

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-405

AUGUST TERM, 2006

Sandra Raymond

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APPEALED FROM:

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v.

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Franklin Family Court

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Bobby J. Desrochers

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DOCKET NOS. 12-1-93 Frdm &

377-11-95 FrFa

Trial Judge: James R. Crucitti

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

Father appeals from the family court=s order denying his motion for parent-child contact. We affirm.

The child that is the subject of this proceeding was born in October 1992. Father=s parentage was established in 1993. Father has been incarcerated since 2001 and is facing several more years in prison. He was also incarcerated from 1996 to 1999. He last saw his child in 1995 or 1996 once a week for six or seven

weeks. A relief-from-abuse order protecting mother from father was granted in 1995 and will expire in June 2011. Following the motions hearing, in which father participated by telephone, the family court found that mother had been the victim of repeated abuse at the hands of father, and that the child had witnessed the abuse. The court concluded that it was not in the child's best interest to have contact with father considering the child's age, father's long-term incarceration, and the significant period of time that had elapsed since father had contact with his son.

On appeal, father argues that the family court was influenced and prejudiced by mother's perjured testimony concerning father's past actions resulting in the court ignoring evidence that he presented demonstrating his rehabilitation in prison and suggesting that his son would like to see him. Father states that there should be a rule preventing the court from relying on perjured testimony. In essence, father asks this Court to judge the credibility of the witnesses based on the videotaped record of the motions hearing, reweigh the evidence, and substitute our judgment for that of the trial court. That is not the role of an appellate court. The family court is ordinarily accorded broad discretion in custody matters. @ Begins v. Begins, 168 Vt. 298, 301 (1998). The family court's findings will stand on review unless there is no credible evidence to support them, considering the evidence most favorably to the prevailing party and discounting inconsistencies or substantial evidence to the contrary. Schipper v. Quinn, 2006 VT 51, & 13; Adams v. Adams, 2005 VT 4, & 10, 177 Vt. 448. This is the standard of review because it is the province of the family court, as the trier of fact, to determine the credibility of the witnesses and weigh the persuasiveness of the evidence. @ Adams, 2005 VT 4, & 10; see Begins, 168 Vt. at 301 (AGiven [family court's] unique position to assess the credibility of the witnesses and weigh the evidence, we will not set aside the court's findings if supported by the evidence, nor its conclusions if supported by the findings. @). As we stated in a recent case, A[t]he family court has the power and obligation to determine the credibility of witnesses @ and therefore Acan believe part of the testimony and reject other parts. @ Schipper, 2006 VT 51, & 14 (AThe family court was under no obligation to reject wife's testimony with respect to the issues before it. @).

The same is true in this case. The family court assessed the credibility of the witnesses, weighed the evidence before it, and determined that it would not be in the child's best interest to have contact with father at

this time, given the circumstances of the case. Upon review of the record, we find no basis for overturning the family court=s decision.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice