Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-222

NOVEMBER TERM, 2001

Deanna Gonyaw Gilfillan	}	
	}	APPEALED FROM:
v.	}	
	}	Orleans Family Court
Brian K. Gilfillan	}	
	}	DOCKET NO. 160-10-95 Osdm
	}	
	}	Trial Judge: Howard E. Van Benthuysen
	}	
	}	

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

Defendant father appeals the Orleans Family Court's order denying his request to modify parent-child contact with his minor children. Defendant claims the court erred by entering the order without holding an evidentiary hearing on whether real, unanticipated and substantial changed circumstances exist since the original divorce and parent-child contact order. We agree and reverse.

The parties' March 14, 1996 final divorce order awarded them joint legal custody and plaintiff mother physical custody of their two children, now ages ten and fourteen. The court awarded father contact with the children "at all reasonable times and places which shall include at a minimum every other weekend, one-half of or alternating major holidays and birthdays, plus two weeks during the children's summer vacation." On February 16, 2001, father filed a motion to modify that provision, supported by an affidavit, claiming (1) mother does not allow all of the visitation the order permits; (2) he and the children desire to spend more time together; (3) he and the parties' oldest child want the child to learn carpentry, which is father's trade; and (4) during school vacations the children are alone at mother's house. Mother opposed the motion and moved to dismiss, taking issue with father's assertions that the parent-child contact order was not working and that she leaves the children unsupervised during their vacations.

On March 23, 2001, the court granted mother's motion to dismiss without a hearing on that motion or father's motion to modify. It reasoned that the father's affidavit did not demonstrate "a real, substantial and unanticipated change in circumstances in the matter." Father moved to reconsider, and the court denied that request. Father timely appealed.

Father contends on appeal that the court should have granted him a hearing because he alleged sufficient changed circumstances under 15 V.S.A. 668 to warrant a hearing on his motion to modify. Specifically, father claims the visitation dispute, his children's advancing age and development, and mother's failure to supervise the children during vacations all show circumstances have changed substantially and unexpectedly since the original parent-child contact order.

We first note that generally, a child's maturation is not an unanticipated change of circumstances, but is "a welcome and expected fact of life." Pigeon v. Pigeon, 12 Vt. L.W. 295, 296 (2001) (mem.). Therefore, we find no error denying the motion to the extent the court relied on father's allegation concerning the children's advancing ages.

We do find error, however, in the court's decision not to take evidence on the parties' dispute about whether mother was

complying with the original parent-child contact order and about whether it was workable. Wilful obstruction of visitation can constitute a substantial and unanticipated change of circumstances. Wells v. Wells, 150 Vt. 1, 4 (1988). Moreover, a custodial arrangement requiring cooperation between parents that subsequently breaks down has been held sufficient to meet the threshold requirement of changed circumstances for the purposes of revisiting custody. Kilduff v. Willey, 150 Vt. 552, 555 (1988). In this case, the parent-child contact order mandated contact between father and the children at "all reasonable times and places." Such an order requires the parties to cooperate on what times and places are "reasonable." The affidavits the parties submitted to the court clearly disclose that their opinions on what was reasonable differed significantly. The court therefore abused its discretion by summarily disposing of father's motion without taking evidence on the issue. See Gates v. Gates, 168 Vt. 64, 67-68 (1998) (Court will uphold trial court's decision on whether substantial change in circumstances exist if it finds no abuse of discretion).

Mother contends that the court correctly dismissed father's motion because he should have brought the matter before the court on a motion to enforce visitation under 15 V.S.A. 668a. She alleges that denial of visitation does not entitle a parent to modify a parent-child contact order. We are not asked, however, to decide whether denial of visitation will always justify modification of parent-child contact. Nor do we believe that the form of the motion is determinative, given the broad and vague nature of the original visitation award. Whether the court defined reasonable times and places in an enforcement order, or substituted specific times and places in a modification order, the result would be the same.

We decide only that the allegations in father's motion and accompanying affidavit are sufficient to create a triable issue on whether circumstances since the original order have changed substantially and unexpectedly. If, after taking evidence, the court finds that they have, it must then determine what parent-child contact is in the children's best interests. 15 V.S.A. 668; Gates, 168 Vt. at 69.

Reversed and remanded.

BY THE COURT:

_____
Jeffrey L. Amestoy, Chief Justice

_____
John A. Dooley, Associate Justice

_____
Denise R. Johnson, Associate Justice