VERMONT SUPREME COURT
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Case No. 21-AP-229

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

FEBRUARY TERM, 2022

Steven Berlin* v. Alison Berlin } APPEALED FROM:
} Superior Court, Lamoille Unit,
} Family Division
} CASE NO. 151-12-19 Ledm
Trial Judge: Nancy J. Waples

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

Husband appeals the family division's final order concerning spousal maintenance and property division, which we affirm. Husband also appeals the trial court's decision denying his motion to modify parental rights and responsibilities and parent-child contact, which we reverse in part and remand.

Husband filed for divorce in January 2020. In October 2020 the parties stipulated to a final order concerning legal and physical rights and responsibilities of their three children, which the court approved. Under the stipulated parental rights order, wife has sole legal responsibility for the children, and the parties share physical rights and responsibility and parent-child contact, with wife having 53% of time and husband having 47%.

The court held a one-day hearing on spousal maintenance and property division in May 2021. After this hearing but before the court issued its final order on those issues, husband moved to modify legal and physical rights and responsibilities and parent-child contact based on wife's decision to enroll their eldest son in a private school located some distance away from the parties' hometown. He sought temporary relief to enforce the current parental rights and responsibilities and contact order pending a hearing, and a hearing to adjudicate the merits of his motion. The parties voluntarily but unsuccessfully mediated the issues raised in husband's motion. The family division issued its final order regarding property division and spousal maintenance in August 2021.[1] Shortly thereafter, the court denied husband's motion to modify in a written decision, without a hearing.

Husband argues that the court abused its discretion in dividing the marital assets, failing to account for wife's gift income in calculating spousal maintenance, and assigning certain debts

[1] The court also issued a separate interim child-support order in August 2021. At the time of this appeal, the issue was still being litigated below.

to him. He also contends that the court committed reversible error by failing to hold a hearing on his motion to modify parental rights and responsibilities and parent-child contact.

As to spousal maintenance and property division, the family division made the following findings. The parties married in 2005 in New York, where they resided until 2016. In 2016, they moved to Stowe, Vermont. Throughout the divorce proceedings and at the time of the final hearing, both parties continued to reside in Stowe. They had three children during the marriage, all still minors.

At the time of the final hearing both parties were 44 years old. Husband was in good health, but wife suffered from Lyme disease, which caused her severe headaches, nerve pain, and fatigue, and interfered with her ability to look at screens for extended periods and other work-related tasks. Wife had a bachelor's degree in fine arts and a master's degree in business administration. Husband had a bachelor's degree.

Prior to and during the early years of the marriage, wife worked full-time at Thompson-Reuters in New York City. She left that position in 2011 and thereafter held a variety of part-time jobs. After moving to Stowe in 2016, wife looked for more lucrative opportunities but was never able to earn more than $19 per hour. At the time of the hearing, wife was working full-time as a ski school supervisor at Stowe Mountain Resort during ski season at $19 per hour, and also worked part-time at the resort during the rest of the year at minimum wage. She testified that $37,000 could be imputed to her as annual income.

Husband worked full-time throughout the marriage, mainly as an entrepreneur and investor in his own businesses. Husband established several different businesses. One company that husband helped to develop, CoreMap, was his current employer at the time of the court's final hearing. Beginning in September 2020, husband earned $125,000 per year as an employee of CoreMap. He also received a $9000 bonus in 2020 and was eligible for a 10% bonus in 2021. Husband additionally earned approximately $400 per month in consulting income.

When the parties moved to Stowe in 2016, they had planned that husband would support the family financially while wife would stay home with their young children. However, that same year two of husband's businesses failed and he was not able to support the family independently. From 2016 through September 2019, he contributed $3000 per month toward household expenses. In December 2019, husband moved out of the house and provided no further financial support to wife or the family until the court ordered him do so in February 2020. To cover all remaining household expenses from 2016 onward, wife took on part-time employment, used credit cards, borrowed money, and spent savings. The parties' credit card balance reached over $50,000 during this period.

Notwithstanding these struggles, the parties individually and jointly received substantial financial support from wife's parents. Before the marriage, wife's parents provided the cash investment for her to purchase an apartment in New York City. Wife sold this apartment, and in 2010 she used $250,000 in sale proceeds as a down payment to purchase a home in Bedford, New York. The parties resided there until they moved to Vermont 2016. Both the deed and mortgage were solely in wife's name, and she continued to own the Bedford house throughout the marriage. Husband testified that he contributed to the down payment and paid for some expenses of the Bedford house while they lived there, but he provided no documentary evidence of any payments and wife disputed these assertions. The parties were not able to cover costs of the Bedford property for several years that they lived there. The bank began foreclosure in 2013,

but wife borrowed nearly $100,000 from her father to repay taxes and mortgage debt and refinance the house. Wife borrowed an additional $75,000 from her parents for improvements. Both loans were secured by notes specifying that wife's parents would be reimbursed through proceeds of any sale of the Bedford home. Since 2016 when the parties moved to Vermont, wife had been solely responsible for all mortgage payments, tax payments, and maintenance costs for the Bedford property. Although wife rented out the property, the rental income was not enough to cover all expenses associated with the property. The trial court included the Bedford property in the marital estate and found its fair market value to be $1,000,000, with a current mortgage of $449,000.

Wife's mother owned the house in Stowe where the parties lived together. Husband moved out in late 2019. Wife's mother purchased the house as an investment for herself and allowed the parties to live there so long as they covered its carrying costs. The parties covered these costs until husband stopped contributing in 2019, at which point wife could no longer keep up. Wife's mother continued to allow wife and the children to live there despite wife's current inability to pay, but wife had to enter into a loan agreement with her mother under which wife promised to repay the rental value of the home. The court did not include the Stowe house as marital property, and neither party disputed this determination.

Husband also benefitted from two loans from wife's father during the marriage. In 2017, at husband's request, wife borrowed money from her father to loan to husband for one of husband's businesses. Husband signed a promissory note to wife and wife signed a contemporaneous note to her father. The total amount husband owed wife under this loan was $23,999.96. Separately, husband borrowed $10,000 from wife's father. Wife requested at trial that husband repay both loans in full.

Husband's businesses were another component of the marital estate. Husband testified at trial that all of his businesses were defunct and valueless, but he provided no documentary evidence or third-party testimony to support this assertion. Husband's Form 813B financial affidavit, signed one week before trial, listed his percentage ownership in four different businesses and labeled them as assets, albeit without any quantified value. Both parties testified that husband had contributed $3000 per month toward family expenses during 2018 and most of 2019, but the court noted that his Social Security Statement for those years showed almost no income, suggesting that husband had underreported business income. Wife also testified that husband failed to accurately report his business income during several years when they filed joint income tax returns, resulting in outstanding obligations to the IRS.

In addition to husband's businesses and the Bedford house, the court determined that wife's retirement account, an IRA, was the only other significant asset. Wife contributed to this account between 2000 and 2011. During the five years before marriage, she contributed approximately $50,000 total. It is unclear how much she put into the account during the marriage or how the investment grew over time. In 2020, after she was unable to obtain a line of credit to keep up with household expenses, she withdrew $97,000 from the IRA. She used this money to pay joint obligations of the parties. At the time of trial, she had not yet paid back this amount and she testified that the taxes would be approximately $30,000 if not repaid. The value of the IRA account at the time of trial was $371,308.33.

At the time of trial, the parties owed funds to the IRS for tax years 2015, 2016, and 2017, when they filed joint returns. Wife testified that these tax obligations were due to husband's business income taxes and his failure to accurately report business income, and that she did not

know about these unpaid taxes until 2019. She began filing her taxes separately in 2018 and sought innocent-spouse status for the years they filed jointly. Nevertheless, the IRS garnished wife's income-tax refund in years when she filed separately to pay the back taxes owed from the years the parties filed jointly. The total amount garnished was approximately $8000. The parties still owed approximately $500 to New York, $500 to Vermont, and a few hundred dollars to the IRS. The parties also had outstanding accountant bills. Wife provided evidence and the court found that husband had previously agreed to pay outstanding joint tax obligations and accountant bills.

After weighing the factors of 15 V.S.A. § 751, the court divided the marital property as follows. It awarded the Bedford house wholly to wife and released husband from responsibility to pay any debts associated with it. The court noted that wife had been solely responsible for the carrying costs of that property since 2016. It further concluded that, after deducting the mortgage, promissory notes to wife's parents, and the $250,000 down payment that came from wife's premarital assets, and considering the transaction costs of selling the home, the home likely had no net value. Given these circumstances, the court determined it was appropriate to award the Bedford house to wife.

The court noted that wife contributed financially to husband's businesses over the years, and that these businesses supported the family for some period while wife worked part-time or stayed home with the children. It also found that husband neither contributed to wife's IRA nor his own retirement account. Instead, husband invested his discretionary income back into his businesses. Although husband testified that his remaining businesses had no value and were essentially defunct, the court did not credit this testimony. It noted discrepancies in his federal income filings. For example, when he was providing wife with $3000 per month for joint expenses in 2018 and 2019, his social security reporting forms reflected $621 and $1122, respectively, in annual income. Although the court did not find an exact value for any of husband's businesses—and no evidence was presented of any particular value other than husband's assertion that they were valueless—the court noted that husband listed the businesses as assets in his Form 813B financial disclosure form and thus concluded that they had some value. Accordingly, the court awarded husband 100% of his businesses and wife 100% of her IRA account. Though neither party addressed husband's personal savings account in their proposed findings and conclusions, husband's Form 813B financial disclosure indicated that the account had a value of approximately $10,000 one week before trial, so the court awarded it to husband. Finally, the court awarded each party the vehicle that each currently possessed, along with sole responsibility for any liabilities associated with that vehicle.

As to other liabilities, the court noted that wife had been solely responsible for family expenses since husband stopped contributing in 2019. The court attributed the joint tax obligations to husband and ordered him to repay both the amounts the IRS garnished from wife and any remaining tax liabilities. It also ordered husband to repay the $23,996 that he borrowed from wife via her father.[2] The court concluded that the parties were responsible for their own respective credit card obligations since the date of separation.

Although the true value of husband's businesses was unknown, the court acknowledged that it was awarding wife a greater percentage of the marital estate. It concluded that such

[2] The court's property order did not mention the $10,000 that husband borrowed from wife's father, but because neither party raised this issue on appeal, we do not address it.

division was equitable and appropriate because wife brought significantly more assets into the marriage than husband and received significant funds from her parents during the marriage, all of which she contributed toward marital expenses. Wife was also solely responsible for the investment and appreciation of her retirement account during the marriage. Though both parties were gainfully employed during the marriage, the court found that wife was currently unable to earn the same level of income as husband.

As to spousal maintenance, the court analyzed the factors of 15 V.S.A. § 752. It found that both parties had been living beyond their means, but that wife did not have sufficient income to support her reasonable needs. The court cited to evidence that wife's expenses far outweighed her income and found that husband often did not contribute to household expenses during the marriage.

The family court noted that maintenance awards can also serve to compensate one spouse for contributions to family well-being not otherwise recognized in the property division. See Stickney v. Stickney, 170 Vt. 547, 549 (1999) (mem.). On this point, the court found that wife had been the primary caretaker of the children and took on part-time work while also managing the household. Husband, by contrast, had the luxury to travel and pursue his business ventures full time, even though those businesses did not generate sufficient income to fully support the family during most of the marriage. Husband ultimately secured a lucrative salaried position with CoreMap, one of the businesses he was involved in during the marriage. The court found that the CoreMap opportunity was possible for husband because wife took care of the home and children. Given these circumstances, as well as wife's limitations from Lyme disease, the court determined that wife was entitled to maintenance from husband.

Wife requested that she receive the guideline amount of maintenance for a fifteen-year marriage, pursuant to 15 V.S.A. § 752(b)(9), and the court agreed.[3] The trial court found that the combination of wife's property award, other assets, and income were insufficient to meet her needs. Her retirement account could not be drawn upon without significant penalty. And although the Bedford house could eventually be sold, the court determined the house had insufficient equity remaining to offset a maintenance award after accounting for outstanding loans and necessary expenses. The court found that after husband stopped contributing to household expenses, wife could not meet her needs without borrowing money from her family, which would need to be paid back, and drawing from her retirement account, which would need to be replenished to not incur tax penalties. The court credited wife's testimony that she had been unable to find work at a wage higher than $19 per hour because the skills from her former financial-services position were outdated and her Lyme disease limited her ability to work certain jobs. In considering the timeline for wife to acquire education or training necessary to secure self-sustaining employment, the court determined the statutory guideline duration—six to fourteen years for sixteen-year marriage—was appropriate.

[3] Husband asserts that wife specifically requested a larger award of property in lieu of spousal maintenance at trial, and that she did not seek spousal maintenance until after trial. He suggests the trial court committed error by ignoring this discrepancy. Husband misrepresents the record. The trial transcript reflects that wife unequivocally requested the guideline amount of maintenance. When asked by the court whether she would be "willing to accept" a larger property award in lieu of maintenance, she responded affirmatively. These circumstances evince no prejudice to husband or error by the trial court.

The court found that husband's current income could pay for his own reasonable needs in addition to spousal support. The court cited documentary evidence reflecting that he was earning $10,816 per month and his expenses—including taxes, all withholdings, and the children's expenses—were approximately $7400 per month. The court noted this did not include husband's bonuses.

In calculating the maintenance award, the court began with the statutory guidelines for a marriage of fifteen to twenty years, which provide for an award of 20% to 37% of the difference between the parties' incomes for a period of six to fourteen years. Using wife's $19-per-hour wage at forty hours per week and husband's $125,000-per-year salary, the court found a difference of $88,000. Because the court awarded wife 100% of her IRA account, it noted that an award on the lower end of the range was appropriate. However, because the salary calculation did not include husband's bonuses, the court determined that the lowest value would also not be warranted. The court ordered a maintenance award of 25% of $88,000, or $1833.33 per month for seven years.

On appeal, husband seeks to reverse several aspects of the court's order, challenging both the division of marital assets and debts as well as the award of spousal maintenance to wife. Under 15 V.S.A. § 751, the family court must divide the marital estate in an equitable manner after considering numerous factors. This process is "not an exact science," and the trial court has "broad discretion when analyzing and weighing the statutory factors in light of the record evidence." Wade v. Wade, 2005 VT 72, ¶ 13 178 Vt 189 (quotation omitted). Similarly, the court has wide discretion in determining whether and in what amount to award spousal maintenance after considering the factors in 15 V.S.A. § 752. Gravel v. Gravel, 2009 VT 77, ¶ 23, 186 Vt. 250. We will not disturb the court's order "unless its discretion was abused, withheld, or exercised on clearly untenable grounds." Cabot v. Cabot, 166 Vt. 485, 500 (1997) (citation omitted). "On review, we will uphold the family court's findings of fact unless, taking the evidence in the light most favorable to the prevailing party and excluding the effect of modifying evidence, there is no credible evidence in the record to support them." Kasser v. Kasser, 2006 VT 2, ¶ 16, 179 Vt. 259.

Husband characterizes the court's order as awarding 100% of marital assets to wife because he asserts that his businesses—the only notable assets he was awarded—have zero value. If husband's characterization were true, such a stark award would merit particularly careful scrutiny, but it is not. Although husband testified that the businesses were defunct, there was contrary evidence in the record. In particular, the court found that husband's testimony was undermined by the fact that he continued to maintain ownership interests in several businesses and listed them as assets in his Form 813B financial affidavit, signed just one week before the merits hearing. Moreover, there was evidence that husband failed to accurately report business income in tax filings and social security filings. On appeal, husband does not cite to any evidence of the value of his businesses other than his own self-serving, conclusory testimony. We defer to the trial court's assessment of credibility and do not reweigh evidence on appeal. Kasser, 2006 VT 2, ¶ 19. Because there was credible evidence in the record to support that husband's businesses had some—albeit unknown—value, we reject the premise that the trial court effectively awarded all marital assets to wife. In addition, the court awarded husband the $10,000 in his savings account, further contradicting his assertion that wife received all marital assets.

Husband's other arguments challenging the unequal division of assets also boil down to the weight of evidence and credibility of witnesses. He asserts that wife was only able to put her

savings into a retirement account because he was paying most of the household bills during that period. However, he does not challenge the trial court's finding that he could have put his own discretionary income into a retirement account but instead chose to re-invest in his business ventures. Moreover, there was evidence that the Bedford house went into foreclosure during the period when husband claimed he was paying for the mortgage and property taxes, and wife was forced to borrow money from her parents to pay down debts and retain ownership of the Bedford house. That the court did not fully credit husband's testimony or placed greater weight on contravening evidence does not evince error or render the property division inequitable. Wade, 2005 VT 72, ¶ 13 (noting trial court's broad discretion in weighing statutory factors in light of record evidence). Husband also contends that his financial support allowed wife the time and opportunity to get her master's degree in business administration, which increased her earning potential, and thus he was entitled to a more equal property division. But the court clearly found credible wife's testimony that she genuinely tried but was unable to find work at a higher salary due to her outdated skillset and limitations from Lyme disease. We defer to the trial court's credibility determination. Kasser, 2006 VT 2, ¶ 19.

Husband also argues that the court committed error when it found that "both parties have been living beyond their means including in the size of their homes," because husband's rented house is smaller than the one wife lives in. He contends that this finding affected the court's reasoning in dividing assets, so reversal is warranted. Because the court made this finding in analyzing 15 V.S.A. § 752(b)(6)—the payor spouse's ability to meet his reasonable needs in addition to paying spousal support—rather than in relation to the property-division factors, husband's contention fails on its face. But, even assuming husband is challenging the award of spousal maintenance based on this claimed error, we do not see how the trial court's qualitative assessment of the parties' lifestyles affected its quantitative calculations or prejudiced husband. The court compared husband's own statement of his monthly expenses against his proffered monthly salary, finding approximately $3000 in monthly surplus not including bonus income. Husband does not contest the court's method of calculating ability to pay, and the court's findings in this regard support its conclusion that factor (b)(6) favored wife. We need not assess whether the court erred in its comment about the parties' spending habits because the comment did not prejudice husband. See In re M.B., 147 Vt. 41, 44 (1986) (holding that "[r]eversal is required only where the error complained of results in undue prejudice").

Husband next argues that the court erred by not attributing monetary gifts from wife's family as income to wife for purposes of determining spousal maintenance. Husband claims that wife has continued to receive regular gift income from her family members of $7006 per month, but the record evidence did not support such a finding. Husband cites to his own generalized testimony that wife had access to a lot of family money, but this testimony did not mention any specific gifts, regularly occurring deposits, or any documentary evidence of gifts. Indeed, the court sustained wife's counsel's unopposed objection partway through this portion of testimony on the basis that husband was speculating without any foundation for his statements.

The only other testimony at trial regarding gifts occurred when husband's counsel cross-examined wife regarding her application to the IRS for innocent-spouse status. The entire exchange was limited to the following:

> [Q.] If you can look at Exhibit II, your Innocent Spouse form. It listed on page 5 your monthly income. 7,000 dollars of gift income a month; is that correct?

A. Yes. That's what it says.

Q. This is a form that you completed in what year?

A. 2000 and -- it was recent. I think it was in 2019 (indiscernible).

Q. And your parents were the source of that gift income, correct?

A. My -- my accountant filled -- help me fill this out, and I believe that those loans are more loans than a gift, but in terms of Innocent Spouse form, I'm not entirely sure how that works, but she -- under the guidance of my accountant, this is what she had me fill out for the purpose of the Innocent Spouse. And those gifts, I think are referring to 2015, '16, and '17, not currently, because it's an Innocent Spouse form for those tax years, not now. I can tell you where the gift we got came from.

Although the application sought innocent-spouse status for tax years 2015, 2016, and 2017, it listed $7006 as current monthly income in the form of gifts. The application was undated and unsigned, but wife testified that her accountant helped her fill it out in 2019, suggesting that $7006 was her monthly income from gifts at some point in 2019. Wife's testimony thus conflicts to some extent with the text of the application itself or suggests that she or her accountant interpreted the income section of the form differently. But, without further questioning to clarify wife's testimony, the court was left with sparse and ambiguous evidence regarding gift income for an isolated year or period of years. The court ultimately found that wife received gifts in 2018, citing this application. It is unclear why the court determined that wife had received gifts in 2018 as opposed to 2019 or some time between 2015 and 2017, but any error here was harmless because the court neither found, nor was there evidence to support, that wife received any gift income beyond 2019 when the parties separated and began establishing separate budgets. Husband cites to no authority supporting the proposition that past gifts, even if recurring regularly for some period, are properly included as current income for purposes of determining spousal maintenance. Section 752 of Title 15 directs the court to consider whether the spouse seeking maintenance "lacks sufficient income," not whether she lacked income at some previous point during the marriage. 15 V.S.A. § 752(a)(1) (emphasis added). Moreover, the court's finding regarding gift income must be considered in context with its finding that wife contributed all gifts and loans from her family during the marriage toward joint household expenses—a finding that husband does not contest on appeal. Thus, husband's contention that wife will receive a windfall by benefitting simultaneously from spousal maintenance, child-support payments, and continuing gift income is not supported by the record evidence. The court did not err by failing to make further findings regarding gift income and it acted within its discretion to not consider past, isolated gifts in determining wife's current financial status. See Johnson v. Johnson, 155 Vt. 36, 40 (1990) ("The trial court has considerable discretion in ruling on maintenance, and the party seeking to overturn a maintenance award must show that there is no reasonable basis to support it.").

Husband's final argument regarding property division is that the court abused its discretion by ordering him to repay the nearly $24,000 that he borrowed to support one of his businesses. Husband cites to the dissenting and concurring opinion in Clark v. Clark, 172 Vt. 351 (2001), as well as Agway v. Brooks, 173 Vt. 259 (2001), for the proposition that the trial

court should not have attributed this debt to husband unless it pierced the veil of his corporation. The cited portion of the dissenting and concurring opinion of Clark cites affirmatively to cases in which courts have looked beyond legal entities controlled by parents or supporting spouses to determine their true income potential, but it is of little import here because it does not analyze corporate debt or the particular circumstances under which veil-piercing may be necessary or appropriate. Agway is a veil-piercing case not involving family law, and it provides no support for husband's contention other than stating the general test for holding shareholders personally liable for corporate debts. Agway, 173 Vt. at 262. Regardless of whether husband was acting in his personal capacity or on behalf of his corporation when he initially borrowed the money from wife, there was evidence that husband later personally agreed to repay this debt. Thus, the court acted within its discretion in assigning this debt to him rather than forcing wife and her father to bear the loss from husband's failed business venture.

Husband also seeks to overturn the court's order denying his motion to modify parental rights and responsibilities and parent-child contact. "The court may modify a parental rights and responsibilities order upon a showing of real, substantial and unanticipated change of circumstances where the modification is in the children's best interests." Sundstrom v. Sundstrom, 2004 VT 106, ¶ 28, 177 Vt. 577 (mem.). Husband bears "a heavy burden to prove changed circumstances, and the court must consider the evidence carefully before making the threshold finding that a real, substantial and unanticipated change of circumstances exists." Id. ¶ 29 (quotation omitted).

The crux of husband's motion was his allegation that mother had enrolled oldest son in a private school approximately one hour and fifteen minutes away from Stowe, which would reduce husband's time with all three children during prime extra-curricular and bonding periods before and after school. Under the parties' current parent-child contact schedule, husband has the children for five weekdays every two weeks. Husband asserted that he would need to drive the one-hour-and-fifteen-minute leg four times on each weekday he has the children, for a total of five hours per day, to drop off and pick up oldest son and return to Stowe for his work and to shuttle the other children to and from their schools in Stowe. In addition to impinging on his parent-child contact, husband claimed that this new obligation would be incompatible with his current employment. Husband also suggested in his motion that wife's proposed solution to the husband's transportation burden was to enroll oldest son as a full-time boarding student, which would greatly reduce husband's contact with him.

Although husband requested a hearing, the court did not hold one. Instead, it determined that husband's motion on its face failed to allege a real, substantial, and unanticipated change in circumstances. The court's decision rested primarily on a mathematical error: it found that husband would need to drive only a total of two-and-a-half hours per day, which it concluded was very typical in Vermont. It also noted that the time husband spends with his children would not change, because he would be in the car spending time with oldest son. This determination fails to recognize time lost with other children. The court also did not address the possibility that wife would enroll oldest son as a full-time boarding student or any impact on father's ability to work.

Despite multiple errors undermining the court's order, we need not reverse the order in its entirety. Husband's motion alleged several ways in which wife's decision to enroll eldest son at a boarding school could impact his contact with all three children, but his allegations suggest no basis for modifying legal rights and responsibilities. The parties previously stipulated, and the court ordered, that wife had sole legal rights and responsibilities, such that "[wife] shall consult

with [husband] on all non-emergency legal decisions concerning the children where possible, but will have the final decision-making authority." Husband's motion alleged that wife had notified him in June 2021 that eldest son was "interested" in attending the boarding school and that she had submitted an application. In July 2021, before husband filed his motion to modify, the parties voluntarily attended mediation in an attempt to reach consensus on this educational decision. Husband's motion clearly demonstrated that wife had followed the decision-making protocol established by the stipulated final order on parental rights and responsibilities. Cf. Wener v. Wener, 2016 VT 109, ¶ 18, 203 Vt. 582 (affirming finding of substantial change of circumstances regarding legal responsibilities where mother had "violated the protocol established by the parties in their agreement" as to educational decision-making). That wife ultimately exercised her authority over eldest son's education to reach a decision contrary to husband's wishes after failed mediation does not demonstrate a possible change in circumstances meriting the court's reexamination of that authority. We affirm the portion of the trial court's order denying husband's motion to modify legal rights and responsibilities.

We cannot affirm, however, the portion of the court's order concerning parent-child contact. Although we do not conclude that husband's alleged facts necessarily constitute changed circumstances bearing on parent-child contact, it is certainly not clear on the limited record before us that husband failed to allege a real, substantial, and unanticipated change in circumstances. He filed a sworn statement alleging events that could potentially have a significant impact on the lives of husband and all three children. Given the court's errors and the lack of a hearing to develop any evidentiary record, the order cannot stand. We conclude that, under the circumstances of this case, the trial court abused its discretion by not holding a hearing to consider husband's motion as it relates to parent-child contact. Cf. Williams v. Williams, 158 Vt. 574, 576-77 (1992) (holding that trial court did not abuse discretion in refusing to hold hearing where issues father sought to raise in his post-trial motions had been addressed at trial).

The order regarding property division and spousal maintenance is affirmed. The portion of the order denying husband's motion to modify legal rights and responsibilities is affirmed, and the portion of the order concerning parent-child contact is reversed and the matter is remanded for further proceedings consistent with this decision.

BY THE COURT:

_____
Harold E. Eaton, Jr., Associate Justice

_____
Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice