

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KAREN BARTON, ¹	§
	§
Respondent Below-	§ No. 612, 2002
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
DAVID CARTER, JR.,	§ in and for New Castle County
	§ File No. CN97-8106
Petitioner Below-	§ CPI Nos. 02-06360
Appellee.	§ 02-02669

Submitted: April 25, 2003

Decided: June 9, 2003

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

ORDER

This 9th day of May 2003, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The respondent-appellant, Karen Barton (“Mother”), filed an appeal from the Family Court’s October 22, 2002 order granting the petitioner-appellee, David Carter, Jr. (“Father”), primary residential custody of the parties’ two minor children. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) The parties have been litigating custody and visitation issues with respect to their minor children, a son and a daughter, since at least April 1997. In

¹The Court sua sponte has assigned pseudonyms to the parties pursuant to SUPR. CT. R. 7(d).

1997, Mother, who had moved to Florida with her second husband, petitioned the Family Court for primary residential custody of the children. Father, who lived in Delaware, requested that the children continue to live with him. Following a two-day trial in February 1998, the Family Court prohibited Mother from relocating the children to Florida and granted Mother primary residential custody of the children on the condition that she return to Delaware to live. Mother eventually moved back to Delaware from Florida. In 1998, the Family Court signed a consent order, which required Mother to reside no more than a two-hour drive from Father's home in Delaware.

(3) In January 2002, Mother moved with the children to Indiana to be with her third husband. Although Mother contends that Father granted her permission to move to Indiana with the children, Father disputes that contention. There is no dispute that there was no Family Court order or written agreement by Father permitting Mother to move with the children to Indiana. On January 28, 2002, Father filed a custody modification action in the Family Court. On February 8, 2002, the Family Court issued an ex parte order granting temporary residential custody to Father and ordering Mother to return the children to Delaware immediately. Mother did not return the children to Delaware until March 1, 2002, when, by order of the Family Court, Father assumed residential custody of the children. Thereafter various motions were filed by the parties, including a motion

for custody evaluation filed by Mother.² Trial on Father's petition for custody modification was then scheduled for August 28, 2002.

(4) At the August 28, 2002 hearing, the Family Court heard testimony from Mother, Father, Mother's second husband, Mother's current husband, Father's current wife and Dr. Romirowsky. On August 30, 2002, the judge conducted an interview on the record with each of the children. The testimony of Dr. Romirowsky provided the underpinning for the Family Court's decision to grant primary residential custody to Father.

(5) Dr. Romirowsky conducted what he characterized as an "updated evaluation," consisting of interviews with the children, Mother, Father, Mother and Father's current spouses, and third parties who had observed the interactions among Mother, Father and the children, and a review of written materials such as the children's report cards and correspondence from third parties. Dr. Romirowsky's investigation provided the basis for two general observations—first, that the children's views regarding Father and their preference to reside with Mother were being unduly influenced by Mother and, second, that Mother's actions indicate that she tends to place her own interests ahead of those of the

²The parties ultimately agreed that Samuel Romirowsky, Ph.D., a licensed psychologist, would conduct the custody evaluation. Dr. Romirowsky was familiar with the children since he had conducted the custody evaluation for the February 1998 trial. The Family Court noted in its October 22, 2002 decision that Dr. Romirowsky relied on some of the information obtained in connection with the previous trial to reach his current conclusions.

children. Dr. Romirowsky's ultimate recommendation was that Father be granted primary residential custody, regardless of whether Mother chooses to remain in Indiana or not, and that Mother be granted visitation.

(6) On the subject of Mother's undue influence over the children, Dr. Romirowsky testified as follows:

Unfortunately, there is an issue here, I think, an issue of parent alienation. There is no question in my mind but that the children's attitude pertaining to Father has been strongly influenced by things that they have been actually taught by Mother about the Father's disposition, about Father's discipline, about Father's alleged anger, about Father's alleged abuses. . . . It is also striking to me that the kids acknowledge that Dad has been on good behavior, but add parenthetically, not in a way that I believe a child would normally think about these matters, . . . that the fact that Dad is behaving well is that he is just trying to make a good impression during the Court evaluation and that is not really his true colors. . . .

Of additional concern was the fact that the kids each speak about an attachment to Mother's new in-laws, her extended family, in a way that reflects an unusually strong attachment. When you bear in mind that . . . , if Mother moved to Indiana in or around January of '02 and the children were returned to Delaware some time around the beginning of March, they had all of about a month or so to be in Indiana. . . . [The daughter] had been essentially instructed that this is your new family. And for me that was a bit alarming. . . . It is this combination of teaching the children that your family is now Indiana. Teaching the children that God wants you to live in Indiana. Of teaching the kids . . . that your Father is a scary person and that you need to be afraid of your Father. That . . . creates an

impression that I think is destructive of the children

....

Dr. Romirowsky also testified that he interviewed a close friend of Mother's who reported that it was Mother's practice to teach the children that they need to be afraid of Father. Mother's second husband testified to his observation that Mother would typically "prime" the children about Father's alleged violent tendencies before visitations with him.

