

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-471

JUNE TERM, 2007

Amy Stevens-Russo	}	APPEALED FROM:
	}	
v.	}	Windham Family Court
	}	
Vito Russo	}	DOCKET NO. 24-1-06 Wmdm
	}	
		Trial Judge: Patricia A. Whalen

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

Husband appeals from the family court's order annulling his marriage to wife and awarding wife custody of the parties' child. He raises numerous arguments. We affirm.

Husband and wife were married in July 2003. They have one child together, M.R., who was born in November 1999. Husband is currently incarcerated. In January 2006, husband requested a legal separation from wife; wife sought an annulment in a separately filed action. The cases were consolidated, and in June 2006, wife agreed to dismiss her case with the understanding that husband's case would be amended from a legal-separation complaint to a divorce complaint. A final divorce hearing was scheduled for October 23, 2006, and the court issued a transport order to enable husband to attend. Shortly before the final hearing, husband moved to dismiss his complaint. The court provided wife the opportunity to reopen her case, which she did, and the final hearing date remained the same. Husband then requested that the court vacate its transport order and allow him to participate by telephone. The court denied husband's request to participate by telephone in a contested, evidentiary hearing. It also noted that husband's behavior during previous telephone conferences had impeded the court's ability to keep order. The court informed husband that he could appear in person via the transport order, and if he chose not to do so, he would waive his right to participate in the final hearing. Husband subsequently requested that the transport order be vacated, and the court ruled, consistent with its earlier order, that he could not participate by telephone.

After an evidentiary hearing, the court issued an order annulling the parties' marriage. It found that after husband and wife married, wife learned that husband had been previously married and never divorced. Wife presented a certified copy of a marriage record, which indicated that husband had married a woman in Florida in 1987. The court concluded that because husband was legally married to another woman at the time he married wife, the second marriage was void under 15 V.S.A. § 511(b). The court awarded wife sole legal and physical custody of M.R. Husband was granted the right to parent-child contact as follows: he could send cards and letters to M.R. while he was incarcerated, which wife or a third-party designee could preview. Telephone contact was not permitted unless husband first set up a debit-card system with the prison. Once such a system was established, husband could petition

the court to modify its order to allow telephone contact, and the court would determine at that time if telephone contact was appropriate. This appeal followed.

Husband raises numerous arguments on appeal. He sets forth his version of the facts, relying on evidence that was not presented at the final hearing. He asserts that wife knew of his first marriage, and that she committed fraud and perjury at the hearing. He questions why wife was allowed to renew her request for an annulment after his divorce complaint was dismissed. He argues, among other things, that the court should have granted his request to continue the final hearing, as well as his other motions. He also challenges the court's award of parent-child contact, suggesting that his parental rights were terminated by the court.

We find no basis to disturb the court's decision. Its findings are supported by credible evidence in the record, and support a conclusion that the parties' marriage was void due to the fact that husband was legally married to another woman at the time he married wife. Wife was thus entitled to an annulment under 15 V.S.A. § 511(b). We reject husband's attempt to relitigate the facts on appeal. Husband had an opportunity to attend the final hearing, which he chose not to do. He has not demonstrated that any of the family court's findings are clearly erroneous. Semprebon v. Semprebon, 157 Vt. 209, 214 (1991) (Supreme Court reviews trial court's findings for clear error). His challenges to wife's credibility are equally unavailing. See Cabot v. Cabot, 166 Vt. 485, 497 (1997) (it is for family court, not Supreme Court, "to determine the credibility of the witnesses and weigh the persuasiveness of the evidence"). The court did not err in granting wife an annulment, nor did it abuse its discretion in denying any of husband's motions.

We similarly find no error in the court's award of parent-child contact. The family court has broad discretion in determining what level of contact is in a child's best interests, Myott v. Myott, 149 Vt. 573, 578 (1988), and this Court will not interfere with a visitation order unless the family court's discretion "was exercised upon unfounded considerations or to an extent clearly unreasonable upon the facts presented." Cleverly v. Cleverly, 151 Vt. 351, 355-56 (1989). Husband fails to show that the court abused its discretion here. Husband is currently incarcerated out-of-state. The order allows him to contact the child through letters, and possibly by telephone depending on the family court's subsequent evaluation of the circumstances. The court did not terminate husband's parental rights. We have considered all of the arguments raised by husband, and find them without merit.

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