

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CYNTHIA FRANK, <sup>1</sup>	§
	§ No. 27, 2013
Petitioner Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for New Castle County
RACHEL STEWART,	§ File No. CN10-04142
	§ Petition No. 11-01217
Respondent Below-	§
Appellee.	§

Submitted: May 9, 2013  
Decided: May 24, 2013

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

**ORDER**

This 24th day of May 2013, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The petitioner-appellant, Cynthia Frank, filed an appeal from the Family Court's December 10, 2012 order denying her request for unsupervised visitation with her granddaughter, Caroline. The respondent-appellee, Rachel Stewart, Caroline's mother, has moved to affirm the

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<sup>1</sup> The Court *sua sponte* assigned pseudonyms to the parties by Order dated January 22, 2013. Supr. Ct. R. 7(d). The Court hereby also assigns a pseudonym to the minor child.

judgment of the Family Court on the ground that it is manifest on the face of the opening brief that this appeal is without merit.<sup>2</sup> We agree and affirm.

(2) The record before us reflects that, in January 2011, Frank filed a petition for third-party/grandparent visitation in the Family Court. In February 2012, the petition was consolidated with Stewart's petition for custody and the petition of Caroline's father for visitation. In March 2012, the Family Court entered a temporary order permitting Frank visitation with Caroline during the father's scheduled visitation at the Family Visitation Center. Both petitions were then consolidated for purposes of a review hearing in the Family Court on September 6, 2012. On December 10, 2012, the Family Court issued its order denying Frank's petition for unsupervised visitation with Caroline. This appeal followed.

(3) In her appeal, Frank claims that the Family Court erred and abused its discretion when it denied her petition for unsupervised visitation with her granddaughter.

(4) In order to obtain third-party visitation, the petitioner must first establish by a preponderance of the evidence that such visitation would be in the child's best interests pursuant to Del. Code Ann. tit. 13, §722.<sup>3</sup> The Family Court must then find one of the following factors: a) the parent

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<sup>2</sup> Supr. Ct. R. 25(a).

<sup>3</sup> Del. Code Ann. tit. 13, §2412(a) (1).

consents to the third-party visitation; b) the child is dependent, neglected or abused in the parent's care; c) the parent is deceased; or d) the parent objects to the visitation; however, the petitioner has demonstrated, by clear and convincing evidence, that the objection is unreasonable; and has demonstrated, by a preponderance of the evidence, that the visitation will not substantially interfere with the parent/child relationship.<sup>4</sup>

(5) We have reviewed the entire transcript of the September 6, 2012 hearing in the Family Court. The transcript reflects that Caroline has significant medical issues, including severe stomach and breathing problems. She must eat a specialized diet and has doctor's appointments twice a week. As a result of Caroline's stomach problems, called fetal gastroschisis, she is at risk of an intestinal blockage or hernia. As a result of her breathing problems, called super ventricular tachycardia, she must be treated with a nebulizer two to six times a day and takes five different medications. Without the medications, she risks a severe asthma attack.

(6) At the hearing, Frank presented no evidence that she had knowledge of Caroline's specialized diet or her various medications. She presented no evidence that she would know what to do in the event of a medical emergency. In its December 10, 2012 decision, the Family Court

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<sup>4</sup> Del. Code Ann. tit. 13, §2412(a) (2).

found that Frank had not demonstrated by a preponderance of the evidence that unsupervised visitation was in Caroline's best interests. Nor had Frank demonstrated by clear and convincing evidence that Stewart's objection to her having unsupervised visitation with Caroline was unreasonable.

(7) On appeal from a Family Court decision, this Court reviews the facts and the law as well as the inferences and deductions made by the Family Court.<sup>5</sup> This Court will not disturb the Family Court's findings of fact unless they are clearly wrong and justice requires that they be overturned.<sup>6</sup> Conclusions of law are reviewed *de novo*.<sup>7</sup> If the Family Court has correctly applied the law, our standard of review is abuse of discretion.<sup>8</sup>

(8) Our review of the submissions of the parties, the Family Court's December 10, 2012 decision and the complete transcript of the September 6, 2012 hearing does not reveal any error or abuse of discretion on the part of the Family Court. We, therefore, conclude that the Family Court properly determined that, given Caroline's numerous medical problems and Frank's lack of knowledge about them, Frank's petition for unsupervised visitation should be denied.

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<sup>5</sup> *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

<sup>6</sup> *Id.*

<sup>7</sup> *Mundy v. Devon*, 906 A.2d 750, 752 (Del. 2006).

<sup>8</sup> *Forrester v. Forrester*, 953 A.2d 175, 179 (Del. 2008).

(9) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice