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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-058

OCTOBER TERM, 2007

Larkin Forney	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Family Court
	}	
	}	
Ashley Terjelian	}	DOCKET NO. 332-5-03 Cndm
		Trial Judge: Geoffrey W. Crawford

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

Father appeals the family court's order modifying his parent-child contact with respect to the parties' four-year-old daughter. We remand the matter for a new hearing.

This is an acrimonious parentage action begun in 2003. The most recent hearing was held on January 30, 2007, after which the family court issued an order establishing a place and time for father's parent-child contact. The court also denied in a motion-reaction form, without comment, several motions that father had filed before the hearing. On appeal, father argues that (1) the family court's actions and rulings demonstrated bias against him and failed to protect him from mother's lies; and (2) the court would not allow him to present his case and failed to take testimony or consider his motions to appoint a guardian ad litem, to order an evaluation to assess his daughter's living situation, and to modify parental rights and responsibilities. Father also challenges the administrative judge's denial of his motion to disqualify the family court judge hearing his case.

After reviewing the record, including the transcript of the January 30 hearing, we find no evidence of bias on the part of the family court, and we find no basis for overturning the administrative judge's decision denying father's motion to disqualify the trial court judge. As the administrative judge indicated, father has failed to cite any objective, provable facts in support of his claim of bias. Nevertheless, we are compelled to remand the matter because the record does not reveal a basis for the court's decision to deny father's motions to appoint a guardian ad litem, to order an evaluation, and to modify parental rights and responsibilities. Prior to the January 30 hearing, father filed several motions expressing concern over his daughter's living situation and asking the court to appoint a guardian ad litem, order an evaluation, and modify parental rights and responsibilities. The court's notice of the January 30 hearing specifically indicated that those and other motions would be heard at the hearing.

During the brief hearing, the family court focused on finding a mutually agreeable place where father could visit with the parties' daughter once or twice each week. Father complained that the hearing was supposed to be about more than finding an agreeable place for parent-child contact, but the court never took evidence on any other issue. The brief hearing consisted almost entirely of the parties bickering over who did what at the previous attempted father-daughter visit. In the end, despite father's complaint that he did not like meeting at Burger King for visits because the child was distracted at the playground there, the court ordered one-hour Sunday visits at the restaurant. Following the hearing, the court also issued a motion-reaction form denying all of father's previous motions.

We recognize from our review of the record that this is a longstanding, acrimonious case in which no less than eighty motions have been filed over the past four years. We also recognize that the parties, particularly father, have engaged in argumentative behavior that has disrupted the judicial proceedings. Nevertheless, we must remand the matter for another hearing because father had no real opportunity to present any arguments concerning the motions that were to be the subject of the January 30 hearing, and the record reveals no basis for the family court's decision to deny those motions. Although apparently neither party requested findings, in this case there was no opportunity for the parties to present evidence that could have formed the basis for the court's decision. Cf. Slade v. Slade, 2005 VT 39, ¶ 5, 178 Vt. 540 (mem.) ("Where findings are neither requested nor made, this Court must assume that the trial court found every contested issue of fact necessary to sustain the judgment.").

Reversed and remanded.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

_____
John A. Dooley, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice