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

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2015-216 & 2015-328

FEBRUARY TERM, 2016

Maya Kucij	}	APPEALED FROM:
	}	
	}	Superior Court, Washington Unit,
v.	}	Family Division
	}	
	}	
Mark Hauser	}	DOCKET NO. 201-6-04 Wndm
		Trial Judge: Nancy J. Waples

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

In these cases consolidated for appeal, father appeals: (1) orders of the superior court's family division summarily denying, without holding a hearing, his motions for contempt and to enforce and modify the existing stipulated order regarding parental rights and responsibilities (PR&R); and (2) an emergency ex parte order requiring father to transfer the parties' child to mother at the end of the summer at a particular time and place. We affirm.

The parties are the parents of Henry, who was born on June 14, 2002. Mother commenced a parentage action in June 2004, and a final order was issued in the spring of 2005. Mother was awarded sole physical PR&R and has retained those rights since that order was issued. The parties shared legal PR&R until September 2010, when mother was awarded sole legal PR&R. For the period relevant to the motions at issue here, mother lived in Montreal, Canada, with Henry, her husband, and their daughter, while father resided in Vermont. In May 2015, mother informed father that she intended to relocate to Missouri effective August 2015 with her family, including Henry. The family court issued a new order regarding PR&R and parent-child contact in July 2015. On July 30, 2015, after receiving an email from Henry stating that he wanted to live with father, mother filed an emergency ex parte motion asking the court to order father to transfer the child to her at the end of Henry's summer vacation on August 3, 2015, at the Barre City Police Department. The court issued an order granting the motion without holding a hearing, and the child was transferred at the designated time and place without incident.

Unfortunately, the parties have been unable to parent Henry without seeking regular court intervention. There are currently fifty-two pages of family court docket entries in this case indicating that the parties have filed over 120 motions. The first of the consolidated appeals concerns four motions filed by father—numbers 104, 105, 106, and 109—asking the family court to find mother in contempt and to enforce and temporarily modify the then-governing July 3, 2014 stipulated order concerning PR&R and parent-child contact. These motions were apparently triggered by the parties' dispute over the 2015 Easter school break. Henry had changed schools in Montreal, and, as a result, the detailed dates for parent-child contact set forth in the July 3 order did not coincide exactly with the new school breaks. After father had refused mother's request to alter the parent-child contact schedule, mother refused father's request for

parent-child contact a week earlier than what was called for in the order. In motion 104, father asked the court to find mother in contempt. In motion 105, father moved to enforce the July 3 order and also to amend it with respect to parent-child contact during the remainder of the school year and for summers. In motion 106, father moved to enforce the July 3 order by requiring mother to provide father with contact information, medical and education records concerning Henry, and documents for passage to and from Canada. In motion 109, father asked for immediate temporary, short term contact with Henry—apparently to make up for contact he had not taken advantage of a couple of weeks earlier.

Mother responded to defendant's motions by explaining that she had refused father's last-minute request to alter the timing of the Easter break parent-child contact set forth in the July 3 order because father had himself refused to accommodate her with requested changes, and that father had declined to pick up Henry for the April weekend set forth in the July 3 order. Mother also stated that father had not claimed that he and Henry were unable to cross the Canadian border with the documents provided to him and that she had routinely signed releases for medical and educational records, which is all that she was required to do under the July 3 order. Father asked the court to set a hearing to consider his motions.

On April 30, 2015, without holding a hearing, the family court denied father's motion 109 on a motion-reaction form, stating as follows:

> The motion is DENIED. The Amended Final Stipulation and Order dated July 3, 2014 makes clear the rights and obligations of the parties regarding Parent Child Contact. The Final Order does not permit Parent Child Contact for the weekend of April 23, 2015 through April 26, 2015 [the weekend requested by father]. [Father's] requests for other relief are governed by the July 3, 2014 Final Order.

One week later, the court denied father's motions 104-106 without explanation. Father appeals, arguing that the family court abused its discretion by not holding a hearing on his motions or providing an explanation for its decision to deny his motions.

Generally, the family court has discretion under V.R.C.P. 78(b)(2), applicable to parentage proceedings by V.R.F.P. 4(a)(1), to dispose of a motion without holding a hearing. Callahan v. Callahan, 2008 VT 94, ¶ 12, 184 Vt. 602 (mem.); see also Williams v. Williams, 158 Vt. 574, 576 (1992) (stating that Rule 78 "makes clear that the question of whether to hold a hearing on a post-trial motion is within the discretion of the trial court"). Specifically, with respect to a motion for contempt, the court is required to initiate a proceeding and set the matter for an evidentiary hearing "only if the alleged contempt, if proven, would be a clear and substantial violation of a previous order of the court." V.R.F.P. 16(b). In evaluating a trial court's decision, we must be able to determine "what was decided and why." Turner v. Turner, 2004 VT 5, ¶ 7, 176 Vt. 588 (mem.).

Here, the family court's statement in denying father's motion 109 and its contemporaneous denials of father's motions 104-106 indicated the court's belief that father's allegations, even if proven, would not amount to a clear and substantial violation of the controlling order with respect to parent-child contact and mother's obligations under the order. We find no abuse of discretion. See Hunt v. Hunt, 162 Vt. 423, 436 (1994) ("Ordinarily, use of the contempt power is subject to review only for an abuse of discretion."). As the family court stated, father was not entitled under the April 3 order to the weekend he wanted for parent-child

contact. As for father's complaints regarding mother's alleged refusal to provide him with various types of information and documents concerning Henry, the April 3 order does not require mother to provide records to father, but rather gives each party "the right of access to all of Henry's records" and requires each party to sign any necessary releases. It is difficult to decipher exactly what records father is claiming he has been unable to obtain, in part because his lengthy motions are interspersed with allegations about what mother did or did not do before the controlling July 3, 2014 was in place, which cannot form the basis for motions to enforce or modify. Cf. Hayes v. Hayes, 144 Vt. 332, 337-38 (1984) (stating that court considering modification of custody shall examine change in circumstances since original order). Regarding father's allegations that mother failed to provide him with documents that would allow him and Henry to cross the Canadian border, father did not allege that he was unable to cross the border with the documents mother had provided him.

We further note that many, if not all, of the issues father raises here are moot now that mother has moved to Missouri with Henry. This is particularly true, given that in July 2015, the family court issued a new order regarding PR&R and parent-child contact. Included in this category is father's appeal of the family court's order granting mother's emergency ex parte motion for an end-of-the-summer transfer of the child at a particular time and place. The child was transferred without incident, and this Court cannot provide any relief with respect to that order that would affect the parties. For the reasons stated above, we uphold the family court's orders denying motions 104-106 and 109, as well as its order requiring father to transfer Henry to mother at the end of the 2015 summer break at a particular time and place. See In re Moriarty, 156 Vt. 160, 163 (1991) ("The general rule is that a case becomes moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." (some quotations omitted)); In re D.B., 161 Vt. 217, 222 (1993) (stating that "Rule 78(b)(2) does not require a hearing when what is alleged, even if proven, would not change the result").

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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Marilyn S. Skoglund, Associate Justice