VERMONT SUPREME COURT
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Case No. 22-AP-065

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

JUNE TERM, 2022

In re C.S., Juvenile	}	APPEALED FROM:
(J.F., Father*)	}	
	}	Superior Court, Addison Unit,
	}	Family Division
	}	CASE NO. 21-JV-01745
		Trial Judge: Thomas Carlson

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

As part of a child-protection proceeding, the family division established a permanent guardianship for juvenile C.S. and transferred custody of C.S. to guardians, her maternal grandparents. Father appeals a family division order denying father's motion to modify the parent-child contact provisions of the permanent guardianship. Father argues that the family division erred in concluding that father failed to demonstrate there was a substantial change of material circumstances. We affirm.

C.S. was born in July 2011. She was adjudicated a child in need of care or supervision (CHINS) in June 2015 pursuant to mother's stipulation, and the court granted custody to the Department for Children and Families (DCF). Father was not involved in C.S.'s life at the time and did not participate in the proceedings. DCF moved to create a permanent guardianship with C.S.'s maternal grandparents. Father was served by publication and did not attend the hearing. In December 2017, the family division established a permanent guardianship and transferred custody of C.S. to guardians. See 14 V.S.A. § 2664(a) (providing that family division may establish permanent guardianship as part of child-protection proceeding). The accompanying parent-child contact order provided that C.S. could visit with either parent "at the discretion of [C.S.] and permanent guardians, keeping [C.S.'s] best interests in mind." The order further allowed written, telephone, and electronic contact as agreed to by the parties in C.S.'s best interests and as permitted by schedules. The court deleted the following sentence from the contact order: "In no event shall [C.S.] be compelled to participate in visitation with either parent if she is not willing." The matter was then transferred to the probate division.

In January 2021, father moved to modify parent-child contact seeking written, telephone, electronic, and in-person contact. Guardians separately filed a motion seeking to relocate to Tennessee. The probate division denied father's request and granted guardians' request. Father appealed the denial of his motion to the family division. See 14 V.S.A. § 2664(c) (providing that appeal is de novo to family division). Before the family division, father sought to modify the

contact provisions so that his contact was not discretionary and provided him with a right to contact.

Following a hearing, the family division found the following. Father was incarcerated and had very limited contact with C.S. during the first four years of her life. He was not involved in C.S.'s life when the permanent guardianship was established and did not learn of the permanent guardianship until 2019. In 2021, father began having some contact with C.S. through telephone and letters. The two had an in-person visit in August 2021. In October 2021 C.S. learned from mother that father said he was recording his calls with C.S. C.S. was upset about this invasion of privacy and refused to talk with father from that point on. Father denied recording any calls but admitted he told mother he was recording because he was angry about guardians' plan to move to Tennessee. Father has not reached out to guardians or C.S. since then except for sending C.S. a Christmas card. Although the probate division approved guardians' request to move, guardians continue to live about forty-five minutes away from father. C.S. is intelligent, confident, and knows her own mind. Guardians are generally inclined to leave contact with father up to C.S.

Based on these findings, the family division concluded that there was no basis to modify the parent-child contact provision of the guardianship order because there had not been a change in material circumstances. The court found that father continues to have only the very beginnings of a relationship with C.S. and has the same opportunities to build his relationship with C.S. that he did in 2017.

On appeal, father argues that the family division erred in concluding that there was no material change in circumstances. Father contends that guardians are leaving decisions regarding contact totally to C.S.'s discretion and that this is a change from the situation at the time of the final order because that order did not prohibit guardians from compelling C.S. to have contact with father. Father also argues that guardians' prospective move to Tennessee is a change of circumstances.

To modify the contact provisions of a guardianship order requires a threshold showing of a substantial change in material circumstances. 14 V.S.A. § 2667(d) (providing that visitation or contact in guardianship order may be modified "based upon a finding by a preponderance of the evidence that there has been a substantial change in the material circumstances, and that the proposed modification is in the best interests of the child"). If this condition is met, only then does the court consider whether a change is in the child's best interests. Id. As with motions to modify contact orders in domestic cases, the family division has broad discretion in determining if there is a change of circumstances necessary to consider modifying a contact order. See Weaver v. Weaver, 2018 VT 38, ¶ 15, 207 Vt. 236 ("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." (quotation omitted)); Patnode v. Urette, 2017 VT 107, ¶ 4, 206 Vt. 212 (explaining that Supreme Court gives family division "substantial deference" regarding parent-child contact).

Here, the court did not abuse its discretion in concluding that father had failed to meet his burden of showing a substantial change in material circumstances. The evidence supports the court's findings that the material circumstances around father's relationship with C.S. had not substantially changed since the time of the guardianship order. Although father and C.S. had a brief period of contact, their relationship remained in the beginning stages. Father's opportunity

to have contact with C.S. was also relatively unchanged. The court found that, since the time of the final hearing, guardians had given weight to C.S.'s feelings about contact with father. Guardians were supporting C.S.'s current desire not to have contact with father as in her best interests. Contrary to father's assertion, however, guardians had not ceded all decision making to C.S. or precluded future contact between C.S. and father.

The court also acted within its discretion in concluding that guardians' possible future move is not a change in circumstances. First, guardians have not yet moved so any change is speculative. Moreover, father failed to demonstrate how such a move would change his current relationship with C.S. since father and C.S. currently do not have in-person contact. See Gazo v. Gazo, 166 Vt. 434, 440 (1997) (explaining that relocation without more is not per se substantial change of circumstances).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice