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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-168

NOVEMBER TERM, 2017

Brian D. Littlefield	}	APPEALED FROM:
	}	
	}	Superior Court, Lamoille Unit,
v.	}	Family Division
	}	
	}	
Jennifer (Moody) Littlefield	}	DOCKET NO. 130-8-10 Ledm
		Trial Judge: Thomas Z. Carlson

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

Father appeals the family court's order concluding there was a change of circumstances and modifying the existing parent-child contact schedule for the parties' two children. On appeal, he argues that the court erred in concluding first that there was a change of circumstances sufficient to modify the existing contact schedule and second that a modification of the existing parent-child contact schedule was in the children's best interests. We affirm.

The parties divorced in 2011. The final order gave parents shared physical and legal rights and responsibilities for their two boys, born in 2004 and 2005. They agreed to a parent-child contact schedule whereby each parent got a five-day stretch of time, plus two days, in each two-week period. At the time of the divorce, father had moved to Burlington and the boys were enrolled in school there. The final order stated that the boys would remain in school in Burlington as long as one parent continued to reside there. Mother lived in Elmore, where the marital home had been located and where mother had her business, but she was contemplating a move to Burlington as well.

In 2013, mother filed a motion to modify parent-child contact, alleging a change in circumstances based on the facts that she did not move to Burlington and father had remarried. Mother wanted the boys to go to school in Elmore and to change the schedule so they were with her during the school week and with father on most weekends and holidays. Father responded by seeking to modify parental rights and responsibilities to give him primary rights and responsibilities. The court at that time indicated that it did not consider there to be a sufficient change in circumstances to modify shared parental rights, and encouraged the parties to resolve the dispute by stipulating to a new parent-child contact schedule.

The parties filed an amended schedule in August 2013, which the court adopted. Under the amended agreement, the children were with father most of time during the school year. Father had contact each week from Sunday to Friday, except for mother's contact in the evening on

Tuesdays and Thursdays. Mother was granted contact on weekends except father had the children on one, two, or sometimes three weekends a month, depending on the month and the number of weekends in the month. The agreement stated that the intent was for mother "never to have less than two weekends per month during the school year." Mother was granted contact on the weekdays during summer vacation and father had contact on weekends. Each parent was also entitled to a week of vacation, and holidays were split between parents. The practical effect of the new schedule was that mother had about one-third of the overnights with the children.

Mother moved to modify in August 2016. Mother argued that the ambiguity and confusion created by interpreting the 2013 schedule was a change of circumstances. She argued that the language of the 2013 schedule proved difficult to interpret, communications between the parents had grown strained, and neither party was happy with the results. She alleged that the boys found it difficult to predict where they would be on a given weekend and that this caused them angst. Father contended that the mere fact that the schedule was complicated was not a change of circumstances, though he agreed the existing schedule was "difficult and convoluted." He proposed a schedule with alternating weekends and more time for mother on holidays.

The court found that the "parties' shared view that they cannot agreeably interpret the complications of their 2013 agreement" was a sufficient change in circumstances to warrant modification of the order. The court also determined that there was a change of circumstances because the purpose of the 2013 agreement was to establish a predictable schedule and to provide for equal co-parenting, but that it had done neither. It further found that modification was in the best interests of the children to ensure maximum contact with each parent. With minor modification, the court adopted a new schedule proposed by mother. Under that schedule, during the school year father has contact weeknights and mother has the children on Wednesdays and three of every four weekends, and in the summer, the schedule flips plus each parent receives two consecutive weeks of vacation. Father appeals.

On appeal, father argues that the court erred in finding a change in circumstances and in concluding that modification of the order was in the best interests of the children.

To modify an existing order on parent-child contact, the court must first determine that there has been a "real, substantial and unanticipated change of circumstances." 15 V.S.A. § 668(a). "There are no fixed standards to determine what constitutes a substantial change in material circumstances; instead, the court should be guided by a rule of very general application that the welfare and best interests of the children are the primary concern in determining whether the order should be changed." Maurer v. Maurer, 2005 VT 26, ¶ 7, 178 Vt. 489 (mem.) (quotations omitted). The family court has discretion to determine if the change-of-circumstances threshold has been met. Sundstrom v. Sundstrom, 2004 VT 106, ¶ 29, 177 Vt. 577 (mem.). If the court makes the requisite finding, it then must consider whether a change in parent-child contact is in the children's best interests. Id. ¶ 37; see 15 V.S.A. § 665(b) (listing best-interests factors).

Father contends that the facts in this case do not demonstrate that there was a real, substantial, and unanticipated change of circumstances necessary to modify the existing order because although the parties had some disagreements about the proper interpretation of the 2013 schedule, these disagreements were minor, related to modifying the order, and not unanticipated.

The family court has broad discretion in determining whether there is a change of circumstances necessary to modify an existing order, and "this Court must affirm unless the discretion was erroneously exercised, or was exercised upon unfounded considerations or to an extent clearly unreasonable in light of the evidence." See Pigeon v. Pigeon, 173 Vt. 464, 466 (2001) (mem.) (recognizing that threshold for modifying parent-child contact is discretionary, but reversing where facts did not demonstrate change of circumstances).

The court acted within its discretion in this case. The court found that, based on the evidence, both parties agreed that the 2013 was complicated in ways that they had not anticipated. The court further found that this complication led to an increasing number of disagreements between the parties and created uncertainty for the children regarding whose house they would be at on a given weekend. The court did not abuse its discretion in determining that this amount of unanticipated confusion and uncertainty, coupled with the rising tension between the parties, was sufficient to meet the threshold for a change of circumstances to modify the existing parent-child contact schedule. Father argues that the level of the parties' disagreements was insufficient to meet the change-of-circumstances threshold, pointing to other cases that required "a breakdown in communication between parents." See Maurer, 2005 VT 26, ¶ 8. These cases are distinguishable, however, in that they involved parents seeking to modify parental rights and responsibilities. The burden of showing changed circumstances to alter parent-child contact is lower than the heavy burden for changing custody. Hawkes v. Spence, 2005 VT 57, ¶ 20, 178 Vt. 161. Here, the facts were sufficient to support the court's finding that this lower burden had been met.

Father also states that the order was not the source of the parties' disagreements; rather, mother's desire to change aspects of the order was what caused the disputes. Whatever the source of the disagreements—an inherent ambiguity in the 2013 schedule or one parent's desire to make changes—the court found that parents were experiencing difficulties communicating about the schedule and this was sufficient to demonstrate changed circumstances.

Father further contends that the court erred in determining that there was a change of circumstances based on the fact that mother had the children less than half the time, contrary to the intent of the original divorce order. Although the court explained that mother was receiving only about one-third of the overnights under the 2013 schedule, this was not the basis of the court's change-of-circumstances finding, which instead rested on the increased disagreements between the parties.

Father next argues that the court made insufficient findings about the children's best interests to support the modified schedule. The court has broad discretion in determining the children's best interests. Maurer, 2005 VT 26, ¶ 10. The court must consider the statutory factors, 15 V.S.A. § 665(b), but there is "no specific requirement on how this consideration is to be manifested in the court's findings and conclusions." Sochin v. Sochin, 2005 VT 36, ¶ 6, 178 Vt. 535 (mem.) (quotation omitted). Here, the court found that the children were doing well in their current school, were involved in sports, and were adjusted to their lives with each parent. The court found that under the current schedule the children were unable to predict whose house they would be at on weekends. The court found that both parents were equally able to provide love, care, and support for the children and it was in the children's best interests to maximize their time

with both parents. These findings all support the modified schedule, which provides time with both parents, simplifies the schedule, and decreases the number of transfers during the weekday.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Karen R. Carroll, Associate Justice