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

SUPREME COURT DOCKET NO. 2018-279

JANUARY TERM, 2019

Troy Reynolds v. Meghan Forant*	}	APPEALED FROM:
	}	
	}	Superior Court, Lamoille Unit,
	}	Family Division
	}	
	}	DOCKET NO. 22-2-16 Ledm
		Trial Judge: Barry D. Peterson, Acting Superior Judge, Specially Assigned

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

Mother appeals the trial court's order modifying parent-child contact and granting father unsupervised overnight visits. On appeal, mother argues that she was not properly noticed for the hearing, that the court improperly limited her presentation of evidence, and the court failed to evaluate if there was a change of circumstances or analyze the child's best interests before modifying parent-child contact. We reverse and remand.

Father initiated this parentage action seeking contact with the parties' child. In November 2016, the court issued a final order granting mother sole legal and physical parental rights and responsibilities. The order included a temporary order concerning parent-child contact that, by its express terms, was to be reviewed in six months. It provided for father to have supervised contact for at least one hour per week beginning as soon as father presented mother with the written results of a clean supervised urine analysis. The order noted the court's expectation that following the court's review of the contact schedule in six months, "contact will then be unsupervised for increasing periods of time to eventually include overnights."

In July 2017, the court held a child-support hearing and a review hearing regarding parent-child contact. At that time, father explained that he had not been able to provide a clean urine-analysis report because he smokes marijuana at bedtime for anxiety. The court explained that the only way father would start to see his son would be by delivering a clean urine analysis. The court stated, "as far as parent-child contact, [the November 2016] order will remain in place," and explained to father that as soon as he established a clean urine analysis, the court expected mother to comply with the supervised-visit schedule.

In March 2018, father filed a motion to modify parent-child contact and a motion for contempt. Father asserted that he provided a clean urine analysis in October 2017, but that he had contact with his child on only one occasion. Father requested overnight and holiday contact with a suggested schedule. The court held a hearing in July 2018 on both motions. At that point there had been twelve scheduled visits between father and son, but only six had taken place. Mother

claimed the visits were missed due to the child's illness and father's nonappearance. At the hearing, father asserted that mother was in contempt for failing to consult with him on matters involving the child. Father testified that he had to cancel visits with his son because of his own illness and due to a car accident. He expressed a desire to have contact outside of supervised visits. Mother testified that she thought father needed to build more of a relationship with their child before having unsupervised visits. She was concerned about father's live-in girlfriend who was a former heroin user. On July 17, 2018, the court issued an order granting father's motion to modify parent-child contact. Citing 15 V.S.A. § 650, the court found that there was no evidence that contact with father would result in direct physical harm or significant emotional harm. The court incorporated father's proposed contact schedule, giving father unsupervised overnight contact three of every four weekends. Mother filed a notice of appeal.

On appeal, mother first argues that the court improperly converted a motion for contempt into a hearing on parent-child contact without adequate notice to her. The record contradicts mother's claim. Father's motion was entitled a motion for contempt and to modify parent-child contact. In the motion, father asserts that "intervention by this Court is necessary to establish a suitable schedule of parent-child contact to permit the child to develop a consistent and nurturing relationship with [father]." His request for relief included a request that the court "immediately establish a fixed and determined schedule of overnight and holiday parent-child contact" between father and the child. The court's notice of hearing expressly indicated that the hearing related to father's motions to modify parent-child contact and for contempt. For these reasons, we reject mother's contention that she did not have adequate notice of the issues before the court at the hearing that led to the order on appeal.

Mother also argues that the court abused its discretion in not allowing her to present witnesses at the hearing. At the hearing, mother sought to have the child's maternal grandmother testify that mother was a hard worker and loving mother, and the court determined that this was not necessary because neither fact was at issue. The family court has discretion in determining the relevancy of evidence. Gravel v. Gravel, 2009 VT 77, ¶ 10, 186 Vt. 250. Father did not contest the award of sole legal and physical rights and responsibilities to mother; the issue before the court was whether the court should establish a fixed schedule of unsupervised visits for father. The court acted within its discretion in concluding that mother's proffered evidence would not inform the court's evaluation of this question.

Finally, mother argues that the court erred in failing to find a change of circumstances prior to modifying the order and did not analyze whether a change was in the child's best interests. Father contends that the existing parent-child contact was established by a temporary order and therefore no change-of-circumstances finding was required.

A court may issue a temporary order in a parentage action. Groves v. Green, 2016 VT 106, ¶ 21 & n.4, 203 Vt. 168 (explaining that 15 V.S.A. § 594a, which authorizes temporary orders in divorce actions, applies by analogy to parentage actions). The purpose of a temporary order is "to provide quick, temporary relief to the parties in between the initiation of the . . . proceeding and the final decree." Id. (quotation omitted). To modify a temporary order made pending a final hearing, the court need not engage in a changed-circumstances analysis because the temporary order by its terms is meant to cease at the time of a final order. Thompson v. Pafundi, 2010 VT 80, ¶ 17, 188 Vt. 605 (mem.). However, once an order is final, prior to modifying it, the court must find a real, substantial, and unanticipated change of circumstances. 15 V.S.A. § 668.

A threshold question, then, is whether the order on appeal, granting father's request for modification, modifies a final order or a temporary order. Whether the court's July 2017 ruling on parent-child contact was a final order is a subject of some dispute. On the one hand, the court's oral order on the record maintained the existing order in place—and the existing order contemplated expansion to unsupervised and overnight visits after a period of supervised visitation.* These considerations arguably support the view that the parent-child contact order remained a temporary order subject to review and subsequent modification without any showing of a real, substantial, and unanticipated change of circumstances. However, near the end of the hearing, the court said, "I don't see us scheduling anything—there's nothing—there's not going to be a review scheduled—until either of you file a motion to modify parental rights and responsibilities, parent-child contact—or child support." The court further explained that the commencement of contact should begin without the involvement of the court once father delivered a clean urine analysis, and that "if either party feels that there's been a real, substantial, unanticipated change of circumstances, they can file a motion to modify the current parental rights and responsibilities, parent-child contact schedule." The court's statement that it was not scheduling a review, and that the order—which provided for supervised contact one hour per week—could be changed upon a showing of a real, substantial, and unanticipated change of circumstances, indicates that the court intended its parent-child contact order to be a final order. The trial court made no findings in this case as to the existence of a real, substantial, and unanticipated change of circumstances. For that reason, its determination cannot stand.

Moreover, even in those cases where a party seeks to modify a temporary order and therefore the court does not need to engage in a changed-circumstances analysis, the court must still analyze the child's best interests prior to altering an existing parent-child contact schedule. DeLeonardis v. Page, 2010 VT 52, ¶ 24, 188 Vt. 94 (explaining that court's decision concerning parent-child contact "must serve the best interests of the children, after consideration of the factors set forth in the governing statute"). The family court has "broad discretion" in determining a child's best interests. Harris v. Harris, 149 Vt. 410, 416 (1988) (quotation omitted); see also 15 V.S.A. § 665(b) (identifying factors that family court must consider in evaluating child's best interests). Although the court has broad discretion, it must explain how it weighed the factors and reached its conclusion. Caroline v. Ogilbee, 2018 VT 96, ¶ 21.

Here, the trial court's explanation for its decision was very brief. The court cited 15 V.S.A. § 650, which provides that it is in the best interests of minor children to have a maximum opportunity for physical and emotional contact with both parents, but did not reference or evaluate any of the statutory best-interests factors. The court then made a drastic change in the existing parent-child contact schedule, moving from supervised visits one hour a week to unsupervised overnight contact for two nights, three out of every four weekends. "We cannot provide a meaningful review of the trial court's order when we are left to speculate as to the reasons the court favored one party over the other when comparing their respective attributes." Id. ¶ 22 (quotation omitted). Absent some explanation for the court's decision to alter the parent-child contact schedule in the manner it did, this Court cannot properly review the decision.

Therefore, we reverse and remand for the trial court to make findings as to changed circumstances and the child's best interests. Given the passage of time since the last evidentiary

* The court's handwritten entry order likewise simply says "N. change PRR/PCC."

hearing, the court may decide to have a new hearing to ascertain the current facts about the child's best interests.

Reversed and remanded.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice