



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

OCTOBER TERM, 2026

Margaret Shugart v. William McCann*	}	APPEALED FROM:
	}	Superior Court, Windham Unit,
	}	Family Division
	}	CASE NO. 23-DM-01002
		Trial Judge: Rachel M. Malone

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

Father appeals from the trial court's order in this parentage proceeding. We affirm.

I. Procedural History

Mother and father are the parents of a daughter, born in June 2018. Mother filed this parentage action in May 2023. In September 2024, after four days of evidentiary hearings, the court issued a detailed temporary order governing parental rights and responsibilities (PRR) and parent-child contact (PCC). In May 2025, following multiple additional evidentiary hearings, the court awarded primary legal and physical custody to mother and set a PCC schedule for father. The court made numerous findings, including the following.

The parties were in a short-term romantic relationship, which ended in December 2018. They shared care of daughter. In April 2022, mother moved to Dummerston, Vermont. Father lives in Mt. Holly. As of August 2022, the parties followed a 2-2-2-5 schedule, which allowed daughter to alternate weekends with each parent. Daughter attended kindergarten at the Dummerston school, but she did not attend school during father's PCC time as father did not want to reduce his time with her. At times, daughter missed out on school events.

Parents had difficulty communicating and they struggled to be flexible with daughter's schedule. The court detailed various incidents illustrating these findings. One incident occurred in January 2025, when daughter had the flu while in father's care. Father wanted to keep daughter overnight rather than return her to mother as scheduled. Mother did not agree to father's proposal. Father told mother not to come to his property to retrieve daughter and reiterated that he wanted to delay the transfer. Mother was concerned because father had attempted to modify the schedule earlier that week and it appeared to her that he was trying again to extend the visit against mother's wishes. Mother informed police of the situation on her way

to pick up daughter. When mother arrived at father's home, he told her she was not welcome on his property. Mother called police again and waited for them to arrive. Father refused to allow police to see daughter and told them to speak instead to his mother, which they did. Police directed father to return daughter or be arrested. Father refused and was handcuffed and placed in a police car. Daughter became aware of what was happening and was very upset. The police ultimately determined that the court order was not sufficiently clear for them to determine that father violated it and they released him. Mother returned home without daughter. The next day, mother sought emergency relief, which the court granted. The court directed father to return daughter to mother, clarified the temporary order, and suspended father's visits until he signed an affidavit agreeing to follow the temporary order, which father did.

Each parent sought primary PRR and the court evaluated the best-interest factors set forth in 15 V.S.A. § 665. The court explained that daughter was close to both parents and both parents were mindful of providing her with emotional support and appropriate structure. Both parents could meet daughter's physical and material needs. Mother demonstrated an ability to meet daughter's needs as she grew. While father was committed to supporting daughter's educational development and had fostered close relationships between daughter and his family members, father struggled in other areas to put daughter's needs before his own. At times, father chose confrontation and intimidation to daughter's detriment. This included the incident in January 2025 referenced above, where father chose to be arrested rather than having daughter go home with mother. Father refused to accept mother's views as equally valid to his own and was unwilling to make a simple compromise in daughter's best interests. Father's interactions with daughter's therapist also seemed more focused on father's needs than daughter's needs. He appeared to use therapy to gain information about mother and control a narrative about daughter's experience with parents, which was not healthy for daughter. The court found that father's behavior had an ongoing detrimental impact on his ability to meet daughter's needs. Father did not recognize the negative effect his behavior had on daughter. The court concluded that mother was better positioned to meet daughter's developmental needs because she could put daughter's needs before her own in managing complex situations and conflict with father.

Daughter had greater connections to mother's community than father's community. She attended school there, had close friends, and participated in activities outside the home. If father were to care for daughter during the week as he proposed, daughter would need to change schools, which would have an impact on her friendships.

Parents struggled to work together to care for daughter and meet her needs. Father was extremely critical of mother's parenting approach. He had little positive to say about mother as a parent, even though the parties shared a happy, healthy, and intelligent child, and mother had provided for more than half of the child's care. Father seemed unable to allow for reasonable differences in lifestyle. The court found most concerning father's repeated assertion that he was better suited to care for daughter because he was more rational than mother. Father appeared to view any matter where there was disagreement as one where he had the rational, fact-based, view, while mother's view was driven by anxiety. The court found that many of parents' disagreements were not situations where one person was right and the other wrong. It added that father's decision to contact various local agencies whenever mother's behavior did not accord with his view did not demonstrate rational behavior or behavior that promoted a functional co-parenting relationship.

Father appeared to resort to insulting, undermining, or attempting to control mother when he did not get his way. The court found that father's behavior created distrust between parents,

which impacted their ability to work together to meet daughter's needs. Father's opinion of mother clearly had a strong deleterious impact on his ability to foster a positive relationship between mother and daughter. Conversely, mother had many positive things to say about father's parenting. She had not restricted daughter's time with father or suggested that their different parenting approaches meant that father could not properly care for her. Instead, mother consistently demonstrated a willingness to promote contact between father and daughter. She demonstrated the ability to be flexible and to try to work cooperatively with father. She communicated with father about daughter and generally kept him informed about daughter. While mother found it difficult to communicate with father and father was at times invasive and controlling, mother maintained sufficient contact with him to support his contact with daughter. The court concluded that mother was better positioned to foster daughter's relationship with father and ensure that daughter maintained frequent and continuing contact with him. It noted that she had been doing this for years. Father struggled to compromise, communicate respectfully with mother, be flexible, or accept a different manner of parenting than his own.

The parties did not agree to share PRR and given the lack of trust between them and their struggles to communicate, the court found it inappropriate to divide PRR. Because the balance of the best-interest factors favored mother, the court awarded her primary PRR. The court set forth a PCC schedule that sought to maximize each parent's time with daughter, mindful of the geographic distance between them and the need to minimize direct contact between the parties and reduce opportunities for conflict. To this end, the court directed that exchanges outside of school occur at a particular location and if the exchange could not occur there and parents could not agree on an alternate location, mother would choose where the exchange occurred. Similarly, the court directed the parties to agree to which full week during the summer each parent would have daughter and if they could not agree, mother would decide the weeks. The court also stated that if circumstances, such as illness, severe weather, or other similar events, required a change to the schedule and parents could not agree to the change, mother would make the decision. All changes to the schedule needed to be made in writing through Our Family Wizard.

In June 2025, following the court's decision, father filed a "motion to enforce parenting plan agreement, to amend findings, and for relief from judgment" "[p]ursuant to V.R.C.P. 52(b), 59(a), 59(e), 60(b)(1), 60(b)(3); 15 V.S.A. § 665." Father asked the court to:

enforce the Final Parenting Agreement reached on August 30, 2022 as the culmination of more than half a dozen mediation sessions; to amend and alter the Court's findings and decision to adopt and incorporate the terms of that final parenting plan; to grant relief from the Court's Decision and Order on Parental Rights and Responsibilities and Parent-Child Contact filed May 8, 2025; and to reopen the hearing, as necessary, to consider fully the comprehensive final parenting agreement reached at mediation, approved by the parties, and thereafter relied upon and followed by both parties.

Father maintained that mother's refusal to sign the agreement did not render it unenforceable.

The court denied father's motion. To the extent that father sought to "enforce" the parties' previous parenting plan by having the court amend its findings and incorporate the plan into its final order, the court found no legal basis for it to do so. Father proffered that the parties

participated in mediation and reached an agreement, but the agreement was never signed, and while the parties followed it, it was never filed with the court. There was a process whereby the court could enforce stipulated parenting agreements, but that process required filing a signed agreement with the court with the request that it be incorporated into a final order regarding PRR and PCC. See generally 15 V.S.A. § 666; DeLeonardis v. Page, 2010 VT 52, ¶ 29, 188 Vt. 94; cf. V.R.F.P. 4(e) (setting forth process for allowing court in divorce but not parentage proceedings to grant final judgment without hearing only where certain documents are filed with court). The court found that the parties had not followed the appropriate process and it had no ability to enforce any plan which the parties adopted and followed but never agreed to formalize as an order. The court similarly rejected father's request that it reconsider its evidentiary rulings related to admission of the agreement and related communications and testimony about the agreement. The court reiterated that this information related to the parties' participation in mediation and it was inadmissible under 12 V.S.A. § 5716(b).

