

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-512

JULY TERM, 2006

Kellie Coakley

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APPEALED FROM:

}

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v.

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Addison Family Court

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William Wright

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DOCKET NO. 20-2-03 Andm

Trial Judge: Edward J. Cashman

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

Mother appeals the family court=s decision denying her request to modify parental rights and responsibilities. We affirm.

Mother brought the instant action on July 25, 2005, seeking to modify the parental rights and responsibilities established by the parties= stipulation of June 9, 2005, entered in a prior proceeding. Under that stipulation father had sole physical and legal custody of child. In support of her request, mother alleged

that father is not the best parent to raise child, has failed to obtain health insurance for child, has interfered with child=s relationship with mother, and has failed to protect child from alleged sexual abuse at the hands of father=s brother, Kent Wright.

The family court denied the request for modification after a hearing. The family court found that mother and father=s previous stipulation provided that Kent Wright would no longer live at the same house as father and child and would not have unsupervised contact with child. The court further found that father was abiding by the terms of that stipulation. Thus, the primary issue about which mother expressed concern pre-dated the last hearing and stipulation and so did not constitute a change in circumstances justifying modification. In addition, while there had been arguments over certain specially-arranged visits between mother and child, mother had generally had contact with child on a regular basis and in accordance with the parties= stipulation. Recognizing that father had made some choices that mother might not have made, the family court noted that this was his right given that he had legal custody of child. The family court concluded that mother had failed to demonstrate changed circumstances to justify a modification of parental rights and responsibilities.

On appeal, mother argues (1) that the family court prevented her from presenting all of her evidence, and (2) that the current division of parental rights and responsibilities did not serve the best interests of the child.

The family court has discretion to admit or exclude evidence, and we will reverse an evidentiary decision only upon a showing of abuse of discretion. Luce v. Cushing, 2004 VT 117, & 15 (mem.) (exclusion of evidence must be clear and prejudicial abuse of discretion to mandate reversal). Here, mother has not indicated what specific evidence she was prevented from presenting or how the admission of such evidence would have affected the family court=s resolution of the issue before it. Rather, from the transcript it appears that the family court gave mother ample opportunity to present her case and sought to conclude the hearing when mother began to reiterate her evidence after the court reached its decision. Accordingly, she has not shown an abuse of discretion.

The party seeking a modification of parental rights and responsibilities must demonstrate a Areal, substantial, and unanticipated change in circumstances@ since the challenged division of parental rights and

responsibilities was established. 15 V.S.A. ' 668. The trial court=s conclusion that mother failed to demonstrate such a change in circumstances is a discretionary determination and our review is deferential. Meyer v. Meyer, 173 Vt. 195, 196 (2001). The motion in this case is unusual because it was filed shortly after the stipulation. Thus, the family court correctly concluded that mother=s primary concern was with events pre-dating the last hearing and the parties= stipulation, and that the other issues she raised were either within father=s prerogatives as the custodial parent or represented isolated disagreements that did not substantially interfere with mother=s relationship with the child.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice