

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JENNIFER L. TAYLOR, ¹	§
	§
Respondent Below- Appellant,	§ No. 200, 2011
	§
v.	§
	§ Court Below—Family Court
	§ of the State of Delaware,
DONALD A. DAVIS,	§ in and for Sussex County
	§ File No. CS02-03694
Petitioner Below- Appellee.	§ Petition No. 10-11856
	§

Submitted: September 23, 2011
Decided: November 10, 2011

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

ORDER

This 10th day of November 2011, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The parties are the parents of a nine-year-old daughter, Sarah. Mother filed this appeal from the Family Court's order granting Father's petition for a modification of visitation. After careful review, we find no error or abuse of discretion in the Family Court's decision. Accordingly, the judgment below shall be affirmed.

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

(2) The record reflects that, since Sarah's birth in 2002, the parties have entered into several consent orders concerning custody and visitation. The most recent order was entered by consent on April 29, 2009. Among other things, the parties agreed to joint custody of Sarah with primary residential placement with Mother. Father was granted visitation with Sarah every other weekend on Saturday and Sunday from 10 a.m. to 7 p.m. each day but not overnight. Thereafter, Father sought a modification of the visitation schedule to allow him to keep Sarah overnight on certain occasions. Mother opposed any overnight visitation.

(3) The Family Court held a hearing in March 2011, at which both parties testified. The Family Court also interviewed Sarah, who indicated that she would like to have overnight visits with Father. Following the hearing, the Family Court modified the visitation schedule, among other things, to permit Father to have overnight visitation with Sarah for two nonconsecutive weeks in the summer and to allow Father to share Sarah's winter and spring breaks from school equally with Mother. Father's weekend visitation would remain the same as before with no overnight visits. The Family Court expressly granted Father expanded visitation with Sarah on the condition that Sarah have her own bedroom while visiting overnight. This contingency was

imposed due to the crowded condition in Father's three-bedroom home when other children were visiting.² Mother appeals this ruling.

(3) Our standard of review of a decision of the Family Court extends to a review of the facts and law, as well as inferences and deductions made by the trial judge.³ We have the duty to review the sufficiency of the evidence and to test the propriety of the findings.⁴ Findings of fact will not be disturbed on appeal unless they are determined to be clearly erroneous.⁵ We will not substitute our opinion for the inferences and deductions of the trial judge if those inferences are supported by the record.⁶ Under Delaware law, the Family Court may modify a visitation order at any time if the best interests of the child, as that standard is set forth in 13 Del. C. § 728(a),⁷ would be served in doing so.⁸

² Father and his wife have two daughters living in their home full-time. Father also has two other daughters from a prior relationship who visit every other weekend. Father's wife also has two sons who live with her and Father on alternate weeks. Thus, between them, Father and his wife have seven children, including Sarah.

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

⁴ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

⁵ *Mundy v. Devon*, 906 A.2d 750, 752 (Del. 2006).

⁶ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d at 1204.

⁷ DEL. CODE ANN. tit. 13, § 728(a) (2009) provides in part, "The Court shall determine, whether the parents have joint legal custody of the child or 1 of them has sole legal custody of the child, with which parent the child shall primarily reside and a schedule of visitation with the other parent, consistent with the child's best interests and maturity, which is designed to permit and encourage the child to have frequent and meaningful contact with both parents unless the Court finds, after a hearing, that contact of the child with 1 parent would endanger the child's physical health or significantly impair his or her emotional development...."

⁸ DEL. CODE ANN. tit. 13, § 729(a) (2009).

(4) In her opening brief on appeal, Mother contends that the Family Court's order granting Father limited and contingent overnight visitation is not supported by the law or the facts and is not the product of logical and deductive reasoning. We disagree.

(5) In reviewing the record, it is clear that the Family Court considered all of the evidence presented in the case and applied the best interests of the child standard to the facts. We are satisfied that the findings made by the Family Court are sufficiently supported by the record, and we find no basis to disturb those findings on appeal. Moreover, the Family Court properly applied the law to the facts in concluding that allowing Father limited and contingent overnight visitation was in Sarah's best interest. Accordingly, we affirm the judgment below on the basis of, and for the reasons set forth in, the Family Court's well-reasoned opinion dated March 22, 2011.

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

BY THE COURT:

/s/ Randy J. Holland
Justice