(7) On the subject of how Mother's actions indicate she places her own interests above those of her children, Dr. Romirowsky testified as follows:

[Mother] was in Florida for approximately eight months without the children. . . [T]o have left them with Father for eight, close to nine, months . . . seem[s] not to be consistent with her genuine concern that Father couldn't do the job or that they needed to be with her. Ultimately, the Court ruled that she needed to return within two hours of Delaware to maintain primary residence of the children, and she did so. Since that time, in 1997, Mother lived in Norristown, PA, West Bedford, New Jersey, Bedford, New Jersey, Swedesboro, New Jersey, moved to another apartment in Swedesboro, New Jersey and then lived with [a New Jersey couple] before relocating to Indiana. In my opinion, that is awfully destabilizing for two youngsters, and what is all the more poignant about that instability . . . is the fact that [the son] has been diagnosed with attention deficit disorder. . . .

Mother's decision to move to Indiana to live there and to create a scenario where the kids cannot have both [parents] is an unfortunate decision, and I think

it is destructive and not consistent with the kids' best interest. . . .

(8) Any modification of a consent order regarding custody and visitation must be done in accordance with the "best interests of the child" standard.³ In determining the "best interests of the child," the Family Court must consider the following factors:

- (a) The wishes of the child's parents as to his custody and residential arrangements;
- (b) The wishes of the child as to his custodian and residential arrangements;
- (c) The interaction and interrelationship of the child with other relatives with whom he lives;
- (d) The child's adjustment to his home, school and community;
- (e) The mental and physical health of all individuals involved;
- (f) Past and present compliance by both parents with their rights and responsibilities to their child;
- (g) Evidence of domestic violence.⁴

(9) Utilizing these factors, the Family Court made the following findings in its October 22, 2002 decision. Both Mother and Father want residential custody of the children. Mother believes that the environment in Indiana, including her husband's extended family and their church, is healthier for the children. Father believes that he can provide a more stable environment for the children than Mother. While the children both expressed a clear preference to live with Mother

³DEL. CODE ANN. tit. 13, § 729(b).

⁴DEL. CODE ANN. tit. 13, § 722(a).

in Indiana, there is reason to question the genuineness of their preference given Mother's undue influence over them. Likewise, while the children stated their strong attachment to their new extended family in Indiana, there is reason to question the genuineness of this attachment given the limited amount of time the children actually have spent in Indiana. As noted by Dr. Romirowsky, the children are bonded more closely with Mother, but, if they are permitted to move to Indiana with her, they will have little chance of maintaining a healthy relationship with Father.

(10) While Mother, not Father, has traditionally overseen the children's medical and school needs, there have been gaps with respect to the treatment of her son's ADD and her daughter's orthodontics. Both parents need to be more consistently attentive to the children's long-term health needs. The children attended four different schools during the 2001-2002 school year. While the daughter was able to maintain good grades, the son failed the third grade. Mother has little or no contact with her own extended family, while Father maintains close ties with his extended family in Delaware. The current home of each parent appears to be adequate for the children's needs.

(11) Mother's judgment concerning the children's needs is questionable. She complains that Father is abusive, and yet does not hesitate to leave the children with Father when it suits her needs. Also, while exercising her right to visitation

with the children while she was living in Indiana, she would pick up the children in Delaware on Friday and drive them nine hours to Indiana and then drive them nine hours back to Delaware on Sunday. Such an arrangement was not contemplated by the Family Court's most recent visitation order and does not serve the children's needs for continuity. Finally, while Mother testified concerning Father's abuse of the children, this did not square with Dr. Romirowsky's observation of the children's easygoing interactions with Father.⁵ Based on these findings, the Family Court granted primary residential custody of the children to Father. The Family Court further granted Mother standard visitation if she decides to return to Delaware and modified standard visitation if she decides to remain in Indiana.⁶

(12) In this appeal, Mother makes a number of arguments, which can fairly be characterized as a claim that there was insufficient evidence to support the findings of the Family Court. We have reviewed carefully the record in this case, including the transcript of the August 28, 2002 hearing and the August 30, 2002 interviews with the children, and conclude that Mother's claim is without merit. We have reviewed the factual findings, including all inferences and deductions,

⁵The Family Court also reviewed the evidence against seven factors to be considered pursuant to the Model Relocation Act, which, according to the Family Court, was developed by the American Academy of Matrimonial Lawyers. The Family Court observed that, under these standards as well, relocation was not in the best interest of these children and that any benefit they might derive from residing in Indiana was outweighed by the likely loss of their relationship with Father.

made by the Family Court.⁷ We will not disturb those factual findings because they are not clearly wrong and justice does not require that we overturn them.⁸ Moreover, we find that the Family Court committed no abuse of discretion⁹ and no error of law.¹⁰

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

BY THE COURT:

/s/ Myron T. Steele
Justice

⁶The Family Court noted that Mother and Father would maintain joint legal custody, an issue that the parties have never disputed.

⁷*Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

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

⁹*Jones v. Lang*, 591 A.2d 185, 186 (Del. 1991).

¹⁰*In re Heller*, 669 A.2d 25, 29 (Del. 1995).