

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-300

JANUARY TERM, 2004

	} APPEALED FROM:
	}
Margaret Tassey	} Washington Family Court
	}
v.	} DOCKET NO. 349-8-99Wndm
	}
Trevor Ayer	} Trial Judge: Geoffrey W. Crawford
	}
	}

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

Father appeals from a family court decision granting mother's motion to modify parent-child contact and denying father's motion to modify parental rights and responsibilities. Father contends: (1) the evidence failed to support the court's finding of a real, substantial and unanticipated change of circumstances; (2) the evidence failed to support many of the court's factual findings; and (3) the court improperly denied father a sufficient opportunity to present evidence. We affirm.

The parties were divorced in October 2000. Mother was awarded primary legal and physical rights and responsibilities for the parties' daughter, who was six years old at the time, and father was granted liberal parent-child contact, consisting of Thursday afternoon to Monday morning on alternate weeks (weeks one and three out of a four-week block), Thursday afternoon to Friday morning during intervening weeks (week 2), and Thursday afternoon to Saturday morning during the final week (week 4). School vacations and holidays were awarded on an alternating basis, and father was granted two uninterrupted ten-day vacations during the summer.

In October 2002, mother moved to modify the parent-contact schedule to reduce the overall amount of time that the child spent with father. In May 2003, father moved to modify parental rights responsibilities, seeking an award of sole custody. Following a two-day evidentiary hearing, the court issued a written decision, denying father's motion, and granting mother's. The court concluded that mother had demonstrated a real, substantial and unanticipated change of circumstances based largely on its finding that the child was experiencing psychological trauma from tension and fighting that she had witnessed at father's residence. The court further concluded that the child's best interests required simplifying and reducing her visitation schedule with father. Accordingly, the court established a new schedule, providing for visitation with father from Friday after school until Sunday evening at 7:00 p.m. on alternate weekends, and from after school until 7:00 p.m. on intervening Thursdays. The court established certain other conditions concerning telephone contact and pick-ups. The court did not address or alter the existing holiday and summer visitation schedule. This pro se appeal by father followed.

Father first contends the court erred in concluding that there had been a real, substantial and unanticipated change of circumstances to justify modification of the visitation schedule. Such a ruling is entrusted to the trial court's discretion, and this Court must affirm unless the decision was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. @ Gates v. Gates, 168 Vt. 64, 67-68 (1998). Furthermore, when the evidence is conflicting the credibility of witnesses, the weight of the evidence, and its persuasive effect are questions for the trier of fact, and its determination must stand if supported by credible evidence. Putman v. Putnam, 166 Vt. 108, 117 (1996). The court's decision here was based on testimony by the child's therapist that the child had been frightened and traumatized during

visits with father by fighting between him and his new live-in girlfriend. The court also found that there had been a high level of tension at father's home resulting in harsh treatment of the child, and cited specific instances which, according to the therapist, had frightened and confused the child. The record evidence supports these findings, which amply support the conclusion that there had been a real, substantial and unanticipated change of circumstances warranting reduction of parent-child contact with father. Although father cites other testimony which, in his view, contradicts the testimony of the therapist, and asserts that the therapist was not credible because she had not spent sufficient time with the child, the trial court was entitled to weigh the evidence and its persuasive value, and we cannot say that its decision was unsupported by credible evidence or clearly untenable. Accordingly, its ruling cannot be disturbed.

Father next contends that fourteen of the trial court's nineteen separate factual findings are false, and that others B while A true@ B are contradicted by other evidence. We have reviewed the record, however, and find credible evidence to support each of the court's findings. It bears repeating that the trial court was entitled to weigh the evidence and the credibility of the witnesses, and we cannot disturb its findings if adequately supported, as they are here. Putnam, 166 Vt. at 117.

Finally, father contends that he was denied a fair hearing by the court's refusal to allow him an adequate opportunity to cross-examine mother, to present rebuttal evidence in response to her motion, or to adduce evidence relating to his motion to modify parental rights and responsibilities. The record does not support the claim. Although the court had ordered the parties to disclose the witnesses they intended to call, father B who represented himself at trial B failed to produce a list of witnesses and made no motion for additional time when the court granted mother's request for a full-day hearing (which ultimately extended into a second day). Moreover, at the conclusion of the first day of the hearing, the court B in A trying to decide how much time we need@ B specifically inquired of father as to whether he intended to call any witnesses other than himself. Father was uncertain but responded, A I don't think so.@ On the second day of the hearing, father was afforded a lengthy opportunity to testify on his own behalf, during which time he stated his reasons for seeking a change of custody. At the end of the day, the court denied mother's request to present additional evidence as unnecessary and redundant. The record does not show that father requested or was denied additional time. Nor does the record show that defendant was denied an opportunity to cross-examine mother. The court did deny father's attempt to admit certain dental records on hearsay grounds, but father was able to testify that mother had missed a number of dental appointments.

The trial court is entitled to set reasonable limits on the time allotted for the presentation of evidence, and the record shows that the trial court here reasonably exercised this discretion in light of the information provided by father and counsel for mother. See Varnum v. Varnum, 155 Vt. 376, 390 (1990). The record does not show that father clearly requested, or was wrongfully denied, an opportunity to present additional evidence. Accordingly, we discern no basis to disturb the judgment.

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Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice