For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

TARAH S. MALEK, Appellant/Plaintiff, v. **ANTHONY W. ROMANO,** Appellee/Defendant.	)	**S. Ct. Civ. No. 2017-0038** Re: Super. Ct. CS. No. 21/2014, MS. No. 4/2014(STT)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Debra S. Watlington

Argued: April 10, 2018
Filed: May 16, 2019

Cite as: 2019 VI 16

BEFORE: **MARIA M. CABRET**, Associate Justice; **IVE ARLINGTON SWAN**, Associate Justice; and **ROBERT A. MOLLOY**, Designated Justice.[1]

APPEARANCES:

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[1] Chief Justice Rhys S. Hodge is recused from this appeal. The Honorable Robert A. Molloy, a Judge of the Superior Court of the Virgin Islands, sits in his place by designation under title 4, section 24(a) of the Virgin Islands Code.

[2] Although he appeared in the Superior Court proceedings, Appellee did not file an appellate brief or otherwise participate in this appeal.

OPINION OF THE COURT

CABRET, Associate Justice.

¶1 Tarah Malek appeals the Superior Court's December 1, 2016 order granting physical custody of her minor child to the child's father, Anthony Romano. Malek argues that the Superior Court erred in finding that there had been a substantial and continuing change in circumstances that warranted modification of physical custody. For the reasons discussed below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

¶2 Malek and Romano are the biological parents of the minor child. On August 19, 2015, the Superior Court awarded joint legal custody of the child and primary physical custody to Malek, with visitation privileges allowed for both parties. (J.A. 17–20). The order provided that either party could petition the court for a change in the custody arrangement under 16 V.I.C. §110. (J.A. 20).

¶3 After the court awarded joint legal custody to the parties, their relationship grew more contentious. (J.A. 988). Malek began interfering with Romano's Facetime and phone conversations with the minor child. (J.A. 790). She also removed the child from school and then a daycare without consulting with Romano. (J.A. 789, 989). The child's guardian *ad litem* expressed concern that Malek was manipulating the child, and that Malek was the primary source of stress in the relationship between the parties. (J.A. 794-95).

¶4 On December 9, 2015, Romano moved for modification of custody under 16 V.I.C. §110, arguing that a substantial and continuing change in circumstances had occurred, making modification of custody necessary to serve the best interests of the child. (J.A. 29–36). Romano argued that Malek's previous failure to disclose vital information relating to the child's care and

her persistent interference with his communication and parenting time required modification of custody. (J.A. 35). Specifically, Romano alleged that Malek failed to disclose to the minor child's guardian *ad litem* and child psychologist past incidents of violence in her household. (J.A. 30). Malek opposed the motion, arguing that the allegations did not amount to a substantial and continuing change in circumstances.

¶5 The court held a custody hearing on the matter beginning on March 10, 2016, which it continued to May 31, 2016. (J.A. 106, 487). At the hearing, both Malek and Romano testified, as well as the director of the child's daycare program, Romano's girlfriend and Romano's brother. Additionally, the Superior Court provided both parties with the reports submitted by Boyd Sprehn, Esq., the child's guardian *ad litem,* and Dr. Carolyn Clansy Miller, a psychologist retained to evaluate this matter. The parties were allowed to examine each of them about these reports at a subsequent hearing on October 24, 2016. (J.A. 785, 825, 888, 909). Both reports concluded that the current custody arrangement was not working because Malek was not providing a stable environment for the child. (J.A. 889–892, 897). Furthermore, both the guardian *ad litem* and Dr. Miller testified at the hearing that they believed it was in the best interest of the minor child to be placed in the physical custody of Romano. (J.A. 905–906, 961–962). By order entered December 1, 2016, the Superior Court transferred physical custody to Romano, finding that the circumstances of the custody arrangement had changed significantly so that modification of the court's earlier custody determination was necessary to serve the best interests of the child, and concluding that the child "will benefit more by being in [Romano's] physical custody." (J.A. 981–996). The court granted Romano's motion for modification of physical custody, and awarded the parties joint legal custody of the minor child, granting primary physical custody to Romano, with visitation

privileges allowed for both parties. (J.A. 981–984). The court's December 1, 2016 order modified and superseded the previous August 19, 2015 order. (J.A. 984).

¶6 On December 13, 2016, Malek filed a motion to vacate or in the alternative, for reconsideration, which the trial court denied by order entered March 14, 2017. (J.A. 997, 1063–1065). Malek filed a timely notice of appeal on March 29, 2017.

II. JURISDICTION

¶7 Before considering the merits of an appeal, this Court must first determine if it has appellate jurisdiction over the matter. *Simpson v. Golden Resorts, LLLP*, 56 V.I. 597, 598 (V.I. 2012). Malek argues that this Court has appellate jurisdiction because although the trial court entitled the order transferring physical custody as temporary, it is actually a final order since the court based it on a finding that there had been a substantial and continuing change in circumstances. (Malek's Br. 1).

¶ 8 "The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law." 4 V.I.C. § 32(a). "The determination of whether a particular order is appealable rests on its contents and substance, not its form or title," *In re People*, 51 V.I. 374, 383 (V.I. 2009), and "[a]n order is considered to be final for purposes of this statute if it ends the litigation on the merits, leaving nothing else for the court to do except execute the judgment." *In re Adoption of L.O.F.*, 62 V.I. 655, 659 (V.I. 2015) (quoting *Joseph v. Inter-Ocean Ins. Agency, Ins*., 59. V.I 820, 823 (V.I. 2013)).

¶9 To be appealable, the Superior Court's order granting Romano custody "must either be a final order, or must fall within one or more of the categories of interlocutory orders for which a

right of appeal is specified in 4 V.I.C. Sections 33(b) and (c)."[3] V.I. R. APP. P. 5(a)(2). To determine whether a custody order is final and appealable, we consider the language of the particular order under review, the specific point in the proceedings at which the trial court has entered the order, and the intended effect of the order upon further proceedings between the parties. *See Bryant v. People*, 53 V.I. 395, 401 (V.I. 2010).

¶10 Generally, an order entered after the trial court has completed a full hearing on the merits will be considered final. *See Toussaint v. Stewart*, 67 V.I. 931, 939 (V.I. 2017). This principle also applies in the context of child custody determinations. *Compare James v. Faust* (*James I*), 62 V.I. 554, 556–59 (V.I. 2015) (recognizing that the custody order issued after a full hearing on the merits was intended to be a final order), and *Jung v. Ruiz*, 59 V.I. 1050, 1053–57 (V.I. 2013) (explaining that the order modifying the custody arrangement issued after a full hearing was intended to be a final order), *with In re Q.G.*, 60 V.I. 654, 659 (V.I. 2014) (holding that an order granting an emergency petition before an adjudicatory hearing was not a final order), and *Bryant*, 53 V.I. at 401 (explaining that an order issued before a hearing on the merits took place was not intended to be a final adjudication).

¶11 This approach is consistent with that taken by a majority of jurisdictions in which courts determine whether a custody order is final or interlocutory by examining the order under traditional finality principles, including whether the order disposed of all issues before the court and whether

[3] The order granting Romano's motion to modify custody does not fall within the meaning of title 4, section 33(b) of the Virgin Islands Code, because it is not an interlocutory order appointing a receiver or refusing to wind up a receivership. 4 V.I.C. § 33(b). The order also does not fall within the meaning of section 33(c) because in it, the trial court did not certify any question for this court's immediate appeal. 4 V.I.C. § 33(c).

there were no questions left for the court to address.[4] And several jurisdictions have statutes that expressly provide for exceptions to the final judgment rule allowing for the immediate appeal of temporary custody orders, including: Arizona, Kansas, and Nevada. *See* ARIZ. R. P. SPEC. ACT. 1(a) (special action review available where there is no "equally plain, speedy, and adequate remedy by appeal"); KAN. STAT. ANN. § 38-2273(a) (permitting an appeal "from any order of temporary custody, adjudication, disposition, finding of unfitness or termination of parental rights"); NEV. R. APP. P. 3A(b)(7) ("An appeal may be taken from the following judgments and orders of a district court in a civil action: An order entered in a proceeding that did not arise in a juvenile court that

[4] There are thirty-eight jurisdictions in which the court applies finality principles to determine whether a custody order is final or interlocutory, including: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Indiana, Iowa, Kansas , Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Washington, and Wisconsin. *Compare Quadrini v. Quadrini*, 964 So.2d 576, 580 (Miss. Ct. App. 2007) (explaining that the lack of criteria articulated by the trial court to trigger a review hearing of the custody order weighed in favor of the order being final), and *Brewer v. Brewer*, 533 S.E.2d 541, 546 (N.C. Ct. App. 2000) (concluding that the custody order was final when "the [trial] court did not leave any question open for further review when it concluded that it was in the children's best interests to remain with their mother"), *with McDonald v. McDonald*, 876 So.2d 296, 298 (Miss. Ct. App. 2004) (recognizing the trial court's reservation of a final determination was suggested by its desire to receive a report and recommendation from D.H.S.), *Bridges v. Hertica*, 651 N.Y.S.2d 257 (N.Y. App. Div. 1996) (recognizing that home studies, mental health and substance abuse evaluations also ordered with the custody order indicated that further presentation of evidence was contemplated), *Sood v. Sood*, 732 S.E.2d 603, 606 (N.C. Ct. App. 2012) (concluding that the trial court did not determine all the issues, "the trial court specifically found that it lacked sufficient information to make vital findings of fact, particularly regarding the parties' mental conditions, as no psychological evaluation had yet been done, but there was evidence which indicated a need for this evaluation and the trial court ordered that such an evaluation be performed"), and *Bell v. Bell*, No. M2011-02618-COA-R3-CV, 2012 WL 38269 at *1 (Tenn. Ct. App. Jan. 6, 2012) (explaining that an order in which the trial court reserved a final custody determination pending a review hearing did not dispose of all claims between the parties); *see Pace v. Pace*, 700 S.E. 2d. 571 (Ga. 2010) ("[T]he nature and quality of the evidence presented at a temporary hearing is likely to be different than that which is ultimately presented at the final hearing.").

finally establishes or alters the custody of minor children."). The Supreme Court of Connecticut has determined that all custody orders are immediately appealable as a matter of common law. *Madigan v. Madigan*, 620 A.2d 1276, 1279 (Conn. 1993).

¶12 We also are mindful of the important, seemingly opposing policy concerns implicated in any application of the final order doctrine in the child custody context. *See generally*, Kurtis A. Kemper, Annotation, *Appealability of Interlocutory or Pendente Lite Order for Temporary Child Custody*, 82 A.LR. 5th 389 (2000). *Compare Madigan*, 620 A.2d at 1279 (concluding that "all custody orders are immediately appealable because an immediate appeal is the only reasonable method of ensuring that the important rights surrounding the parent-child relationship are adequately protected"), *with In re Denly*, 590 N.W.2d 48, 51 (Iowa 1999) ("Refusing to allow appeals as a matter of right from temporary custody orders also promotes judicial economy and efficiency."). Custody orders potentially deprive parents of a fundamental liberty interest: the right to determine the care of their child. *See Bryant*, 53 V.I. at 405; *Troxel v. Granville*, 530 U.S. 57, 66 (2000). Indeed, the Supreme Court of the United States has recognized that this parental interest is "perhaps the oldest of the fundamental liberty interests." *Troxel*, 530 U.S. at 95.

¶13 Guided by these policy considerations, allowing for the immediate appeal of a greater number of custody orders is optimal because it would allow for the swift disposition of custody disputes arising during the pendency of a case but before its ultimate conclusion. Immediate appellate review also provides greater protection for parents erroneously deprived of their fundamental right to custody of their children. However, an overly permissive rule risks causing multiple direct appeals in the same case, undermining judicial economy and unnecessarily delaying the ultimate and final resolution of the matter. Such a doctrine would also undermine the best

interests of the affected child or children, by depriving them and their parents or other caretakers of the stability and predictability otherwise afforded by court orders that are appealable only under limited circumstances. *Compare, Halstead v. Halstead*, 144 N.W.2d 861, 864 (1966) (observing that it is well established that "it is highly desirable the status of a child be fixed as quickly as possible, be thereafter disturbed as little as possible, and then only for the most cogent reasons"), *with Wessinger v. Wessinger*, 56 V.I. 481, 486 n.6 (V.I. 2012) ("Neither judicial economy nor the interests of the children would be served by a rule that permitted appeals from every status quo order from the Family Division; such a rule would undoubtedly protract custody disputes to the detriment of all participants."). Additionally, the trial court's authority to act during the course of such multiple direct appeals would be significantly restricted, potentially impairing the trial court's ability to take immediate action responsive to new developments in the case while any appeal is pending. *See Walters v. Walters*, 60 V.I. 768, 782 (V.I. 2014) (noting that an effective notice of appeal of a final order typically divests the Superior Court of jurisdiction).

¶14 Considering the case law discussed above and the important policy interests that must be balanced in the context of appellate review of child custody proceedings, we hold that a custody order will be considered final and appealable only if it is both: (1) entered after the Superior Court has completed a full hearing on the merits; and (2) disposes of all the issues relevant to the proceedings then presented before the court. *See Carrillio v. CitiMortgage, Inc.*, 63 V.I. 670, 680 (V.I. 2015) ("A final judgment within the meaning of 4 V.I.C. § 32(a) is one that disposes of all the claims submitted to the Superior Court for adjudication."); *Bryant*, 53 V.I. 401–402 (recognizing that a final order is one which disposes of all claims submitted for adjudication). In custody proceedings, this means that a custody order is final, and therefore appealable under 4

V.I.C. § 32(a), if it comes after a full adversarial hearing on the matter where the trial court considered sufficient factors it found to be relevant to the best interests of the child, and if it disposed of all the issues then presented to the trial court. *See Tutein v. Arteaga*, 60 V.I. 709, 714 (V.I. 2014) ("An order granting custody of a minor to one parent is a final appealable order over which we may exercise jurisdiction.") (citing *Madir v. Daniel*, 53 V.I. 623, 630 (V.I. 2010)).

¶15 This holding, we believe, strikes an appropriate balance between the competing goals of protecting the fundamental liberty interest inherent in the parent-child relationship and avoiding the unnecessary delay and uncertainty caused by piecemeal appellate review. Applying these principles of finality, we conclude that the trial court's December 1, 2016 order is a final, appealable order. First, the trial court's order was entered after it had conducted a full adversarial hearing where both parties were allowed to testify and present evidence. *Tutein*, 60 V.I. at 721 (requiring that a trial court "outline a set of relevant factors that it will use to determine the best interests of the child and explain how its findings of fact regarding those factors are supported by the evidence introduced at the hearing"). In reaching its decision, the trial court considered the following factors:

> [T]he parties' respective home environments including the degree to which relocation between those respective environments will impact the child's best interests; the ability of each parent to nurture the child, including the degree to which each parent has acted as primary caretaker; any evidence of domestic violence, sexual violence, child abuse, or child neglect; the interrelationship of the child to his or her parents, siblings, and any other person who may significantly affect his or her best interests; the willingness of each parent to provide a stable home environment for the child; and the recommendations of the psychologist and the guardian *ad litem*.

(J.A. 992). These factors mirror the factors we approved in *Tutein*, 60 V.I. at 721 and *Madir*, 53 V.I. at 628.

¶16 To evaluate these factors, the trial court considered a substantial body of evidence directly bearing on whether modification of the custody arrangement was necessary to serve the best interests of the child. That evidence included: (1) testimony from both parents; (2) testimony and reports from the guardian *ad litem*; and (3) testimony and reports from Dr. Miller, the child psychologist. (J.A. 987–996). The testimony from the parents and the testimony and reports by the guardian *ad litem* and Dr. Miller relating to the welfare of the minor were crucial to the Superior Court's determination that modifying the previous custody order and placing the child in the father's physical custody was in her best interests. *See Tutein* 60 V.I. at 721–23 (consideration of evidence relating to the welfare of the child is directly relevant to resolving the motion on the merits, the chief question being what is in the best interests of the child).

¶17 Second, the trial court, in its order, resolved all issues relevant to the child custody determination by disposing of all pending motions, and by placing the child in the father's physical custody.[5] (J.A. 984). While it is true that in child custody proceedings there always exists some possibility that future developments might require modification of custody at some later date, a custody determination like the one appealed from here will remain final and permanent unless such developments take place and a motion seeking modification based on those developments is filed with the court. *See* 16 V.I.C. §110. Thus, upon entry of its order modifying custody, under the circumstances of this case as they exist at present, the Superior Court resolved all issues before it, leaving nothing more for the court do in this matter. The possibility of future developments that might require review and modification of the custody determination at some undetermined date

[5] In issuing its order, the Superior Court granted Romano's motion for modification of physical custody, denied Malek's motion to obtain a passport for the minor child, and determined that Romano's motion for modification of parenting time was moot. (J.A. 984).

does not alter or detract from the fact that the court's order resolved all issues relevant to custody then pending before the court.[6] For these reasons, we conclude that the custody order is a final order appealable under 4 V.I.C. § 32(a).

III. DISCUSSION

¶18 Malek argues that the Superior Court abused its discretion by transferring physical custody to Romano because the record does not show that a substantial and continuing change in circumstances had occurred warranting transfer of custody. (Malek's Br. 15). Generally, we review the Superior Court's findings of fact for clear error, but exercise plenary review over its legal conclusions. *Jung*, 59 V.I. at 1057 (citing *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (V.I. 2012)). We review the Superior Court's custody determination for an abuse of discretion. *James I*, 62 V.I. at 559 ("[T]his Court reviews the Superior Court's custody determination for an abuse of discretion."); *Jung*, 59 V.I. at 1057; *Madir*, 53 V.I. at 630.

A. Substantial and Continuing Change in Circumstances

¶19 Malek contends that the Superior Court erred by considering a number of factual developments that occurred after the motion for modification had been filed—but before the ultimate decision—arguing that consideration of these developments violated her due process rights. (Malek's Br. 16–17). But Malek fails to cite any legal authority in support of this argument, and only makes one conclusory statement regarding this issue. *Id.* (alleging baldly that "[d]ue process prohibited the trial court from considering facts that occurred after the motion for

[6] In this respect, the custody order at issue in this appeal is no different from any other judgment disposing of all claims that have then been submitted for adjudication, as it is beyond dispute that the mere possibility that circumstances arising after the entry of an otherwise final judgment that might merit it being modified or re-opened at a later date as permitted by V.I. R. Civ. P. 59 and V.I. R. Civ. P. 60 does not affect the finality of such judgment at the time that it is entered.

modification had been filed"). Because this assertion is unsupported by argument or any citation to legal authority, Malek's due process argument is waived. V.I. R. APP. P. 22(m) (issues "unsupported by argument and citation to legal authority" are waived).

¶20 Malek also contends that the Superior Court abused its discretion by modifying physical custody, because none of the factual findings made by the court, individually or collectively, establish a substantial and continuing change in circumstances. (Malek's Br. 16–19). The party seeking to change custody has the burden of proving a change in circumstances requiring modification of the custody arrangement. *See Jung*, 59 V.I. at 1062–65. And the trial court must find that a substantial and continuing change in circumstances is in the best interests of the child. *See James I*, 62 V.I. at 562; *Jung*, 59 V.I. at 1066–67 (Cabret, J., dissenting).

¶21 The "best interests of the child" standard governs custody determinations in the Virgin Islands. *James I*, 62 V.I. at 558; *Jung*, 59 V.I. 1057–1058; *Madir*, 53 V.I. at 632. "[O]ur case law makes clear that when considering a custody dispute the Superior Court must (1) outline a set of relevant factors that it will use to determine the best interests of the child, and (2) explain how its findings of fact regarding those factors are supported by the evidence introduced at the hearing." *Tutein*, 60 V.I. at 721 (citing *Madir*, 53 V.I. at 634).

¶22 Regarding the first step under *Tutein*, the Superior Court outlined the factors it considered to determine the best interests of the child. The court explained that it considered factors such as the respective home environments of each parent and the impact relocation would have on the child's best interests. (J.A. 992). The court also identified other factors, such as the ability of each parent to nurture the child and the degree to which each has been the primary caretaker. *Id.* Further, the court looked for any evidence of domestic violence, sexual violence, child abuse and child

neglect. *Id.* The court also considered the willingness of the parents to provide a stable home for the child, as well as the recommendations of the psychologist and the guardian ad litem in this case, as well as other factors it determined were important to its determination of the best interests of the child in this matter. *Id.* Therefore, because the court properly outlined and explained the factors it used to determine the best interests of the child, the court sufficiently satisfied the first requirement under *Tutein*.

¶23 Next, we turn to the second *Tutein* element to determine whether the Superior Court sufficiently explained how its findings of fact were supported in the record and, if they are, whether those circumstances support the court's determination that substantial and continuing changes in circumstances required a modification of custody here. A finding of fact is clearly erroneous only where it "'(1) is completely devoid of minimum evidentiary support displaying some hue of credibility, or (2) bears no rational relationship to the supportive evidentiary data.'" *Jung*, 59 V.I. at 1062 (quoting *St. Thomas–St. John Board of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007)). Here the record shows that the Superior Court based its decision on the following factual findings: (1) the parties' relationship had grown increasingly more contentious, resulting in the inability to co-parent effectively; (2) the mother continued to make unilateral decisions regarding the child's care without consulting the father; (3) the mother manipulated and isolated the child, as well as obstructed her intellectual and emotional growth by abruptly removing her from daycare; (4) the child's attitude had changed from being happy to now angry, sad, fearful, frustrated, and uncertain; (4) the mother continued to interfere with the father's communication and parenting time; (5) the guardian *ad litem* concluded that the mother was the chief instigator of stress in the relationship and that the father demonstrated good parenting skills; (6) the mother had not benefitted from

online parenting classes; (7) Dr. Miller opined that the mother is under a significant amount of stress, and it is negatively affecting her parenting ability; (8) the father had a flexible working schedule and he provided information about a nearby school; (9) the father has a network of friends and stability unlike the mother, who no longer has the familial and financial support of her parents, and is unstable; (10) the minor child is under significantly more stress due to the chronic discord between her parents; (11) it is not in the best interest of the child to continue with the current physical custody arrangement; and (12) the guardian *ad litem* and Dr. Miller agreed it is in the best interest of the child to be placed in the physical custody of the father. (J.A. 988–992).

¶24 To the extent that Malek argues that the Superior Court's findings of fact were clearly erroneous, we are not persuaded. The record supports a finding that Malek manipulated and isolated the minor child. (J.A. 794). For instance, the child's guardian *ad litem* noted that she appeared to be coached, using words and phrases like "custody" and "no Tina" in apparent reference to Romano's significant other. (J.A. 795). Malek also removed the child from her daycare after the manager testified about her concerns about Malek's treatment of the child at a hearing in this matter. (J.A. 789). The court found that Malek continued to interfere with Romano's parenting time—a finding supported by both Romano's and the testimony of the guardian *ad litem* that Malek had substantially interfered with Romano's communication with the child. (J.A. 501). For instance, Malek only allowed Romano to visit with the child for three of the ten days he was authorized. (J.A. 790). Furthermore, Dr. Miller's report supported a finding that the parties' relationship had grown increasingly more contentious, resulting in the inability to co-parent effectively. (J.A. 434, 630). The court's finding that the child's attitude had changed from being happy to now angry, sad, fearful, frustrated, and uncertain is supported by the report of the guardian *ad litem*. (J.A. 786–

788). Moreover, the guardian *ad litem* testified that he believed that Malek is the chief instigator of stress in the relationship. (J.A. 794, 895). The court found that Malek did not benefit from online parenting classes—a finding supported by the testimony of the guardian *ad litem* that the parenting classes failed to resolve any of Malek's issues. (J.A. 517, 545).

¶25 Dr. Miller testified that a significant amount of stress adversely affected Malek's parenting skills, which would support the court's conclusion that her behavior has had detrimental effects on the child. (J.A. 859, 913, 995). The record also supports the finding that Romano's life had stability—Dr. Miller's evaluation report noted that "Mr. Romano's life had been relatively stable and uneventful." (J.A. 840). Moreover, Dr. Miller's report supported a finding that Romano has a flexible work schedule and a strong network of friends. (J.A. 840). Romano's testimony supports the finding that Romano provided schooling plans for the minor child if he were to be granted physical custody. (J.A. 641). Dr. Miller's testimony supported an inference that Malek was unstable. (J.A. 913–920). Also, the court's finding that Malek no longer has familial and financial support of her parents is supported by Dr. Miller's evaluation report. (J.A. 859). Finally, the testimony and evaluations from the guardian *ad litem* and Dr. Miller also support the court's finding that it is in the best interest of the child to be placed in the physical custody of Romano. (J.A. 905–906, 961–962). Accordingly, because they are supported by evidence in the record, the court's findings of facts in this case were not clearly erroneous. Furthermore, the Superior Court's analysis satisfies the two-prong test outlined in *Tutein* because it identified the set of relevant factors that the court used to determine the best interests of the minor child, and it explained how its findings of facts are supported by the evidence introduced. (J.A. 992). Therefore, the Superior

Court did not abuse its discretion in determining that a substantial and continuing change in circumstances warranted a modification of the custody arrangement.

¶26 Malek also contends that the Superior Court abused its discretion by failing to set out a permanent and unambiguous scheme governing custody of the child. *See James I*, 62 V.I. at 564. (Malek's Br. 19–20). In *James I*, we determined that a trial court's custody order was ambiguous where it did not state custody arrangements for the child beyond August 2018, even though the child would be a minor until 2027. *Id.* at 561-62. The custody order in this matter does set out a permanent and unambiguous custody arrangement, which grants Romano physical custody of the minor child. And the order provides visiting time and details concerning the custody arrangement moving forward. (J.A. 981–984). Accordingly, *James I* is inapposite to this case. Instead, because there were no remaining issues related to the custody arrangement, the Superior Court's custody order does not constitute an abuse of discretion.

IV. CONCLUSION

¶27 We conclude that the Superior Court's December 1, 2016 order is a final order within the meaning of 4 V.I.C. § 32(a) because it was made after a full adversarial hearing, and it disposed of all the issues then pending before the court. Additionally, because the record contains ample evidence supporting the court's findings of fact, we cannot conclude either that those findings were clearly erroneous, or that the Superior Court abused its discretion in entering its order modifying custody. Accordingly, for the reasons discussed, we affirm the order of the Superior Court granting physical custody of the minor child to Romano.

Dated this 16th day of May 2019. **BY THE COURT:**

/s/ Maria M. Cabret
MARIA M. CABRET
Associate Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court