



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

JUNE TERM, 2024

Erica Duggento* v. Roger Longe } APPEALED FROM:
} Superior Court, Washington Unit,
} Family Division
} CASE NO. 364-11-18 Wndm
Trial Judge: Kathryn A.C. Kennedy,
Specially Assigned

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

Mother appeals the family division’s order denying her motion to modify parent-child contact and granting father’s motion to modify parental rights and responsibilities and parent-child contact. We affirm the portion of the order denying mother’s motion but reverse and remand for further proceedings as to father’s motion.

The parties are the parents of twin daughters who were born in August 2013. Mother filed this parentage action in 2018. Following a contested hearing, the court issued an order in June 2019 awarding sole legal and physical parental rights and responsibilities to mother. The court ordered the parties to continue their existing parent-child contact arrangement, in which father had the children in his care from Saturday to Tuesday each week.

In January 2023, mother filed a motion to modify parent-child contact. She stated in the motion that she wished to move with the children to the state of Georgia, where some of her family lived, in order to obtain work and more affordable housing. She proposed shifting to a schedule of summer and school-vacation visits. In response, father moved to modify parental rights and responsibilities to give him sole custody of the children, and to alter the parent-child contact schedule to increase his time with them.

The court held a contested hearing over two days in July and September 2023. In October 2023, the court issued an order in which it found that mother’s plan to relocate to Georgia was a real, substantial, and unanticipated change in circumstances that justified modifying the existing parental rights and responsibilities and contact order. It found that father spent every weekend with the children and that they had strong ties to his home and community, and that the proposed relocation would significantly impair his relationship with them. The court considered the factors set forth in 15 V.S.A. § 665(b) and concluded that it was in the best interests of the children for father to have sole legal and primary physical rights and responsibilities. It adopted father’s proposed parent-child contact schedule, which gave each

parent equal time with the children while mother remained in Vermont, and when mother moved to Georgia, gave her contact with the children during the summer and school breaks and holidays. The court denied mother's motion to modify parent-child contact.

Mother moved for reconsideration, arguing that the modification of parental rights and responsibilities and contact was unnecessary because she had testified that she would not move without the children, and she had in fact not moved. She asked the court to reinstate the prior order in full or at least the parent-child contact order, or to clarify the holiday schedule under the new order. The court denied the request to reconsider the modification of parental rights and responsibilities but clarified that the previous holiday arrangement continued to be in effect. This appeal followed.

A party seeking to modify parental rights and responsibilities or parent-child contact must first show that there has been a "real, substantial, and unanticipated change of circumstances." 15 V.S.A. § 668(a); deBeaumont v. Goodrich, 162 Vt. 91, 95 (1994). "If the party makes this threshold showing, then the court may change custody only when the best interests of the child so require." Habecker v. Giard, 2003 VT 18, ¶ 5, 175 Vt. 489 (mem.). The family division has "broad discretion" in child custody matters and we will uphold its conclusions "if supported by the findings."

Mother does not challenge the portion of the court's order denying her motion to modify parent-child contact; we therefore do not disturb that aspect of the decision. We conclude, however, that the portion of the order granting father's motion to modify legal and physical parental rights and responsibilities and contact must be reversed and remanded because the court failed to properly analyze the motion in light of its decision to deny mother's motion and mother's testimony that she would not relocate to Georgia if the children remained in Vermont.

A custodial parent's relocation can constitute a real, substantial, and unanticipated change in circumstances sufficient to justify modifying an existing custody order. See Hawkes v. Spence, 2005 VT 57, ¶ 18, 178 Vt. 161 (holding that custodial parent's intended permanent move hundreds of miles away was change in circumstances sufficient to modify custody order where it would significantly interfere with existing parent-child contact arrangement). The court found that mother's intended move to Georgia constituted a real, substantial, and unanticipated change in circumstances sufficient to modify both parental rights and responsibilities and parent-child contact. However, it then denied mother's motion to modify the parent-child contact order, concluding that it would not be in the children's best interests to have less frequent contact with father. This effectively prevented mother from moving because she could not realistically comply with the existing contact arrangement if she lived in Georgia. Mother testified that if the children were to remain in Vermont, she would not move. In her motion to reconsider, she asserted that she had not moved, because she could not take the children with her. Given mother's clearly stated position that she would not move without the children, the court's denial of mother's motion to modify contact meant that the change in circumstances on which it relied to grant father's motion to modify parental rights and responsibilities no longer existed. The court did not identify any other change in circumstances sufficient to justify modifying the existing arrangement. Its modification of parental rights and responsibilities and parent-child contact was improper without this threshold finding. See Wener v. Wener, 2016 VT 109, ¶ 21, 203 Vt. 582 (reversing and remanding custody order where trial court failed to properly analyze whether changed circumstances would still exist if mother did not move).

We therefore reverse the portion of the court's order granting father's motion to modify parental rights and responsibilities and parent-child contact and remand for the court to determine whether, in light of the evidence and mother's decision not to move, there exists a change in circumstances sufficient to modify legal or physical parental rights and responsibilities or parent-child contact.

Affirmed as to the order denying mother's motion to modify parent-child contact; reversed and remanded for further proceedings with respect to the order granting father's motion to modify parental rights and responsibilities and parent-child contact.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

Nancy J. Waples, Associate Justice