

*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. 2020-282

MARCH TERM, 2021

Heidi Marsano* v. Adam A. Marsano	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 185-4-19 Cndm
		Trial Judge: Barry D. Peterson

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

Mother appeals the family court’s order regarding parent-child contact. On appeal, mother argues that the trial court abused its discretion in assessing the child’s best interest when setting father’s parent-child contact, and in not finding that abuse had occurred under 15 V.S.A. § 665a. We affirm.

The parties were previously married and are the parents to a minor child, E.M. Following their divorce, under a 2014 order, they shared legal and physical rights and responsibilities and had approximately even parent-child contact. Father had contact with E.M. from Saturday evening to Tuesday morning. Father also has a daughter, G.M., with his second wife. In September 2018, E.M. began exhibiting behavioral problems in school, including being disrespectful and physically aggressive to teachers and other students, particularly girls. Father’s second wife testified concerning an incident that occurred in March 2019. Father was drunk and the two had an argument. The argument escalated and father physically assaulted his second wife by choking her. She was able to push him off and to contact police. Father was arrested and charged with aggravated domestic assault. G.M. and E.M. were both present in the house during the assault. G.M. was crying during the incident. E.M. did not leave his room during the assault and it was not clear from the evidence if E.M. heard what transpired.

In March 2019, following father’s arrest, mother moved to suspend father’s parent-child contact with E.M. on an emergency basis and to modify parental rights and responsibilities and parent-child contact. The court initially suspended contact between father and E.M. The court subsequently approved the parties’ agreement for supervised overnight visits with father. These orders were described by the court as temporary and each order indicated that it would be reviewed in a few months.

Mother filed a supplement to her motion to modify parental rights and responsibilities and parent-child contact, asserting that E.M.’s increased behavioral difficulties, including physical and verbal abuse of girls at school, amounted to a real, substantial, and unanticipated change of circumstances. The court held a hearing on the motion. At the hearing, father’s second wife testified that father has a drinking problem, is an aggressive drunk, and is verbally abusive. She

witnessed father drinking and driving drunk with the children in the car. The court found the testimony of father's second wife "very credible." Mother testified that during her marriage to father, he did not drink excessively. She stated that before their divorce, father became angry, verbally abusive, disrespectful, and called her derogatory names in front of E.M. She also stated that E.M.'s behavior became more angry, defiant, and physically aggressive after the incident in March 2019. She stated that father's behavior towards mother and his second wife had an impact on E.M.'s behavior at school. Mother testified that the first two supervised visits between E.M. and father went well and thereafter E.M. refused to have contact with father. Mother did not know why, and the court did not credit father's assertion that E.M.'s refusal was caused by mother or that mother attempted to alienate E.M. from him. The court found that father was not a good role model for E.M. and that E.M.'s poor behavior at school was likely related to father's behavior toward mother and his second wife.

In August 2019, the court issued a temporary order on parent-child contact. The court found that father's arrest, increased drinking, and E.M.'s behavior amounted to a real, substantial, and unanticipated change of circumstances. The court found that father's inability to control his anger, his increased drinking, and his treatment of women weighed in favor of modifying parent-child contact on a short-term basis but did not support a modification of parental rights and responsibilities. The court directed that E.M. continue individual counseling and commence family counseling to facilitate reunification between father and E.M. The court also directed father to continue alcohol counseling. The court indicated that it anticipated father would be able to resume his prior contact schedule in the future and set the matter to be reviewed in ninety days.

On review, in December 2019, following a hearing, the court continued the temporary order. The court again indicated that it anticipated that continued progress would be made.

In March 2020, the court clarified that its prior orders had modified parent-child contact, but that the parties continued to share physical rights and responsibilities as provided for in their 2014 order. The court found that the relationship between father and E.M. was improving and ordered that individual and family counseling continue. The court provided father with unsupervised and increased parent-child contact.

In August 2020, following another hearing, the court issued a final order. In the order, the court found that E.M.'s behavior and performance at school had improved. The court also found that visits between father and E.M. were going well. The court increased father's parent-child contact to unsupervised overnights with a return to the 2014 schedule after four overnight contacts. Mother then filed this appeal.

On appeal, mother first argues that the trial court abused its discretion in providing father with parent-child contact that he had under the 2014 schedule. "The family court has broad discretion in awarding, modifying, or denying parent-child contact, and we will not disturb its decisions unless its discretion was exercised upon unfounded considerations or to an extent clearly unreasonable upon the facts presented." Weaver v. Weaver, 2018 VT 38, ¶ 15, 207 Vt. 236 (quotation omitted). The court may modify parent-child contact when there is a "real, substantial and unanticipated change of circumstances." 15 V.S.A. § 668(a). The burden to modify parent-child contact is not as high as the burden required to warrant a change in custody. Weaver, 2018 VT 38, ¶ 18. Once the threshold is met, "the court must then determine whether changes to the parent-child contact arrangement are in the best interests of the child." Id. ¶ 21; see 15 V.S.A. § 665(b) (listing best-interests factors).

Mother argues that the court erred in evaluating E.M.'s best interest related to parent-child contact, contending that the evidence and the family court's own findings do not support the decision. In support of her argument, mother cites findings made by the family court in August 2019 regarding father's arrest for domestic violence, his drinking, his verbal abuse, E.M.'s concerning behavior at school, and E.M.'s refusal to have contact with father. Mother argues that an analysis of the child's best interests under 15 V.S.A. § 665(b) warrants restricting father's contact.

We do not address mother's argument that the record does not support the court's decision. The appellate rules require an appellant to produce a transcript of all parts of the proceedings in the trial court that are relevant to the issues the appellant raises on appeal. V.R.A.P. 10(b)(1). Mother has not ordered a transcript of the hearings in the family court and therefore has waived the right to challenge the sufficiency of the court's findings. V.R.A.P. 10(b)(1); Evans v. Cote, 2014 VT 104, ¶ 7, 197 Vt. 523 ("Without the transcript, this Court assumes that the trial court's findings are supported by the evidence.").

Mother's argument that the court's decision is not supported by the court's own findings fails to recognize the chronology of orders on parent-child contact that preceded the final order on appeal. The August 2020 final order followed over a year of decisions regarding father's contact with E.M. As detailed above, beginning in March 2019, the trial court restricted father's contact with E.M. based on its findings concerning E.M.'s best interests. The court provided father with supervised visits, then incrementally increased contact based on several factors, including engagement in individual and family counseling, the status of father's relationship with E.M., and E.M.'s behavior. By the time of the final order in August 2020, the court found that E.M.'s grades in school were good, he had had no behavioral reports since the 2018-19 school year, visits between E.M. and father were going well, individual and family counseling was continuing, and father had not consumed alcohol since March 2019.

The family court acted within its discretion in this case in first restricting father's contact, then providing a means for father to increase contact, and finally reestablishing the prior parent-child contact schedule. This Court has recognized that orders restricting contact with a parent on a temporary basis may be appropriate where it is consistent with the child's best interests and there is a road map for reestablishing contact. See Wright v. Kemp, 2019 VT 11, ¶ 26, 209 Vt. 476 (explaining that court can restrict contact and provide expectations for increased contact if terms and conditions are "reasonable and reasonably attainable, assuming parental engagement in the prescribed process, and consistent with the child's best interests"). The family court utilized exactly this approach in this case, and its findings support the court's decision.

We also reject mother's related argument that the court's analysis of E.M.'s best interests was insufficient. The trial court has discretion to evaluate the best-interests factors and is not required to particularly evaluate each statutory factor as long as "the findings as a whole reflect that the trial court has taken the statutory factors into consideration, in so far as they are relevant." MacCormack v. MacCormack, 2015 VT 64, ¶ 5, 199 Vt. 233 (quotation omitted). Here, although the court's discussion in the 2020 final order was brief, when viewed in the context of the court's preceding orders, it was sufficient to understand the court's rationale. See Weaver, 2018 VT 38, ¶ 21 (concluding that court's analysis of child's best interests was sufficient "particularly when read together with earlier orders").

Mother's final argument is that the court erred in finding in its August 2019 temporary order that 15 V.S.A. § 665a did not apply because father was not convicted of domestic assault against mother and had not been found to have committed abuse against a family or household

member. Specifically, mother contends that the court’s findings support the conclusion that father committed abuse against a family or household member, his current wife, and, as a result, the court was required to make an additional finding that “adequate provision can be made for the safety of the child and the parent who is a victim of domestic violence” when fashioning a parent-child contact schedule. Section 665a states that the court may award parent-child contact to a parent who has committed abuse against a family member if it finds that adequate provision can be made for the safety of the child and the parent who is a victim of domestic violence. This requirement is triggered when a parent has been convicted of domestic assault against the other parent within the prior ten years or has been found to have committed abuse against a family or household member as defined in 15 V.S.A § 1101. If these findings are made, the court may consider imposing certain conditions outlined in § 665a(b). These conditions include, but are not limited to, supervised contact, participation in counseling, abstinence from use of substances including alcohol, and a prohibition against overnight contact. Id. § 665a(b)(2)-(4), (6).

The court concluded that this provision did not apply because, although father had pending domestic-assault charges against him, he had not yet been convicted. Furthermore, the court found that father had not been found to have committed abuse against a family or household member “at the present time.” We need not decide whether the court erred in concluding that § 665a did not apply because, even if it applied and the court was required to make a specific finding that its parent-child contact order contained adequate provision for the safety of the child, any error in not doing so was harmless. Throughout the lengthy proceedings the court consistently considered the child’s safety in fashioning parent-child contact conditions, which initially prohibited contact altogether and then progressed to supervised, and finally, unsupervised contact. The court modified conditions as father progressed in his counseling and sobriety and imposed many of the same conditions § 665a(b) suggests it may consider. It is clear that the court’s foremost consideration in making all of its parent-child contact orders was the child’s safety.

Affirmed.

BY THE COURT:

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice