

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2012-0191, In the Matter of Jamie Griswold and Tracy Hayward, the court on March 13, 2013, issued the following order:

The petitioner, Jamie Griswold, appeals a November 2011 order of the trial court which continued the suspension of a December 2010 final parenting plan that awarded him primary parenting responsibility for his daughter. The respondent, Tracy Hayward, is the mother of the child. Griswold argues that the trial court erred in granting primary rights and responsibilities to Hayward after finding that she had “been trying to hide from Mr. Griswold, and had been trying to find any way she can to thwart contact between him and [the parties’ child].” He also argues that the trial court erred in suspending final orders and replacing them with new orders without “providing reasoning to do so.” We vacate and remand.

The trial court has wide discretion in matters involving custody and visitation. In the Matter of Miller & Todd, 161 N.H. 630, 640 (2011). Absent an unsustainable exercise of discretion, we will affirm the decision of the trial court. Id. Our review is limited to whether the record establishes an objective basis sufficient to sustain the discretionary judgment made. Id.

When determining matters of child custody, a trial court’s overriding concern is the best interest of the child. Id. RSA chapter 461-A, the Parental Rights and Responsibilities Act, states that “children do best when both parents have a stable and meaningful involvement in their lives.” RSA 461-A:2, I (Supp. 2012). It is the State’s policy to “[s]upport frequent and continuing contact between each child and both parents” and to “[e]ncourage parents to share in the rights and responsibilities of raising their children.” Id. The Act sets forth several criteria that are to be considered by the court in determining the best interests of the child. The criteria include: (1) “[t]he ability and disposition of each parent to foster a positive relationship and frequent and continuing physical, written, and telephonic contact with the other parent, including whether contact is likely to result in harm to the child or to a parent”; (2) “[t]he support of each parent for the child’s contact with the other parent as shown by allowing and promoting such contact”; and (3) “[t]he support of each parent for the child’s relationship with the other parent.” RSA 461-A:6, I (Supp. 2012). As we observed in Miller & Todd, “[a] child’s best interests are plainly furthered by nurturing the child’s relationship with both parents, and a sustained course of

conduct by one parent designed to interfere in the child's relationship with the other casts serious doubt upon the fitness of the offending party to be the custodial parent." In the Matter of Miller & Todd, 161 N.H. at 641 (citation and quotations omitted). The obstruction by a custodial parent of visitation between a child and the noncustodial parent may, if continuous, constitute behavior so inconsistent with the best interest of the child as to raise a strong possibility that the child will be harmed. Id.

It appears from the limited record before us that the trial court issued a final parenting order in December 2010 that awarded primary parenting responsibility of the parties' child to Griswold. The order was temporarily suspended in July 2011 and the child remained in Hayward's custody. In the order currently before us, the trial court found that Hayward "has deliberately chosen to ignore the various orders of this court requiring contact between [the child] and [Griswold], has deliberately made herself unavailable for court hearings in the hope that this case will just go away, and has rebuked all efforts of law enforcement to assist in the enforcement of New Hampshire's orders." These findings directly contradict the statutory criteria that must be considered in determining the best interest of the child. The trial court then concluded that "[d]espite Ms. Hayward's contemptuous behavior toward Mr. Griswold and toward the New Hampshire courts, I cannot in good conscience tear this child away from the only parent she knows in order to provide Mr. Griswold with the rights he has as a parent."

We are mindful of the trial court's concern that the child "does not even know her father." However, as the Vermont Supreme Court observed in addressing parental alienation: "Although obviously well intended, the court's decision effectively condoned a parent's willful alienation of a child from the other parent. Its ruling sends the unacceptable message that others might, with impunity, engage in similar misconduct." Begins v. Begins, 721 A.2d 469, 470-71 (Vt. 1998).

We conclude that the trial court's order of November 2011 that continues to suspend the award of primary parenting responsibilities to Griswold must be vacated and remanded for reconsideration in light of Miller & Todd. The December 2010 final parenting order awarded primary parenting responsibility to Griswold. It has now been more than two years since that order issued. The November 2011 order indicates that the pending motions addressed in the order included Griswold's motion for contempt and Hayward's motion to vacate final orders and modify final decree. The order does not specifically address those motions and, as we have observed, is legally insufficient to continue suspension of the December 2010 parenting order.

Accordingly, we vacate the trial court's November 2011 order and remand this case for reconsideration in light of this order. We note that the record appears to indicate that review hearings may have been conducted during the pendency of this appeal. It is within the trial court's discretion to take into consideration any additional circumstances that may have occurred while this appeal was pending.

Vacated and remanded.

HICKS, LYNN and BASSETT, JJ., concurred.

**Eileen Fox,
Clerk**