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. 2018-343

MARCH TERM, 2019

Julie M. Allen* v. Joshua Clayton	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 157-3-15 Cndm
		Trial Judge: Barry D. Peterson, Acting Superior Judge, Specially Assigned

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

Mother appeals from the trial court's September 2018 order setting a parent-child contact (PCC) schedule. She argues that the court erred in finding that she had voluntarily stipulated on-the-record to a final PCC schedule. Based on her assertion that no agreement exists, mother argues that the court should have made findings as to what PCC schedule was in the children's best interests.[*] We affirm.

To place mother's arguments in context, we must recount the procedural history in some detail. Parents divorced in February 2016. They have two minor children. Wife was awarded primary legal and physical rights and responsibilities subject to father's right to liberal and substantially equal PCC. In September 2016, father moved to modify parental rights and responsibilities and PCC. The court granted his request in March 2017. It found that since the issuance of the final divorce order, mother had been charged with driving-under-the-influence, she was intoxicated at school events and at a child's birthday party, and she was visibly intoxicated on several occasions while caring for the children. The parties had agreed to an interim order but mother violated its terms by again caring for the children while intoxicated. As of March 2017, the court found that mother had not done anything specifically to address her alcohol issues. After finding a change of circumstances and evaluating the statutory best-interest criteria, the court awarded primary legal and physical rights and responsibilities to father. The court issued a temporary PCC order, indicating it would review PCC after ninety days to determine if expanding mother's PCC was in the children's best interests.

A review hearing occurred in May 2017. The court found that mother had again been intoxicated while caring for the children but that she was trying to address her alcohol issues. The court increased mother's PCC and stated that if, for the following two months, there were no further problems with mother being intoxicated or consuming alcohol during PCC, then mother

[*] Mother also appears to challenge the court's March 2017 order that awarded sole legal and physical rights and responsibilities (PRR) to father. The March 2017 order awarding sole PRR to father was not timely appealed, and it is not properly before us.

could take the children on a week-long summer vacation. The court stated that it would review the PCC schedule one more time after ninety days to determine if expanding mother's PCC was in the children's best interests.

The court held a second review hearing in August 2017, and the parties agreed that the current schedule would remain in place. In September 2017, father filed an emergency request for supervised contact based on allegations that mother was again intoxicated while caring for the children. Father explained that the police had taken mother into protective custody at a time when she was caring for the children. The court granted father's request on an ex parte basis and appointed a guardian ad litem for the children. Following a hearing, the court issued a written order. It found that mother now admitted that she was an alcoholic and she had started to take significant steps to address her alcohol problem. The court found that as a result of mother's continued use of alcohol when caring for the children, there had been a real, substantial, and unanticipated change of circumstances since the May 2017 order. It found that overnight PCC was not in the children's best interests. It allowed unsupervised daytime PCC to continue. The court stated that it would issue an amended PCC schedule that would be reviewed after 120 days to determine if expanding mother's PCC was in the children's best interests.

Another review hearing commenced in May 2018; it was continued to July 2018 to allow father to testify. At the July 2018 hearing, mother's attorney inquired about having the court continue to review the PCC schedule. The court responded that it had already conducted several review hearings and that it contemplated that the July hearing would be the final hearing with respect to PCC. The court explained that it did not routinely engage in six-month reviews of PCC and that it could conduct another hearing if there was a real, substantial, and unanticipated change of circumstances. The court stated that it was not foreclosing the possibility that it might conclude after father's testimony that a further review was needed, but it was not inclined to do so. Father argued that it was expensive and disruptive to the children and to parents to continue engaging in review hearings. He asserted that the children sought certainty and finality in their schedule and that another hearing could be held if a change in circumstances existed.

Before father testified, the court took a recess to allow the parties to negotiate a possible settlement. Mother's attorney informed the court that the parties had "been able to finalize a schedule," and she expressed her hope that "at some point in the future we'll be able to expand it." Father responded that he viewed this agreement as a final order that was subject to final order modification standards. Mother did not object or otherwise comment on father's assertion. The children's guardian ad litem indicated his belief that the schedule was in the children's best interests as it would provide them the certainty that they had been lacking. The court agreed that the children needed stability. The court then went over the schedule with the parties on the record, and the parties negotiated a holiday schedule on the record as well. At the conclusion of the hearing, counsel for mother proposed that father's attorney draft the order incorporating the parties' stipulation. The attorney did so, but mother refused to sign it. Father's attorney filed the partially signed stipulation with the court in early August 2018. Several weeks later, mother filed a written objection to the order and requested that the court continue the evidentiary hearing. Mother asserted that she did not understand that the terms of the PCC schedule would be "permanent." The court denied mother's motion. It found that the parties had voluntarily stipulated to a PCC schedule on the record at the July 2018 hearing. Mother's possible after-the-fact regret, the court explained, was not a basis to reopen the evidence. Mother appeals.

Mother argues that under 15 V.S.A. § 666, the court had to find that the parties' agreement was "reached voluntarily" and that it erred in finding a voluntary agreement here. According to

mother, there was no meeting of the minds on the contract's essential terms because she intended to agree to an interim order while father agreed to a permanent order.

We reject mother's arguments. The court did not err in finding that mother voluntarily stipulated to a final PCC schedule on the record. Cf. 15 V.S.A. § 666(c) ("If the court finds that an agreement between the parents is not in the best interests of the child or if the court finds that an agreement was not reached voluntarily the court shall refuse to approve the agreement."). The court made it clear at the hearing that it was not inclined to issue yet another temporary PCC order subject to further review unless there was something in father's testimony that led it to change its mind. Father did not testify. Instead, the parties negotiated an agreement during a court recess, which they presented to the court. Mother did not state that the parties had agreed to a temporary PCC schedule. We do not construe her expression of hope that PCC might be increased sometime in the future as making such a representation to the court. Indeed, as reflected above, father immediately made clear to the court his belief that the parties had agreed to a final PCC order and mother raised no objection to this assertion. The guardian ad litem and the court went on to discuss the importance of having a final schedule for the children, without any objection from mother. See Cooper v. Savage, 145 Vt. 223, 225-26 (1984) (explaining that "[o]nce a party agrees to a stipulation, [the party] is bound by it," and party must timely object if he or she takes issue with stipulation "or to the court's express understanding of the stipulation"). Mother's failure to object "constitutes acceptance." Id.

Mother offers no legal support for her assertion that the court was required to engage in a "standard colloquy" before finding the agreement voluntary. We find it clear from the record that the parties' expressed their "mutual manifestations of assent or a meeting of the minds on all essential particulars." EverBank v. Marini, 2015 VT 131, ¶ 17, 200 Vt. 490 (quotation omitted); see also Stonewall of Woodstock Corp. v. Stardust 11TS, LLC, 2018 VT 79, ¶ 20 ("A party cannot escape a contract on the basis of an unexpressed mental reservation.") (quotation omitted); Restatement (Second) of Contracts § 17(1) (1981) (setting forth, in relevant part, basic principle in contract law that "the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange"). The court did not err in finding that the parties voluntarily agreed to a final PCC schedule and holding them to that agreement.

Based on our conclusion, we need not address mother's assertion that in the absence of an agreement, the court was required to make findings and conclusions as to the children's best interests.

Affirmed.

BY THE COURT:

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Marilyn S. Skoglund, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice