

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-359

FEBRUARY TERM, 2018

Penny Sheehan v. Thomas Sheehan*	}	APPEALED FROM:
	}	
	}	Superior Court, Windsor Unit,
	}	Family Division
	}	
	}	DOCKET NO. 59-2-14 Wr dm
		Trial Judge: Robert P. Gerety, Jr.

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

Father appeals the court's order granting mother sole physical and legal rights and responsibilities to the parties' two children and setting parent-child contact for father. On appeal, father argues that the court abused its discretion in evaluating the children's best interest and in establishing the contact schedule. We affirm.

The court found the following. The parties were married for seventeen years and had two children, who were fourteen and twelve at the time of the final order. During the marriage the parties lived in Perkinsville. The marital home is close to the family saw mill business where father works. Mother was primarily responsible for caring for the children and running the household and father was primarily responsible for operating the business. Father has worked significantly more than forty hours a week to run the business and must continue to do so to make the business successful. Mother is also employed full time outside the home.

After the parties' separation, the court entered a temporary order based on the parties' stipulation. The parties had shared legal rights and responsibilities and mother was granted physical rights and responsibilities. The order provided that if mother moved to a different community, the children would attend school in mother's community. Mother moved to Woodstock and enrolled the children in schools there. The older child would have been moving schools anyway because there is no high school in Perkinsville. The court found that mother's move would not have a long-term adverse impact on the children.

The court held a lengthy divorce hearing at which the parties contested property division, spousal maintenance, parental rights and responsibilities, and parent-child contact. The court issued a final decision on parental rights and responsibilities and parent-child contact to provide clarity before the school year began, reserving the issues regarding division of marital property and spousal maintenance.

In setting parental rights, the court considered the children's best interests in light of the statutory factors. 15 V.S.A. § 665(b) (directing court to establish parental rights and responsibilities in child's best interests and setting forth nine factors to guide decision). The court found that most best-interests factors did not favor either party. The children had a good

relationship with both parents. The children were bright, well-adjusted, and motivated students. Both parents were able to provide for the children. The children were well adjusted to their housing, school, and community in Perkinsville and had good relationships with friends and family, including father's extended family. They are involved in mother's church community. They were able to readjust to moving to Woodstock without adverse impact. The court found differences between the parties on two factors. The court found that mother had been and continued to be the children's primary caregiver and that this weighed in mother's favor. On the other hand, the court found that father was better able to foster a positive relationship between children and mother and therefore this factor favored father. The court noted, however, that it was confident that once a clear order was established, both parents would be able to foster a positive and continuing relationship with the other parent. The court concluded that mother's role as the primary caregiver weighed heavily in mother's favor and that it was in the children's best interest to award legal and physical parental rights and responsibilities to mother. The court granted father parent-child contact every other week from Thursday to Monday plus time during vacations and holidays. Father appeals.

On appeal, father argues that the court abused its discretion in evaluating the best-interests factors. The trial court has "broad discretion" when it comes to establishing parental rights and responsibilities. Hazlett v. Toomin, 2011 VT 73, ¶ 11, 190 Vt. 563 (mem.). The trial court is afforded "broad latitude in determining the child's best interest" and this court will affirm as long as the decision is supported by the evidence. Id. Father contends that the court misapplied the factors relating to the children's adjustment to their community, the ability of each parent to foster a positive relationship with the other parent, and the child's relationship with the primary care provider. 15 V.S.A. § 665(b)(4), (5), (6).

Insofar as the court considered each of these factors and supported its decision with evidence from the record, we conclude there was no abuse of discretion. As to "the quality of the child's adjustment to the child's present housing, school, and community and the potential effect of any change," 15 V.S.A. § 665(b)(4), the court found that the children were well-adjusted to their home in Perkinsville, and that the move to Woodstock and to new schools would not have an adverse impact and would continue to allow for maintaining relationships with friends and family in Perkinsville. Moreover, the court acted within its discretion in finding that mother's role as the primary caregiver was significant and outweighed father's slightly greater ability to foster a positive relationship with mother. Although a parent's role as primary caregiver may not be determinative in every case, the court properly weighed the evidence here, including the length of time mother had acted as primary caregiver and father's ongoing time-intensive commitment to his work. It was the court's role to evaluate the credibility and weight of the evidence. See Chickanosky v. Chickanosky, 2011 VT 110, ¶ 14, 190 Vt. 435 ("In the highly fact-intensive context of a custody determination, we rely on the family court's determinations of fact and evaluations of credibility."). There are no grounds to disturb the court's determination that awarding legal and physical rights and responsibilities to mother was in the children's best interest.

Next, father argues that the court abused its discretion in setting the parent-child contact schedule. The court granted father contact from Thursday after school until Monday morning every other week. Father argues that this amount of time is insufficient because it does not provide him with "maximum continuing physical and emotional contact." 15 V.S.A. § 650. The trial court has broad discretion in crafting a parent-child contact schedule that serves the best interests of the children, and its decision will not be reversed unless clearly unreasonable on the facts presented or based on unfounded considerations. Gates v. Gates, 168 Vt. 64, 74 (1998). The court explained that father's proposed schedule of alternating weeks with each parent would not be in the children's

best interests because of the long transportation time required to get to school from father's house and level of communication that would be required between the parties. The court acted within its discretion in setting the contact schedule in this case.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice