

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHERRY V. PALMER,¹

Petitioner Below-
Appellant,

v.

BRIAN L. PALMER,

Respondent Below-
Appellee.

§

§ No. 443, 2012

§

§

§ Court Below—Family Court

§ of the State of Delaware,

§ in and for Kent County

§ File No. CK09-01452

§ Petition No. 12-01444

§

§

Submitted: November 2, 2012

Decided: January 15, 2012

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

ORDER

This 15th day of January 2013, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Sherry Palmer ("Mother"), filed this appeal from a Family Court order, dated July 13, 2012, denying her petition for modification of custody. Having reviewed the parties' respective contentions and the record below, we find no error in the Family Court's findings and conclusions. Accordingly, the Family Court's judgment shall be affirmed.

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

(2) The parties are the parents of one son, born June 17, 2005. As the Family Court recognized and the record reflects, the parties are both good parents who have cooperated with each other in raising their son. They shared residential custody. On July 6, 2012, the Family Court held a hearing on Mother's petition to modify custody. Father had accepted a new, higher-paying position with his company and had moved to New York with his wife and fourteen-year-old daughter. Mother sought full residential custody so that the child could continue to live in Delaware during the school year.

(3) Both parties appeared at the hearing pro se. Neither party presented any evidence or witnesses other than their own testimony. The Family Court indicated its desire to interview the child, but Mother and Father both agreed that they did not want the trial judge to conduct the interview because of the child's young age, his love for both of his parents, and their desire not to compel the child to have to make a choice between them. At the conclusion of the hearing, the Family Court noted that both parties were capable parents and that most of the legal factors considered by the court did not weigh in favor of either party. The trial judge noted, however, that the child would be required to change schools regardless of which home he was living in during the school year and that Father's work schedule was more consistent, whereas Mother's work schedule would

require the child to spend more time in the care of extended family while she worked nights. Based on that finding, the Family Court awarded primary residential custody to Father. Mother was granted eight weeks of visitation in the summer as well as all school breaks and long weekends.

(4) In her opening brief on appeal, Mother contends that she has now addressed the Family Court's concern about her work schedule so that she no longer will be required to work late nights. Mother also contends that she will address the Family Court's concern about her son switching schools by choosing, pursuant to the school choice program, to send her son to the same school he attended in first grade. Mother asserts that she did not address these issues prior to the hearing because she did not believe that the Family Court would allow Father to take the child with him when he moved, in the absence of any evidence that Mother was not a fit parent.

(5) 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.² We have the duty to review the sufficiency of the evidence and to test the propriety of the findings.³ Findings of fact will not be

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

³ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

disturbed on appeal unless they are determined to be clearly erroneous.⁴ We will not substitute our opinion for the inferences and deductions of the trial judge if those inferences are supported by the record.⁵

(6) 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. The criteria for determining the best interests of the child are set forth in Section 722 of Title 13 of the Delaware Code.⁶ The criteria in Section 722 must be balanced in accordance with the factual circumstances presented to the Family Court in each case. As this Court has

⁴ *Mundy v. Devon*, 906 A.2d 750, 752 (Del. 2006).

⁵ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d at 1204.

⁶ Section 722(a) provides:

The Court shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child. In determining the best interests of the child, the Court shall consider all relevant factors including:

- (1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;
- (2) The wishes of the child as to his or her custodians(s) and residential arrangements;
- (3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabitating in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
- (4) The child's adjustment to his or her home, school and community;
- (5) The mental and physical health of all individuals involved;
- (6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title; and
- (7) Evidence of domestic violence as provided for in Chapter 7A of this title.

noted, the weight given to one factor or combination of factors will be different in any given proceeding.⁷

(7) In this case, the Family Court enumerated all of the factors set forth in Section 722 and concluded that none of the factors favored one parent over the other, except that Father had a more consistent work schedule, which did not require him to work evenings, and also had a fourteen-year-old daughter at home with whom his son was strongly bonded.

(8) Upon review, we conclude that the factual findings of the trial judge are 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 modifying residential placement was in the child's best interests given that the parties no longer lived close enough to maintain shared residential placement.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁷ *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997).