



Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

MAY TERM, 2022

Matthew Piantoni* v. Kathleen Daley } APPEALED FROM:
} Superior Court, Bennington Unit,
} Family Division
} CASE NO. 21-DM-00037
Trial Judge: Kerry Ann McDonald-Cady

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

Father appeals from the family division's final order establishing parental rights and responsibilities (PRR) and parent-child contact (PCC) for the parties' one minor child. We affirm.

The trial court found the following. The parties met through mutual friends in July 2016 when father was visiting Vermont from North Carolina. During this visit, the parties had a single intimate encounter which resulted in mother's unplanned pregnancy. The parties were not in an established relationship at the time. Mother informed father that she was pregnant in August 2016.

Mother visited father in North Carolina, where father admitted that he was drinking regularly and had used cocaine. Mother invited father to live with her in Vermont contingent on him not using intoxicating substances. Father then moved in with mother at her home in Bennington.

Mother is a licensed social worker and father is a carpenter. When father relocated to Vermont, mother had recently begun working at Bennington College as a social worker. Father helped with projects around mother's home. Mother also networked and helped father find employment as a carpenter.

Mother gave birth in April 2017. After son was born, mother continued to work at Bennington College, but was able to work from home most of the time. She also had summers off. For the first two years of son's life, father worked full-time as a carpenter outside the home. During this time, mother was the primary care provider, breastfeeding him, bathing him, changing him, and providing for all his daily needs. When she returned to work full-time in person, she hired a nanny to care for son. Father assisted in parenting whenever he was not working by helping with feeding, changing, and nighttime wakeups. Father also helped with cooking and doing dishes.

After son's birth, the parties' relationship soured. Mother observed father drinking again, consuming a six-pack of beer on some days. Mother encouraged father to seek substance-abuse treatment, but he did not. In October 2017 mother asked father to move out. He refused.

In the summer of 2018, the parties' relationship deteriorated further. Father was consuming alcohol regularly and began staying out late. The parties argued frequently. During one altercation, mother told father not to come home intoxicated. Father then did exactly that. He climbed through a window, pushing out the air conditioner, which woke up mother and son. Mother also found empty alcohol containers in the basement. Mother asked father to move out multiple times. Father perceived mother's requests for him to move out as her being emotional and the result of medical and mental-health issues.

When son was approximately two years old, father's job ended and around the same time son's nanny could no longer care for him. Given this circumstance, the parties decided that father would care for son while mother worked. The parties also agreed that father would look for a new job, and then save enough money to allow him to find separate housing and move out.

For about eighteen months, father did not work and instead cared for son. Mother also hired her birth doula to come to the house and help with son. When mother returned from work or worked from home, she took over primary parenting.

While father was home with son, they did fun, creative activities that were healthy and nurturing. For example, father regularly brought son to the local library, showed him planes at the airport, attended a children's museum, and took him on a trip to visit extended family and explore the woods.

Around June 2020, mother engaged her cousin to help get father to move out. Mother's cousin came to the house and told father he needed to leave immediately, and father did so under protest. From June 2020 to the date of the trial court's final order, the parties followed a PCC schedule set by mother: father had son on Tuesdays and Thursdays from 8:30 a.m. to 6:00 p.m. and Saturdays overnight into Sunday, while mother had son all other times.

Father commenced this parentage action in December 2020. Father sought primary physical and legal PRR and to limit mother's PCC to every other weekend. Mother sought primary legal and physical PRR with father having PCC only every other weekend. The court held a contested hearing in August 2021.

It issued a written decision in September 2021 including extensive findings and conclusions regarding PRR and PCC. The court carefully analyzed each statutory best-interests factor and determined that most of them favored mother, while the other factors were neutral or not applicable. The court noted that both parties appeared to be caring and loving parents and both played an important role in son's life. However, the court expressed concern regarding father's alcohol use. It also placed particular weight on mother's role as primary caregiver and decisionmaker for most of son's life and found that son benefitted from routine and consistency at mother's house.

The court awarded mother primary legal and physical PRR. It established a four-week alternating PCC schedule providing father with overnight contact every week, either from Friday afternoon to Sunday afternoon or from Thursday afternoon to Friday afternoon, depending on the week. The court ordered that each parent have independent contact with son's teachers and doctors and that mother advise father of any major medical or education decisions and permit

father to attend son's medical and dental appointments. It also established a detailed holiday and vacation schedule providing each parent with equal holiday and vacation time with son. The court further ordered that each party is entitled to a daily telephone or video-conference call with son when he is with the other party.

On appeal, father does not challenge the award of PRR to mother; he contests only the PCC schedule. He argues that the trial court provided no explanation for decreasing his contact with son and that the court's findings and applicable legal standards supported more PCC for father than was ordered. Father also contends that the court's analysis of the second best-interests factor was flawed because it rested on an erroneous conclusion that his struggle with substance abuse was ongoing.

The family division has broad discretion in establishing parent-child contact. Lee v. Ogilbee, 2018 VT 96, ¶ 15, 208 Vt. 400. We will not disturb the court's findings of fact unless, "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 the findings." Hoover v. Hoover, 171 Vt. 256, 258 (2000). We will not overturn the "court's legal conclusions so long as they are supported by its findings." Sochin v. Sochin, 2005 VT 36, ¶ 4, 178 Vt. 535 (mem.). "[I]t is the exclusive role of the trial court to assess the credibility of witnesses and weigh the evidence; we do not reweigh the evidence on appeal." Peralta v. Brannan, 2020 VT 100, ¶ 21.

In awarding parent-child contact, the family division must consider all relevant evidence concerning the statutory factors set forth in 15 V.S.A. § 665(b) that address the best interests of the children. Lee, 2018 VT 96, ¶ 15. But § 665(b) "imposes no specific requirement on how this consideration is to be manifested in the court's findings and conclusions." Trahnstrom v. Trahnstrom, 171 Vt. 507, 507 (2000) (mem.) (quotation omitted). We will not disturb the family division's order regarding parent-child contact if it reflects "reasoned judgment in light of the record evidence." DeLeonardis v. Page, 2010 VT 52, ¶ 20, 188 Vt. 94 (quotation omitted).

Father argues that the court's findings did not support the PCC schedule it imposed. He points out that the court found he was a loving, caring parent, always had consistent contact with son, and played an important role in son's life. In father's view, the court's analysis of the best-interests factors compelled a PCC schedule more favorable to father.

We disagree. Even where a child has a strong bond with both parents and neither party's parenting is deficient, the trial court may nevertheless decide it is appropriate under the circumstances to provide one parent with more contact time than the other. The court's PCC schedule here, which primarily consolidated time for father on weekends and placed son with mother during most weekdays, was amply supported by its findings. In particular, the court found credible mother's concerns about risks to son from father's alcohol use. It credited mother's testimony that she smelled intoxicants on father's breath during a PCC exchange in the fall of 2020. The court also noted several other instances where negative consequences resulted from father's alcohol use. The court further considered the lack of self-reflection evident in the fact that father denied having any problem with alcohol consumption and refused any treatment, even though his alcohol use negatively impacted his personal relationships. Though the court did not agree with mother that father's alcohol use supported cutting off father's contact with son altogether, awarding mother a greater share of PCC was reasonable given this concern. See DeLeonardis, 2010 VT 52, ¶ 20.

Moreover, the court's decision to keep son with mother for all weekdays during most weeks was well supported by its consideration of mother's role as primary caretaker and the

importance of routine and consistency for son. The court found that “change in the routine of homes” had a negative impact on son, demonstrated by son’s bed-wetting and use of explicit language after returning from father’s care. It noted that son was born and always lived in mother’s house, whereas father’s new residence in a different town presented a change of routine. The court also found that mother had been making sound legal decisions for son and safely caring for him as his primary parent, and that father had not had the same level of parenting responsibility. See Trahnstrom, 171 Vt. at 508 (“Mother’s position as the children’s primary care giver is entitled to great weight unless she is unfit.”). These facts supported the court’s conclusions that § 665(b)(4), (5), (6), and (8) all favored mother. And although the court did not specifically state that residing with mother during most weekdays was in son’s best interests, we can easily infer this conclusion from the court’s analysis. See Harris v. Harris, 149 Vt. 410, 414 (1988) (stating that the law “imposes no specific requirement on how [consideration of best-interests factors] is to be manifested in the court’s findings and conclusions”).

That the court also made many positive findings regarding father’s parenting and relationship with son does not necessarily mean father is entitled to a more favorable PCC schedule. Father’s argument in this regard essentially challenges the weight that the court assigned to certain evidence. As we do not reweigh evidence on appeal, Peralta, 2020 VT 100, ¶ 21, father’s contention fails. The court’s PCC schedule was supported by its findings, and we therefore will not disturb it. DeSantis v. Pegues, 2011 VT 114, ¶ 26, 190 Vt. 457 (“[W]e uphold the court’s legal conclusions if they are supported by the findings.”).

Father additionally argues that the trial court’s PCC order cannot stand because the court did not explain its rationale for the particular schedule it imposed. While the court did not explain its precise reasoning for each day of the week and minute detail of the schedule, it was not required to do so. See Terino v. Bleeks, 2018 VT 77, ¶ 12, 208 Vt. 65 (“The family division has broad discretion in parent-child contact decisions, which we will not disturb unless this discretion was exercised upon unfounded considerations or to an extent clearly unreasonable upon the facts presented.” (quotation omitted)). Because “the record as a whole” indicated that the court considered and applied all the statutory best-interests factors with regard to parent-child contact, Thompson v. Pafundi, 2010 VT 80, ¶ 12, 188 Vt. 605 (mem.), and its PCC award demonstrated “reasoned judgment in light of the record evidence,” Lee, 2018 VT 96, ¶ 11 (quotation omitted), we affirm the trial court’s order.

Finally, father argues that the court’s balancing of the best-interests factors was tainted by its erroneous conclusion that father struggles with substance abuse. The court determined that both parents were capable of providing adequate food, clothing, medical care and other material needs for son. The court concluded, however, that § 665(b)(2) favored mother because mother “can consistently provide a safe home for Will as she does not struggle with substance abuse [while father] does.” Father acknowledges that the court made sufficient findings to support that he struggled with drinking until 2018, but he asserts there were insufficient findings that father abused alcohol after that time.

Our review of the record reveals ample support for the court’s conclusion regarding father’s continuing issues with alcohol. First, the court credited evidence that father may have been drinking alcohol when he drove to pick up son in the fall of 2020. It found that such behavior “clearly posed a risk to [son] if a parent who had abused alcohol in the past, used alcohol prior to driving then drove with the child.”

The court found several other concerning instances of father's alcohol use that occurred farther back in time when the parties were still living together. Contrary to father's suggestion, these events did not become irrelevant simply by the passage of time. Father points to no evidence that he has stopped drinking alcohol. At trial, father agreed to stop drinking if it meant he could spend more time with his son. But the court emphasized in its order that father had agreed to stop using intoxicants when he moved in with mother, then repeatedly transgressed. And although father's alcohol use negatively impacted his relationships with family and friends, he continued to drink, refused any treatment, and denied having any problem with alcohol. Given these findings, we cannot say that the court erred in concluding that father's struggle with alcohol abuse was ongoing.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice