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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-211

JANUARY TERM, 2018

Mark A. Dilley v. Molly Rafferty	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	
	}	DOCKET NO. 371-6-15 Cndm
		Trial Judge: Barry D. Peterson, Acting Judge, Specially Assigned

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

Father appeals from the trial court's final divorce order. We affirm.

The parties divorced in March 2017 following a two-year marriage. Father is 48 years old and mother is 35. They are the parents of one child who was born in July 2013. Mother has a thirteen-year-old son from a previous relationship. After considering the statutory best-interest factors in 15 V.S.A. § 665, the court awarded primary legal and physical rights and responsibilities (PRR) in the parties' child to mother, who had been and continued to be the child's primary caregiver. Father was provided liberal parent-child contact. He was ordered to pay $583 per month in child support. The court also divided the marital estate after evaluating the factors set forth in 15 V.S.A. § 751. This appeal followed.

Father first challenges the court's award of primary PRR to mother. Father argues that the court failed to properly evaluate the evidence. He contends that mother exaggerated his illnesses and discredited him. According to father, mother ignored that he had a strong bond with the child and her proposal for parent-child contact lacked a logical basis. He recounts his version of the facts. Father maintains that the court should have awarded him "sole PRR"[1] and ordered shared legal custody despite a statute that prohibits this outcome absent an agreement between the parties.[2]

We find no error. The trial court has broad discretion in determining a child's best interests. Myott v. Myott, 149 Vt. 573, 578 (1988). It is for the trial court, not this Court, "to determine the

[1] It is not apparent if "PRR" as used by father means physical rights and responsibilities or parental rights and responsibilities.

[2] Father also attempts to raise a constitutional challenge to 15 V.S.A. § 665 for the first time on appeal. We do not address this argument. See Bull v. Pinkham Eng'g Assocs., 170 Vt. 450, 459 (2000) ("Contentions not raised or fairly presented to the trial court are not preserved for appeal.").

credibility of the witnesses and weigh the persuasiveness of the evidence." Cabot v. Cabot, 166 Vt. 485, 497 (1997). Father simply wars with the trial court's evaluation of the weight of the evidence. The fact that he disagrees with the court's conclusion does not demonstrate an abuse of discretion. See, e.g., Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (explaining that arguments which amount to nothing more than a disagreement with court's reasoning and conclusion do not make out a case for an abuse of discretion). The court's findings are supported by the record, and they support the court's decision to award primary PRR to mother.

Father also challenges the court's distribution of the marital estate. He appears to argue that the court should have adopted his proposed findings. Again, father simply wars with the court's conclusion and seeks to have this Court reweigh the evidence. He fails to show any abuse of discretion. See Chilkott v. Chilkott, 158 Vt. 193, 198 (1992) (recognizing that trial court has broad discretion in dividing marital property, and appellant bears burden of show abuse of discretion).

Finally, father complains that an "acting interim judge" decided this case, which he contends was inappropriate because during the first and second day of the final hearing, the Legislature went into session and it did not confirm the magistrate's appointment as a judge. Father appears to assert that because the judge was a magistrate, he should have been allowed to appeal the final divorce order to the superior court under V.R.F.P. 8(g) and have a de novo hearing.

As mother asserts, it is evident that the magistrate here was serving as an "acting judge," appointed pursuant to the Administrative Judge's authority under 4 V.S.A. § 22(b)(1), and that this temporary appointment had nothing to do with the Governor's power to appoint interim judges under the state constitution. The appointment was not affected by the beginning of the legislative session. Father had no right to a second de novo hearing before the superior court. His final claim of error is without merit.

Affirmed.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Harold E. Eaton, Jr., Associate Justice