

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM A. GARLIC, JR.,	§
	§
Respondent Below-	§ No. 43, 2004
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
LAURA H. HOJNICKI,	§ File No. CN98-10955
	§ Petition No. 01-37838
Petitioner Below-	§
Appellee.	§

Submitted: March 31, 2004

Decided: May 12, 2004

Before **HOLLAND**, **BERGER**, and **JACOBS**, Justices.

ORDER

This 12th day of May 2004, upon consideration of the appellant's opening brief, the appellee's motion to affirm, and the record below, it appears to the Court that:

(1) The respondent-appellant, William Garlic (Father), filed this appeal from a decision of the Family Court granting the appellee, Laura Hojnicky (Mother), sole custody of the parties' six-year old daughter. Mother has moved to affirm the Family Court's decision on the ground that is manifest on the face of Father's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that the Family Court held a hearing on January 7, 2004, at which both parties appeared, to consider Mother’s petition for sole custody and primary residence of the parties’ minor daughter. In support of its custody decision, the Family Court found that the parties’ had never been married, that the child had always resided with Mother, that Father had been incarcerated since May 2002 and will remain incarcerated until at least December 2004, that Father has had no contact with the child since April 1999—three years prior to his incarceration—and that Father acknowledged the child was a stranger to him.

(3) In his opening brief on appeal, Father asserts the following arguments: (a) the Family Court improperly may have based its decision on the child’s preference to live with Mother; (b) the Family Court failed to consider that he had paid child support up until his incarceration in May 2002; and (c) the Family Court should not have considered his incarceration as a factor in determining custody. Mother has moved to affirm the Family Court’s judgment on the ground that it is manifest, based on the undisputed facts, that the Family Court did not err or abuse its discretion in holding that it was in the “best interests of the child” that sole legal custody be awarded to Mother.¹

¹ See Del. Code Ann. tit. 13, § 722 (1999) (setting forth the “best interests of the child” standards).

(4) Having carefully considered the parties' respective positions, we find it manifest that the judgment below should be affirmed on the basis of the Family Court's well-reasoned decision dated January 16, 2004. The Family Court did not err or abuse its discretion in concluding that it was in the child's best interests that Mother be awarded sole custody.

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

BY THE COURT:

/s/ Randy J. Holland
Justice