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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-411

MAY TERM, 2006

Stephanie Zalot	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Family Court
	}	
Eric W. Bianchi	}	
	}	DOCKET NO. F598-7-95 Cndm

Trial Judge: Helen M. Toor

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

Mother appeals the family court=s order transferring sole legal and physical parental rights and responsibilities to father as the result of mother=s relocation to Connecticut. We affirm.

The parties married in May 1986, had a son in December 1992, and divorced in June 1996. Under the divorce decree, the parties shared legal parental rights and responsibilities, mother had physical parental rights and responsibilities, and father had parent-child contact amounting to approximately one-third of the child=s time, including mid-week overnight visitation. Father remarried in 2002. In the fall of 2004, mother informed father

that she wanted to move to Connecticut to live with a man whom she intended to marry. Mother and her new husband were married on January 1, 2005. In accordance with the final order, the parties attended mediation sessions, but they were unable to resolve disagreements over how to divide parental rights and responsibilities in light of mother=s intended relocation out of state.

In February 2005, father filed a motion to modify parental rights and responsibilities. Two months later, mother filed a motion to modify father=s parent-child contact schedule. Following a one-day hearing on August 19, 2005, the family court awarded father sole legal and physical parental rights and responsibilities, with mother retaining significant visitation rights. Mother appeals, arguing that the family court erred by: (1) failing to follow the proper legal standard in determining whether father showed a real, substantial, and unanticipated change in circumstances, as required as a precondition to modification; (2) failing to give controlling weight to mother=s role as the primary care-taking parent; and (3) transferring all legal and physical parental rights and responsibilities to father when he had not requested such a transfer.

We address the last issue first. Mother suggests that the family court was precluded from awarding sole legal and physical parental rights and responsibilities to father because father asked only for an unspecified modification of parental rights and responsibilities in his motion, and neither party indicated at trial that they were contemplating a complete transfer of all legal and physical parental rights and responsibilities to one parent. We find this argument unavailing. In his motion, father explicitly asked the court to modify parental rights and responsibilities, which the statute expressly defines to include legal rights and responsibilities. See 15 V.S.A. ' 664(1)(A). The basis for the motion was mother=s relocation. The motion stated that the parties= son wanted to remain in Vermont. Plainly, the motion indicated that father wanted to be given parental rights and responsibilities over his son in Vermont after mother moved out of state. In light of mother=s relocation to Connecticut and father=s motion, the parties must have contemplated the possibility that the court would transfer legal and physical parental rights and responsibilities to father. Indeed, mother=s attorney cross-examined father concerning what the circumstances would be the following summer if he were awarded primary physical parental rights and responsibilities. The fact that father did not expressly ask for Asole@ or Alegal@ rights and responsibilities did not divest the court of its discretion to award such rights and responsibilities to father. See

15 V.S.A ' 668 (upon motion of either parent, family court may annul, vary or modify previous order awarding parental rights and responsibilities).

We now turn to mother=s principal arguments. Mother first contends that the family court failed to apply the standard set forth in our most recent relocation decision, Hawkes v. Spence, 2005 VT 57, 178 Vt. 161, in determining that her relocation amounted to a real, substantial, and unanticipated change of circumstances. See 15 V.S.A. ' 668 (upon showing of real, substantial and unanticipated change of circumstances, court may modify previous order if it is in best interests of child). In Hawkes, 2005 VT 57, & 8, we stated that relocation standards needed to be Aflexible enough to allow trial courts to weigh the complex variables that come into play in relocation cases, and yet not so flexible that they fail to provide guidance to the trial courts and predictability to the litigants and lawyers involved.@ We emphasized that although relocation alone does not necessarily meet the threshold requirement of changed circumstances, relocation can satisfy that threshold requirement depending on Aall the surrounding circumstances, keeping in mind that the effect on the child is what makes a change substantial.@ Id. && 9-10.

To clarify the standard for determining whether a party has met the threshold requirement, we adopted ' 2.17(1) of the American Law Institute Principles of the Law of Family Dissolution, which provides that Arelocation is a substantial change of circumstances justifying a reexamination of parental rights and responsibilities >only when the relocation significantly impairs either parent=s ability to exercise responsibilities the parent has been exercising or attempting to exercise under the parenting plan.= @ Hawkes, 2005 VT 57, & 13 (quoting ALI Principles of the Law of Family Dissolution ' 2.17(1) (2002)). We cautioned that there was no precise formula for determining whether a parent=s ability to exercise his or her responsibilities would be substantially impaired, but cited relevant factors for the trial court to considerCthe amount and duration of each parent=s exercise of actual custodial responsibility, the distance and duration of the move, and the availability of alternative visitation arrangements. Id.

Here, mother argues that the family court ignored those relevant factors and improperly found a substantial change of circumstances based on the mere negative impact of relocation upon father=s visitation schedule,

rather than the required ALI analysis of whether relocation significantly impaired the father-child relationship. According to mother, her relocation to Connecticut with the parties= son would effect only the timing, not the quality, of father=s relationship with the child. Before reviewing mother=s contentions, we examine the family court=s decision with respect to changed circumstances. The court concluded that mother=s move to Connecticut with the parties= son would have a significant negative impact on father=s relationship with the boy because it would, at minimum, disrupt the regular, overnight mid-week contact that father and child had enjoyed for the previous nine years. The court explained that A[b]eing a part of a child=s week-day activities and evening sports events, helping the child with homework, knowing the teachers and the school, are all fundamentally different from merely seeing the child on intermittent weekends and holidays.@

Mother makes much of the fact that the family court used the word Aimpact@ instead of Aimpair@ in determining how her relocation would effect the relationship between father and child, but we find no basis for reversing the court=s decision. The court=s reference to Aimpact@ is strictly adverse in the context of this case and adequately describes a significant impairment not only to father=s visitation, but also to father=s ongoing involvement in the child=s life *vis a vis* regular weekly stays, homework, and attendance at soccer games and school conferences outside of scheduled visitation. Contrary to mother=s complaint that the ' 2.17 factors were ignored, the court=s finding of changed circumstances relied on the ALI factors relating to: (1) the disruption to father=s actual exercise of significant parental responsibilities; (2) the child living four to five hours away from father, thereby making the regular contact previously enjoyed by father impossible; and (3) the lack of a practical alternative visitation arrangement to substitute for the father-child relationship that would be impaired as a result of relocation.

Although mother is not moving across the country, she is moving hundreds of miles to another state, which the court concluded would mean a significant change in the nature and quality of the parent-child contact between father and son, thereby adversely impacting their relationship. Further, it is undisputed that mother=s relocation was unanticipated. Given these circumstances, mother has failed to demonstrate that the family court abused its discretion by concluding that father met his heavy burden of showing a real, substantial, and unanticipated change of circumstances. See Lane v. Schenck, 158 Vt. 489, 494 (1992) (AThe threshold

determination for a motion to modify is discretionary.@); ALI Principles ' 2.17(1), cmt. b (A[A] relocation several hundred miles away will ordinarily constitute changed circumstances, unless the prior pattern of visitation has been so infrequent that the additional burden imposed on a parent by the longer distance is not significant.@).

Finally, mother argues that, in considering the best interests of the child, the family court abused its discretion by failing to give greater weight to the fact that mother was the child=s primary parent. Mother is correct that the noncustodial parent faces a high hurdle to justify transferring parental rights and responsibilities from the custodial parent, and that the family court may not substitute its judgment for that of the custodial parent A >merely because the court would have done something different if it had been the parent.= @ Hawkes, 2005 VT 57, & 11 (quoting Lane, 158 Vt. at 495). Mother is also correct that the role of the primary parent is generally accorded Agreat weight@ in considering assignment of parental rights and responsibilities. Harris v. Harris, 149 Vt. 410, 418 (1988). This particular statutory factor is not a trump card, however, and even its great weight must be balanced against, and may be exceeded by, the other factors prescribed by 15 V.S.A. ' 665. The court=s ultimate consideration, of course, is the best interests of the child. See Lane, 158 Vt. at 498 (AIf the court concludes that the best interests of the children would be better served by continuing to live with the custodial parent in the new location rather than with the noncustodial parent in Vermont, the motion to modify must be denied.@).

Here, after carefully reviewing the criteria set forth in 15 V.S.A. ' 665, the family court determined that it was in the best interests of the parties= son to remain in Vermont with father. The court acknowledged that mother had been the child=s primary care provider, but the great weight of that factor did not patently overwhelm other factors cited by the court relating to the boy=s integration into the Burlington community and his strong bond with his father=s extended family in that community. The court noted that mother had no extended family in Connecticut, and concluded that during this time of significant change in the boy=s life, the added support of his extended family and a familiar community would be highly beneficial. We find no abuse of discretion in the court=s decision to transfer parental rights and responsibilities to father based on these reasonable considerations. See deBeaumont v. Goodrich, 162 Vt. 91, 103-04 (1994) (family court has broad

discretion in custody matters, including those involving relocation; family court=s judgment must be upheld as long as it is reasonably supported by court=s findings).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice