App No. TBD

IN THE UNITED STATES SUPREME COURT

TIMOTHY DASLER,
Petitioner,

v.

JENNIFER KNAPP(F.K.A. DASLER),
Respondent

On Application for an Extension of Time
to File Petition for a Writ of Certiorari to the
United States Court of Appeals from a
Vermont Supreme Court Decision

PETITIONER'S APPLICATION TO EXTEND TIME
TO FILE PETITION FOR WRIT OF CERTIORARI

Timothy Dasler, Pro Se
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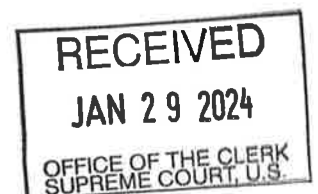
Orford, NH 03777



STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

To the Honorable Sonia Sotomayor, as Circuit Justice for the United States Court of Appeals for the Second Circuit: Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Timothy Dasler respectfully requests that the time to file its Petition for Writ of Certiorari in this matter be extended for 60 days up to and including April 5th 2024.

The Vermont Supreme Court's Rocket Docket issued its opinion on 10/13/23. (Appendix A) and denied rehearing on 11/7/23(Appendix . B).

Absent an extension of time, the Petition for Writ of Certiorari would be due on 2/5/24. Petitioners are filing this Application more than ten days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1).

Background

This case arises from Due Process challenges to the Vermont state precedent/practices that are in conflict other state and Federal interpretations of Federal law.

In short, petitioner sought enforcement of a 2017 Vermont Court Order, the court failed to adhere to statute, court rules, and the 14th Amendment and petitioner appealed.

On appeal, the court found that the lower court exceeded it's authority under court rules(not by statute) by granting an extension of time to file a Rule 59 Motion to Reconsider, thus it retroactively treated the Rule 59 Motion as a Rule 60 Motion, stated it did not have jurisdiction over the appeal, only the Motion to Reconsider, which it was treating as a Rule 60 Relief from Judgement that could not address mere legal error.

The essential elements of the challenges of issues of Federal Law are;

1. It is Unconstitutional to deprive a litigant of 14th Amendment Right due to Court Error
2. The State Court must follow SCOTUS precedent regarding 14th Amendment protected proceedings even in Family Court.
3. Unconstitutional Bias/Unfairness may be shown within a judicial action wherein the court makes a series of legal errors all favoring respondent and severely prejudicing the petitioner including;

3.A. Depriving the petitioner of statutory rights in violation of the 14th Amendment

3.B. Depriving the petitioner of a statutorily required hearing in violation of the 14th Amendment.

3.C. Violating court rules causing a loss of jurisdiction over petitioner's appeal

3.D. Violating Court Rules by allowing non-party counsel to take up ½ of the petitioner's examination with unsworn statements of facts, legal arguments, and objections all in violation of court rules

3.E. Refusal to enforce subpoenas issued by a prior judge, thus depriving petitioner of discovery.

3.F. Making findings unsupported by the record, prejudicing petitioner's case.

3.G. Threatening petitioner with sanctions when he pointed out this series of legal errors, and reframing 5 years of prior court's orders to create a parody of the case to justify the unreasonable judicial threat.

4. When the state delegates a private party as the gatekeeper of another person's Constitutional Right, it cannot also abrogate its duty to enforce access to that right when the gatekeeper forecloses access to that Constitutional Right.

While the threshold issue here is the Vermont Court's disregard of Federal precedent in Hamer and Federal principles of fairness and due process, the state's long-established precedent also results in consistently unfair proceedings in violation of Federal law.

While the legal issues in this case are solidly Federal Due Process issues, it appears that any case touching on Domestic Relations immediately must refute the branding of "state issues" as opposed to Federal.

Congress created the UCCJEA to resolve the issue of which court takes up a custody case, however, this did not abrogate the states' requirement to adhere to Federal Law and the Constitution when adjudicating these Child Custody orders.

Federal legislation and Federal Courts have been involved very little in setting the goal posts for defining Due Process in such proceedings, and states vary wildly when interpreting

what process is due.

The Vermont Supreme Court position can fairly be summed up as believing that the court's subjective interpretation of the "best interest of the child" supersedes a right to a fair hearing, thus the hearing need not be fair if the court believes it furthers the court's belief of what is best for the child.(see Knutsen v. Cegalis VT 2017)

A proper interpretation of Federal precedent, however, is that the state enjoys significant freedom in crafting custody orders, however, it must adhere to the 14th Amendment and the "best interest" can only be informed by a fair hearing and not on Unconstitutional considerations(such as presumptions of parental fitness based upon gender or marital status as in Stanley v. Illinois, or simply because the court thinks a "better decision could be made" as in Troxel v. Granville)

It appears that the SCOTUS has taken no more than 5-6 child custody cases in the history of this nation for a host of reasons, however, the result has been wildly different interpretations of the sparse precedent available.

In petitioner's home state of NH, statute codifies the correct interpretation of SCOTUS precedent and Constitutional Rights by recognizing that marriage does not grant parental rights, thus divorce alone is not a cause of action to disturb them(only to set guidelines for the equal exercise of that right by two divorced parents).

In NH, parents have a statutory right equal parental rights upon divorce unless there is Clear and Convincing Evidence of harm to the child(the same standard created by Congress to address Hague Convention Child Custody actions).

In VT, however, a parent may seize parental rights through Ex-Parte action and prevail on the fruits of that ex-parte order rather than the merits even if there is "no credible factual basis" to the ex-parte action(see Knutsen v. Cegalis 2016 VT), and with only the Preponderance of Evidence a parent may be stripped to minimal supervised contact indefinitely because the court reasons it is 'technically' not a termination of rights.

In Knutsen v. Cegalis VT 2017, the court upheld a continued suspension of contact with the falsely accused parent such that the parent saw the child twice in a therapists office over a 5 year period because the custodial parent had acted as private prosecutor, severed contact through

an ex-parte order, and refused to abide by court orders to reunify the child. In short, Knutsen prevailed on the fruits of his misconduct rather than the merits of his legal case.

In Knutsen 2017, the prevailing party was ordered to pay the attorney fees for the losing party, which was only necessary because he prevailed by simply upending the judicial process through his misconduct.

The court recognized in Knutsen that the harm to the child was real, however, it was entirely caused by Knutsen steeping the child in negativity about the wrongly accused parent. It recognized that the child was capable of restoring that relationship, but not while also being bombarded by the negativity from the custodial parent. So Cegalis' 5 year deprivation of contact was simply due to the private prosecutor(the Custodial parent) simply convincing the child of the accusations and prevailing on the harm he caused to the child.

In this time period, the non-custodial parent is statutorily required to pay child support at a much higher rate while they cannot see the child. So Knutsen, acting as private prosecutor, robs Cegalis not only of her Parental Rights/Contact, but also collects payment from her to exercise those rights on her behalf. There is no recovery for this.

The Knutsen 2017 court considered standards of evidence and decided that since there was the promise of reunification someday(which had not happened over 5 years), it was technically not a termination of rights, therefore, it did not need to require the Clear and Convincing Evidence standard.

The limited SCOTUS precedent has been clear. Whether the case is a termination of parental rights(as in Santosky v. Kramer or Stanley v. Illinois) or merely disturbing occasional weekend visitation(as in Troxel v. Granville), Clear and Convincing Evidence is the standard required to disturb parental rights.

The lack of Federal protection of these rights, however, has resulted in this wildly different interpretation of the law between states.

The Vermont Supreme Court's disregard for 14th Amendment Rights goes far beyond just the standards of evidence described above, however, that was the easiest illustration of differences between the states, and need for a SCOTUS ruling to clarify that states freedom in

Family Court is still constrained by Federal principles of Due Process and Constitutional Rights.

In the case at bar, respondent entered into a private agreement with a medical provider to exclude petitioner from access to the child's care or medical records.

This is in violation of the 2018 Custody Order, so petitioner sought enforcement of his Parental Rights under the 2018 Divorce Order. His 2019 filing was not addressed until 2022 due to the pandemic

The newly appointed judge, with a huge back log of cases due to court shutdowns in 2020-2022, appeared eager to clear the docket and systematically deprived petitioner of rights under the Constitution, state law, and court rules.

Due to court error, the appellate court found that it had lost jurisdiction over the appeal, and disregarded Federal Precedent in doing so.

The Vermont Supreme Court relegated the appeal to the "rocket docket", which functions as an intermediate appellate court with cases largely handled by staff attorneys.

The sub-panel of the State Supreme Court known as the "Rocket Docket", relies on staff attorneys to summarize the briefs for the justices, recommend cases for expedited "Rocket Docket" proceedings, and draft the opinions.

The justices appear to rely heavily on staff summaries and have appeared confused about the case in the limited oral arguments due to reliance on summaries rather than the briefs themselves.

The truncated proceedings are designed to expedite the application of precedent and limit the involvement of the Justices, but also favors state precedent in disregard of the Supremacy Clause.

In the case at bar, the Rocket Docket disregarded the SCOTUS' clear precedent in Hamer v. Neighborhood, which clarifies that time limits set by court rules are Claim Processing Rules and only time limits set by statute are Jurisdictional.

The Hamer court explained how courts have frequently mis-used the term Jurisdictional,

and Hamer was therefore necessary to explain that only Congress can grant or deprive the court of jurisdiction.

The Rocket Docket decision does not acknowledge petitioner's citation of Hamer, instead relying on state precedent that precedes Hamer and states simply that time limits for filing Notice of Appeal is Jurisdictional(clearly contrary to Hamer's finding).

The circumstances of the case at bar mirror Hamer closely. The state rules mirror Federal Rules, and the timeframes are set by court rules, not by the legislature.

Petitioner had requested that the lower court grant a 3 week extension of time to file a Rule 59 Motion and/or Notice of Appeal.

The lower court granted this extension of time "to file any motion allowable under Rule 59 and/or notice of appeal".

Petitioner filed within the prescribed time limit and Respondent did not object.

Petitioner filed notice of appeal timely after the court denied the Rule 59 Motion.

On appeal, the Rocket Docket, sua sponte, issued an order stating it did not have jurisdiction because the lower court lacked authority under court rules to extend the timeframe to file a Rule 59 Motion.

Therefore the Rule 59 Motion was treated as a Rule 60 Motion that did not toll the time for filing Notice of Appeal, thus the court did not have jurisdiction over the appeal.

Petitioner cited Hamer as well as Federal cases noting that where a court has affirmatively misled a litigant about the time to file either Equitable Tolling and/or Rule 60 Relief is required to rectify the problem so a litigant does not lose a Due Process right as a result of court error.

The Vermont Supreme Court called Petitioner's reliance upon the court's extension a "tactical decision" and stated that Rule 60 relief was not appropriate under the circumstances. It also ignored Hamer entirely.

Whether the Rocket Docket concluded that the Federal case was inapplicable to a state law case or simply favored state precedent is unclear because the court also refused to address

the request for clarity in Petitioner's request for reargument.

Because the Rocket Docket found it lacked jurisdiction, it considered the appeal as an appeal of a Rule 60 Post-judgment Order, thus all of petitioner's arguments were treated as an un-timely post-judgement attack.

The case was rife with Due Process issues typical of the Vermont Courts, however, and clarity as to the boundaries of petitioner's 14th Amendment Right to Due Process is necessary here.

Vermont has a strong favoritism of custodial parents, which it has reiterated consistently in its case law, thus for the lower court it is preferable to inoculate a questionable legal conclusion from appellate scrutiny by simply ignoring standards of evidence and aligning all factors to favor the custodial parent rather than present a messy case with factors favoring both parties and ripe for appellate scrutiny.

In the case at bar, the lower court refused to enforce the subpoena issued by a previous judge, allowed non-party counsel to usurp petitioner's hearing time by repeatedly making unauthorized objections, legal arguments, unsworn statements of fact, and signal to the witness during examination(with ½ of petitioner's time taken up by non-party counsel).

The court refused to schedule hearings required by statute, and deprived petitioner not only of the original forum of a trial required by statute, but also of access to the appellate court due to the error in issuing an extension in violation of court rules.

Reasons For Granting An Extension Of Time

Petitioner has been trying to protect his Parental Rights within the Vermont system, however, he has been deprived of any proceeding of competent jurisdiction to disturb the precedent that continues to decide this case.(Rocket Docket proceedings, bound by precedent, lack the authority to disturb precedent and may only apply existing precedent to cases)

Vermont precedent also indicates that civil recovery for tort damages must be independent of the Family Court proceedings.

Petitioner eventually sought relief in Civil Court with filings in Federal District Court in 2021.

One Civil Suit is against Respondent, Jennifer Knapp, who continues to wield state power to sever petitioner's parental rights in violation of court orders and without a hearing.

The second Civil Suit is against Dalene Washburn, a medical provider and the non-party witness previously mentioned(whose counsel continually interrupted the proceedings).

Ms. Washburn is a medical provider who has acted in a conspiracy with Respondent Jennifer Knapp to sever Respondent's access to his child's medical records and medical care.

The Vermont Family Court has repeatedly reaffirmed Respondent's right to access his child's medical records and providers, however, it has stated it cannot enforce the actions of a non-party to the case.

Due to the pandemic and court shut-downs, Respondent's 3 cases ended up moving forward in sync and overwhelming the pro se litigant.

The Family Court filing dating back to 2019 was postponed due to the pandemic and was only resolved on appeal at the end of 2023.

The Federal Civil Suits filed in 2021 were dismissed due to claims of the Domestic Relations Abstention and petitioner is subject to appellate deadlines in these proceedings.

He seeks to set the boundaries of due process in Vermont Court through Declaratory Judgement and also to stop the wrongful use of state power, which Ms. Knapp and Ms. Washburn have usurped to steal his parental rights without a hearing.

He needs to establish in the Circuit Court that there is no remedy at the state level and rebut the District Court's mis-application of the Domestic Relations Abstention.

Coupled with these tight deadlines, Petitioner is also a single father(50/50 visitation), self-employed full time(not an attorney), had an extended illness at the end of December, which put him behind in all his deadlines, and was also in a car accident that has created additional logistical/administrative burdens that are unavoidable.

The intersection of Federal Law with Family Law is complicated and very difficult to get any advice on due to the rarity of attorneys who are experienced in both areas.

In this case, the Due Process issues are solidly within Federal Issues, yet have been overlooked by federal courts since the circumstances where Federal Courts have jurisdiction over cases related to parental rights/child custody are relatively rare.

Petitioner has a solid argument why these Federal Issues require a Federal Court to take the case, yet the knee jerk response from District Courts(and many Circuits) seems to be to reject such cases.

Although the SCOTUS has repeatedly cautioned application of the Domestic Relations Exception where Federal Jurisdiction otherwise lies, it appears that the Federal Courts often over-use the doctrine and reject cases inappropriately.

This has resulted in a very difficult set of issues to understand and respond to.

The weight of all of these responsibilities coupled with the illness and auto accident has left too much work for a pro se litigant to keep up with, and an extension of time is just.

As explained above, the Vermont Supreme Court's disregard for fundamental fairness is directly at odds with SCOTUS precedent and appears that either the state court believes that Hamer does not apply, since it is based upon Federal Law(although obviously the principles were rooted in the difference between time limits set by statute vs. court rule and these principles are not limited to Federal cases).

Moreover, though, this case is about a Constitutional Right to a fair hearing, standards of evidence required under the 14th Amendment(and the fact that appellate court definition of "clear error" sets the meaning of those standards), and when/how a court's actions illustrate bias/unfairness simply through judicial acts that are consistently unreasonable/unlawful.

In particular, the issue is that state courts, particularly Vermont, conclude that in Domestic Relations Cases they need not provide a fair hearing because of their belief that precedent such as Ankenbrandt mean that the proceedings are entirely the domain of the state and they need not adhere to Federal judicial standards of fairness.

Although the UCCJEA sets which court has jurisdiction, there needs to be clarification that states must conduct those proceedings within the boundaries of due process.

This clarification may also be used through Declaratory Judgement in Federal District

Courts to achieve what petitioner is already seeking(which the District Court has denied) by obtaining prospective relief when the states disregard Federal Precedent in Family Court.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the time to file the Petition for a Writ of Certiorari in this matter be extended 60 days, up to and including 4/5/24

1/24/24

CERTIFICATE OF SERVICE

I hereby certify that on __________1/25/24__________________ I sent a copy of

(date)

Request for Extension of Time to file a Petition for Writ of Certiorari to

______John Loftus________, at
(Opposing Party or Attorney)
____80 South Main Street, Hanover, New Hampshire 03755______,
(the last known address)
by__________US MAIL__________.
(state method of service)

____1/25/24________ ______________________________
Date Signature

____1____

Appendix A.

VERMONT SUPREME COURT
109 State Street
Montpelier VT 05609-0801
802-828-4774
www.vermontjudiciary.org

Case No. 22-AP-331

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, 2023

Jennifer Knapp (Dasler) v. Timothy Dasler* } APPEALED FROM:
} Superior Court, Windsor Unit,
} Family Division
} CASE NO. 74-6-17 Oedm
Trial Judge: Heather J. Gray

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

Father appeals the family court's order denying his motion for reconsideration of previous orders in which the court denied his requests to modify parental rights and responsibilities, to hold mother in contempt, and to reopen the evidence as to modification. We affirm.

The parties were married for five years and have one minor daughter. They were divorced in August 2018. In the final divorce order, the family court awarded mother primary legal and physical parental rights and responsibilities and established a fifty-fifty parent-child contact schedule. Father appealed that decision to this Court, and we affirmed. Dasler v. Dasler, No. 2018-301, 2019 WL 2359608 (Vt. June 3, 2019) (unpub. mem.) [https://perma.cc/7LDD-V462].[1]

In March 2020, father moved to modify the final divorce order to give him sole legal and physical parental rights and responsibilities and to hold mother in contempt for allegedly enrolling the parties' child in a different school without consulting him and failing to participate in mediation. The court scheduled a hearing in May 2022. Prior to the hearing, father requested

[1] Father has filed two other appeals from the underlying divorce proceeding. In Dasler v. Dasler, No. 2020-124, 2020 WL 6542001 (Vt. Nov. 6, 2020) (unpub. mem.) [https://perma.cc/NN9X-XWW5], we affirmed the family court's denial of father's motion to hold mother in contempt for allegedly failing to return certain personal items to him. In Dasler v. Dasler, No. 2020-146, 2021 WL 840982 (Vt. Mar. 5, 2021) (unpub. mem.) [https://perma.cc/8978-PU7X], we affirmed the family court's order denying father's request to vacate the divorce order due to alleged fraud by mother.

a continuance so that he could conduct a deposition of daughter's therapist, whom he intended to call at the hearing. The court denied that motion and father's written and oral motions to reconsider. Mother, father, and daughter's therapist testified at the hearing, which took a full day.

Father subsequently moved to reopen the evidence and to set an additional hearing. He argued that he was unable to impeach the therapist regarding certain testimony and did not have enough time to present evidence about mother's alleged violations of the custody and contact provisions in the final divorce order. He then filed a renewed motion for more hearing time to question the therapist and asked the court to strike testimony suggesting that the therapist had provided him with daughter's records.

On September 30, 2022, the court issued a decision denying father's motions to modify parental rights and responsibilities and hold mother in contempt. In a separate order entered on the same date, the court denied father's motions to reopen the evidence and to strike the therapist's testimony.

Father moved for an extension of time to "respond and/or appeal." The family court granted the motion and gave father until November 4, 2022, to move for relief under Vermont Rule of Civil Procedure 59 or file a notice of appeal.

On November 7, 2022, father filed a motion for reconsideration in which he argued that the court misconstrued the evidence at the hearing and improperly sustained the objections of therapist's attorney, the therapist had a conflict of interest and should not be trusted, and he should have been allowed to impeach the therapist. He argued that mother had violated the divorce order in various ways and asserted that she lied in her testimony. He accused the court of bias against him. He argued that he should have been afforded more hearing time. He again asked the court to grant a new hearing due to these alleged errors.

The trial court denied the motion on November 22, 2022, concluding that father raised issues that had already been litigated and decided and did not present any new grounds for relief. Father filed his notice of appeal—his fourth to this Court—on December 5, 2022.

As a threshold matter, we reiterate our conclusion, previously communicated to the parties by entry order, that this Court only has jurisdiction to review the family court's November 22, 2022 order. A notice of appeal ordinarily must be filed within thirty days after entry of the order appealed from. V.R.A.P. 4(a). "The timely filing of a notice of appeal is a jurisdictional requirement," and "[w]e require strict adherence to deadlines for filing notices of appeal." Casella Constr., Inc. v. Dep't of Taxes, 2005 VT 18, ¶¶ 3, 6, 178 Vt. 61. A motion to alter or amend the judgment under Vermont Rule of Civil Procedure 59(e) tolls the running of the appeal period if it is filed within twenty-eight days of the order. See V.R.A.P. 4(b) ("If a party timely files [a Rule 59(e) motion] . . . the full time for appeal begins to run for all parties from the entry of an order disposing of the last remaining motion"); V.R.C.P. 59(e) (requiring motion to alter or amend to be filed within twenty-eight days after entry of judgment). Father's motion to reconsider the court's September 30, 2022 orders was filed on November 7, more than twenty-eight days later. It therefore was not timely under Rule 59(e) and did not toll the running of the appeal period from the September orders. Although the trial court ostensibly extended the

time for father to file his motion, it lacked the authority to do so. See V.R.C.P. 6(b) (stating court "must not extend the time to act" under certain rules, including Rule 59(e)).

Accordingly, this Court informed the parties at the outset of the appeal that the only order it had jurisdiction to review was the family court's November 22, 2022 order denying reconsideration, because father's notice of appeal was filed within thirty days of that order. Father filed multiple motions asking this Court to reconsider its decision, which we denied. In his appellate briefs, father repeats his arguments that this Court erred in determining that it only had jurisdiction to review the family court's November 22, 2022 order. Insofar as father repeats the same arguments that he previously made by motion, we see no basis to revisit our decision. We recognize that mother was self-represented, but this did not excuse him from complying with court rules. See In re Verizon Wireless Barton Permit, 2010 VT 62, ¶ 22, 188 Vt. 262 ("The court does not abuse its discretion where it enforces the rules of civil procedure equitably, even against a pro se litigant." (quotation omitted)).

Father argues that his motion to reconsider should have been treated as a Rule 60(b) motion, which would make it timely for tolling purposes. See V.R.C.P. 60(b) (allowing court to provide relief from judgment for mistake, newly discovered evidence, or fraud by adverse party if motion filed within one year of judgment); V.R.A.P. 4(b). However, father's motion did not refer to Rule 60 and did not allege any of the bases for relief set forth in that rule. It is plain from the arguments in the motion that it was brought pursuant to Rule 59(e). See Fournier v. Fournier, 169 Vt. 600, 601 (1999) (mem.) (stating that motion denominated as motion to reconsider was indistinguishable from motion to alter or amend judgment). Father's attempt to recategorize it now is not supported by the record.

Father further argues that our determination that we lack jurisdiction to review the September 2022 orders should mean that our decision on the merits of this appeal will lack preclusive effect in other courts. Consistent with our case law, we take no position regarding the preclusion consequences of this decision. See Alden v. Alden, 2010 VT 3, ¶ 8, 187 Vt. 591 (mem.) ("The general rule is that a court should not dictate preclusion consequences at the time of deciding a first action.").

We therefore turn to the family court's November 22, 2022 order denying father's motion to reconsider. Such a motion "is addressed to the sound discretion of the trial court, and that court's ruling is not reversible unless it constitutes a manifest abuse of discretion." Chelsea Ltd. P'ship v. Town of Chelsea, 142 Vt. 538, 540 (1983). "[A]buse will be found only when the trial court has entirely withheld its discretion or where the exercise of its discretion was for clearly untenable reasons or to an extent that is clearly untenable." Brueckner v. Norwich Univ., 169 Vt. 118, 133 (1999) (quotation omitted).

There was no abuse of discretion here. Many of father's arguments in his motion to reconsider, such as his claims that he was not afforded sufficient hearing time and that he was improperly prevented from impeaching the therapist, were repetitious of previous motions to the court, which it had considered the arguments and decided against him. See 11 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 2810.1 (3d ed.) ("The 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."). Other arguments simply challenge the court's

assessment of the evidence and weighing of witness credibility, matters which fall within the court's sole discretion. See Cabot v. Cabot, 166 Vt. 485, 497 (1997) ("As the trier of fact, it was the province of the trial court to determine the credibility of the witnesses and weigh the persuasiveness of the evidence."). Father's disagreement with the court's decision does not equate to an abuse of discretion. See Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (mem.) (explaining that arguments which amount to nothing more than disagreement with court's reasoning and conclusion do not make out case for abuse of discretion).

Father claims that the court's order must be reversed because the superior judge was motivated by bias against him.[2] A judge "is accorded a presumption of honesty and integrity, with burden on the moving party to show otherwise in the circumstances of the case." Ball v. Melsur Corp., 161 Vt. 35, 39 (1993) (quotation omitted).

Father's claim of bias rests on two grounds. First, he cites the court's discussion in its November 7, 2022 order about potential sanctions. The court explained that since March 2020, father had moved to reconsider nearly every substantive order issued by the court. It listed twelve such motions filed by father. The court noted that it had denied nearly all of these motions. Many were denied because father had failed to raise any new argument or fact that had not already been raised or litigated. The court compared father's litigation conduct to that of the father in Fox v. Fox, 2022 VT 27, 216 Vt. 460, against whom this Court upheld the trial court's imposition of a prefiling injunction after he repeatedly filed vexatious, harassing, and duplicative motions with no support in fact or law that appeared to be motivated by a desire to harass his ex-spouse. The court noted, however, that mother in this case had not yet sought such a sanction against father, and it did not impose any sanctions against him.

The above discussion was not indicative of judicial bias. See In re Wildlife Wonderland, Inc., 133 Vt. 507, 513 (1975) (noting presumption that "all evidence bearing upon issues considered by the trier was heard with impartial patience and adequate reflection," and stating that "[a] decision contrary to the desires of a party does not denote bias"). The court was simply warning father, in a neutral and objective fashion, that his pattern of repeatedly seeking reconsideration of every ruling without offering any new factual or legal justification could be interpreted as harassment and potentially lead to sanctions under Vermont Rule of Civil Procedure 11. The court did not actually impose any sanction against him or make any statement that indicated partiality in favor of one side or the other.

Father also points to various rulings made by the judge—including several that are not part of the record on appeal because they either pre-dated the September 30, 2022 order or were made after father filed his notice of appeal—as evidence of her alleged bias.[3] To overcome the

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[2] Defendant did not move to recuse the judge until after this appeal was filed. That motion and the resulting order are not part of the record in this appeal, and we do not consider them.

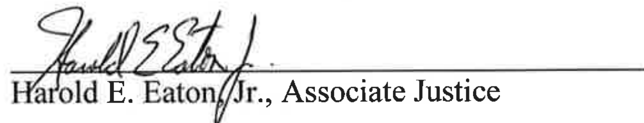
[3] Defendant moved for reconsideration of our April 4, 2023 order denying his request to include a December 2022 order addressing parent coordination and a March 2023 order denying father's motion to disqualify the judge as part of the record in this appeal. We indicated that the motion would be decided with the merits of the appeal. We now deny the motion because these

presumption of judicial impartiality "it is not enough merely to show the existence of adverse rulings, no matter how erroneous or numerous, or that the judge expressed a comment or opinion, uttered in the course of judicial duty, based upon evidence in the case." Gallipo v. City of Rutland, 163 Vt. 83, 96 (1994). The mere fact that the judge has ruled against father does not demonstrate judicial bias.

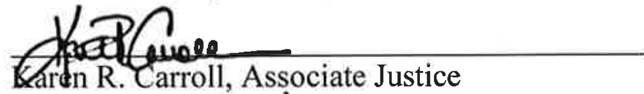
Father raises various other arguments in his appellate briefs, including that he was treated unfairly at the May 2022 hearing, the court erred in failing to hold hearings on his July 2022 motions to enforce and to reissue a subpoena to the therapist, the court's order denying his motion to modify parental rights and responsibilities contained erroneous findings and was not supported by the evidence, the court misinterpreted the terms of the final divorce order in a manner that deprived him of his constitutional rights, and mother's interference with his parental rights violated due process. As explained above, we lack jurisdiction to consider these issues because father did not timely appeal from the September 30, 2022 orders.

Affirmed.

BY THE COURT:



Harold E. Eaton, Jr., Associate Justice



Karen R. Carroll, Associate Justice

Nancy J. Waples, Associate Justice

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orders were entered after father filed his notice of appeal and are therefore not subject to review in this appeal. See Fox v. Fox, 2022 VT 27, ¶ 31 n.3 (declining to address post-appeal rulings by family division because not part of record on appeal). They are also unrelated to the order that is properly before us, namely, the order denying reconsideration of the court's orders denying father's requests to modify parental rights and responsibilities and to reopen the evidence.

Appendix B
Case No. 22-AP-331

VERMONT SUPREME COURT
109 State Street
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802-828-4774
www.vermontjudiciary.org

ENTRY ORDER

NOVEMBER TERM, 2023

Jennifer Knapp (Dasler) v. Timothy Dasler*	}	APPEALED FROM:
	}	Superior Court, Windsor Unit, Family Division
	}	
	}	CASE NO. 74-6-17 Oedm

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

Appellant's motion to reargue fails to identify points of law or fact presented in the briefs upon the original argument which were overlooked or misapprehended by this Court. See V.R.A.P. 40(b)(1). The motion is therefore denied.

Appellant requests that appellee be ordered to pay his costs. "A party who seeks costs must—within 14 days after entry of judgment—file with the clerk . . . an itemized and verified bill of costs." V.R.A.P. 39(d)(1). Appellant has not filed an itemized and verified bill of costs, and his request is therefore denied. Id.; see also Alpine Haven Prop. Owners' Ass'n, Inc. v. Brewin, 2018 VT 127, ¶ 4, 209 Vt. 645 (mem.) (holding that time to file motion for costs under Rule 39(d)(1) not tolled by filing of motion to reargue).

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

Nancy J. Waples, Associate Justice