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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-088

AUGUST TERM, 2005

Raymond Donley	}	APPEALED FROM:
	}	
v.	}	Chittenden Family Court
	}	
Dielene Donley	}	
	}	DOCKET NO. 160-2-02 Cndm
		Trial Judge: Helen M. Toor

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

Mother appeals pro se from a family court order granting father=s motion to modify parental rights and responsibilities for the minor, R.J. Mother raises a host of issues principally relating to the sufficiency of the evidence to support the court=s findings. We affirm.

Mother and father were divorced in 2002. Parental rights and responsibilities for their child, R.J., born in 1995, were awarded to mother. In January 2004, mother attempted suicide by shooting herself in the chest at her home in Hyde Park. R.J. was at home during the incident. The suicide attempt occurred while mother was intoxicated. Mother claimed that the suicide attempt was the result of a one-time incident in which she drank to excess because of problems with her partner, but the court found that the claim of isolated alcohol abuse was not credible. R.J. went to father=s house in Colchester the evening of the incident, and remained with him while mother was in the hospital in a coma. Father enrolled the child in school in Colchester and obtained counseling for him to help deal with the recent trauma. He also arranged for school testing to evaluate R.J. for learning disabilities and enrolled him in special reading classes.

Father moved to modify custody. On January 23, 2004, the court awarded temporary parental rights and responsibilities to father. In February 2004, mother moved to have custody returned to her, noting that she had been released from the hospital. Following a hearing in April, the court set a parent-contact schedule with mother and indicated that the case would be reviewed in June. The contact schedule was revised following hearings in June and August, and a final hearing took place over two days in November and December 2004, addressing both custody and contact issues. In addition to the testimony of the parties, the court heard the testimony, and reviewed the extensive written psychological evaluations prepared by, two mental health professionals. On January 28, 2005, the court issued a written decision, awarding parental rights and responsibilities to father, and ordering extensive visitation with mother.

In reaching its decision, the court carefully reviewed the statutory factors governing the best interests of the child under 15 V.S.A. ' 665(b). It found that although the child appears to have a positive relationship with both parents, father was better able to provide emotional support and guidance and a safe environment, and was better able to address R.J.=s developmental needs. In this regard, the court found that mother lacked insight into the emotional impact of her suicide attempt on the child, failed to appreciate R.J.=s diagnosed learning and attention disorders, and failed to appreciate the difficulties that would confront the child if required to change schools and special education classes. The court also noted the psychologist=s opinion that it was critical R.J. remain in a stable environment, a safe place to live,

and a secure school setting, and receive ongoing counseling.

In her brief on appeal, mother sets forth a statement of issues consisting of fifteen brief, separately framed questions addressed to the adequacy of the evidence to support a number of findings, claimed inconsistencies in the findings, and alleged procedural errors. The first and most significant of these is whether there was evidence presented to show a real, substantial, and unanticipated change of circumstances, as required for a modification of parental rights and responsibilities under 15 V.S.A. ' 668. We have held that the preliminary showing of a real, substantial, and unanticipated change of circumstances is a jurisdictional prerequisite to considering a change of custody. Kilduff v. Willey, 150 Vt. 552, 553 (1988); Bullard v. Bullard, 144 Vt. 627, 629 (1984). The trial court=s decision here does not contain an explicit finding that there was a real, substantial, and unanticipated change of circumstances. Nevertheless, the court found, and the parties agreed, that mother had attempted to take her own life while the child was at home, resulting in mother=s lengthy hospitalization. This had necessitated, in turn, that the child change residence and schools, and had caused emotional trauma that continued to require regular counseling and extensive emotional support. Thus, the record is replete with evidence of a real, substantial, and unanticipated change of circumstances, and the court in essence found such a change based on this evidence. See Valeo v. Valeo, 132 Vt. 526, 530 (1974) (absence of explicit finding of changed circumstances was not fatal to custody modification order where court Ain essence found that there was a change in material circumstances since the date of the original divorce decree@); see also In re K.F., 2004 VT 40, & 9, 176 Vt. 636 (mem.) (noting that the changed-circumstances requirement for termination of parental rights may be met where the record and findings Aare replete with facts sufficient to meet the required standard@) (quotations omitted)). Accordingly, we conclude the statutory requirement, and its important underlying purpose, was satisfied in this case. See Kilduff, 150 Vt. at 553 (purpose of changed-circumstances requirement is to ensure that Acustody ought not to be modified without critical justification@).

Of the remaining questions set forth in mother=s statement of issues, none contains adequate legal or factual argument for consideration on appeal. See Johnson v. Johnson, 158 Vt. 160, 164 n.* (1992) (holding that although plaintiff=s brief raised numerous issues, they were so inadequately briefed that they failed to meet the requirements of V.R.A.P. 28(a)(4) and would not be addressed on appeal); State v. Taylor, 145 Vt. 437, 439 (1985) (holding that this Court Awill not construct an appellate case for either party out of whole cloth@ where the issues raised are inadequately briefed). Briefly considered, nevertheless, none of the claims or questions undermines the court=s decision. Mother alleges that a side judge who participated in an earlier hearing on parent-child contact is a reformed alcoholic and was biased because there were issues related to alcohol. The allegation is entirely unsupported, and the claim standing alone is inadequate to demonstrate judicial bias. See Porcaro v.Drop, 175 Vt. 13, 19 (2002) (judge is accorded presumption of honesty and impartiality, and burden is on moving party to show otherwise).

Mother further questions whether the court placed undue reliance on the report of Dr. Lewis, the clinical psychologist who evaluated the minor. The weight and credibility to be accorded the evidence is uniquely entrusted to the trial court, and will not be disturbed absent an abuse of discretion. Kanaan v. Kanaan, 163 Vt. 402, 405 (1995). Such an abuse has not been demonstrated here. Mother also questions whether the evidence was sufficient to support several of the court=s findings, including its finding that mother does not adequately appreciate the severity of the trauma to the child resulting from her suicide attempt, or appreciate the child=s attention disorders; that mother=s claim to have become intoxicated within half of an hour of putting the child to bed was not credible; and that a relief from abuse order obtained by mother=s partner contributed to mother=s lack of regular contact with the child. The record contains ample credible evidence to support the findings, however, which therefore can not be disturbed on appeal. See Sochin v. Sochin, 2005 VT 34, & 4 (this Court will disturb trial court=s findings only if, viewing the record in the light most favorable to the prevailing party, and excluding the effect of modifying evidence, there is no credible evidence to support them).

Mother also raises several procedural questions, including whether a fair ruling could result after hearings before Atwo separate judges with different agendas,@ why a guardian was not appointed for the minor, why the trial court at an earlier hearing in April 2004 would not accept documentation that she did not abuse the child and why the court advised father to Afire@ a family court mediator at the same hearing, whether it was fair to limit an earlier hearing on parent-child contact in August 2004 to a half-day after father=s attorney was allegedly late and unprepared, and why a potential witness, mother=s partner, was not afforded an opportunity to testify. Mother cites no evidence or argument to

explain the basis of her claim that she was unfairly prejudiced by having different judges at different hearings, nor any evidence to support her claim that they had an Aagenda.@ See Porcaro, 175 Vt. at 19 (burden is on moving party to demonstrate judicial bias). Mother also offers no evidence or argument to show how or why she was prejudiced by the failure to appoint a guardian ad litem for the child, by the court=s evidentiary rulings and alleged comments about the family court mediator, by her partner=s failure to testify, or by the earlier half-day hearing. See Dunning v. Meaney, 161 Vt. 287, 289 (1993) (alleged error is not basis for reversal absent demonstration of prejudice). Furthermore, the record reveals that the parties were afforded ample opportunity to submit evidence at the final hearing, over parts of two days in November and December 2004, and there was no request to call mother=s partner as a witness. Accordingly, we discern no error.

Mother=s remaining claims are set forth in a section of her brief labeled AArguments.@ She claims that the trial court inaccurately found that mother does not see a problem moving the child to another school, asserting that R.J. is already familiar with the school and knows the children and teachers there, but citing no evidence or testimony to support the claim. Mother asserts that husband=s testimony concerning R.J.=s sleep problems was inconsistent and contradicted by Dr. Lewis, one of the clinical psychologists, but she fails to cite the record to support the claim or demonstrate how the alleged inconsistency was prejudicial and affected the court=s decision. See Dunning, 161 Vt. at 289 (alleged error in court=s findings in modification proceeding is not basis for reversal absent a demonstration of prejudice). She contends, similarly, that R.J.=s psychological evaluation was arranged by the school district, rather than by father (as the court found), but fails to argue or demonstrate prejudice from the alleged misstatement. She notes that Dr. Lewis is not R.J.=s regular therapist and suggests that the court erroneously relied on his evaluation, but fails to specify the area of his assessment on which the court erroneously relied or how it was prejudicial. Finally, she claims that father is endangering the child by living with a convicted sex offender, but cites motions and affidavits filed subsequent to the custody hearing in this case which were not before the trial court and therefore cannot be considered in this appeal. In re Wal*Mart Stores, Inc., 167 Vt. 75, 87 (1997) (facts outside the record cannot be considered on appeal). Accordingly, we discern no basis to disturb the judgment in this matter.

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