}	
v.	}	Chittenden Family Court
	}	
Al-Sayed Mamann	}	
	}	DOCKET NO. 673-8-01 Cndm
		Trial Judge: Helen M. Toor

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

Mother appeals the family court=s order granting father=s motion to modify parent-child contact to allow him to have supervised visitation with the parties= child. We affirm.

The parties began an intimate relationship in 1999, and their child was born in August of that year. Father was living in New York City. The parties visited each other periodically until May 19, 2001, when father assaulted mother after learning that she was dating someone else. Following the incident, which resulted in the filing of criminal charges against father, mother obtained a temporary relief-from-abuse order and filed a parentage action seeking sole parental rights and responsibilities. In December 2001, the family court awarded mother parental rights and responsibilities and suspended father=s parent-child contact while criminal charges were pending against him. The court indicated that the criminal charges should be resolved before initiating visitation, and that the child should not have to visit father while he was incarcerated. Father was eventually convicted of domestic assault and unlawful restraint, and was incarcerated from August 2003 until January 2004.

In April 2004, father moved to modify the earlier parentage order to allow him contact with the parties= child. The court first ruled that father had met the threshold requirement of showing a substantial change of circumstances because the criminal charges had been resolved, and he was no longer incarcerated. Following a hearing on the merits, the court granted father=s motion to modify parent-child contact, finding no evidence that the child would be physically or emotionally harmed by having supervised contact with her father. The court ordered that therapeutic supervised contact take place at least twice a month for six months, at which time the therapeutic supervisor could inform the court of any concerns about progressing towards regular supervised contact or even unsupervised contact.

On appeal, mother first argues that father failed to meet the threshold showing of changed circumstances. See 15 V.S.A. ' 668 (stating that upon showing of real, substantial and unanticipated change of circumstances, family court may modify previous custody order if it is in best interests of child). We disagree. As the family court noted, the original parentage order suspending father=s parent-child contact was based on the court=s determination that contact should not be initiated unless and until the criminal charges were resolved and father was out of jail. At the time father filed his motion to modify, the criminal charges had been resolved and he had completed his sentence. The family court did not abuse its discretion in concluding that those circumstances were sufficient to satisfy the threshold requirement for modifying parental rights and responsibilities. See Meyer v. Meyer, 173 Vt. 195, 197, 789 A.2d 921,923 (2001) (emphasizing deferential standard for reviewing family court=s finding of changed circumstances).

Mother further argues that the family court abused its discretion by modifying parent-child contact to allow father to have supervised visitation, considering that the child witnessed father assault mother, father had not had any contact with the child since that incident, and father had failed to acknowledge any wrongdoing regarding the assault. Again, we find no abuse of discretion. See Gates v. Gates, 168 Vt. 64, 74, 716 A.2d 794, 801 (1998) (AGranting, modifying, or denying visitation is within the discretion of the trial court and will not be reversed unless its discretion was exercised upon unfounded considerations or to an extent clearly unreasonable upon the facts presented.@ (internal quotations omitted)). Although the party seeking to modify parental rights and responsibilities has the burden of proof, the family court properly presumed, absent evidence to the contrary, that it would be in the child=s best interests to have a relationship with her father. See 15 V.S.A. ' 650 (declaring public policy that it is in best interests of children of divorcing parents to have opportunity for maximum contact with both parents, unless physical or emotional harm is

likely to result from such contact); see also Mullin v. Phelps, 162 Vt. 250, 267, 647 A.2d 714, 716 (1994) (holding that family court may not terminate child-parent contact of either parent in divorce or custody cases absent clear and convincing evidence that best interests of child requires such action). The court found no evidence that the child had experienced any trauma as the result of witnessing the assault years earlier or that she would experience any trauma in seeing her father again. In short, the court found no evidence that the child would suffer either physical or emotional harm as the result of supervised contact with her father. As for mother=s argument that father had not yet taken responsibility for his prior assault on mother, the family court considered this factor but determined that it would still be in the child=s best interests to have contact with her father, at least in a supervised setting. Under these circumstances, the court acted within its discretion in ordering therapeutic supervised visitation.

Affirmed.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

_____
John A. Dooley, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice