ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-183

NOVEMBER TERM, 2009

Crystal Carter	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Family Court
	}	
	}	
Eric Carter	}	DOCKET NO. F173-2-06 Cndmp
		Trial Judge: Matthew I. Katz

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

Mother appeals pro se from a family court order denying her motion to modify parental rights and responsibilities. We affirm.

Although the parties are married, this case originated in February 2006 as an action to establish parentage and child support. Father acknowledged paternity of the child and the parties apparently reconciled, but later separated and a motion to establish child support and parental rights and responsibilities was filed by the Office of Child Support in January 2009. Following a hearing in early March 2009, the family court issued a written decision granting legal and physical custody of the minor, who was then three years old, to father, and liberal visitation to mother. Among its findings, the court noted that mother had been living separately with another man and had recently changed jobs after a period of unemployment, while father had been caring for the child, maintaining regular employment and a stable life style, and had a good sense of responsibility relating to both his job and the child. The court noted that the child attended a day care in Essex.

In mid-April 2009, about six weeks after the court's decision, mother filed a pro se motion to modify the order. Mother's affidavit in support of the motion alleged that father leaves the child with unfit neighbors; that the child becomes upset when returning to father's care; that father yells at the child and fails to control her; and that father was planning to change her daycare, where she was well adjusted. In early May 2009, the court denied the modification motion in a brief entry order, stating that mother's "statement does not reveal a substantial, unanticipated change in the child's circumstances. Parents do change daycares." This appeal followed.

In determining whether to modify parental rights and responsibilities, the family court must engage in a two-step analysis, first determining whether the moving party has shown a real, substantial, and unanticipated change of circumstances and, if so, only then addressing the best interests of the child. Gates v. Gates, 168 Vt. 64, 69 (1998); 15 V.S.A. § 668. The family court's ruling on such a motion is discretionary and will not be disturbed unless clearly unreasonable. Meyer v. Meyer, 173 Vt. 195, 197 (2001).

Mother's brief does not approach the standards for an adequate brief under V.R.A.P. 28(a), failing to set forth a clear statement of the facts, the claims on appeal, or citation to the parts of the record and cases and authorities relied on. Liberally construed, however, much of her argument appears to be addressed to issues relating to the family court's initial parental-rights-and-responsibilities decision. She claims that the decision was the result of an unfair hearing and challenges the family court's findings and reasoning. That decision, however, was not appealed, is final, and cannot be subsequently challenged. Bennett Estate v. Travelers Ins. Co., 140 Vt. 339, 343 (1981) (judgments regularly obtained are conclusive upon the parties and cannot be collaterally attacked) overruled on other grounds by Bevins v. King, 147 Vt. 645, 645-46 (1986) (mem.).

Mother also claims that father keeps guns in his home and has a history of drug use, and that mother takes the child to the dentist and other appointments and provides a more age appropriate environment; but again, all of these allegations appear to be matters related to the merits of the initial custody decision, not to material, unanticipated changes of circumstances that occurred after the decision. Thus, even if mother's claims on appeal were broadly within the scope of the issues raised in her affidavit, they would not establish the jurisdictional prerequisite of a change of circumstance necessary for a modification of parental rights and responsibilities.

The principal change of circumstance alleged by mother in her affidavit concerns father's decision to change daycare providers. She alleged that the child had spent two years in the same daycare and that a change would be disruptive. We have recognized, however, that a parent entrusted with the daily care and custody of a child must be afforded sufficient latitude—consistent with health and safety—in decisions relating to the child's education, welfare, and general upbringing. See Lane v. Schenck, 158 Vt. 489, 495-96 (1992). We cannot conclude, therefore, that the family court erred in finding that father's decision to change daycare providers, even if unsettling for the child, was not a sufficiently substantial and unanticipated change of circumstances to support a modification of parental rights and responsibilities. Accordingly, we find no basis to disturb the judgment.*

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

* We note that mother does not allege that the court erred in denying her motion without a hearing, and we have held that a trial court does have the discretion to dispose of a motion without a hearing under V.R.C.P. 78(b)(2) where, as here, "what is alleged, even if proven, would not change the result." In re D.B., 161 Vt. 217, 222 (1993).