

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2017-0630, In the Matter of Eva Oliver and Thomas Oliver, the court on July 6, 2018, issued the following order:

The petitioner, Eva Oliver (mother), appeals an order of the Circuit Court (Pendleton, J.) granting a motion by the respondent, Thomas Oliver (father). She contends that the trial court erred: (1) in its interpretation of the parties' parenting plan; (2) by denying her request for a further hearing; (3) by addressing her relocation closer to the father's residence when the father challenged only the parties' child's school placement; (4) by requiring her to enroll the child in a school district in which she no longer lived; and (5) by modifying the parenting plan without addressing the child's best interest, see RSA 461-A:11, I(f) (Supp. 2017). We vacate and remand.

Although the father's motion challenged only the child's enrollment in a new school district, the trial court stated that "[t]he only issue before the Court was whether [the mother's] unauthorized unilateral . . . relocation without first obtaining court approval would be allowed." The trial court misinterpreted the parties' parenting plan as requiring a parent to obtain judicial approval prior to relocating closer to the other parent's residence. The father acknowledges that the parenting plan does not include this requirement.

Furthermore, the trial court modified the parenting plan to designate the father's residence as the child's residence for the purpose of school enrollment without accepting evidence regarding the child's best interest. See RSA 461-A:11, I(f) (authorizing trial court to amend parenting plan if modification makes minimal change in parties' relative parenting times and change would be in child's best interest). Accordingly, we cannot conclude, as the father argues, that the trial court implicitly found that the modification was in the child's best interest.

We decline the father's invitation to "correct [the trial court's] mistaken grounds." Instead, we vacate the trial court's order and remand for further proceedings consistent with this order, including, but not limited to, conducting an evidentiary hearing to determine whether modifying the parenting plan to designate the father's residence as the child's residence for the purpose of school enrollment is in the child's best interest. We encourage the trial court to expedite the hearing in view of the coming school year.

In light of this decision, we need not address the mother's other arguments.

Vacated and remanded.

HICKS, HANTZ MARCONI, and DONOVAN, JJ., concurred.

**Eileen Fox,
Clerk**