REGULAR CALENDAR

March 1, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Children and Family Law to which was referred HB 1286,

AN ACT relative to the modification of parental rights and responsibilities. Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Josh Yokela

FOR THE MAJORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MAJORITY
COMMITTEE REPORT

Committee:	**Children and Family Law**
Bill Number:	**HB 1286**
Title:	**relative to the modification of parental rights and responsibilities.**
Date:	**March 1, 2022**
Consent Calendar:	**REGULAR**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

The majority of the committee believes this change is not necessary since the Supreme Court has already interpreted the current language to reflect the change proposed so there should be no confusion going forward about this language.

Vote 8-7.

Rep. Josh Yokela
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Children and Family Law

HB 1286, relative to the modification of parental rights and responsibilities. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Josh Yokela for the **Majority** of Children and Family Law. The majority of the committee believes this change is not necessary since the Supreme Court has already interpreted the current language to reflect the change proposed so there should be no confusion going forward about this language. **Vote 8-7.**

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

March 1, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Children and Family Law to which was referred HB 1286,

AN ACT relative to the modification of parental rights and responsibilities. Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.

Rep. Debra Altschiller

FOR THE MINORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MINORITY
COMMITTEE REPORT

Committee:	**Children and Family Law**
Bill Number:	**HB 1286**
Title:	**relative to the modification of parental rights and responsibilities.**
Date:	**March 1, 2022**
Consent Calendar:	**REGULAR**
Recommendation:	**OUGHT TO PASS**

STATEMENT OF INTENT

This bill makes minor and necessary changes to the language of RSA 461-A:11, placing "any of" with "only" in the following: "The court may issue an order modifying a permanent order concerning parental rights and responsibilities under any of the following circumstances." It then goes on to outline a nine part list of those circumstances. This change is necessary because lower courts have found ways to rule outside the scope of that comprehensive list. When written, the intention of the list was to provide all of the possible issues that could be considered for a change to a parenting plan. Two lower court decisions modified parenting plans outside of the scope of the list provided in RSA 461-A:11 and were overturned by the NH Supreme Court (see In re Muchmore, 159 NH 470 (2009) and In re Larue, 156 NH 378 (2007). In Larue, the court observed that the legislature intended contract principles to apply in determining whether the parties have agreed to a modification pursuant to the statute, indicating the first steps to limiting the court's power to alter a parenting plan. The ability, will, or resources needed to appeal a lower court decision to the Supreme Court is not necessarily available to all citizens and the Court has made clear, on at least two occasions, that a legislative fix to the language of RSA 461-A:11 is needed. To better serve the best interests of children and their parents, the minority believes this bill should pass.

Rep. Debra Altschiller
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Children and Family Law

HB 1286, relative to the modification of parental rights and responsibilities. **OUGHT TO PASS.** Rep. Debra Altschiller for the **Minority** of Children and Family Law. This bill makes minor and necessary changes to the language of RSA 461-A:11, placing "any of" with "only" in the following: "The court may issue an order modifying a permanent order concerning parental rights and responsibilities under any of the following circumstances." It then goes on to outline a nine part list of those circumstances. This change is necessary because lower courts have found ways to rule outside the scope of that comprehensive list. When written, the intention of the list was to provide all of the possible issues that could be considered for a change to a parenting plan. Two lower court decisions modified parenting plans outside of the scope of the list provided in RSA 461-A:11 and were overturned by the NH Supreme Court (see In re Muchmore, 159 NH 470 (2009) and In re Larue, 156 NH 378 (2007). In Larue, the court observed that the legislature intended contract principles to apply in determining whether the parties have agreed to a modification pursuant to the statute, indicating the first steps to limiting the court's power to alter a parenting plan. The ability, will, or resources needed to appeal a lower court decision to the Supreme Court is not necessarily available to all citizens and the Court has made clear, on at least two occasions, that a legislative fix to the language of RSA 461-A:11 is needed. To better serve the best interests of children and their parents, the minority believes this bill should pass.

Original: House Clerk
Cc: Committee Bill File

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

EXECUTIVE SESSION on HB 1286

BILL TITLE: relative to the modification of parental rights and responsibilities.