In a separate decision issued in May 2025, the court denied father's motion to hold mother and her attorney in contempt in connection with the January 2025 incident described above, and it later denied father's motion to reconsider. Finally, the court denied father's motion to vacate the final order and his request for a new trial. We discuss these decisions in greater detail below. This appeal followed.

II. Arguments on Appeal

A. Evidentiary Issue

Father first argues that the court erred by refusing to allow or hear evidence of the parties' written, unsigned "agreement" that was developed during mediation. No agreement was submitted to the trial court before the hearing or specifically offered into evidence at the hearing. Father waited to raise the issue of enforcing an agreement until after the court had issued its decision on PRR. Father appears to argue that the court should have accepted this document as a binding agreement between the parties, including that the parties would share PRR, and that they would follow the PCC schedule set forth in that document. According to father, the court's evidentiary ruling "removed from consideration a basis on which the court could have recognized and preserved the parties' longstanding shared-parenting arrangement."

The record on this point indicates as follows. At a February 2024 hearing, mother's attorney objected when father's counsel asked mother if she and father had reached an agreement during mediation that occurred in 2022. Mother argued that what occurred during mediation was privileged and inadmissible, and the parties had agreed that nothing from mediation could be introduced as evidence. Father responded that the evidence would show that when the mediation concluded, the parties had an agreement and the mediator provided them guidance on how to file it with the Court. Father's counsel acknowledged that no agreement was signed by the parties or filed with the court, that mother disagreed with some of the terms, and that the parties returned to mediation. Father told the court that he did not seek to enforce the final agreement as "the final agreement doesn't address the real central issues, I think, that we're here about." Father argued instead that the agreement was "relevant to why the parties proceeded as the way they did in the Fall of 2022." The court reviewed the Uniform Mediation Act and found it clear that all communications related to the parties' mediation were privileged and could not be used in the parentage proceeding. See 12 V.S.A. § 5713. The court found that no exceptions applied, particularly given the absence of a signed agreement at the mediation's conclusion. Father responded that he had not thought that communications occurring after mediation were covered

by the statute but indicated that he would refrain from asking about it and “we can take it up, if need be, at a different time.” Both parties testified to what the schedule looked like after mediation in 2022, and father testified that mother referenced following an “agreement.”

As an initial matter, father does not appear to have preserved his claim of error at the hearing below. See In re White, 172 Vt. 335, 343 (2001) (explaining that “[t]o 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” and “[t]he very purpose of the preservation rule is to ensure that the original forum is given an opportunity to rule on an issue prior to our review” (quotations omitted)). Indeed, he does not show that he ever attempted to offer the alleged agreement itself into evidence and any such document is not part of the record before us. Father also fails to show any harm from this alleged evidentiary error. Father complains that he should have been able to show that the parties had an agreement in 2022 regarding shared PRR and PCC, which they followed for two years. But both parties testified to the schedule after 2022, and the court made findings about their conduct after that date. With respect to father’s argument that they had an agreement regarding daughter’s kindergarten attendance, father testified to that effect at trial. Regardless of any agreement, the court acted within its discretion in finding that missing part of a full-time kindergarten program could have a negative effect on daughter, which father did not recognize.

Father’s contention that the court should “enforce” this unfiled and unsigned “agreement” is contrary to father’s position at trial, where his counsel told the court at the hearing that he did not seek to enforce it and that the agreement did not address the central issues before the court. Putting aside this and other flaws, the court could not divide PRR in this case as supposedly done in the unsigned mediation agreement. The parties did not agree to share PRR below; each sought primary PRR. And, as the court further found, given the lack of trust between parents and their struggles to communicate, it would not be appropriate to divide PRR. See 15 V.S.A. § 665(a) (“The court may order parental rights and responsibilities to be divided or shared between the parents on such terms and conditions as serve the best interests of the child. When the parents cannot agree to divide or share parental rights and responsibilities, the court shall award parental rights and responsibilities primarily or solely to one parent.”). With respect to PCC, father did not seek to follow a 2-2-2-5 schedule as was apparently done after mediation. He sought to care for daughter on weekdays, arguing that he was better suited than mother to do so.

The court was charged with determining an allocation of PRR and PCC in daughter’s best interests, and the court based its decision on the admissible evidence before it. As set forth above, it found mother better suited than father to meet daughter’s developmental needs because she could put daughter’s needs before her own in managing complex situations and conflict with father. Mother was also better suited to foster a positive relationship between daughter and father. The court found that father lacked insight into the negative effect his behavior had on daughter and he struggled to compromise, communicate respectfully with mother, be flexible, or accept a different manner of parenting than his own. With respect to PCC, discussed in additional detail below, the court was mindful of the geographical distance between the parties, the need to minimize direct contact between the parties, and to reduce opportunity for conflict. It determined that mother, who holds primary PRR, should have custody of daughter on weekdays. Father fails to show any reversible error in the court’s allocation of PRR and PCC stemming from its ruling concerning mediation communications.

B. Motion to Vacate and for New Trial

Father next asserts that the court erred in denying his motion to vacate the final parentage order and hold a new trial. According to father, the order must be vacated because the court was improperly constituted. Father raised this issue for the first time in late June 2025, after the court issued its merits decision. He relied on Civil Rule 59(a) and the catch-all provision in Rule 60(b)(6). Father asserts that two assistant judges, Assistant Judge Barnett and Assistant Judge Partridge, initially participated in these proceedings. Assistant Judge Barnett, but not Assistant Judge Partridge, was present at two merits hearings held in October 2024. In February 2025, father moved to hold mother and her attorney in contempt and the court held a hearing on father's motion that month. Assistant Judge Partridge attended the motion hearing. Father asked the court to consider the evidence presented at the motion hearing in making its final order in the parentage proceeding. The trial judge and Assistant Judge Partridge signed a May 2025 entry order denying father's motion for contempt. Only the trial judge signed the final parentage order. Father contends that this procedure violated 4 V.S.A. § 457 because Assistant Judge Partridge's absence from several merits hearings in October 2024 meant that she could not participate in the February 2025 motion hearing. Father contends that the trial court "converted the motion hearing into a merits hearing," and that it used evidence presented at that hearing in reaching its final decision.¹

The trial court denied father's motion to vacate and for a new trial in December 2025. It declined to address the merits of father's argument about the composition of the court. It noted, however, that father was factually incorrect as to the assistant judge's role in the contempt decision. The court agreed that Assistant Judge Partridge was present for the hearing on the motion for contempt. When the parties agreed that the court should consider findings from the contempt hearing in its final order, however, the court determined that Assistant Judge Partridge should not participate in any factfinding related to the evidence presented at the contempt hearing as she was not present for prior evidentiary hearings regarding the final order. The court stated that the assistant judge's signature on the order denying the motion for contempt indicated her presence at the hearing only.

We reject father's assertion that the circumstances here require us to vacate the trial court's final judgment order. While the court's post-decision entry order clarifying the role of the assistant judge was not the best practice, the court explained what occurred with respect to the assistant judge at the contempt hearing. Cf. Ball v. Melsur Corp., 161 Vt. 35, 39 (1993) (recognizing that in context of recusal motion judge "is accorded a presumption of honesty and integrity, with burden on the moving party to show otherwise in the circumstances of the case" (quotations omitted)), abrogated on other grounds by Demag v. Better Power Equip., Inc., 2014 VT 78, 197 Vt. 176. The court's explanation—that the assistant judge did not participate in any

¹ Father identifies by number three findings in the court's final judgment order that he argues were based on evidence in the contempt hearing, one of which recounts the apparently uncontested factual underpinnings of the January 2025 incident. He provides no citation to the contempt record in support of his assertion with respect to a finding concerning daughter's relationship with paternal grandparents and paternal grandmother's opinion of mother's parenting, and a finding about daughter's therapy. We will not comb the record searching for error. See In re S.B.L., 150 Vt. 294, 297 (1988) (recognizing that it is appellant's burden "to demonstrate how the lower court erred warranting reversal" and that Supreme Court "will not comb the record searching for error"); see also V.R.A.P. 28(a) (providing that brief must contain concise statement of case and specific claims of error, contentions of appellant, and citations to authorities, statutes, and parts of record relied on).

factfinding that occurred—undercuts father’s argument on appeal. Father fails to show that the court’s contempt order, or the final judgment order (signed by the trial judge alone), was issued by an improperly constituted court. Cf. Vt. Union Sch. Dist. No. 21 v. H.P. Cummings Constr. Co., 143 Vt. 416, 422 (1983) (stating that “[o]rders issued from an improperly constituted court are void, since they lack any basis in law”).

The record offers no support for father’s suggestion that there was a factual disagreement between the assistant judge and the trial court at the contempt hearing. Cf. 4 V.S.A. § 457(d) (“In the event that court is being held by the presiding judge and one assistant judge, and they do not agree on a decision, a mistrial shall be declared.”). We consider father’s remaining challenges to the court’s explanation of the role of the assistant judge equally unpersuasive. It bears noting that the presence of the assistant judge at the February 2025 contempt hearing was reflected in a transcript of that proceeding prepared on March 3, 2025, two months before the issuance of parentage order and more than three months before father filed his motion to vacate. We reject father’s second claim of error.²

C. PCC

Finally, father argues that the court erroneously subjected parts of his PCC to mother’s “convenience, discretion, and control” and thereby improperly delegated core judicial authority to her. He complains that the court set forth a process by which mother would decide, if the parties could not agree, on which summer week each would have with daughter, where they should meet to exchange daughter if their usual location was unavailable, and what to do in the event severe weather or illness necessitated a change in schedule.

We reject father’s argument. The trial court did not delegate core judicial authority to mother. “It is the court’s responsibility to decide which parent will assume legal and physical parental rights, and to set forth parent-child contact for the noncustodial parent,” and that is what occurred here. Engel v. Engel, 2012 VT 101, ¶ 13, 193 Vt. 19. The court exercised its discretion to create a PCC order designed to promote certainty, minimize conflict, conserve judicial resources, and promote daughter’s best interests in the event of any extraordinary circumstances. See DeSantis v. Pegues, 2011 VT 114, ¶ 26, 190 Vt. 457 (recognizing trial court’s discretion in determining PCC schedule). Father’s PCC is not subject to mother’s “convenience and discretion,” as father asserts. Gazo v. Gazo, 166 Vt. 434, 444-45 (1997). As set forth above, the court found that father was unable to compromise with mother, to daughter’s detriment, and mother was better suited to navigate situations of the type identified in the PCC decision. The court detailed numerous incidents to support this conclusion, including the one that occurred in January 2025. At that exchange, father took the position that because he could not physically travel to the exchange location at the precise time called for in the order, he did not need to return daughter to mother that day. These types of conflicts harmed daughter, and the court reasonably crafted its PCC order to avoid them if possible. The court’s decision is grounded in the evidence and its findings. While father may disagree with the court’s decision, he fails to

² Following oral argument in this case, father moved to strike statements made by mother’s counsel during oral argument concerning her ability to see Assistant Judge Partridge at the contempt hearing and her assertion that father would have seen the assistant judge as well. Father also moves to strike “all references in Appellee’s Brief” on this subject but he does not identify any specific language in appellee’s brief as relying on evidence outside the record. The Court did not rely on any evidence outside the record in reaching its conclusion and we therefore deny father’s motion as moot.

show any error. See, e.g., Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (mem.) (explaining that arguments which amount “to nothing more than a disagreement with the court’s reasoning and conclusion . . . do not make out a case for an abuse of discretion”).

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice

Christina E. Nolan, Associate Justice