

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NATALIE HOWARD,)
) No. 353, 2010
 Petitioner Below,)
 Appellant,) Court Below: Family Court of
) the State of Delaware in and
 v.) and for Kent County
)
 SCOTT M. HOWARD,) File No. CK06-02670
)
 Respondent Below,)
 Appellee.)

Submitted: October 27, 2010

Decided: December 21, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 21st day of December, 2010, it appears to the Court that:

(1) Natalie and Scott Howard¹ entered a consent order on February 22, 2007 agreeing to joint custody of their two sons and primary placement of their sons with Scott. In late 2009, Natalie petitioned to modify the custody order, seeking primary or shared placement. After a hearing, the Family Court denied Natalie's petition. Natalie now appeals, and we AFFIRM.

(2) Natalie and Scott Howard married in 1997 and have two sons— Daniel, born in 1998, and Alexander, born in 2002. Natalie and Scott separated on

¹ Pursuant to Supreme Court Rule 7(d), we have assigned pseudonyms to both parties and both of their sons.

December 12, 2005. They entered a consent order on February 22, 2007, agreeing to joint legal custody of their sons with primary placement at Scott's residence. The consent order specified Natalie's visitation rights. Natalie filed successive Petitions to Modify the 2007 Custody Order on November 5 and December 28, 2009. She sought primary or, alternatively, shared placement of their sons. Scott sought to continue the primary placement arrangement outlined in their consent order. After a hearing on the matter, the Family Court denied Natalie's petitions, determining it was in the best interest of the two boys for the consent order custody and placement arrangement to continue. Natalie now appeals that judgment.

(3) To the extent issues on appeal implicate rulings of law, we review them *de novo*.² To the extent issues on appeal implicate rulings of fact, we conduct a limited review of the factual findings of the Family Court judge to assure that they are sufficiently supported by the record and are not clearly wrong.³ We will not disturb inferences and deductions of the judge that are supported by the record and are the product of an orderly and logical deductive process.⁴ If the judge correctly applied the law, our review is limited to abuse of discretion.⁵

² *Stewart v. Dep't of Servs. For Children, Youth, and Their Families*, 991 A.2d 750, 755 (Del. 2010).

³ *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

⁴ *Id.*

(4) Natalie’s first argument is that the judge erred in proceeding on the belief that she was requesting sole custody and primary placement of the minor children. When a Family Court judge misstates a fact, but the misstated fact does not weigh significantly in his best interest analysis, the misstatement is considered harmless error.⁶ Here, the judge misstated the nature of Natalie’s request in his order: “Mother has petitioned to modify the Consent Order of the parties from joint custody with placement with Father, to sole custody and placement with her.”⁷ This misstatement, however, was insignificant to his best interest analysis because he based his decision primarily on maintaining the “stable placement that the children ha[d] adjusted to for several years.”⁸ In considering Natalie’s petition, regardless of whether it asked for joint or sole custody, the judge concluded that “change would not be in the children’s best interest.”⁹ Therefore, the judge’s misstatement was harmless error.

(5) Natalie’s second argument is that the judge erred in denying shared placement of the children. Specifically, she challenges the judge’s best interest

⁵ *Id.*

⁶ *See Hall v. Wakley*, 950 A.2d 659, 2008 WL 2175252, at *4 (Del. May 23, 2008) (TABLE).

⁷ Appendix to Op. Br. at A-187.

⁸ *Id.* at A-192.

⁹ *Id.*

analysis. Under 13 *Del. C.* § 722(a), when considering custody and residential arrangements for children, Family Court judge must determine what is in the best interest of the children in light of eight specifically identified best interest factors.¹⁰ In this case, the judge enumerated each of the best interest factors in his order and recounted the evidence that he deemed relevant under each factor.¹¹ He also weighed the testimony and made factual findings, which guided his decision to continue the consent order's placement arrangement. He did not abuse his discretion by performing the best interest analysis and denying Natalie's petition.

¹⁰ 13 *Del. C.* § 722(a). Best interests of child.

(a) The Court shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child. In determining the best interests of the child, the Court shall consider all relevant factors including:

- (1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;
- (2) The wishes of the child as to his or her custodian or custodians and residential arrangements;
- (3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
- (4) The child's adjustment to his or her home, school and community;
- (5) The mental and physical health of all individuals involved;
- (6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title;
- (7) Evidence of domestic violence as provided for in Chapter 7A of this title; and
- (8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

¹¹ Appendix to Op. Br. at 188–90.

(6) Finally, Natalie contends that the judge erred by failing to consider the Family Court Contact Guidelines. These Guidelines provide, in relevant part:

Recent Child Development research indicates that children accustomed to interaction with both parents on a daily basis should continue to have regular and frequent contact. The Court's goal is to have the children spend as much quality time with each parent as possible.¹²

The Guidelines are not a substitute for the statutory best interest analysis required by Section 722(a), and the judge's decision not to follow the Guidelines' preference for shared residential placement is not an independent basis for reversal.¹³ The judge correctly applied the best interest analysis pursuant to Section 722(a), and did not abuse his discretion by maintaining joint legal custody with the boys primarily residing at Scott's residence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹² *Ross v. Ross*, 992 A.2d 1237, 2010 WL 1404220, at *4 (Del. Apr. 7, 2010) (TABLE).

¹³ *Id.* at *4 n.14.