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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-382

FEBRUARY TERM, 2006

Marie Marking	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Family Court
	}	
Adam Gingras	}	
	}	DOCKET NO. 417-6-03 Cndm

Trial Judge: Thomas J. Devine

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

Mother appeals pro se from a family court order denying her motion to modify parental rights and responsibilities. For the reasons set forth below, we reverse the judgment, and remand for further proceedings.

This matter originated as a parentage action between the parties, who had a daughter in April 2003. In August 2003, the court entered a stipulated final order providing for shared parental rights and responsibilities. Each party eventually filed a motion to modify custody, resulting in a hearing in March 2005. Both parties were represented by counsel at the hearing, who informed the court (Judge Toor) that the parties had agreed upon a new parent-contact schedule. Counsel also explained that while the parties had also hoped to enter into a comprehensive stipulation governing parental rights and responsibilities, a number of issues remained to be resolved. The court declined to delay the hearing any further, but accepted the parent-contact stipulation, encouraged the parties to continue settlement discussions concerning custody, and assured them that they could withdraw their motions to modify, adding that Aif you folks can=t work things out and you=re not happy with shared legal, you can file a new motion and it will get dealt with in due course.@ The parties agreed to this arrangement, and the court again explained that while this would leave the shared-custody order intact, the parties could continue to work toward a new arrangement by consent, and A[i]f you get to a place where you=ve tried and tried and tried and you couldn=t come to agreement and one or both of you think that the current arrangement just isn=t workable, you can file another motion and we=ll have a hearing about it.@

Several months later, in July 2005, mother filed a new motion to modify custody, supported by an affidavit stating that father had failed to comply with the parent-contact provisions, had placed the parties= child and mother=s older children in fear, had been verbally abusive toward mother, and had recently relocated to New York and refused all requests for contact information. She sought sole custody of the child. Father did not file a response to the motion, and the court (Judge Devine) did not schedule a hearing. Instead, the court issued a brief entry order, stating that the motion Alargely recites problems and concerns which pre-date the recent comprehensive March 25, 2005, stipulation and order,@ that father=s move to New York did not represent a material change of circumstances Aespecially where the order contemplates and authorizes largely supervised contact in Vermont,@ and that mother had therefore failed to demonstrate a real, substantial, and unanticipated change of circumstances, as required under the modification statute, 15 V.S.A. ' 668. See Meyer v. Meyer, 173 Vt. 195, 197 (2001) (finding of changed circumstances represents jurisdictional threshold for modification of parental rights and responsibilities). Accordingly, the court denied the motion. This pro se appeal followed. Father has not filed a responsive brief.

It appears that in denying the motion, Judge Devine may have misconstrued the March 25, 2005, stipulation as Acomprehensive@ in nature while, in fact, it addressed only parent-contact issues, and was probably equally unaware of Judge Toor=s express assurance that the parties remained free to refile their modification motions and participate in a new hearing in the event that settlement efforts proved futile. The court may also have misconstrued mother=s claim concerning father=s move to New York and failure to provide contact information, which not only undermined the visitation provisions, but also allegedly rendered the shared custody arrangement unmanageable. Accordingly, we conclude that the judgment must be reversed, and the matter remanded for a hearing on mother=s motion to modify parental rights and responsibilities.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice