

unaware that she had any friends, family, or other social network in Maine. He expressed concern about how the child was doing in school because he believed mother failed to properly supervise daughter and ensure she attended school in Vermont. Father testified that mother had not consistently provided him PCC in the past and she had been warned by the court that she could lose custody if her behavior continued. Father sought primary PRR. He stated that he had a two-bedroom apartment, and he could meet daughter's needs.

Mother was in the car with daughter during the hearing. She said that daughter was well-aware of the situation and wanted to speak. The court explained that mother needed to file a motion for that to occur. Mother then exited the car, leaving daughter in the car, for the remainder of the hearing. Mother testified that she lived in an apartment in Maine with her husband, daughter, and her two older children. When asked how daughter was doing in Maine, mother responded, "good." Mother noted that daughter had not met many friends because she had been attending school remotely. As far as her efforts to ensure father had contact with daughter after the move, mother stated that she asked him to meet her halfway (apparently just before or at the time that she moved), but he refused.

During her testimony, mother referred to screenshots of text messages she had filed with the court in response to father's motion to modify. The messages were apparently sent to father prior to her move. Father's attorney objected to the use of the text messages, stating that copies of these messages had not been provided to her and she received no notice of service of them. The court explained that the messages as filed in Odyssey appeared to be cut off; they were not readable. Mother indicated that she still had her other cellphone with the messages and asked to read the messages into evidence. The court allowed her to do so over father's objection that he could not authenticate that her testimony would reflect what was stated in the messages. Mother then testified that a day or so before she moved, she tried to work out an arrangement with father on PCC, proposing that he meet her in New Hampshire. Mother stated that when father asked about picking daughter up several days later, she replied that she was in New Hampshire waiting. Mother admitted to changing her phone number and stated that she wanted to have a Maine number. Mother said she was unaware if father had social media but she noted that daughter had a social media account. According to mother, the messages she filed with the court also showed that daughter had contact with daughter's paternal cousin and aunt. When asked by the court how father could contact her once she changed her phone number, mother replied "[h]e would have no way." She then said that the only way would be through social media and "[a]nybody can send messages on Facebook." Father stated that he could not contact mother on Facebook as she had changed her name and profile.

At the close of the hearing, the court made findings on the record. It later issued a written decision supplementing its oral ruling. The court found as follows. Under the existing order, father was entitled to PCC with daughter every weekend, although sometimes he saw daughter every other weekend. In February 2021, mother texted father that she planned to move to Bangor, Maine and she wanted to discuss modifying PCC. Father did not agree to modify PCC and asked mother to transfer custody to him; mother refused. The court found that mother contacted the court clerk and understood that she did not need permission to relocate. Mother moved to Maine shortly thereafter with daughter, joining her husband and starting a new job.

Several days after her move, mother texted father that she was in New Hampshire and that father should come pick daughter up for a visit. Father did not do so. The court appeared to blame father for not traveling to New Hampshire to pick up daughter when mother texted him or agreeing to her request to modify PCC. Father thereafter had no contact with mother. As stated

above, mother changed her phone number and her last name but she stated that she could be located on Facebook under her old name. The court found that daughter was in contact with members of father's family via social media and that mother called father's brother, asking him to discuss a possible solution with father, without success. Mother's testimony indicates that her conversation with father's brother occurred prior to her move.

Mother lives in an apartment in Maine with daughter, two older children, and her husband. Daughter participated in school remotely during the remainder of the 2020-2021 school year and mother planned to enroll daughter in a Maine school for the upcoming year. The court acknowledged that father filed his motions in May 2021 and the matter was not heard until late August 2021 due in part to father's inability to locate and serve mother.

Based on these and other findings, the court concluded on the record that father failed to demonstrate a "real, substantial, and unanticipated change in circumstances" that would warrant modification of the 2012 order. 15 V.S.A. § 668(a). With respect to legal PRR, the court found no evidence to suggest that mother made decisions that were not in daughter's best interests. It found no evidence that daughter's medical or physical needs were unmet. The court found that daughter had attended school remotely after the move and she was enrolled in school for the upcoming year. The court reached a similar conclusion with respect to physical PRR, finding that daughter's needs were being met in Maine. The court recognized that father had no contact with daughter after the move. It acknowledged that mother changed her phone number and did not inform father of her new number. The court nonetheless stated that it did not "find it credible that [father] couldn't find her," and it "suspect[ed] he could have found her" but "just chose not to." The court also faulted father for being unwilling to negotiate with mother over PCC. The court found that mother did not willingly or intentionally deny father contact and that father should have tried to find mother and daughter on social media.

In its written decision, the court discussed relevant case law in greater detail. It recognized that it "must consider, among other factors, '[t]he amount of custodial responsibility each parent has been exercising and for how long, the distance of the move and its duration, and the availability of alternative visitation arrangements.'" Hawkes v. Spence, 2005 VT 57, ¶ 13, 178 Vt. 161 (quoting ALI Principles of the Law of Family Dissolution, § 2.17 cmt. b (2002) [hereinafter ALI Principles]). The court found that mother had sole legal and physical PRR while father had, at most, PCC every weekend from Friday to Sunday. It found that mother now lived five hours away by car, which was "sufficiently close to arrange longer visits by car, without a change in daily routine." While father could no longer have PCC every weekend, he could have PCC over long weekends, school vacations, and holidays. The court reasoned that any impact on daughter was now "minimized by the fact" that she had been living in Maine for more than six months "with the stabilizing influence of her mother, step-father and two siblings." It determined that an alternative visitation schedule could afford father a similar amount of time to the amount provided prior to mother's move.

In its written decision, the court characterized mother's failure to provide father with her new phone number or address as "problematic" but stated it did not have enough evidence to find that mother took these steps deliberately to deny father visitation. The court noted mother's testimony that she was open to father having daughter during summer and school vacations and holidays as additional support for this finding. While the court did not condone mother's behavior, it found it likely that, even if mother had provided contact information to father, court intervention would have been required to amend PCC. For these reasons, the court denied

father's motion to modify PRR and granted father's request to amend PCC. A new PCC schedule was not finalized until January 2022, and it is not part of this appeal.

Father argues on appeal that the court abused its discretion in denying his motion to modify. He contends that the findings and evidence were inadequate and that the court failed to engage in the necessary analysis to support its conclusions. Father maintains that mother's relocation to Maine, and the undisputed fact that he had not seen daughter in seven months by the time of the hearing, constitutes changed circumstances. He further argues that the court's findings were not properly supported by record evidence, the court made significant assumptions based on unsworn statements and facts not in evidence, and it did not conduct any meaningful analysis of the child's best interests. Father also challenges the court's denial of his request to have a witness testify on matters bearing on mother's credibility and conduct. Mother did not file a brief.

The trial court has discretion in evaluating whether changed circumstances exist, Bonk v. Bonk, 2018 VT 15, ¶ 8, 206 Vt. 522, and father must show that the court "withheld its discretion entirely or that it was exercised for clearly untenable reasons or to a clearly untenable extent." Quenneville v. Buttolph, 2003 VT 82, ¶ 11, 175 Vt. 444 (quotation omitted). We will uphold the trial court's factual findings unless, "viewing the record in the light most favorable to the prevailing party and excluding the effect of modifying evidence, there is no credible evidence to support the findings." Bonk, 2018 VT 15, ¶ 8 (quotation omitted). The court's conclusions will stand if supported by the findings. Id. We leave it to the trial court to assess the credibility of witnesses and weigh the evidence. See Kanaan v. Kanaan, 163 Vt. 402, 405 (1995) (explaining that trial court's findings are entitled to wide deference on review because it is in unique position to assess credibility of witnesses and weigh evidence presented).

We agree with father that the court abused its discretion here. The record is insufficient to support the court's findings and the findings do not support the court's conclusion regarding changed circumstances. We therefore reverse and remand for additional proceedings.

As the trial court recognized, changed circumstances may be found when a custodial parent relocates with a child. Hawkes, 2005 VT 57, ¶ 9. The question of whether the "change is substantial enough to meet the threshold must be determined in the context of all the surrounding circumstances, keeping in mind that the effect on the child is what makes a change substantial." Id. ¶ 10. We acknowledged in Hawkes that "assessing changed circumstances based on how the children will be affected obscures the line separating the two-part inquiry set forth in § 668" and recognized that "the difference between the separate analyses under the modification statute's two distinct steps is 'subtle.'" Id. (quoting Gates v. Gates, 168 Vt. 64, 70 (1998) ("[W]hile the court is not permitted to decide what is in the best interests of the children during the first phase of the hearing, it may still consider the impact of the change upon the children in deciding whether the circumstances have substantially changed.")).

In Hawkes, we adopted § 2.17(1) of the ALI Principles, which provides that "relocation is a substantial change of circumstances justifying a reexamination of parental rights and responsibilities only when the relocation significantly impairs either parent's ability to exercise responsibilities the parent has been exercising or attempting to exercise under the parenting plan." 2005 VT 57, ¶ 13. While "there is no precise formula for determining when a parent's ability to exercise his or her responsibilities has been substantially impaired," "the trial court must consider, among other relevant factors, the amount of custodial responsibility each parent has been exercising and for how long, the distance of the move and its duration, and the

availability of alternative visitation arrangements.” *Id.* (quotation and brackets omitted). “[I]n determining whether impairment is substantial, the court should consider the amount of custodial responsibility that a parent has been actually exercising, rather than the amount allocated but not necessarily exercised under a court order.” *Id.* (quotation omitted). The comments to § 2.17(1) state that “a relocation several hundred miles away will ordinarily constitute changed circumstances, unless the prior pattern of visitation has been so infrequent that the additional burden imposed on a parent by the longer distance is not significant.” *Id.* ¶ 19 (quoting ALI Principles § 2.17(1) cmt. b).

In this case, father had been seeing daughter every weekend, or sometimes every other weekend, before mother decided to relocate to Maine, hundreds of miles away. As indicated above, these circumstances generally point to a change of circumstances. See ALI Principles § 2.17(1) cmt. b. The court made inadequate findings here regarding the effect of mother’s relocation on the child, and particularly, the effect of mother’s decision to effectively prevent father from having any PCC or contact with daughter for seven months. Father did not have the burden to find a way to locate mother and daughter once they moved. It is undisputed that mother changed her phone number and did not provide father with her new number, her new last name, or her address. Those were willful actions on her part, and they certainly raise a suggestion of parental alienation. See *Renaud v. Renaud*, 168 Vt. 306, 309 (1998) (recognizing that “the great weight of authority holds that conduct by one parent that tends to alienate the child’s affections from the other is so inimical to the child’s welfare as to be grounds for a denial of custody to, or change of custody from, the parent guilty of such conduct” but emphasizing that “best interests of the child remain[] the paramount consideration”).

The evidence does not support the court’s finding that father was somehow obligated to find mother and child on Facebook and try to resume PCC in that way. Mother had obligations under an existing court order, which she flouted. She did not move to modify PCC prior to relocating to Maine. Father was not obligated to agree to informally modifying PCC. Mother’s behavior was not somehow justified by a conversation with a court clerk or the fact that a court was likely to have to resolve the PCC question.

Mother presented minimal evidence on how the child was doing in Maine; father had no ability to present evidence on this issue because he had no contact with mother and child since early 2021. He knew nothing of daughter’s living situation, how she was doing in school, and whether her needs were being met. The record does not support the court’s finding that any impact that daughter felt from the move was minimized by the fact that she had lived in Maine for six months “with the stabilizing influence of her mother, step-father, and two siblings.” First, this finding rewards mother for her unilateral decision to relocate and to cut father off from any contact. There is also no evidence to show that daughter’s current living and family situation provides a “stabilizing influence.”

The text messages read by mother into the record present yet another problem. These documents are cut off and they cannot be read. As father’s attorney asserted below, their substance cannot be verified nor can the dates of the messages or the senders and recipients. The messages that purportedly show contact between daughter and father’s extended family members are equally indecipherable and they have not been authenticated in any way. The court erred in relying on this evidence in its decision.

In light of these shortcomings, we conclude that another hearing is required to allow the court to hear additional evidence and address the salient issues more fully in its findings of fact.

Father raises arguments about the statutory best-interest factors in his brief. If the court finds changed circumstances, it can conduct the best-interests analysis in the first instance. Because we reverse and remand for another hearing, we need not decide if the court erred in its treatment of father's proposed witness. That question can be revisited as necessary at the new hearing.

Reversed and remanded for additional proceedings.

BY THE COURT:

Paul L. Reiber, Chief Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Superior Judge,
Specially Assigned