

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PEGGY L. ALEXANDER,	§
	§
Respondent Below-	§ No. 231, 2001
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
CHARLES KLASE,	§ in and for Kent County
	§ Petition Nos. 00-35149
Petitioner Below-	§ 00-35321
Appellee.	§ File No. CK93-3700

Submitted: September 24, 2001

Decided: November 1, 2001

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

ORDER

This 1st day of November 2001, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The respondent-appellant, Peggy L. Alexander, filed an appeal from the April 18, 2001 order of the Family Court granting petitioner-appellee Charles Klase's motion to modify custody and petition for modification of visitation. In its order, the Family Court modified a previous consent order to provide for primary residential placement of the parties' two minor children with Klase rather than with Alexander's mother, with Klase and Alexander continuing to

share joint custody, and established a schedule for Alexander's visitation with the children. Klase has moved to affirm the judgment of the Family Court on the ground that it is manifest on the face of Alexander's opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In this appeal, Alexander claims that: a) she should have been afforded a transcript of the Family Court hearing at State expense;² b) the Family Court incorrectly granted primary residential placement of the children with Klase rather than with Alexander's mother; c) the Family Court based its decision on insufficient and questionable witness testimony; d) she should have been granted a postponement in order to prepare for the hearing; and e) the hearing was not fair because Klase was represented by counsel and she was not.

(3) The record reflects that the hearing took place in the Family Court on April 17, 2001. At the time of the hearing, there was a February 1, 1999 consent order in place under which Alexander and Klase shared joint custody of the children, but the children's primary residence was with Alexander's mother. Several months prior to the hearing, while serving the probationary portion of a criminal sentence in connection with convictions for theft, forgery and

¹Supr. Ct. R. 25(a).

conspiracy, Alexander was found to be in violation of her probation by testing positive for crack cocaine. She was re-incarcerated at Level V pending space availability at Level IV (Crest Program)³. At the time of the hearing, Alexander had been placed at Level IV and had approximately three months remaining in the Crest Program before she was to begin the probationary portion of her sentence.

(4) The record further reflects that Klase presented the following testimony at the hearing. Sister Ellen Burlack, Director of Religious Education at Saint Polycarps Church, Smyrna, Delaware, testified that she saw Klase and his children regularly at church and that he was a caring and responsible father. Father Ralph L. Martin, a Catholic priest and pastor at Saint Polycarps Church, testified that he had known Klase for three years, that Klase had adopted Catholicism as a way of providing direction and structure to his own life and the lives of his children, and that he was a loving father to his children. Tracy Lynn Ballock testified that she taught the parties' son at Saint Polycarps Church, that she had observed the children with their father and that they had a good relationship with him and his fiancée. Klase's co-worker, Frederick N. Schaefer,

²This claim is moot following this Court's August 20, 2001 request to the Family Court to provide a transcript of the hearing at State expense and the filing of that transcript on September 24, 2001.

III, also testified. He stated that Klase used to have problems with addiction, but had changed his life and had become a good father. Susan H. Hiscock testified that she was a friend of the Klase family, that she was aware of Alexander's drug use and that Klase tried to be a good father.

(5) Thelma J. Koffich, Klase's fiancée, testified that she and Klase were taking marriage classes at Saint Polycarps Church, that she wants the children to maintain a relationship with their mother and grandmother and that she has established a good relationship with both children. Klase himself also testified. He stated that he was able to visit with his children when Alexander was incarcerated, but the situation became complicated when Alexander was released because she went back to using crack cocaine. Klase also described the problems he and Alexander had while married, the impact of those problems on the children, and his efforts to conquer his own addictions and improve his relationship with his children. He stated that Alexander's mother lives in a small, crowded trailer and that the children have had to sleep on the floor when staying with her. Klase testified that he and his fiancée were to be married soon, that they had signed a contract to purchase a house and that he had a support system of church members and relatives he could depend on for help. Under

³The Crest Program is designed to help inmates with drug addiction.

cross examination by Alexander, he also agreed that his son used to cry when he came to pick him up for visitation.

(6) Beatrice W. Rogers, Alexander's treatment counselor, testified on Alexander's behalf. She stated that she had been Alexander's counselor for about six weeks, and that Alexander had been successful in the Crest Program and had been approved for work release. Alexander testified on her own behalf. She stated that she would be on probation in approximately three months and did not believe it would benefit the children or her to have them taken away from her. Alexander admitted to her criminal history and her addiction to crack cocaine and admitted using drugs in the presence of her children. Finally, Alexander's mother testified that Alexander had been a good mother and that she had seen Klase display abusive behavior towards his son. Alexander's mother also stated that she had been a good grandmother and wanted the children to remain with her.

(7) Alexander's claims that the Family Court decision was incorrect and based on insufficient evidence are without merit. In its oral ruling from the bench, the Family Court properly cited to the statutory factors it considered in determining that legal custody should remain jointly with Klase and Alexander, but primary residential placement should be with Klase rather than Alexander's

mother.⁴ Moreover, the decision of the Family Court is supported clearly by the record, is the product of an orderly and logical deductive process⁵ and reveals no abuse of discretion.⁶ Alexander's claims that she should have been granted a postponement and was not afforded a fair trial are also without merit. We have reviewed the record in detail and it is clear that Alexander was given ample opportunity both to present the evidence supporting her case and to question the evidence presented by Klase.⁷

(8) It is manifest on the face of Alexander's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

⁴13 Del. C. § 722(a); *Maureen F.G. v. George W.G.*, Del. Supr., 445 A.2d 934, 935-37 (1982).

⁵*Schoenbeck v. Schoenbeck*, Del. Supr., No. 358, 1997, Veasey, C.J., 1998 WL 10759 (Jan. 2, 1998) (ORDER) (citing *Solis v. Tea*, Del. Supr., 468 A.2d 1276, 1279 (1983)).

⁶*Stone v. Reed*, Del. Supr., No. 510, 1996, Walsh, J., 1997 WL 812629 (Dec. 22, 1997) (ORDER) (citing *Rogers v. Trent*, Del. Supr., 594 A.2d 32, 34 (1991)).

⁷*Dilton v. Beens*, Del. Supr., No. 466, 1994, Veasey, C.J., 1995 WL 466396 (July 28, 1995) (ORDER).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice