

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBIN W. MARTIN,	§
	§ No. 409, 2007
Respondent Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for New Castle County
LUCY C. HACKETT,	§ File No. CN03-08014
	§
Petitioner Below-	§
Appellee.	§

Submitted: April 4, 2008
Decided: April 23, 2008

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER¹

This 23rd day of April 2008, upon consideration of the briefs on appeal, the record below, and the Family Court’s April 2, 2008 report following remand, it appears to the Court that:

(1) The respondent-appellant, Robin W. Martin (“Father”), filed an appeal from the Family Court’s June 20, 2007 custody and visitation order. We remanded the matter to the Family Court for clarification of that order. Because the Family Court acknowledges that the order contains an error that

¹ The Court sua sponte assigned pseudonyms to the parties by Order dated August 6, 2007. Supr. Ct. R. 7(d).

should be corrected, we reverse the judgment of the Family Court and again remand this matter to the Family Court for correction of the order.

(2) The petitioner-appellee, Lucy C. Hackett (“Mother”), filed a petition in the Family Court requesting Father to show cause why he should not be found in contempt of the Family Court’s December 7, 2006 order governing custody of and visitation with the parties’ minor son, Robin W. Martin, Jr. The order, which was consented to by the parties, provides that Mother and Father will have joint legal custody of Robin Jr., Mother will have primary residential custody, Father will have visitation every week-end, and Father will provide all transportation to and from visitation.

(3) In her petition, Mother alleged that Father, who lives in Wilmington, refused to drive Robin Jr. back to her house in Dover after a visitation because the price of gas was too high. Mother’s petition also requested the Family Court to modify its December 7, 2006 order to reduce visitation from every week-end to every other week-end.

(4) A hearing on Mother’s petition was held on June 20, 2007. The hearing transcript reflects that, although Father had asked Mother to share the expense of gas, he never actually failed to return Robin Jr. after a visitation. Finding no violation of the Family Court order, the judge told Mother he would have to dismiss her petition.

(5) Mother then requested that language be added to the December 7, 2006 order to “specify hours for [Robin Jr.] to be dropped off.” The judge obtained the parties’ consent to specify that, during the school year, Father would have visitation with Robin Jr. from Friday after school until Sunday at 7:00 p.m. and, during summer vacation, until Sunday at 8:00 p.m. The judge then stated, “We will modify the Order to put in those specific times of pick up and return.” There was no discussion concerning changing the visitation schedule from every week-end to every other week-end.

(6) However, the Family Court’s written order dated June 20, 2007 states as follows: “At the parties’ request, the Court modifies the Order of 12/07/2006 to provide specific hours for pick-up and return. The modified Order shall provide that Father shall have visitation every other weekend from Friday after school until Sunday at 7:00 p.m. during the school year and until Sunday at 8:00 p.m. during the summer break from school.” (Emphasis added.)

(7) In this appeal, Father claims that the Family Court’s written order is inconsistent on its face because Mother’s petition for a rule to show cause, which contained the request for a change in the visitation schedule, was dismissed and, furthermore, is inconsistent with the hearing transcript, which does not reflect any factual findings that would support a change in

the visitation schedule. Mother, in her answering brief, states that she does not believe the Family Court judge made a mistake and implies that she intends to make Robin Jr. available for visitation only on alternating weekends.

(8) On March 13, 2008, we remanded this matter to the Family Court for clarification of its June 20, 2007 order. In its report following remand, which was filed in this Court on April 4, 2008, the Family Court agreed, after listening to the tape of the hearing and reviewing its written order, that it made an “unintentional error” when it changed Father’s visitation schedule with Robin Jr. from every weekend to every other weekend. The Family Court further recommended that the order be changed to read as follows: “Father shall have visitation every weekend from Friday after school until Sunday at 7:00 p.m. during the school year, and until Sunday at 8:00 p.m. during the summer break from school.” We agree that the June 20, 2007 order should be changed in accordance with the Family Court’s recommendation.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is REVERSED and this matter is REMANDED WITH INSTRUCTIONS to the Family Court to correct its June 20, 2007 order in

accordance with the recommendation contained in its report following remand. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs
Justice