DATE: March 1, 2022

LOB ROOM: 206-208

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Yokela Seconded by Rep. J. Nelson Vote: 8-7

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Peter Petrigno, Clerk

OFFICE OF THE HOUSE CLERK

1/10/2022 8:54:52 AM
Roll Call Committee Registers Report

2022 SESSION

Children and Family Law

Bill #: HB 1286 **Motion:** ITL **AM #:** _____ **Exec Session Date:** 3/1/22

Members	YEAS	Nays	NV
~~Rice, Kimberly A. Chairman~~ Renzullo	✓		
DeSimone, Debra L. Vice Chairman	✓		
Yokela, Josh S.	✓		
Nelson, Jodi	✓		
Belanger, Cody M.	✓		
~~Cross, Kenna E.~~ Healey	✓		
~~Litchfield, Melissa~~ A. Greene	✓		
Smith, Denise M.	✓		
Long, Patrick T.		✓	
Alicea, Caroletta C. ~~Clerk~~		✓	
~~Grossman, Gaby~~ M. Smith		✓	
Levesque, Cassandra N.		✓	
~~Wazir, Safiya~~ M. Chase		✓	
Petrigno, Peter Clerk		✓	
Altschiller, Debra		✓	
TOTAL VOTE:	8	7	0

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON HB 1286

BILL TITLE: **relative to the modification of parental rights and responsibilities.**

DATE: **January 11, 2022**

LOB ROOM: **206** **Time Public Hearing Called to Order:** **2:00pm**

Time Adjourned: **2:07pm**

Committee Members: Reps. Rice, DeSimone, Petrigno, Yokela, J. Nelson, Belanger, Cross, Litchfield, D. Smith, Long, Grossman, Levesque, Wazir, Altschiller and Alicea

Bill Sponsors:
Rep. Amanda Bouldin

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

*** Rep. Amanda Bouldin**
- Introduced her bill relative to the modification of parental rights and responsibilities.

Rep. Jess Edwards
- Signed in opposition

Respectfully Submitted,

Rep. Peter Petrigno, Clerk

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1286 Date 1/11/22

Committee Children and family Law

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
REP JESS EDWARDS	DISTRICT 4		ROCKINGHAM		X

The New Hampshire
House of Representatives

HOUSE OF REPRESENTATIVES - ONLINE TESTIMONY SUBMISSIONS

House Children and Family Law

HB1286

Support: 0 | Oppose: 2 | Neutral: 0

Name	Town	State	Position	Attachment	Typed
Erin Jasina	Portsmouth	NH	Oppose		
Keith Keunning	Bow	NH	Oppose		

HB1286
Info Packet

Section 461-A:11

461-A:11 Modification of Parental Rights and Responsibilities. –

I. The court may issue an order modifying a permanent order concerning parental rights and responsibilities under any of the following circumstances:

(a) The parties agree to a modification.

(b) If the court finds repeated, intentional, and unwarranted interference by a parent with the residential responsibilities of the other parent, the court may order a change in the parental rights and responsibilities without the necessity of showing harm to the child, if the court determines that such change would be in accordance with the best interests of the child.

(c) If the court finds by clear and convincing evidence that the child's present environment is detrimental to the child's physical, mental, or emotional health, and the advantage to the child of modifying the order outweighs the harm likely to be caused by a change in environment.

(d) If the parties have substantially equal periods of residential responsibility for the child and either each asserts or the court finds that the original allocation of parental rights and responsibilities is not working, the court may order a change in allocation of parental rights and responsibilities based on a finding that the change is in the best interests of the child.

(e) If the court finds by clear and convincing evidence that a minor child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature minor child as to the parent with whom he or she wants to live. Under these circumstances, the court shall also give due consideration to other factors which may have affected the minor child's preference, including whether the minor child's preference was based on undesirable or improper influences.

(f) The modification makes either a minimal change or no change in the allocation of parenting time between the parents, and the court determines that such change would be in the best interests of the child.

(g) If one parent's allocation of parenting time was based in whole or in part on the travel time between the parents' residences at the time of the order and the parents are now living either closer to each other or further from each other by such distance that the existing order is not in the child's best interest.

(h) If one parent's allocation or schedule of parenting time was based in whole or in part on his or her work schedule and there has been a substantial change in that work schedule such that the existing order is not in the child's best interest.

(i) If one parent's allocation or schedule of parenting time was based in whole or in part on the young age of the child, the court may modify the allocation or schedule or both based on a finding that the change is in the best interests of the child, provided that the request is at least 5 years after the prior order.

II. Except as provided in RSA 461-A:11, I(b)-(i) for parenting schedules and RSA 461-A:12 for a request to relocate the residence of a child, the court may issue an order modifying any section of a permanent parenting plan based on the best interest of the child. RSA 461-A:5, III shall apply to any request to modify decision-making responsibility.

III. For the purposes of this section, the burden of proof shall be on the moving party.

Source. 2005, 273:1. 2006, 232:1. 2007, 213:1. 2011, 162:1, 2. 2016, 134:1, 2, eff. Jan. 1, 2017.

159 N.H. 470
Supreme Court of New Hampshire.

In The Matter of Adam MUCHMORE and Amy Jaycox.

No. 2009–312.
|
Argued: Nov. 4, 2009.
|
Opinion Issued: Dec. 4, 2009.

Synopsis

Background: Father filed petition to modify parenting plan with respect to the parties' child who was born out of wedlock. The Superior Court, Family Division, Lebanon County, MacLeod, J., entered order modifying the parenting plan. After her motion for reconsideration was denied, mother appealed.

Holdings: The Supreme Court, Dalianis, J., held that:

[1] father was not entitled to parenting plan modification absent proof of one of the circumstances listed in statute governing requests for modification of parenting plans, and

[2] stipulation and decree establishing each party's custody rights was a parenting plan such that father's petition implicated statute governing parenting plan modifications.

Reversed.

West Headnotes (10)

[1] **Child Custody** ⇐ Grounds and Factors

Father was not entitled to parenting plan modification with respect to the parties' child, who was born out of wedlock, absent proof of one of the circumstances listed in statute governing requests for modification of parenting plans; even if trial court found that modification was in child's best interests, it was still required to identify a recognized circumstance warranting modification. RSA 461–A:11.

8 Cases that cite this headnote

[2] **Child Custody** ⇐ Modification

The Supreme Court will not overturn a trial court's modification of an order regarding parenting rights and responsibilities unless it clearly appears that the court unsustainably exercised its discretion.

8 Cases that cite this headnote

[3] **Appeal and Error** ⇐ Statutory or legislative law

The appellate court reviews a trial court's statutory interpretation de novo.

[4] **Statutes** ⇐ Judicial construction; role, authority, and duty of courts

Statutes ⇐ Language and intent, will, purpose, or policy

In matters of statutory interpretation, the Supreme Court is the final arbiter of the legislative intent as expressed in the words of the statute considered as a whole.

[5] **Statutes** ⇐ Plain Language; Plain, Ordinary, or Common Meaning

When examining the language of the statute, courts ascribe the plain and ordinary meaning to the words used.

[6] **Statutes** ⇐ Construction as written

Statutes ⇐ Absent terms; silence; omissions

Courts interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.

1 Cases that cite this headnote

[1] [2] [3] We will not overturn a trial court's modification of an order regarding parenting rights and responsibilities unless it clearly appears that the court unsustainably exercised its discretion. *See In the Matter of Choy & Choy,* 154 N.H. 707, 711, 919 A.2d 801 (2007). Resolving the issues in this appeal requires that we engage in statutory interpretation. We review a trial court's statutory interpretation *de novo. Id.* We note, at the outset, that there is no choice of law issue in this case because the parties agree that New Hampshire law governs.

**458 [4] [5] [6] [7] [8] [9] In matters of statutory interpretation, we are the final arbiters of the legislative intent as expressed in the words of the statute considered as a whole. *In the Matter of Carr & Edmunds,* 156 N.H. 498, 503–04, 938 A.2d 89 (2007). We begin our analysis by looking to the language of the statute itself. *In the Matter of LaRue & Bedard,* 156 N.H. 378, 380, 934 A.2d 577 (2007). When examining the language of the statute, we ascribe the plain and ordinary meaning to the words used. *Id.* We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. *Id.* If the language is plain and unambiguous, then we need not look beyond it for further indication of legislative intent. *Id.* We interpret a statute in the context of the overall statutory scheme and not in isolation. *In the Matter of Carr & Edmunds,* 156 N.H. at 504, 938 A.2d 89. "Our goal is to apply statutes in light of the legislature's intent in enacting them and in light of the policy sought to be advanced by the entire statutory scheme." *Fichtner v. Pittsley,* 146 N.H. 512, 514, 774 A.2d 1239 (2001) (quotation omitted).

RSA 461–A:4, I, provides, in pertinent part:

> In any proceeding to establish or modify a judgment providing for parenting time with a child, ... the parents shall develop and *473 file with the court a parenting plan to be included in the court's decree. If the parents are unable to develop a parenting plan under this section, the court may develop it.

Pursuant to its plain meaning, RSA 461–A:4, I, requires parents to submit a parenting plan to the court for inclusion in its decree. This requirement pertains both to proceedings to establish a parenting plan in the first instance and to modify an existing plan. *See* RSA 461–A:4, I. RSA 461–A:4, I, is silent, however, as to when a parent may seek to modify an existing parenting plan.

RSA 461–A:11 governs the circumstances under which a parent may seek modification of an existing parenting plan. RSA 461–A:11 provides: "The court may issue an order modifying a permanent order concerning parenting rights and responsibilities" once a parent has proved that any one of four circumstances exists: (1) the parents have agreed to the modification, *see* RSA 461–A:11, I(a); (2) one parent has repeatedly and intentionally interfered with the other parent's residential responsibilities and modifying the parents' responsibilities would be in the child's best interests, *see* RSA 461–A:11, I(b); (3) the court finds by clear and convincing evidence that the child's present environment is detrimental to the child and the advantage of modifying the order outweighs the harm to the child from changing her environment, *see* RSA 461–A:11, I(c); or (4) the parents "have substantially equal periods of residential responsibility for the child," either one parent asserts or the court finds that the original allocation is not working, and modifying the order is in the child's best interests, *see* RSA 461–A:11, I(d).

Only after a parent has proved that one of these circumstances exists may the court then modify the existing plan. *See* RSA 461–A:11. When drafting a modified parenting plan, the court must consider "only the best interests of the child as provided under RSA 461–A:6 and the safety of the parties." RSA 461–A:4, I,:6 (Supp.2008).

Here, the trial court found that the petitioner did not meet his burden of proof under RSA 461–A:11, I(b) or (c). Although the trial court did not address whether he met his burden of proof under RSA 461–A:11, I(d), the parties agree that **459 he failed to do so. The petitioner contends that even though *none* of the circumstances set forth in RSA 461–A:11, I, exists, he was entitled, nonetheless, to a modification of the existing parenting plan based only upon proof that doing so was in the child's best interests. He surmises that when none of the circumstances set forth in RSA 461–A:11, I, apply, a parent may seek modification when doing so is in the child's best interests. To support this assertion, he relies upon the reference to a proceeding to modify a parenting plan found in RSA 461–A:4, I. *See* *474 RSA 461–A:4, I (requiring parents in "any proceeding to establish or modify" a parenting plan to submit such a plan to the court).

The plain language of RSA 461–A:11, I, does not support this construction. RSA 461–A:11, II requires the party seeking modification to prove that one of the four circumstances listed in RSA 461–A:11, I, exists. RSA 461–A:11, I, allows a trial court to modify an existing parenting plan under any

170 N.H. 42
Supreme Court of New Hampshire.

In the MATTER OF Nicholas KELLY and Astrid Fernandes–Prabhu

No. 2016–0243
|
Argued: March 1, 2017
|
Opinion Issued: May 26, 2017

Synopsis

Background: Father filed petition to modify parenting plan, seeking 50 percent parenting time and at least joint decision-making responsibility, and mother cross-moved for different modification, seeking to increase her parenting time. The 9th Circuit Court, Nashua County, Family Division, No. 2016–0243, Introcaso, J., approved recommendation of DalPra, M., and granted father's motion. Mother appealed.

[Holding:] The Supreme Court, Lynn, J., held that trial court did not have authority to modify parenting plan.

Reversed in part, vacated in part, and remanded.

West Headnotes (15)

[1] **Child Custody** ⇐ Presentation and reservation of grounds of review

Mother's argument that trial court did not have statutory authority to modify parenting schedule within parenting plan was adequately preserved for appellate review; mother first raised argument in motion for reconsideration of trial court's order, and mother's failure to raise issue prior to order did not deprive trial court of opportunity to correct alleged error because trial court did not modify parenting plan until it issued that order.

3 Cases that cite this headnote

[2] **Appeal and Error** ⇐ Necessity of presentation in general

Parties may not have judicial review of matters not raised in the forum of trial; the rationale behind the rule is that trial forums should have an opportunity to rule on issues and to correct errors before they are presented to the appellate court.

1 Cases that cite this headnote

[3] **Appeal and Error** ⇐ Making and contents of record

An appealing party bears the burden of demonstrating that it specifically raised the arguments articulated in its appellate brief before the trial court.

[4] **Child Custody** ⇐ Agreements

Mother and father did not agree to modification of parenting plan, and thus trial court did not have authority to modify parenting plan under statute governing modification of parental rights and responsibilities; parties disagreed about specific modification terms of parenting plan, father requested minimum of 50 percent residential responsibility time with child, mother requested that parenting schedule be altered to provide her with residential time with child over alternating weekends, and each request sought increase in parenting time that would come at expense of other parent's parenting time. N.H. Rev. Stat. Ann. § 461-A:11.

3 Cases that cite this headnote

[5] **Child Custody** ⇐ Modification

Normally, appellate court will not overturn a trial court's modification of an order regarding parenting rights and responsibilities unless it clearly appears that the trial court unsustainably exercised its discretion. N.H. Rev. Stat. Ann. § 461-A:11.

that joint decision-making responsibility was in child's best interest, and Supreme Court had no way of knowing whether trial court's decision to increase father's parenting time factored into its decision to award father joint decision-making responsibility. N.H. Rev. Stat. Ann. § 461-A:11.

[15] **Child Custody** ⇐ Burden of proof

Child Custody ⇐ Presumptions

Pursuant to statute governing modification of parental rights and responsibilities, a moving party bears the burden of proof in requests to modify decision-making responsibility, and there is no presumption that joint decision-making responsibility is in the best interest of minor children in this context. N.H. Rev. Stat. Ann. § 461-A:11.

****380** 9th Circuit Court–Nashua Family Division No. 2016–0243

Attorneys and Law Firms

Hamblett & Kerrigan, P.A., of Nashua (Andrew J. Piela on the brief and orally), for the petitioner.

Law Office of Peggy L. Small, of Nashua (Daniel R. Krislov on the brief and orally), for the respondent.

Opinion

LYNN, J.

***44** The respondent, Astrid Fernandes–Prabhu (mother), appeals an order of the ****381** Circuit Court (DalPra, M., approved by Introcaso, J.) granting a motion by the petitioner, Nicholas Kelly (father), to modify the parties' parenting plan. On appeal, the respondent argues that the trial court erred by modifying the parties' parenting plan without statutory authority to do so. We reverse in part, vacate in part, and remand.

I

The pertinent facts are as follows. The parties are the parents of a three-year-old son. In January 2015, the trial court issued a final parenting plan that awarded the respondent sole decision-making responsibility and primary residential responsibility for the parties' son. Under the parenting plan, the petitioner received parenting time each weekend from Saturday at 10:00 a.m. to Sunday at 6:00 p.m. and one evening parenting time every week from 4:00 p.m. to 7:00 p.m. Shortly thereafter, the petitioner ***45** successfully petitioned the trial court to extend his weeknight parenting time to run from 4:00 p.m. to 8:00 a.m. the following morning. That modification is not an issue in this appeal.

In September 2015, the petitioner moved for another modification of the final parenting plan, this time seeking, in relevant part: (1) at least 50% parenting time; and (2) at least joint decision-making responsibility. The respondent objected and cross-moved for a different modification of the final parenting plan, seeking to increase her parenting time by adding overnight parenting time on alternating weekends.

Following a hearing, the trial court issued an order (September order) that included the following findings:

> The court finds that the terms of the current Plan do not work in the child's best interests because the parties refuse to allow them to do so. Consequently, a modification of the Plan may be in order. Unfortunately, at this time, the court is not in a position to make that modification. It has insufficient reliable evidence to do so. The assistance of a guardian ad litem is necessary in order to assist the court in determining a parenting schedule that is in the child's best interests.

After a further hearing, the trial court issued an order in March 2016 (March order) modifying the parenting plan by awarding the petitioner joint decision-making responsibility and expanding his routine parenting time to "a nearly equal schedule of parenting time." In its order, the trial court stated that its authority to modify the parenting plan arose because "the parties have agreed that the current Parenting Plan is not working, but are unable to come up with one on their own."

The respondent timely moved for reconsideration, arguing that, under RSA 461–A:11 (Supp. 2016), the trial court did not have the authority to modify the parenting plan. The trial court denied the motion without issuing a narrative order. This appeal followed.

intent as expressed in the words of the statute considered as a whole." Id. "We interpret legislative intent from the statute as written, and we will not consider what the legislature might have said or add words that the legislature did not include." Id. Moreover, "[w]e interpret statutes in the context of the overall statutory scheme and not in isolation." Id.

RSA 461–A:11, I, grants a court authority to modify a permanent order concerning parental rights and responsibilities if it finds one of the specified predicate circumstances. See RSA 461–A:11, I; see also Muchmore, 159 N.H. at 473, 986 A.2d 456. In its March order, the trial court stated that it was empowered to modify the parenting plan because "the parties have agreed that the current [plan] is not working" and "are unable to come up with one on their own." However, the trial court did not specifically identify which subsection of RSA 461–A:11, I, authorized it to modify the parenting plan. Based on its reference to the parties "agreement" that the plan "was not working," it appears the trial court believed it had authority to modify the plan pursuant to RSA 461–A:11, I(a).

RSA 461–A:11, I(a) provides that a court may issue an order modifying a permanent order concerning parental rights and responsibilities if "[t]he parties agree to a modification." RSA 461–A:11, I(a). The respondent argues ***48** the trial court was not empowered to modify the parenting plan pursuant to RSA 461–A:11, I(a) because the parties did not agree to specific modification terms. The petitioner argues that because the statute uses the word "a" in the phrase "agree to a modification," parties need only agree that they both want the plan modified, regardless of whether they agree or disagree on specific terms. Following the petitioner's reasoning, a court may modify a parenting plan even if the parties are in complete disagreement as to what the modification terms should be. Based on his interpretation of the statute, the petitioner argues that RSA 461–A:11, I(a) empowered the trial court to modify the parenting plan because both parents requested a modification of the parenting plan, thereby demonstrating that they "agreed" the plan was not working.

We reject the petitioner's proposed construction of RSA 461–A:11, I(a). A disagreement by parties about the modification terms does not constitute an agreement under RSA 461–A:11, I(a) merely because both parties think the current order should be changed. The plain meaning of "agree" is "to concur in (as an opinion)." Webster's Third New International Dictionary 43 (unabridged ed. 2002). Two separate requests to modify the parenting plan in different ways do not constitute an agreement as the word is plainly understood, and this cannot be what the legislature had in mind when it drafted RSA 461–A:11, I(a).

Here, the petitioner requested a minimum of 50% residential responsibility time ****384** with the child. The respondent, on the other hand, requested that the parenting schedule be altered to provide her with residential time with the child over alternating weekends. Each of these requests sought an increase in parenting time that would come at the expense of the other parent's parenting time. Thus, the parties' requests were in conflict with each other—not in agreement—regarding how parenting time should be shared between them.

We also observe that construing RSA 461–A:11, I(a) in the manner advocated by the petitioner would essentially render RSA 461–A:11, I(d) superfluous. The latter section of the statute allows a court to modify an existing parenting plan if "either each [parent] asserts or the court finds that the original allocation of parental rights and responsibilities is not working," provided that two other conditions are also satisfied: first, that "the parties have substantially equal periods of residential responsibility for the child" under the existing order; and second, that the court finds that the modification "is in the best interests of the child." RSA 461–A:11, I(d). If RSA 461–A:11, I(a) were interpreted to cover a situation in which the only point on which the parties agreed was that the current plan is not working, this section of the statute would then permit a modification of any parenting plan ***49** under that circumstance, regardless of whether the plan allocates residential responsibilities substantially equally between the parties and regardless of whether the change is in the best interests of the child. In short, if RSA 461–A:11, I(a) means what the petitioner argues it means, this section of the statute would capture virtually all of the circumstances under which a modification could be obtained under RSA 461–A:11, I(d), thus making the latter section wholly unnecessary. We refuse to construe RSA 461–A:11, I(a) to produce this result. See In re Guardianship of Williams, 159 N.H. 318, 323, 986 A.2d 559 (2009) ("The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect. We also presume that the legislature does not enact unnecessary and duplicative provisions. ..." (brackets omitted)).

[11] Therefore, based on the framework of the entire statute considered as a whole, we hold that RSA 461–A:11, I(a) permits a court to modify a parenting plan only when the parties agree to specific modification terms. Because the

making responsibility was in the child's best interest, we assume the trial court made all subsidiary findings necessary to support its decision. See Smith v. Lillian V. Donahue Trust, 157 N.H. 502, 508, 953 A.2d 753 (2008). Furthermore, evidence in the record supported the trial court's general findings that the petitioner has a "very good relationship" with the child and "in general, is a very good father."

Nevertheless, because the trial court did not provide a detailed explanation regarding why it decided that joint decision-making responsibility was in the child's best interest, we have no way of knowing whether the trial court's decision to increase the petitioner's parenting time factored into its decision to award petitioner joint decision-making responsibility. Consequently, we vacate the trial court's modification of decision-making responsibility. We note, however, that nothing in this opinion is intended to preclude the trial court from finding, upon remand, that joint decision-making responsibility is in the child's best interest, provided that such decision is not based upon an improper modification of parenting time.

The respondent raises a further issue regarding which party bears the burden of proof in a request to modify decision-making responsibility. Because the issue may arise upon remand, we address it briefly in the interest of judicial economy. See 412 S. Broadway Realty v. Wolters, 169 N.H. 304, 317, 147 A.3d 417 (2016). The respondent argues that the trial court misallocated the burden of proof when it did not require the petitioner to show that a change in decision-making responsibility was in the best interests of the child pursuant to RSA 461–A:11, II. See RSA 461–A:11, II (requiring a parent to show that a modification of decision-making responsibility in a permanent parenting plan is in the "best interest of the child"). The respondent argues that the party seeking a modification of decision-making responsibility has the burden of proof pursuant to RSA 461–A:11, III, which provides that "[f]or the purposes of this section, the burden of proof shall be on the moving party." RSA 461–A:11, III.

The petitioner contends that he did not bear the burden of proof under RSA 461–A:11, II because the second sentence of this statute provides that "RSA 461–A:5, III shall apply to any request to modify decision-making responsibility." RSA 461–A:11, II. The petitioner argues that we should interpret the cross reference to RSA 461–A:5, III in RSA 461–A:11, II to mean that the presumption that joint decision-making responsibility is in the best interest of the child, found in paragraphs I and II of RSA 461–A:5, applies to decision-making modification requests made pursuant to ***52** RSA 461–A:11, II, and therefore relieves him of the burden of proof placed upon the moving party by RSA 461–A:11, III. We are not persuaded.

[15] Reading the statute as a whole, we conclude that the legislature intended the presumption of joint decision-making specified in RSA 461–A:5, I and II to apply only to initial or original decision-making orders, whereas requests for modification of such orders made pursuant to RSA 461–A:11 are subject to the burden of proof specified in RSA 461–A:11, III ("the burden of proof shall be on the moving party"). If RSA 461–A:5 applied to all orders (including modification orders) affecting decision-making responsibility, as the petitioner argues, there would have been no need to include the cross reference to RSA 461–A:5, III in the text of RSA 461–A:11, II. The inclusion of this cross reference makes sense only if the legislature understood ****387** that RSA 461–A:5 does not generally apply to requests to modify decision-making orders. See Garand v. Town of Exeter, 159 N.H. 136, 141, 977 A.2d 540 (2009) ("The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect."). Therefore, pursuant to RSA 461–A:11, III, the moving party bears the burden of proof in requests to modify decision-making responsibility, and there is no presumption that joint decision-making responsibility is in the best interest of minor children in this context.

Reversed in part; vacated in part; and remanded.

HICKS, CONBOY, and BASSETT, JJ., concurred.

All Citations

170 N.H. 42, 164 A.3d 379

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HB 1286 - AS INTRODUCED

2022 SESSION

22-2699
07/05

HOUSE BILL ***1286***

AN ACT relative to the modification of parental rights and responsibilities.

SPONSORS: Rep. Amanda Bouldin, Hills. 12

COMMITTEE: Children and Family Law

ANALYSIS

This bill limits the circumstances under which the court may issue a modification to an order concerning parental rights and responsibilities.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1286 - AS INTRODUCED

22-2699
07/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the modification of parental rights and responsibilities.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Parental Rights and Responsibilities; Modification of Parental Rights and Responsibilities. Amend the introductory paragraph of RSA 461-A:11, I to read as follows:

I. The court may issue an order modifying a permanent order concerning parental rights and responsibilities ***only*** under [~~any of~~] the following circumstances:

2 Effective Date. This act shall take effect January 1, 2023.