



observed a woman outside the courtroom yelling, banging on the door, and creating a disturbance. After the officer asked her to leave, the woman entered a vehicle with a man who the court officer believed was father. When the hearing resumed, the court questioned father regarding the incident, but he did not respond. The court found that father perjured himself by stating under oath that his partner was not present and that he was at home when in fact she was with him in a vehicle parked outside the courthouse. The court therefore determined that father lacked credibility.

The family division took judicial notice of several relief-from-abuse (RFA) proceedings that were initiated by father. Between January 2021 and February 2022, father filed five RFA petitions against mother on behalf of the children, alleging corporal punishment. All were denied after a final hearing, except one that was granted in February 2022, which ordered mother to not abuse, threaten, or use physical force or corporal punishment against the children. The order was effective until August 2022. The court found that father's perjury during the hearing about his partner called into question father's credibility in his previous RFA filings against mother.

Based on the evidence presented, the family division found that there was a real, substantial, and unanticipated change in circumstances. The court credited mother's testimony, finding that father prevented mother from exercising her PCC by not bringing the children to custody exchanges, which resulted in eleven missed weekend visits. The court found that father tried to alienate the children from mother by repeatedly attempting to obtain RFA orders against mother.

The court concluded that a modification of the existing PRR order was in the children's best interests. See 15 V.S.A. § 665(b). The court weighed each of the statutory factors and made the following findings. Mother overall had a greater capacity to provide love, affection, and guidance for the children, and demonstrated more concern about the children's medical needs and school attendance. Father lived in a small home with his partner and her four children. The household was chaotic, and the adults had difficulty supervising the children, resulting in injuries to the children. Father's partner yelled and used profanity toward the children. Father was not responsive to school staff when they attempted to contact him about the children; instead, mother became the primary contact with the school. Father failed to seek timely medical treatment for the children, including when one of the children had a painful urinary tract infection for weeks. Mother eventually took the child to the emergency room. The children also had unexplained injuries while in father's care.

In contrast, the court found that mother's home with her partner and his mother was calm and could provide stability and consistent parenting. The court found that father had engaged in parental alienation against mother, providing noncredible excuses for failing to transport the children to visits or make them available for telephone calls with mother. The court found that father's interference with the children's relationship to mother was not in their best interests and was harmful. Although the court recognized that there was an RFA in place against mother, the court noted that father's perjury raised concern about his credibility at the RFA hearing. In any event, the court found that there were no current concerns that the children were at risk of abuse in mother's care and rather that father's conduct placed the children at risk of ongoing medical, education, and emotional neglect. Based on this assessment, the court awarded mother sole legal and physical PRR, with contact for father every other weekend.

On appeal, father details incidents that he alleges took place both before and after the final hearing in this case, arguing that mother is abusive to the children and that the family division order was in error. He also asks for additional contact with the children.

“Faced with a motion to modify parental rights and responsibilities, the family court has broad discretion to determine the child’s best interests as required by the statute.” Chickanosky v. Chickanosky, 2011 VT 110, ¶ 14, 190 Vt. 435. “We will therefore uphold the court’s findings of fact unless they are clearly erroneous, viewing them in the light most favorable to the prevailing party below and excluding the effect of modifying evidence.” Id.

To the extent that father presents new allegations regarding mother’s claimed misconduct, we do not consider these alleged incidents because the record on appeal is limited to the evidence presented in the family division. V.R.A.P. 10(a) (defining composition of record on appeal). To the extent father is reasserting facts already presented to the family division, we decline to reweigh the evidence on appeal. It is the responsibility of the family division alone to “evaluate the credibility of witnesses and the weight evidence should be afforded.” Chickanosky, 2011 VT 110, ¶ 14. That a different weight or conclusion could be drawn from evidence is not a ground for reversal on appeal. “Where the family court’s award of custody reflects its reasoned judgment in light of the record evidence, its decision may not be disturbed.” Kasper v. Kasper, 2007 VT 2, ¶ 5, 181 Vt. 562 (mem.). Here, the family division acted within its discretion and its findings were adequately based on evidence in the record. Therefore, father has presented no basis to reverse the court’s decision.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Karen R. Carroll, Associate Justice

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Nancy J. Waples, Associate Justice