IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL MARTIN,[1]	§	
	§	No. 317, 2021
Respondent Below,	§	
Appellant,	§	
	§	Court Below–Family Court
v.	§	of the State of Delaware
	§	
IVY LYNCH,	§	
	§	File No. CN18-05875
Petitioner Below,	§	Petition Nos. 18-30970, 20-03579
Appellee.	§	

Submitted: October 14, 2022
Decided: January 5, 2023

Before **VALIHURA**, **VAUGHN**, and **TRAYNOR**, Justices.

ORDER

After consideration of the parties' briefs and record on appeal, it appears to the Court that:

(1) The appellant, Daniel Martin (the "Father"), filed this appeal from a September 10, 2021 Family Court child-custody order. Having reviewed the parties' respective arguments, we affirm the Family Court's judgment.

(2) The Father and the appellee, Ivy Lynch (the "Mother"), are the parents of a son, born in 2013 (the "Child"). In October 2018, the Mother filed a petition for custody, seeking primary residential placement and sole legal custody of the

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

Child. The Father field a counterclaim, seeking joint legal custody and shared placement of the Child. At the time the petitions were filed, the parties shared joint legal custody of the Child, who primarily resided with the Mother, and the Father enjoyed weekly overnight visitation with the Child under a February 15, 2019 protection-from-abuse ("PFA") consent order (the "PFA Consent Order"). On July 12, 2019, the Family Court entered an interim consent custody order (the "Interim Custody Order"), under which the parties agreed to: (i) follow (with minor modifications) the visitation schedule set forth in the PFA Consent Order, (ii) use the Family Wizard app to communicate and exchange information regarding the Child's welfare, and (iii) enroll the Child in counseling with an agreed-upon counselor. The Family Court set a review hearing for January 10, 2020.

(3) In September 2019, the parties agreed that the Child would see Pali Payne, MSSW, LCSW, for counseling. Shortly thereafter, the Mother filed a motion to terminate the Father's participation in the Child's therapy sessions. In support of the motion, the Mother alleged that the Father (i) would not leave the Child alone with Ms. Payne, (ii) argued with Ms. Payne in front of the Child, and (iii) had used a cell phone to record the Child's counseling sessions without Ms. Payne's consent. Over the Father's objection, the Family Court granted the motion, prohibiting the Father from participating in the Child's counseling without the specific consent of Ms. Payne.

(4) On January 10, 2019, the Family Court continued the review hearing on the custody petitions until May 20, 2020, to allow the Mother to retain Dr. Samuel Romirowsky to conduct a custody evaluation. On February 6, 2020, the Father filed a petition for a rule to show cause alleging that the Mother took the Child to a school function in violation of the Interim Custody Order. On March 10, 2020, a Family Court commissioner found that the Father had violated the PFA Consent Order and extended it through May 1, 2020.[2]

(5) In light of in-person restrictions related to the COVID-19 pandemic, the parties agreed to continue the May 2020 hearing because Dr. Romirowsky had been unable to perform any home visits and complete his custody evaluation. Dr. Romirowsky completed his custody evaluation in late October 2020. In November 2020, the Family Court granted the Father's request for a continuance to allow the Father, who objected to Dr. Romirowsky's findings and recommendations, to retain Dr. Harris Finkelstein to conduct an independent custody evaluation.

(6) On December 15, 2020, the Family Court granted the Father's request to change the location of the custody exchanges (the "December 2020 Order"). In February 2021, the Mother filed a motion for interim relief, alleging, in relevant part, that the Father (i) was misconstruing the December Order to change the time (in

[2] The Court notes that the PFA proceedings were filed under a different petition number and that the documents related to the PFA proceedings—aside from those supplied by the Father in his appendix—are not part of the record on appeal.

addition to the location) at which the custody exchanges were to take place, (ii) was not using the Family Wizard app to communicate with the Mother, and (iii) refused to send the Child to school after the Child's school resumed in-person instruction. In March 2021, the Father filed a motion for interim relief, seeking additional overnight visitation. On April 2021, the Family Court granted in part and denied in part the Mother's motion for interim relief and denied the Father's motion. The court specifically reserved judgment until a full hearing on the merits regarding (i) whether remote or hybrid learning was in the Child's best interest and (ii) what visitation schedule was in the Child's best interest.

(7) The Family Court held a full hearing on the merits of the custody and rule to show cause petitions over four days in May and June 2021. On September 10, 2021, the Family Court issued a written decision (i) awarding the Mother primary placement of the Child and sole decision-making authority in the areas of healthcare and academics and (ii) establishing a visitation schedule for the Father.[3] The Father appeals.

(8) Our 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.[4] Our duty is to review the sufficiency of the evidence and to test the propriety of the

[3] The decision also denied the Father's petition for a rule to show cause, the denial of which is not at issue on appeal.

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

findings.[5] Findings of fact will not be disturbed on appeal unless they are determined to be clearly erroneous.[6] We will not substitute our opinion for the inferences and deductions of the trial judge if they are supported by the record.[7] Finally, "[w]hen the determination of facts turns on a question of credibility and the acceptance or rejection of the testimony of witnesses appearing before [the Family Court], those findings of the [court] will be approved upon review, and we will not substitute our opinion for that of the trier of fact."[8]

(9) Under Delaware law, the Family Court is required to determine legal custody and residential arrangements for a child in accordance with the best interests of the child.[9] The criteria for determining the best interests of the child are set forth in 13 *Del. C.* § 722(a). The Family Court must tailor its custody order to "permit and encourage the child to have frequent and meaningful contact with both parents" unless it finds that the child's contact with one parent would endanger the child's physical health or impair his emotional development.[10]

(10) On appeal, the Father's arguments may be fairly summarized as follows: (i) the Family Court's decision to give the Mother sole decision-making

---

[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] 13 *Del. C.* § 722(a) ("The [Family] Court shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child.").
[10] 13 *Del. C.* § 728(a).

power in the areas of the Child's healthcare and academics was not supported by the evidence, (ii) the Family Court's finding that custody exchanges were contentious was not supported by the evidence, (iii) the Family Court's reliance on the PFA Consent Order and the Father's alleged history of domestic violence was erroneous, and (iv) Dr. Romirowsky's custody evaluation was biased in favor of the Mother. We find no merit to the Father's arguments.

(11) As a preliminary matter, to the extent that the Father argues that testimony presented at the hearing does not support the Family Court's findings, this Court is unable to review his claims because the Father failed to provide a copy of the transcript of the hearing. Supreme Court Rule 14 provides that the appellant is required to provide the Court with "such portions of the trial transcript as are necessary to give this Court a fair and accurate account of the context in which the claim of error occurred [as well as] a transcript of all evidence relevant to the challenged finding or conclusion."[11] Although the Father designated the transcripts from the four-day custody hearing in his initial notice of appeal, the Father later amended his notice of appeal, eliminating his request for the transcripts and noting that transcripts of the hearing were not necessary because the parties' respective custody evaluations were part of the record. But in the absence of the transcripts of

[11] Del. Supr. Ct. R. 14(e).

the custody hearing, this Court is largely unable to review the Father's claims of error regarding the Family Court's factual findings.[12]

(12) The Father argues that exhibits admitted into evidence at the custody hearing support his arguments that the Family Court's findings are not supported by the evidence. But we cannot review these exhibits in a vacuum. Each exhibit was admitted through a witness, who provided testimony concerning the exhibit. As summarized by the Family Court's decision, the parties presented conflicting evidence regarding the Father's temperament,[13] the Father's willingness to promote the Child's mental health through counseling,[14] and the Child's receptiveness to virtual learning. The Court will not set aside the Family Court's findings, which were clearly premised on credibility determinations to which we defer.

(13) In its opinion, the Family Court considered all of the factors set forth in Section 722 and concluded that all the factors fell in the Mother's favor or were

[12] In his reply brief, the Father notes that the Mother ordered the transcripts of the custody hearing, although she chose not to cite them in her answering brief. But the Mother, who does not allege that the Family Court erred, is not obligated by Supreme Court Rule 14 to provide the Court with the transcripts of the proceedings below.

[13] In connection with his contention that the evidence does not support a finding that the custody exchanges have been contentious, the Father argues that the court's reference to the holiday schedule in Exhibit A to its decision altered the December 2020 Order, which directed the parties to share transportation responsibilities. It is not clear to the Court that the Family Court intended to alter the December 2020 Order as the Father claims. If the parties cannot agree on this point, the Father should file a motion for clarification in the Family Court in the first instance.

[14] Contrary to the Father's suggestion, we find it clear that the Family Court awarded sole decision-making authority on issues concerning the Child's healthcare because of concerns related to the Child's mental health, not because of any potential allergy issue the Child may have.

neutral. Noting that it had the discretion to give more weight to some factors than others, the Family Court gave considerable weight to factors three (the interaction of the Child with his parents, grandparents, and any persons who may significantly affect the Child's best interests) and six (the parties' past and present compliance with their parental rights and responsibilities to the Child) to conclude that it was in the Child's best interest to primarily reside with the Mother. Noting that the Father strongly contested the Mother's allegations of domestic violence and that Dr. Finkelstein did not believe that the Father fit the profile of an abuser, the Family Court nevertheless found that the Mother's allegations were of concern. However, it did not place particular emphasis on the domestic-violence factor in its best-interests analysis.

(14) Finally, we find no evidence that Dr. Romirowsky's findings and recommendations—which were made after consulting multiple sources, including the Father, the Mother, the Child, and the Child's therapist—were biased in favor of the Mother. In sum, we find no basis to disturb the Family Court's findings. The Family Court properly applied the law to the facts when it concluded that it was in the Child's best interest for the Mother to have primary placement of the Child and sole decision-making authority in the areas of the Child's healthcare and academics.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family

Court is AFFIRMED.

BY THE COURT:

/s/ James T. Vaughn, Jr.
Justice