

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

**ENTRY ORDER**

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-037

**JUL 20 2009**

JULY TERM, 2009

Jennifer A. Zeno

v.

Eric E. Zeno

} APPEALED FROM:  
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}  
} Addison Family Court  
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}  
} DOCKET NO. 71-4-08 Andm

Trial Judge: Matthew I. Katz

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

Father appeals the family court's order on parental rights and responsibilities associated with the parties' divorce. Father argues that the court erred in (1) diminishing his parenting role from shared custody to limited parent-child contact without a finding of harm, and (2) granting legal and physical rights and responsibilities to mother based on mother's role as primary caregiver without considering all of the other statutory best-interests factors. We affirm.

During the parties' twelve-year marriage, they had a daughter in February 2007. Mother stayed home for the first few months of daughter's life as her primary caregiver. Daughter then attended day care four days a week and father's mother cared for her one day a week. The parties separated in March 2008. In April 2008, the parties stipulated to shared legal and physical rights and responsibilities. They agreed daughter would live with mother and father would have contact with daughter from Tuesday afternoon until Thursday morning as well as every other weekend from Friday afternoon until Sunday evening. While the parties continued to operate under this schedule during their period of separation, they increasingly became unable to communicate in person. They began utilizing a notebook to convey information about daughter to one another. By the time of the final hearing, both parties agreed they could not share custody, and each sought sole or primary legal and physical rights. Both parents work full time outside of the home. Father lives in the marital home in Middlebury with his girlfriend. Mother lives with her boyfriend at his house in Whiting.

Because the parties did not agree to share or divide parental rights and responsibilities, the court could not continue the temporary shared arrangement and was obligated to award primary rights and responsibilities to one parent. 15 V.S.A. § 665(a). The court noted that although the parties' temporary contact schedule worked, "[w]hether it is in the best interests of the 22-month old [daughter] is another question." The court found that mother had been daughter's primary caregiver since she was born. Mother fed, bathed, dressed and got daughter ready for school. She also took daughter to the doctor. The court explained that mother had testified that daughter is very clingy and angry when she first returns from being in father's care for a few nights. Thus, the court was concerned with constructing a schedule that would provide daughter with stability. Ultimately, the court awarded mother sole legal and physical rights and

granted father contact from Tuesday after school to Wednesday evening, as well as one weekend day each week. The court also granted father one week of vacation. Father appeals.

The family court has broad discretion to craft parental rights and responsibilities orders that serve the best interests of the children. Kasper v. Kasper, 2007 VT 2, ¶ 5, 181 Vt. 562 (mem.). We will affirm the court's findings unless clearly erroneous. "Where the family court's award of custody reflects its reasoned judgment in light of the record evidence, its decision may not be disturbed." Id.

Father first argues that the court erred when it substantially decreased his contact with daughter without a finding of harm. Father cites the Legislature's directive in 15 V.S.A. § 650, which states that after divorce "it is in the best interests of [the parents'] minor children to have the opportunity for maximum continuing physical and emotional contact with both parents, unless direct physical harm or significant emotional harm to the child or parent is likely to result." Father argues that in the absence of any demonstrated harm, the court was required to craft an order that maximized contact between father and daughter.

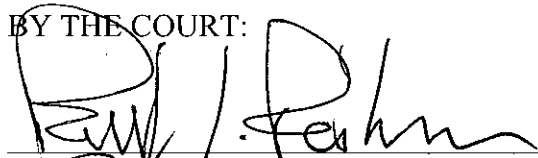
While father does not have the same level of contact that he enjoyed while the parties shared custody, the court's contact schedule does not so diminish father's contact as to violate the statutory goal in 15 V.S.A. § 650. Both parties acknowledged that they could not share custody of daughter; therefore, the court had to devise a new arrangement. Under the court's schedule, husband has contact one night during the week and an overnight each weekend, plus half of major holidays and one week of vacation time. Father's time with daughter is not so diminished as to offend the statutory directive that the court should maximize contact with both parents. See Bancroft v. Bancroft, 154 Vt. 442, 449 (1990) (holding that contact schedule whereby the father had "fifty percent of the children's time on weekends and school vacations, and approximately twenty-five percent of their time overall" did not offend § 650). The court was not required to find harm to reduce father's contact. The court's schedule allows each parent to have time with the child, while providing the stability the court found was necessary for this young child. While husband did not receive the schedule he desired, the court did not abuse its discretion in adopting the schedule it ordered. See Kasper, 2007 VT 2, ¶ 7 (explaining that in reviewing custody determinations, we do not consider "[w]hether the . . . court had other effective options," rather we determine whether the court "abused its discretion in choosing the option it did").

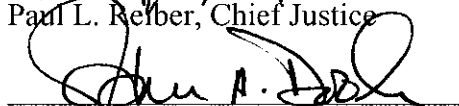
Father next argues that the court erroneously granted mother custody because the court failed to specifically consider all of the best-interests factors in 15 V.S.A. § 665(b), and improperly applied a presumption in favor of the primary caregiver. We conclude that the court's decision is supported by adequate findings. While the court did not specifically make findings on each of the statutory factors, the court is not required to do so. See Harris v. Harris, 149 Vt. 410, 414 (1988) (explaining that trial court not required to make findings on each factor as long as findings as a whole demonstrate that court has considered the statutory factors). The court considered the best interests of the child as required in 15 V.S.A. § 665(b). The court explained that mother is the child's primary caregiver, id. § 665(b)(6), and gave this great weight. See Harris, 149 Vt. at 418 (explaining that one parent's status as primary custodian is entitled to "great weight"). Because the court found that there were no "strong indications pointing toward a custody award" to father, the court granted wife sole physical and legal custody of the parties' child.

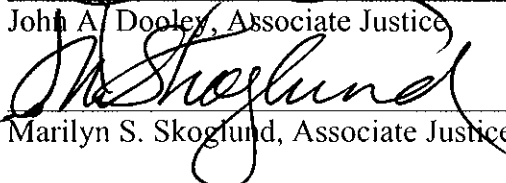
While we agree that the family court's findings are not extensive, they are sufficient to support the court's decision. Essentially, the court found that under most factors, the parties were relatively equal, but that mother's role as primary caregiver tipped the balance and supported granting her sole legal and physical custody. We disagree with father's contention that the court erred in placing too much emphasis on mother's role as primary caregiver, especially given father's active role in daughter's life during the parties' period of separation. Father does not contest that mother was initially daughter's primary caregiver, but argues that the court should have considered his role in daughter's life during the parties' period of separation when they shared custody. We have explained that inquiry of the primary care provider "should focus on all relevant periods of the child's life, rather than exclusively on the period immediately preceding trial." Nickerson v. Nickerson, 158 Vt. 85, 91 (1992). Physical custody with one parent during a separation period does not "in itself cause a former primary-care-provider to lose that status." Id. at 89. In this case, the court found that even during the period of separation when father had substantial contact with daughter, mother continued to be the primary caregiver. The court noted that mother had generally been the one to bring daughter to the doctor, and father had taken her by himself on only one occasion. The evidence supports the court's finding that mother continued to be daughter's primary caregiver. This finding in turn supports the court's decision to grant mother sole legal and physical rights and responsibilities, and we therefore find no grounds to disturb the court's order.

Affirmed.

BY THE COURT:

  
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Paul L. Reber, Chief Justice

  
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John A. Dooley, Associate Justice

  
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Marilyn S. Skoglund, Associate Justice