

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-454

OCTOBER TERM, 2002

Debra L. Cochran	}	APPEALED FROM:
	}	
	}	Caledonia Family Court
	}	
v.	}	
	}	DOCKET NO. 64-3-00 Cadm
Gary R. Cochran	}	
	}	Trial Judge: Dennis R. Pearson
	}	
	}	

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

Defendant-father, Gary Cochran, appeals from a divorce judgment of the Caledonia Family Court awarding parental rights and responsibilities to plaintiff-mother, Debra Cochran. Father contends that the court improperly applied the primary caretaker analysis to their three minor children, two boys, ages ten and fifteen, and a girl, age thirteen. Specifically, father first claims that he was impermissibly forced to shoulder the burden of proof under the primary caretaker criteria of 15 V.S.A. § 665. Second, he maintains that the court's decision gave undue weight to the post-separation period, in which mother provided parental rights and responsibilities under a temporary order dated July 6, 2000. We affirm.

The Cochrans were married on May 10, 1986, in Peacham, Vermont. Father was twenty-three; mother was nineteen. After almost fourteen years of marriage, they separated on March 4, 2000. A farmer by trade, father spent most of the early years of the marriage assisting and then co-managing operations on the Sargent farm in Peacham, which had been mother's family's farm for six generations. In 1994, father opted to switch employers and began working on the Kempton farm in Peacham. In March 2000, father moved out. The parties' ability to communicate nearly collapsed shortly after that separation, and each became convinced of the other's unfitness for primary custody. Unable to coordinate shared rights and contact arrangements for the interim period, they turned to the court for a temporary determination. An interim order was issued on July 6, 2000, with the court's findings of facts and conclusions of law following on August 11, 2000. The family court concluded that mother had been the primary caretaker up until the time of the hearing, and awarded her temporary parental rights and responsibilities. However, at trial, the court found that primary care-giving duties such as fixing meals and preparing the children for bed and school were shared equally until the date of separation in March 2000, after which the court found that mother functioned as the primary care-taker.

As the family court noted, the decision that mother should remain as the primary caretaker is not " free from all doubt." As an appellate court, we must favor the ability of the trial court to read and perceive the relationships and interactions of all the parties, and review the court's determinations deferentially. The family court has broad discretion in determining custody matters. Begins v. Begins, 168 Vt. 298, 301, 721 A.2d 469, 471 (1998). Affording broad discretion implies that this Court will respect the opportunity of the family court to assess the evidence and credibility of the witnesses, and its findings will not be overturned unless they are clearly erroneous. Payrits v. Payrits, 171 Vt. 50, 53, 757 A.2d 469, 472 (2000). The paramount consideration in awarding parental rights and responsibilities is the best interests of the child. Begins, 168 Vt. at 301, 721 A.2d at 471. " The focus of the court's decision must be the best interest of the child, not equity between the parties." Bissonette v. Gambrel, 152 Vt. 67, 70, 564 A.2d 600, 602 (1989). Additionally, we review the findings of fact in a light most favorable to the party that prevailed below, and those findings will not be set aside unless they are clearly erroneous. Stickney v. Stickney, 170 Vt. 547, 548, 742 A.2d 1228, 1230 (1999) (mem.).

In awarding parental rights and responsibilities, the family court undertook a step by step application of the factors listed in 15 V.S.A. § 665(b), endeavoring to compare the parties according to these factors. These factors are non-exhaustive, and must be read to seek the best interests of the child. See 15 V.S.A. § 665(b) (" the court shall be guided by the best interests of the child, and shall consider at least [nine] factors"). The evaluation of a child' s relationship with the primary care-giver is merely one of the factors, but it is entitled to carry great weight in the court' s determination. See Trahnstrom v. Trahnstrom, 171 Vt. 507, 508, 756 A.2d 1242, 1245 (2000) (mem.) (awarding custody to mother despite equal footing on most of § 665 factors, having found that she was the primary care-giver); 15 V.S.A. § 665(b)(6).

The family court determined that this factor heavily favored mother based on her status as primary care provider since separation. In Nickerson v. Nickerson, 158 Vt. 85, 90, 605 A.2d 1331, 1334 (1992), we declined to bifurcate consideration of the pre- and post-separation periods. Instead, we held that " the inquiry should focus on all relevant periods of the child' s life, rather than exclusively on the period immediately preceding trial." Id. at 91, 605 A.2d at 1334. An alternative holding in Nickerson would have encouraged a primary care-giver who desired to leave the home to remove the children as well in order to preserve the primary-care status for the intervening time. Id. at 90, 605 A.2d at 1334. Such " parental strategizing is inimical to the best interests of children." Id. Applied here, the argument would have encouraged father to remain in the marital residence to preserve his shared responsibility, despite his instinct that tensions over mother' s drinking and his relationship with a co-worker were creating an unstable environment for the children.

The family court held that the non-custodial party " effectively bears the burden of demonstrating that (1) the parent who now has sole rights and responsibilities is > unfit' in some substantial way to be the primary parent, and (2) the requested change will be in the > best interests' of the children." (Citing Casey v. Wall, No. 00-119, slip op. at 2-3 (Vt. Nov. 16, 2000)) (unpublished entry order). Father contends that he was improperly handicapped by what appears to be a misapplication of our holding in Nickerson. Regardless of the court' s misstatement of father' s burden, the father also did not show that the § 665(b) factors favored granting parental rights and responsibilities to him. In applying the § 665(b) factors, the court properly evaluated custody under the statutory criteria and determined that it narrowly favored granting custody to mother. In such a situation, the court' s partial reliance on mother' s post-separation custody as a demonstration of her ability to care for the children was a proper basis on which to favor her retention of custody. In the absence of any clear error or any indication that the conclusions of the trial court were unsupported by its findings, those conclusions shall be left undisturbed, and the children' s interest in stability and continuity shall be respected.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice