

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

**ENTRY ORDER**

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-405

MAY 21 2010

MAY TERM, 2010

Jennifer Dziadul	}	APPEALED FROM:
	}	
	}	
v.	}	Bennington Family Court
	}	
	}	
Scott A. Dziadul	}	DOCKET NO. 225-8-08 Bndm

Trial Judge: David Howard

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

Father appeals the family court's grant of parental rights and responsibilities to mother in the parties' final order of divorce. Father argues that the family court erred in assessing the statutory best interests factors. We affirm.

Mother and father were married in May 2001. They have one child who was also born in May 2001. At the time of their marriage, they lived in Michigan close to mother's family. In 2003, the parties moved to Vermont, where father's family resides, and purchased a home in Bennington. Both parties have worked during the marriage. Father owned his own business at times and mother was also employed. Their hours were not always regular, and they took turns caring for the child when the other was working.

The parties separated in April 2008. Initially, father left the home and stayed with friends, while mother resided with the child in the marital home. A few months later, the parties decided that father should remain in the marital home and mother would get an apartment. Mother filed for divorce in August 2008. Under the temporary order, the parties had roughly equal time with their son. In July 2009, mother moved to Cambridge, New York. She did not inform father of her move in advance, and father learned about it from his sister.

The court held a final contested hearing on July 20, August 4, and August 10, 2009. The parties did not agree to share rights and responsibilities, and both parties sought primary rights for their son. The trial court issued a final order on September 23, 2009.

In considering custody, the trial court examined the statutory factors set forth in 15 V.S.A. § 665(b). On most of the factors, the court found that the parties were relatively evenly balanced. The court found that the parties were both able to meet their son's developmental needs and to provide him with a home and safe environment. The court also found that they each have "great love and affection for their son." In addition, the court found that either parent would be able to maintain the child's positive relationships with both sets of grandparents. One factor favored mother. The trial court found that mother was the primary care provider in the

child's early years, and continued to have this role, although father had more involvement with his son during the period of the parties' separation.

The court also found that two factors favored father. As to the child's adjustment to his current situation, the court found this favored father since mother's move to New York would necessitate a change in the child's school and community. The court noted, however, that the distance was not great and a move would not be seriously difficult for the child. The court further found that though both parties desired for son to have a good relationship with the other parent, they had difficulty communicating and cooperating. The court found that this factor favored father, who was better at compromising. The court noted, however, that some of the communication problems would be alleviated by a final order that provides specifics about parent-child contact.

Ultimately, the court concluded that mother's longer role as primary care giver weighed slightly heavier than father's advantage in other areas and awarded mother primary legal and physical rights and responsibilities. Father appeals.

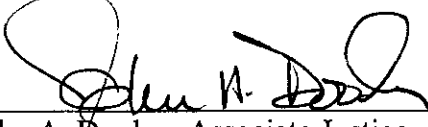
Father asserts that the evidence does not support the court's finding that mother was the child's primary care provider. "The family court has broad discretion in awarding custody, and its findings will not be overturned unless clearly erroneous." Payrits v. Payrits, 171 Vt. 50, 52-53 (2000). We conclude that the evidence is sufficient to support the court's finding that mother is the primary caregiver. The court found that mother was home with the child during the early years. When both parties were employed, the court found that mother participated more in the child's care. Once the parties moved to Vermont, mother continued to do more of the child-rearing as husband was working long hours and traveling. The court acknowledged that during periods of unemployment, father cared for his son, and that since the parties' separation, father has had more involvement, but the court explained that mother continued to care for the child for large amounts of time. Though father has obviously been involved in caring for his son, the court's conclusion that mother is the child's primary caregiver is based on credible evidence and not erroneous.

Father next argues that the trial court's findings do not represent a complete, balanced or even-handed analysis of the statutory best interest factors set out in 15 V.S.A. § 665(b). Father claims that the evidence does not support the family court's findings related to the child's adjustment to his current living situation, § 665(b)(4), and the ability of each parent to foster a positive relationship with the other parent, § 665(b)(5). The family court found that both of these factors favored father, but concluded that mother's status as primary caregiver should be accorded greater weight. Essentially, father argues that the court did not properly weigh the statutory factors. The family court is required to consider each factor in § 665(b), but the statute "imposes no specific requirement on how this consideration is to be manifested in the court's findings and conclusions." Mansfield v. Mansfield, 167 Vt. 606, 607 (1998) (mem.). This was a close case. Ultimately, however, since the parties did not agree to share custody, the court had to award rights and responsibilities to one party. See 15 V.S.A. § 665(a) (court may not award shared custody unless both parents agree). "Where the family court's award of custody reflects its reasoned judgment in light of the record evidence, its decision may not be disturbed." Kasper v. Kasper, 2007 VT 2, ¶ 5, 181 Vt. 562 (mem.). In this case, the court concluded that mother's status as primary caregiver weighed in favor of granting her primary rights, despite father's advantage in other areas. It was proper for the court to give weight to mother's status as primary

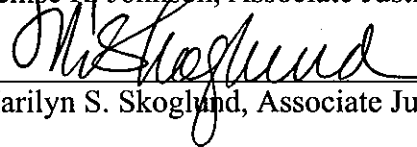
caregiver. See Trahnstrom v. Trahnstrom, 171 Vt. 507, 508 (2000) (mem.) (explaining that a parent's position as the child's primary caregiver is entitled to great weight unless the parent is unfit). The court's award was reasonable and supported by the findings, and we will not disturb it on appeal.

Affirmed.

BY THE COURT:

  
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John A. Dooley, Associate Justice

  
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Denise R. Johnson, Associate Justice

  
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Marilyn S. Skoglund, Associate Justice