

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BERNARD M. PERRY, <sup>1</sup>	§
	§ No. 541, 2010
Petitioner/Respondent Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for New Castle County
RUTH ALEXANDER,	§ File No. CN09-02441
	§ Petition No. 09-11052
Respondent/Petitioner Below-	§
Appellee.	§

Submitted: April 22, 2011

Decided: June 6, 2011

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

**ORDER**

This 6th day of June 2011, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The appellant, Bernard M. Perry, filed an appeal from the Family Court's June 2, 2010 custody order and its July 29, 2010 order denying his motion for reargument. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that Perry and appellee Ruth Alexander are the biological parents of two minor children---Nancy, born on

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<sup>1</sup> The Court *sua sponte* assigned pseudonyms to the parties by Order dated August 25, 2010. Supr. Ct. R. 7(d). We hereby also assign pseudonyms to the minor children of the parties.

January 7, 1995, and Nathan, born on June 19, 2002. On March 30, 2009, Perry filed a petition for sole custody of Nancy and Nathan. On April 30, 2009, Alexander filed a response to the petition and a counterclaim requesting joint legal custody and that the children's primary residence remain with her.<sup>2</sup> On July 31, 2009, Perry requested a custody evaluation with Samuel Romirowsky, Ph.D., which the Family Court granted by order dated August 11, 2009.

(3) On March 2, 2010, the Family Court, on Perry's motion for emergency *ex parte* relief, issued an order prohibiting contact between Alexander's boyfriend, John Graham,<sup>3</sup> and the children. Perry alleged that Graham and Alexander were cohabiting and that Graham had pleaded guilty to a sexual offense stemming from an incident in Maryland in 1998. At a hearing later that month, the Family Court continued the no-contact provision of the order.

(4) On May 6, 2010, the Family Court held a full hearing on Perry's March 30, 2009 petition for custody and Alexander's April 30, 2009 answer and counterclaim. Alexander was represented by counsel. Both

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<sup>2</sup> An interim order dated June 8, 2009 had established joint legal custody and primary residence with Alexander.

<sup>3</sup> We have assigned a pseudonym to Alexander's boyfriend.

parties, as well as Graham, testified at the hearing. In addition, the Family Court interviewed Nancy *in camera*.<sup>4</sup>

(5) The testimony presented at the hearing established the following. Perry lives in a five-bedroom home in Bear, Delaware. He rents the basement and at least one upstairs bedroom to individuals he located on Craigslist. Perry testified that he can provide a better home environment for the children than Alexander. He also stated that Alexander has been an abusive and neglectful parent. Finally, Perry stated that Alexander's older son from a previous relationship has a drug problem that was never appropriately addressed, casting doubt on her ability to be a good parent.

(6) Nancy's interview with the Family Court revealed that she does not have a good relationship with her father. She views him as controlling and interested primarily in finances rather than relationships. For example, Nancy stated that her father initiated the custody action primarily because he did not want to pay child support. Nancy also stated that she was uncomfortable with the strangers living in her father's house and worried that she would have no privacy if she stayed there. Perry acknowledged that his relationship with Nancy was distant and that he had not made any

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<sup>4</sup> The Family Court declined to interview Nathan because of his age and maturity level.

arrangements for counseling. Although Dr. Romirowsky had completed a custody evaluation, it was not submitted at the hearing.

(7) Alexander lives in a three-bedroom home in Middletown, Delaware. The home is located on the same street as Alexander's sister's home. The children spend a lot of time with their maternal aunt and her two children. Alexander lives alone with her children, but has a relationship with Graham, who has taken an active role in the children's lives. According to Nancy, the children have a good relationship with him. According to Graham, he has established a healthy relationship with both children and he encourages Nancy to keep in touch with her father. Both children are well-adjusted to their home and school. Alexander has been the children's primary caretaker and has taken responsibility for managing all of the children's activities and medical care. Perry, on the other hand, has not fully exercised his visitation rights with the children.

(8) At the hearing, Graham testified at length about his 1998 guilty plea. His Maryland sentencing order was admitted into evidence. As reflected in the order, he pleaded guilty to a fourth degree sexual offense, which did not require him to register as a sex offender. Graham does not

seek custody of the children, nor does he reside in Alexander's home.<sup>5</sup> Graham testified at the hearing that the incident that led to his guilty plea, a sexual encounter with the minor sister of his girlfriend, occurred during a time in his life when he was abusing alcohol and he has no recollection of it. Since that time, Graham has completed treatment and abstains from drinking alcohol.

(9) On June 2, 2010, the Family Court issued its order establishing joint legal custody and designating Alexander as the primary residential parent. In its order, the Family Court found that Perry was not credible with respect to his motivation for requesting sole custody of the children. The Family Court placed great weight on its interview with Nancy, whose relationship with Perry was quite strained. The Family Court also noted that Perry's work schedule is unpredictable, which would prevent him from fully participating in his children's school and extracurricular activities. Finally, the Family Court stated that Graham's testimony concerning his guilty plea was credible and that he would pose no threat to the children. Moreover, he demonstrated genuine concern for the children's well-being. Taking into consideration all relevant factors, including the best interests factors

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<sup>5</sup> Under Del. Code Ann. tit. 13, §724A, there is a rebuttable presumption that no sex offender may be awarded sole or joint custody of a child, no child may primarily reside with a sex offender, and no sex offender may have unsupervised visitation with a child.

contained in Del. Code Ann. tit. 13, §722(a), the Family Court ordered that joint legal custody of the children would be maintained, Alexander would be awarded primary residential custody and Perry would have alternating week-end visitation with Nathan. Counseling for Perry and Nancy was ordered. Finally, the no-contact order between Graham and the children was lifted.

(10) Following issuance of the Family Court's custody decision, Perry filed a motion for reargument, which the Family Court denied on July 29, 2010. In its order, the Family Court denied Perry's request that it consider additional evidence not presented at the hearing and denied Perry's motion for reargument on the ground that Perry had not demonstrated in his motion that it had misinterpreted the facts or overlooked a controlling legal principle in its custody order.<sup>6</sup>

(11) In his appeal, Perry claims that the Family Court's ruling awarding primary residential custody to Alexander and its finding that Graham does not pose a threat to the children's well-being constituted an abuse of discretion based upon numerous errors of fact and law.

(12) To the extent that issues on appeal from a custody order of the Family Court implicate rulings of law, we review them *de novo*.<sup>7</sup> To the extent that such issues implicate findings of fact, we conduct a limited

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<sup>6</sup> Fam. Ct. Civ. R. 59(e).

<sup>7</sup> *Stewart v. DSCYF*, 991 A.2d 750, 755 (Del. 2010).

review of the Family Court's factual findings to assure that they are sufficiently supported by the record and are not clearly wrong.<sup>8</sup> We will not disturb inferences and deductions made by the Family Court that are supported by the record and are the product of an orderly and logical deductive process.<sup>9</sup> If the Family Court correctly applied the law, our review is limited to abuse of discretion.<sup>10</sup>

(13) We have carefully reviewed the record in this case, including the transcripts of the May 6, 2010 custody hearing and the transcript of the Family Court's interview with Nancy. We are satisfied that the factual findings contained in the Family Court's June 2, 2010 custody order are fully supported by the record. Moreover, we conclude that the Family Court properly weighed the best interests factors of Del. Code Ann. tit. 13, §722(a) and committed no legal error or abuse of discretion. To the extent that the Family Court misstated facts in its analysis, as argued by Perry, we conclude that any such misstatement did not weigh significantly in the Family Court's best interests analysis and, therefore, constitutes harmless error.<sup>11</sup> We also are satisfied that the Family Court properly denied Perry's motion for reargument and, therefore, affirm its July 29, 2010 order.

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<sup>8</sup> *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Hall v. Wakley*, Del. Supr., No. 540, 2007, Jacobs, J. (May 23, 2008).

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

BY THE COURT:

/s/ Randy J. Holland  
Justice