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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-047

JANUARY TERM, 2010

April Streeter/Office of Child Support	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Family Court
	}	
	}	
Brian L. Rooney	}	DOCKET NO. 285-4-05 Cndm
		Trial Judge: Linda Levitt

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

Father appeals the family court's order denying his motion to modify parental rights and responsibilities. We affirm.

In the parties' final divorce order issued on June 30, 2006, mother was awarded sole legal and physical rights and responsibilities, and father was awarded parent-child contact, with respect to the parties' minor child. In October 2006, father was charged with first-degree murder. He was eventually convicted of that charge; his appeal from that conviction is pending before this Court. In December 2006, mother filed a motion to modify father's parent-child contact, citing the pending murder charges and father's incarceration. On February 2, 2007, the family court issued an order suspending parent-child contact between father and the parties' child until further order of the court and striking provisions in the divorce order that allowed father access to records and information concerning the child and that required mother to notify father of major decisions regarding the child. Father did not appeal this order. In July 2008, father filed a motion to modify parent-child contact, and the court denied the motion approximately ten days later. Father did not appeal from the order denying the motion. On December 11, 2008, father again filed a motion to modify parent-child contact, citing the changed circumstances resulting from his conviction on the murder charge. On January 7, 2009, the family court denied the motion on a motion-reaction sheet without holding a hearing. The court referred to previous orders, including the February 2, 2007 order in which the court granted mother's motion to modify. Father timely appealed the January 7, 2009 order.

On appeal, father argues that the family court erred by denying his motion without holding a hearing, given the substantial change of circumstances resulting from his conviction and incarceration, and that the court failed to follow certain procedural rules before terminating his parental rights. Neither argument has merit. Father did not appeal from the family court's February 2, 2007 order granting mother's motion to modify, which was a final order modifying custody; therefore, he was required to demonstrate a real, substantial, and unanticipated change of circumstances after the issuance of that order to meet the threshold showing for modifying the order. See 15 V.S.A. § 668 (providing that court may modify previous custody order upon showing of real, substantial, and unanticipated change of circumstances). Father fails to explain how his conviction on charges that were the basis for suspending his parent-child contact under

the previous order is an unanticipated change of circumstances that could allow for more contact. See Miller v. Miller, 2005 VT 122, ¶ 15, 179 Vt. 147 ("The burden of proving th[e] change of circumstances lies with the party seeking modification."). Rather than seeking modification of the previous order, father appears to be collaterally challenging the family court's February 2, 2007 order. Under the circumstances, the family court did not err in denying father's motion without holding a hearing, given father's failure to indicate a real, substantial, and unanticipated change or circumstances since the February 2, 2007 order. See V.R.C.P. 78(b)(2) ("[T]he court may decline to hear oral argument and may dispose of [a] motion without argument."); V.R.F.P. 4(a) (incorporating civil rules except as otherwise provided); Callahan v. Callahan, 2008 VT 94, ¶ 12, 184 Vt. 602 (mem.) (upholding family court's denial of husband's motion without hearing based on court's finding that husband had failed to show any legal grounds in support of his motion). Finally, father mischaracterizes the family court's January 7, 2009 order as an order terminating his parental rights. That order merely denied father's motion to modify based on his failure to demonstrate a real, substantial, and unanticipated change of circumstances since the previous order.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice