

VERMONT SUPREME COURT
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Case No. 25-AP-373

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

AUGUST TERM, 2026

Shamitra Lefebvre* v. Jared Lefebvre	}	APPEALED FROM:
	}	Superior Court, Orleans Unit,
	}	Family Division
	}	CASE NO. 23-DM-00078
		Trial Judge: Justin P. Jiron

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

Mother appeals from the family court's final divorce order. She challenges the court's parent-child contact (PCC) schedule. We affirm.

I. Procedural History

A. Merits Decision

The parties married in 2013 and separated in 2023. They are the parents of a daughter, born in 2013. Mother has two other children; father has one other child. The parties stipulated to the division of marital property and agreed that mother should have primary legal and physical parental rights and responsibilities for daughter. The sole contested issue was PCC.

Following a July 2025 hearing, the court set forth a PCC schedule. It made numerous findings, including the following. The parties have a history of conflict. Mother described abuse by father that occurred in daughter's presence or earshot. Mother alleged that father engaged in marital rape and that he repeatedly exhibited rage toward her and daughter, which included screaming and breaking things. Mother asserted that father struck her on more than one occasion.

Mother obtained a relief-from-abuse (RFA) order against father in 2019. This order allowed father to have supervised contact with daughter at least once a week. The parties reunited, and the RFA was vacated at mother's request. Mother sought a second RFA order in January 2023. She obtained a temporary order but continued to have contact with father. This order was also vacated at mother's request. Mother sought a third RFA order in February 2023. The court

granted mother's request in March 2023 for one year, and the order was later extended for another year. The parties waived factual findings in all these orders. The third RFA order was extended for a second time in March 2025. Father did not testify at the hearing on the extension request. Based on mother's testimony at that hearing, the court found in the RFA extension order that father caused mother physical harm and sexually assaulted her.

At the final divorce hearing, the court rejected mother's attempt to introduce a complaint and affidavit she filed in the 2019 RFA case to establish, as a matter of fact, what the parties' "lived experience" had been and what daughter had "been exposed to . . . for multiple years." The court agreed with father that these documents were inadmissible hearsay because mother offered them to establish that the alleged events occurred. The court noted that mother was free to testify about what occurred, which mother did. The RFA orders were admitted as exhibits without objection. Father's counsel emphasized that he had agreed to final RFA orders with the findings waived and that he later waived the opportunity to testify at the 2025 RFA extension hearing given pending criminal cases. The court noted that it was not considering testimony from other hearings in deciding the case before it.

In its written order in the instant case, the court explained that the RFA hearing and final divorce hearing were for different purposes and father did not testify at the RFA extension hearing.¹ The court did not find that mother presented sufficient evidence at the divorce hearing to support her allegations that father sexually or physically abused her. It found that father yelled at mother more than once in daughter's presence and that this behavior was likely emotionally upsetting for the child, who would sometimes suck her thumb or hold a blanket as a coping mechanism. This behavior decreased after father moved out in 2023, but it increased more recently.

The court found that mother began looking for a therapist for daughter in 2025. At the time of the final divorce hearing, the child completed four therapy sessions. The court recounted in detail the therapist's interaction with the child and her assessment. The child did not report being physically harmed by father or observing father abuse mother.

Father's visits with daughter in the eighteen months leading to the final divorce hearing were overwhelmingly positive. The child displayed affection toward father; she was outgoing, talkative, and engaged. They participated in activities together, and the visit supervisor did not observe that the child was anxious, fearful, or nervous during the visits.

Mother sought a PCC schedule that included a lengthy transition period from supervised to unsupervised visits. Father proposed a brief transition period. He sought immediate overnight visits on the weekend for four weeks, following which he would have PCC every other weekend.

¹ In its decision, the court found that father had a pending sexual-assault charge for acts committed against mother at the time of the 2025 RFA extension hearing and that that charge was later dismissed based on mother's refusal to testify. In ruling on mother's motion to reconsider, the court clarified that the charge against father had in fact been dismissed at the time of this RFA hearing. It added, however, that the dismissal was without prejudice and was based specifically on mother's refusal to testify. The court found that both of those things provided father with a motive not to testify at the RFA hearing.

Father sought to share summer vacations evenly and have additional time with daughter during other school vacations.

Father described his relationship with daughter during the time he lived with the family as very close. He testified to various activities that he and daughter engaged in together. Father reported that daughter got along well with his other child. There was a separate bedroom in father's home where daughter could stay during visits. Father worked full-time and had the same job for thirty years. Mother was unemployed. She did some traveling as an "influencer," which required father to care for daughter in her absence. Mother also attended yoga frequently and was comfortable leaving daughter with father during these sessions.

Based on these and other findings, the court considered the statutory best-interests factors, including whether there was evidence of abuse and the impact of the abuse on the child and the abusing parent. The court found that father had yelled at mother in daughter's presence, which caused daughter fear and anxiety. This had likely damaged father and daughter's relationship, and daughter had expressed hesitation and fear about beginning unsupervised contact with father. The court found this tempered, however, by the entirely positive interactions the parties had during visitation. The court was not convinced that unsupervised visits and a transition to overnight visits would be emotionally damaging to daughter. It concluded that increased contact between father and daughter was in daughter's best interests. It reiterated that daughter had positive visits with father over the prior eighteen months. Mother only recently, and possibly in anticipation of the final hearing, attempted to obtain counseling for daughter. If daughter was experiencing significant emotional issues after father moved out, the court would have expected a more timely effort to obtain counseling for her. Notwithstanding the unexplained delay, the court expected that counseling would be helpful to daughter as she transitioned to increased contact with father.

The court was satisfied that supervised visits were no longer required, but it continued them for one week to ease the transition. Father would then have unsupervised contact in a public place for two hours once a week. After one month, father would have two hours of unsupervised contact in a public place or at his father's home once a week. Toward the end of that month, visitation would include additional time on Saturdays. In October 2025, father would have one weekend overnight, transitioning to two nights. The court also set forth a holiday and school vacation schedule.

B. Motion for Reconsideration

Mother moved for reconsideration, which father opposed. As relevant here, mother argued for the first time that her RFA case should be consolidated with the final divorce action. She also asked the court to find that father abused her and to reconsider the PCC order to provide protections for her and daughter under 15 V.S.A. § 665a.

The court denied mother's motion. It first recounted the procedural history of this case and related matters in detail. It explained that in January 2023, mother filed for divorce and reported to police that father physically and sexually assaulted her. Father was arraigned on two counts of domestic assault in mid-January 2023. In March 2023, the parties stipulated to a one-year RFA order with no factual findings. The RFA order was modified in January 2024 to provide supervised

contact between father and daughter. The RFA order was extended by agreement in February 2024. It was further modified by agreement several times in the fall of 2024.

Mother sought to extend the RFA order in February 2025. She expressed fear of being near father or interacting with him. Mother was willing to remove daughter from the RFA order, however, once she and father came to an agreement or the court issued a PRR order “ ‘that [would] protect [mother] from interacting with [father] with regard to exchanges and communication.’ ”

At the hearing on mother’s RFA extension request in March 2025, the court found that father sexually and physically assaulted mother. Mother testified to that effect at the RFA hearing with significant detail. Father did not testify. The court did not find at the RFA hearing that father abused or posed a safety risk to daughter. It extended the RFA order as to mother until mid-September 2025. The RFA order was extended as to daughter until May 1, 2025, unless it was vacated earlier in connection with the parties’ final divorce hearing (which at that time was scheduled for April 18, 2025).

The final divorce hearing was rescheduled for mid-July 2025. Because this meant the RFA order as to daughter would expire before the final hearing, mother moved to extend the RFA order again. The court issued a modified RFA order as to daughter that expired at the end of July 2025 unless vacated earlier after the final divorce hearing. The court also discussed the final divorce order, which we do not repeat here.

Turning to the substance of mother’s reconsideration motion, the court noted that mother failed to cite a procedural rule or statute to support her request. It treated mother’s motion as a Rule 59(e) motion to alter or amend the judgment. Under that rule, a party could seek reconsideration on the grounds that the court misapplied the law or made a mistake in its factual findings. The rule did not allow parties to present new evidence or otherwise relitigate the issues below. See, e.g., Veljovic v. TD Bank, N.A., 2025 VT 38, ¶ 16 (recognizing that “Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment” (quoting 11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2810.1 (3d ed. 2024))).

The court explained that part of mother’s theory would require it to retroactively consolidate the divorce and RFA cases. Mother correctly asserted that the cases should have been consolidated under Vermont Rule for Family Proceedings 4.3(a)(3)(B) because the divorce case was pending when the RFA action was filed. The court rejected mother’s argument, however, that this oversight constituted a mistaken application of the law in terms of the final divorce order that would justify mother’s motion to reconsider. The judge explained that he was not presiding over the RFA and divorce cases when they were filed in 2023. To the extent that the failure to consolidate the cases was an error, the error was in place for over two years by the time of the final divorce hearing. The situation was apparently acceptable to the parties, both of whom were represented by counsel. Neither party raised the issue.

Even assuming the parties should be excused for failing to raise the issue, the court found no feasible way to correct the oversight. Mother suggested that the court should simply consolidate the cases and then adopt the findings of abuse from the RFA case into the divorce case. The court found this argument failed to recognize the posture of the parties at different stages of the litigation.

When the hearing was held to extend the RFA order in March 2025, the two cases were separate. Father chose not to testify at the RFA hearing, presumably because the only issue at the RFA hearing related to contact between father and mother. No suggestion was made that the RFA order would further restrict father's contact with daughter. No findings were made that father abused daughter or posed a risk of harm to her. The factual findings concerned only father and mother. Additionally, the court specifically ordered that the RFA order would remain in effect for six months for mother, but only until the final hearing for daughter. In other words, the parties understood that the final hearing in the divorce case was the forum for resolving PCC, whereas the RFA order would remain in effect for mother beyond that point.

The court considered this distinction important. It found that father reasonably chose not to testify at the RFA hearing, believing that PCC would be addressed at a later hearing. Father argued at the RFA hearing that he had not attempted to contact mother since the RFA order was originally entered and that she did not need protection. There was no argument or discussion by any party regarding daughter's need for an RFA order, or whether father posed a risk to her. The court found it clear that both parties deferred the issue of PCC until the final divorce hearing. The court presumed that each made strategic or tactical decisions based on that understanding.

Retroactively consolidating the two cases would change that dynamic. It would result in factual findings in the RFA case becoming part of the divorce case after the divorce hearing was held when there was no longer an opportunity to present evidence. One or both parties might have treated the RFA hearing differently if they knew that the factual findings for the RFA order would later be adopted at the final divorce hearing. The court had found that mother established sexual and physical abuse by father at the RFA hearing largely because her testimony was detailed, specific, and un rebutted. At the final divorce hearing, however, the court heard from both parties and father adamantly denied committing any abuse. Mother provided conclusory testimony regarding the allegations of sexual assault, which lacked the specificity provided at the RFA hearing. Even if father had not denied the abuse at the divorce hearing, the court found it unlikely that it would have found such abuse based solely on mother's testimony.

The court added that not only would a retroactive consolidation be unfairly prejudicial to father, the request was also untimely. Mother did not identify any rule or law that would allow the court to take such action so long after the fact, particularly when she was represented by counsel who could have raised the issue before the hearing to extend the RFA order. Mother's request was also outside the scope of the motion to reconsider, which related only to the issues and evidence presented at the final divorce hearing and which resulted in the final order. Consolidation or lack thereof was never raised in the final divorce hearing. The court emphasized that the purpose of a motion to reconsider was not to relitigate earlier decisions or errors in a case.

The court also rejected mother's argument that it must take judicial notice of the findings of sexual and physical abuse from the RFA order. The court explained that taking judicial notice was improper because the issues were not the same in both proceedings. The RFA hearing concerned abuse against mother, and the court did not find in the RFA case that daughter was exposed or impacted by such abuse. The final divorce hearing focused on father's PCC with daughter. The issues were closely related, but they were not the same. Even if the court were to find in the divorce case that father sexually or physically abused mother, moreover, the court found that mother presented no evidence at the divorce hearing to establish a nexus between such abuse

and a restriction on his PCC. She offered no argument about how such a finding would alter the court's decision. The court reiterated that father and daughter historically had a healthy and close relationship, they consistently enjoyed their supervised visits, and daughter looked forward to increasing contact with father once the divorce was final. Without such a nexus, or evidence of some other impact the abuse might have on father's PCC, the court found no basis to modify the current PCC schedule. The court thus denied mother's motion. This appeal followed.

II. Arguments on Appeal

On appeal, mother reiterates her argument, raised for the first time in her motion to reconsider, that the RFA and divorce cases should have been consolidated. She suggests that the parties and their counsel reasonably believed that the cases had been consolidated and the court unfairly questioned why counsel had not raised the issue. Mother further contends that the court was required to consolidate the cases and it had no discretion to deny her request.

This argument fails for the reasons identified by the trial court. The court recognized that the cases should have been consolidated at the outset, and it explained why it rejected mother's belated request to consolidate them after the final divorce order issued. We agree with the trial court that mother fails to show why consolidation is an appropriate remedy at this juncture or how a Rule 59 motion would provide the appropriate vehicle for such relief given her failure to raise this issue at trial. As set forth above, the scope of relief available pursuant to a Rule 59 motion is limited. Where, as here, a party fails to "raise [an] argument in the trial court prior to judgment" and raises the argument for the first time in a Rule 59 motion, the argument "is not preserved for appeal." Veljovic, 2025 VT 38, ¶ 16.

Mother also argues that the court should have taken judicial notice of the findings in the 2025 RFA extension case to establish as a matter of fact in the divorce case that father physically and sexually abused her and then considered whether any provisions in 15 V.S.A. § 665a should apply.² "Judicial notice is premised on the concept that certain facts or propositions exist which a court may accept as true without requiring additional proof from the opposing parties." In re A.M., 2015 VT 109, ¶ 30, 200 Vt. 189 (quotation omitted). The court identified reasonable grounds in support of its refusal to adopt findings in a different case, and its decision is consistent with our case law. See, e.g., In re Estate of Leno, 139 Vt. 554, 557 (1981) ("It is improper for a court to take judicial notice of the files, records and judgment in a case other than that on trial."). While mother disagrees with the court's conclusion, she fails to demonstrate error. The court acted within its discretion in concluding that these findings were not an appropriate subject for judicial notice. We note, in any event, the trial court found that even if it had adopted these findings, the court had

² Mother also argues that the court should have applied the doctrine of issue preclusion, but she fails to show that she raised this argument at the final divorce hearing. See State v. Ben-Mont Corp., 163 Vt. 53, 61 (1994) ("To properly preserve an issue for appeal a party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it."); see also In re S.B.L., 150 Vt. 294, 297 (1988) (explaining that appellant has burden "to demonstrate how the lower court erred warranting reversal," and Supreme Court "will not comb the record searching for error"); V.R.A.P. 28(a)(4) (explaining that appellant must show how issues were preserved with citations to "parts of the record on which the appellant relies").

not found that daughter was exposed to or impacted by such abuse, and mother failed to demonstrate any nexus between the alleged abuse and father's PCC.

Finally, mother asserts that the court issued contradictory findings in two different cases based on "the same testimony." The divorce case is the only case on appeal, and testimony from the RFA proceeding was not admitted in the divorce case. The court explained in its decision, moreover, that it considered mother's testimony regarding abuse to be conclusory at the divorce hearing, and it had also considered father's denial of such abuse. The court did not issue contradictory findings in the divorce case, and it did not err in basing its decision on the evidence presented at the final divorce hearing.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice