

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-027

OCTOBER TERM, 2005

Matthew Trim	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Family Court
	}	
Ashley Brunton	}	DOCKET NO. 616-8-02 Cndm

Trial Judge: Helen M. Toor

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

Mother appeals from a family court order modifying parental rights and responsibilities for the parties= minor child. Mother contends: (1) the court=s order granting father primary physical parental rights and responsibilities was inconsistent with the evidence showing that father had intentionally violated a court order by preventing mother from sharing physical custody of the child; and (2) the court=s findings were inadequate and failed to support the judgment. We affirm.

This case began as a parentage action filed by father against mother in August 2002, resulting in a stipulated order for shared legal and physical parental rights and responsibilities of the parties= minor son, born in December 2001. The parties arranged for an equal division of physical custody on alternating weeks. In the summer of 2003, father moved to upstate New York, where his parents and other family members lived. The shared custody arrangement continued until July 2004, when father refused to return the child to mother after his week of visitation had expired. In October, mother filed a motion to modify custody, seeking sole parental rights and responsibilities on the basis of father=s violation of the shared custody order.

A hearing on the motion was held in December 2004. The child was then three years old. Mother was represented by counsel, while father represented himself. At the conclusion of the hearing, the court made findings on the record. The court found that a substantial and unanticipated change of circumstances had occurred based on father=s conduct and the parties= demonstrated inability to agree to share parental rights and responsibilities. The court then reviewed the statutory factors governing the best interests of the child, ultimately concluding that the evidence supported an award of primary physical rights and responsibilities to father. The court maintained the existing contact schedule of alternating weeks with mother until the child entered kindergarten, when visitation would change to every other weekend. This appeal followed.

Mother first contends the court=s order was inconsistent with the undisputed evidence showing that father intentionally interfered with her custodial rights by refusing to return the child after July 2004. We have recognized that willful interference with a parent=s right to physical custody or visitation is not in a child=s best interests and may form the basis for a change of custody. Sundstrom v. Sundstrom, 2004 VT 106, & 38, 865 A.2d 358; see also 15 V.S.A. ' 665(b)(5) (stating that in considering child=s best interests, court shall consider Athe ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including physical contact@). We have also held, however, that willful interference with court ordered physical custody, Ano matter how

deplorable, cannot be made the basis for an automatic award of custody to the innocent party. Wells v. Wells, 150 Vt. 1, 4 (1988) (quotations omitted). The primary consideration is the child's best interests, and in making its determination the court must consider all of the evidence in light of the relevant statutory factors. Sundstrom, 2004 Vt. 106, & 38. The court's decision in this regard is accorded broad deference. We will not disturb the court's factual findings unless clearly erroneous, nor its conclusions if the findings reasonably support them. Bell v. Squires, 2003 VT 109, & 14, 176 Vt. 557 (mem.).

In its findings here, the court acknowledged that father acted inappropriately in defying a court-ordered shared custody arrangement, a finding amply supported by numerous decisions of this Court condemning conduct by one parent that undermines the child's relationship with the other. Id. & 18; see also Begins v. Begins, 168 Vt. 298, 301 (1998) (A[A] child's best interests are plainly furthered by nurturing the child's relationship with both parents, and a sustained course of conduct by one parent designed to interfere in the child's relationship with the other casts serious doubt upon the fitness of the offending party to be the custodial parent.) (quotations omitted). At the same time, the court correctly observed that its paramount consideration was the best interests of the child. Sundstrom, 2004 VT 106, & 38. Contrary to mother's assertion, the court here did not Agloss over father's conduct, but neither was it compelled, as mother argues, to base its decision solely or principally on this factor. Father testified that he refused to return the child to mother based on his concern that mother's relationship with another man, who lived in Canada, was abusive, and because he feared that mother would take the child to Canada and impede his continued relationship with the child. Mother denied any abuse. Although the court properly condemned father's unilateral action and found that the claim of abuse was inconclusive, it also found that father had not otherwise attempted to alienate the child's affection for mother, who had remained in touch with father's family, had visited the child at a family gathering, and had maintained regular telephone contact with the child.

In reviewing the other statutory factors, the court found, based on the testimony of father and the child's paternal grandmother, that father had a close and positive relationship with the child. The grandmother testified without dispute that father's life revolved around the child, that he doted on him, and that they spent large amounts of time together fishing, reading books, and engaging in other activities. There was also testimony that father attended to the child's medical needs, and that the child was enrolled in a local daycare and doing well. In addition, the court found, and the evidence showed, that the child had a close relationship with his paternal grandparents, who lived near father. The court found that mother, in contrast, had offered little or no evidence concerning her relationship with the child, and therefore found that it had little basis on which to evaluate or compare that relationship with father's.

Without directly challenging these findings, mother contends that father should not be rewarded for the relationship that he developed with the child subsequent to his violation of the order. Nothing in the record, however, suggests that the evidence was limited to father's relationship with the child subsequent to July 2004. Indeed, in her brief on appeal mother characterizes her relationship with the child from birth to July 2004 as being the primary caretaker Afor at least one-half of the time,@ essentially acknowledging that she and father had both served as primary caretakers until July 2004.

Contrary to mother's claim, the court's findings, summarized above, are supported by the testimony at trial, and they adequately address the requisite statutory factors in determining the child's best interests. The findings, in turn, support the court's conclusion that the child's best interests were best served by an award of primary physical custody to father. Accordingly, we discern no basis for disturbing the judgment.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice