

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TAMARA CASEY CHURCH, ¹	§
	§ No. 1, 2012
Petitioner Below,	§
Appellant,	§ Court Below—Family Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§
GARY E. FLOWERS,	§ File No. CN10-03703
	§ Petition No. 11-34583
Respondent Below,	§
Appellee.	§

Submitted: September 21, 2012

Decided: November 15, 2012

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

ORDER

This 15th day of November 2012, upon consideration of the appellant’s opening brief and the record on appeal,² it appears to the Court that:

(1) The appellant, Tamara Casey Church (“Mother”), appeals from a Family Court order dated December 12, 2011 that dismissed her petition for custody on the ground that the Commonwealth of Pennsylvania had jurisdiction over the parties’ custody and visitation issues. We find no merit to Mother’s appeal. Accordingly, we affirm the order of the Family Court.

¹ The Court assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

² The appellee chose not to file an answering brief on appeal. Accordingly, the parties were informed that the matter would be decided on the basis of the opening brief and the record below.

(2) In June 2010, Mother requested the Family Court of Delaware to register a Pennsylvania court's foreign custody order, which awarded the parties joint custody of their children. Thereafter, Mother filed a petition to modify the custody order. The Family Court dismissed Mother's petition on August 3, 2010 on the grounds that Father lived in Pennsylvania, and therefore, the Pennsylvania court had exclusive, continuing jurisdiction to modify its own custody order. In 2011, the Pennsylvania court modified its custody order and granted Father sole physical custody of the children. On November 8, 2011, Mother filed a petition for custody in Delaware accompanied by a motion to bypass mediation. On December 12, 2011, the Family Court denied Mother's motion to bypass mediation and dismissed her petition for custody, on the ground that the Pennsylvania court retained jurisdiction over the parties' custody and visitation issues. This appeal followed.

(3) After careful consideration, it is manifest that the Family Court's order must be affirmed. Section 1922 of Title 13 of the Delaware Code pertinently provides that the Family Court in Delaware "may not modify a child custody determination made by a court of another state unless" Delaware has jurisdiction to make the initial custody determination, and the foreign court determines either that it no longer has exclusive, continuing jurisdiction, or that Delaware would be a

more convenient forum.³ In this case, the Pennsylvania court entered the original custody order, Father has continuously resided in Pennsylvania, and the Pennsylvania courts have not renounced jurisdiction over the parties' custody and visitation issues. Accordingly, we find no legal error in the Family Court's dismissal of Mother's petition on the ground that Pennsylvania had continuing jurisdiction over the matter.⁴

NOW, THEREFORE, IT IS ORDERED that the order of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³ DEL. CODE ANN. tit. 13, § 1992(1) (2009).

⁴ *See Trader v. Darrow*, 630 A.2d 634, 636-38 (Del. 1993) (holding that under the UCCJA, predecessor to the UCCJEA, the Delaware Family Court did not have jurisdiction to modify a Maryland custody order where the father continued to reside in Maryland, and the Maryland court had not conceded its continuing jurisdiction to Delaware).