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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-322

FEBRUARY TERM, 2018

Joshua Tuck v. Amanda Tuck*	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
	}	Family Division
	}	
	}	DOCKET NO. 209-7-16 Frdm
		Trial Judge: Mary L. Morrissey

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

Mother appeals the family division's final order awarding legal and physical parental rights and responsibilities for the parties' three minor children to father. We affirm.

The family court made the following undisputed findings in its final order. Father is twenty-seven years old and mother is thirty-two. The parties married in 2010. They have three daughters: L.T., who is eight years old, A.T., who is seven, and P.T., who is almost four. During the marriage, the family lived in Enosburg, Vermont. In the early years of the children's lives, the parties shared parenting responsibilities, with both parents bringing the children to daycare, feeding the children, and participating in bedtime routines. Father maintained the finances, did the grocery shopping, and cooked meals, while mother did most of the cleaning in the home.

Beginning in November 2013, mother worked during the day performing data entry for the State of Vermont, while father worked nights and weekends providing care to adults with mental health issues. Father began to take on a greater caregiving role for the children, particularly after the parties decided to take P.T. out of daycare in 2015. The children's preschool teacher testified that father brought the children to and from preschool four out of five days a week. She opined that he had great parenting skills, was a natural teacher, and gave the children choices but also set clear expectations for them. Father engaged the children in games and learning activities at home and brought them to their medical appointments. Although mother continued to participate in bedtime routines, in 2015 she began to isolate herself from the family and spend considerable time on her phone, such that the children looked to father to have their needs met. The court found that father was the primary care provider from November 2013 until June 2016, when the parties separated.

Many of mother's family members live in South Carolina. Due to mounting financial pressures and his belief that living in South Carolina would be less expensive and might provide an opportunity to rekindle his relationship with mother, father agreed to move to South Carolina in June 2016. The parties agreed that mother and the children would move after school ended and father would remain in Vermont for a few months to earn money to pay outstanding bills. Mother and the children moved into the four-bedroom home of mother's parents in South Carolina on June 19, 2016.

Ten days after mother and the children left Vermont, father traveled to South Carolina to visit them during his days off from work. Mother informed father that she no longer wanted to be with him. They agreed to stay married for a year and not see other people during that period while they decided what to do. They agreed that the children would stay with mother for the school year and that mother would not ask father for child support during this period. Father returned to Vermont. Then, on Friday, July 8, mother told father that she was planning to go camping with a man and another couple for the weekend. Father asked mother not to go on the trip because it was P.T.'s birthday on July 10 and he felt it was important for a parent to be with the child on her birthday. She went on the camping trip. Father called the children and thought that P.T. sounded distressed. He decided to move to South Carolina immediately to save the marriage. He got the dogs, bought some birthday presents for P.T., and drove southward. When he arrived on July 10, the children were excited to see him. Mother was not there. At some point, he learned that mother had sexual relations with the man with whom she had gone camping. Father and mother talked on the phone and father called mother derogatory names on the phone. He left South Carolina before mother returned home and within hours of his arrival.

While father was driving back to Vermont, the parties communicated over the phone. Father told mother the marriage was over. They agreed that father would bring the children back with him to Vermont for the rest of the summer and that he would return them to South Carolina for the beginning of school in August. Father went back to mother's home that same day to pick up the children. When he arrived, mother presented him with a document stating that the parties agreed to joint custody, that father would have the children during summer vacation and school holidays, and that they would reside with mother during the school year and attend school in South Carolina. Father credibly testified that mother told him he could not take the children unless he signed the document, so he signed it. He stated that he did not intend to give mother parental rights and responsibilities for the children, and that he only signed the document so he could take them with him that day. Two weeks after returning to Vermont, father filed for divorce.

Mother filed an emergency motion for temporary parental rights and responsibilities, seeking to enforce the agreement signed by father. The court held a brief hearing at which both parties appeared. Father argued that he entered into the agreement under duress and that he should have primary custody. The court found that both parties were able to care for the children, but concluded that "the tipping factor for temporary purposes" was the parties' July 10, 2016 agreement. It awarded temporary rights and responsibilities to mother. The court emphasized that the order was temporary and that "[f]urther hearing and testimony may alter the permanent result." After the temporary order issued, the children returned to South Carolina. Mother is employed at a company in South Carolina where she works Monday to Thursday from 6:30 a.m. to 5:00 p.m. The children enjoyed spending their free time with their maternal cousins in South Carolina. Mother and the children continued to live with her parents at the time of the final hearing, but she anticipated that they would soon be moving into a rented four-bedroom home with her boyfriend. Mother's boyfriend is twenty-two years old and was convicted twice for reckless driving in 2016. Mother testified that he has never driven the children without her in the car, but she had no concerns about him driving the children.

The children traveled to Vermont for their Thanksgiving, Christmas, and spring vacations from school. Father and children stayed with father's parents during these visits. Father engaged in activities with the children during the summer, including riding bikes and going to a museum. Father testified that if given custody, he and the children would live with his grandparents until he could find his own apartment. This would permit L.T. to return to the school she had attended in Enosburg, while A.T. would know some of her classmates from daycare. Father's sister, who is thirty-two years old and has a master's degree in education, would watch the children while he

worked at night. Father expressed willingness to foster a relationship with mother's relatives in Vermont.

The parties agreed that daily telephone calls would occur between the children and the noncustodial parent at 10:00 a.m. and 6:00 p.m. However, mother rarely called on time, making it difficult for father to plan activities and keep the children interested in the call. Although P.T. did not always want to talk to mother, father encouraged her to do so. Mother testified that father also does not always call at the agreed-upon times.

In its final decision, the court noted that although the parties had initially agreed for mother to have the children with her during the school year, father subsequently objected to that agreement. Thus, the court determined that it had the power to examine whether that agreement was fair and to reject it if necessary. It found that the agreement was entered into in haste following the rapid decline of the parties' relationship, and was not created after a full consideration by both parties of the equities of their respective situations. The court considered the statutory factors in 15 V.S.A. § 665(b) and found that the parties were equally situated with regard to several of the factors, but determined that father had a greater ability and disposition to provide a safe environment, to meet the children's developmental needs, to foster a positive relationship and contact with mother, and to communicate and cooperate with mother regarding the children. The court concluded that it was in the best interests of the children for father to have primary legal and physical rights and responsibilities. It therefore rejected the parties' July 10, 2016 agreement and awarded parental rights and responsibilities to father. See 15 V.S.A. § 666 (providing that court may reject custody agreement if not in best interests of child or if agreement not reached voluntarily).

On appeal, mother mainly challenges the court's assessment of the best-interests factors. "Generally, the court enjoys broad discretion in assessing the best interests of a child and we accept their findings unless clearly erroneous." Rinehart v. Svensson, 2017 VT 33, ¶ 16, __ Vt. __. Although the trial court is not required to make specific findings regarding each of the statutory factors, see Harris v. Harris, 149 Vt. 410, 414 (1988), in this case the court made detailed findings with regard to each factor for which evidence was presented. The evidence supports these findings and the court's conclusions.

Mother first challenges the court's assessment of the quality of the children's adjustment to their present housing, school, and community in South Carolina and the potential effect of any change. See 15 V.S.A. § 665(b)(4). She argues that the court should have given greater weight to the children's successful adaptation to South Carolina. The court found that the children had strong ties to Vermont, where they had spent their entire lives prior to June 2016 and had friends and family. They had no connection to South Carolina prior to June 2016. The court noted that no evidence was presented regarding friendships formed with classmates in South Carolina, extracurricular activities, or the children's relationship with mother's boyfriend. The court found no indication that the children's bonds to South Carolina were stronger than their ties to Vermont or that returning to Vermont for the school year would adversely impact their education or emotional well-being. We see no reason to disturb these findings, which are supported by the testimony presented at the final hearing. "We have consistently held that in such situations the credibility of the witnesses, the weight of the evidence, and its persuasive effect are questions for the trier of fact, and its determination must stand if supported by credible evidence." Payrits v. Payrits, 171 Vt. 50, 54 (2000).

Mother also claims that the court improperly focused on father's historical role as the primary caregiver and ignored the fact that she had been the primary parent for the past year

pursuant to the temporary order. We find no error. In considering the primary caregiver relationship, "the inquiry should focus on all relevant periods of the child's life, rather than exclusively on the period immediately preceding trial." Nickerson v. Nickerson, 158 Vt. 85, 91 (1992). Here, the court expressly found that mother had been the primary caregiver during the 2016-17 school year, while father had fulfilled that role from November 2013 until June 2016. It determined that the children had positive relationships with both parents, and therefore this factor did not weigh significantly in favor of either parent. The weight given to the relationship with the current primary caregiver depends on the likely effect of a change of custodian on the children. Payrits, 171 Vt. at 55. "Only when there is no evidence of that effect should the court ordinarily find that the child must remain with the primary caregiver if fit." Id. There was sufficient evidence regarding the parents' respective roles as caregivers to allow the court to weigh the impact of changing custody on the children. It concluded that the change would not have an adverse effect. The evidence supports the court's findings.

Mother further argues that the court did not give sufficient consideration to the fact that father provided no child support from August 2016 until January 2017, when the child support order went into effect. We find no error. Both mother and father testified that when they initially separated, they agreed not to ask each other for child support. When mother requested money for the children's school activities, he sent it to the school. Father fully complied with the child support order once it was issued. Thus, the court's finding that both parties had the present ability and disposition to provide the children with adequate food, clothing, and medical care was not clearly erroneous.

Finally, mother claims that this is essentially a relocation case. Thus, she argues, the trial court should have determined whether there was a real, substantial, and unanticipated change in circumstances by considering the factors set forth in Hawkes v. Spence, 2005 VT 57, ¶ 13, 178 Vt. 161, before it considered the statutory best-interests-of the-child factors. However, this is not a relocation case; "[i]t is a final determination of parental rights and responsibilities following a temporary order." Thompson v. Pafundi, 2010 VT 80, ¶ 17, 188 Vt. 605. The family court did not err by "proceed[ing] directly to a statutory best-interests analysis in crafting a final order because the temporary order in place up until then was just that: temporary." Id. (citing Porcaro v. Drop, 175 Vt. 13, 14 (2002)). Thus, Hawkes is inapplicable here.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice