IN THE SUPREME COURT OF THE STATE OF DELAWARE

LORI POTTER,	§	
	§	No. 477, 2004
Respondent Below,	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware, in and
v.	§	for Sussex County
	§	
GEORGE BRANSON,	§	No. CS02-04059
	§	
Petitioner Below,	§	
Appellee.	§	

Submitted: April 21, 2005
Decided: June 13, 2005

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

ORDER

This 13th day of June 2005, upon consideration of the parties' briefs, it appears to the Court that:

(1) The respondent-appellant, Lori Potter ("Mother"), filed an appeal from the October 4, 2004 order of the Family Court granting primary placement of her minor child, William A. Branson ("Will"), with the petitioner-appellee and child's father, George Branson ("Father").[1] In his petition to the Family Court, Father sought to modify a prior custody and visitation order whereby the parties shared joint custody of Will, with primary placement vested in Mother. Father sought modify this prior

[1] Pursuant to the provisions of DEL. SUP. CT. R. 7(d), this Court has *sua sponte* selected pseudonyms to identify the parties included in this action.

order by having the Family Court grant him primary placement of Will or, in the alternative, modify the prior visitation order to compensate him for missed visitation time caused by Mother's relocation from Dagsboro, Delaware to Newark, Delaware. The Family Court granted Father's petition, vesting primary placement of Will with Father with visitation awarded to Mother. Upon careful review of the record, we have determined that the record evidence supports the Family Court's factual findings, the Family Court did not abuse its discretion and the Family Court committed no errors of law. Accordingly, we affirm.

(2) Will was born on April 12, 2001 to Mother and Father, who had a relationship but were never married. The parties ended their relationship in July 2002. Following their breakup, the parties entered into an interim stipulation for custody, placement and visitation on August 9, 2002. Pursuant to that interim stipulation, the parties shared joint custody of Will, with primary placement vested in Mother. Father's visitation rights consisted of multiple evening visits each week and alternating Fridays and Saturdays.

(3) On September 3, 2002, Mother and Father entered into another temporary consent order regarding custody and visitation. The parties continued to share joint custody of Will and primary placement remained vested in the Mother. Father's visitation rights were later modified, consisting of Wednesday and Friday evenings,

alternating weekends, Thanksgivings and Christmases, and assuring that the appropriate parent would have Will on Mother's Day and Father's Day.

(4) On July 9, 2003, a trial was held in the Family Court on the issue of visitation. The parties had previously agreed to share joint custody, with primary placement vested in Mother. The Family Court awarded Father visitation rights consistent with the above agreement and with the Standard Visitation Guidelines.

(5) Throughout the foregoing history, the parties both lived in Dagsboro. In January 2004, Mother decided to move to Newark, approximately two hours from Dagsboro, to attend the University of Delaware. On January 12, 2004, Father filed a motion to modify the prior custody and visitation order of July 9, 2003. In a March 16, 2004 order, the Family Court modified the visitation schedule on an interim basis and on October 4, 2004 primary placement was awarded to Father, with Mother receiving visitation rights. The Family Court concluded that it was in Will's best interest to vest primary placement in Father. Mother appeals from this decision.

(6) Mother raises three arguments in support of her direct appeal. She argues that the Family Court erred because (i) it considered factors provided by the Model Relocation Act (the "Model Act"), thereby violating the separation of powers doctrine, (ii) it applied the Act to an in-state move and (iii) even if the Family Court correctly applied the law, its decision is not supported by the record and is not the product of

an orderly and logical deductive process.

(7) Our review of a Family Court's custody decision extends to a review of both the facts and law as well as to inferences and deductions drawn by the Family Court.[2] To the extent the Family Court's decision implicates rulings of law, our review is *de novo.*[3] If the Family Court has correctly applied the law, our review is for abuse of discretion.[4] We will not disturb the Family Court's factual findings unless they are clearly wrong or justice requires their overturn.[5] We will also not substitute our own opinion for the inferences and deductions made by the Family Court where those inferences and deductions are supported by the record and are the product of an orderly and logical deductive process.[6]

(8) Mother's first argument is that because the General Assembly has not adopted the Model Act, the Family Court may not consider the factors listed in it. This argument, however, misreads the applicable law. The law provides that the Family Court will consider "all relevant factors including" those which are

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[2] *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983) (citing *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979)).

[3] *In re Heller*, 669 A.2d 25, 29 (Del. 1995) (citing *In the Interest of Stevens*, 652 A.2d 18, 23 (Del. 1995) (citing *Black v. Gray*, 540 A.2d 431, 432 (Del. 1988)).

[4] *Jones v. Lang*, 591 A.2d 185, 186-187 (Del. 1991) (citing *W. v. W.*, 339 A.2d 726, 727 (Del. 1975)).

[5] *Solis*, 468 A.2d at 1279 (citing *Wife (J.F.V.)*, 402 A.2d at 1204).

[6] *Id.* (citing *Husband J.E.T. v. Wife E.M.T.*, 407 A.2d 532, 533 (Del. 1979)).

enumerated by statute.[7] This indicates that the Family Court has discretion to consider additional factors as long as it considers all of the statutory enumerated factors. Here, the Family Court simply supplemented its best-interest analysis under the statutory factors with those from the Model Act and thus properly applied the law. Moreover, the Family Court has not attempted to incorporate the Model Act into Delaware law and so has not encroached on the General Assembly's sphere. We agree with the Family Court that non-statutory factors, such as the Model Act, may be used "on occasion."[8] We also find that the circumstances of this case warranted the Family Court's use of these factors to supplement its best interest analysis under the statute. We therefore conclude that the Family Court did not violate the separation of powers doctrine by applying factors from the Model Act.

(9) Mother next challenges the Family Court's application of the Model Act to an in-state move. Delaware courts have only ever applied the Model Act to out-of-state relocations.[9] Mother argues that the Family Court could only readdress the visitation schedule if there was an out-of state move. This argument is not persuasive. In fact, Mother undercuts her own position by acknowledging that under the

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[7] DEL. CODE ANN. tit. 13, § 722(a) (2005).

[8] *See E.G. v. S.G.*, 1999 WL 33100128, at *3 (Del. Fam. Ct.) (approving the use of non-statutory factors in certain situations).

[9] *See, e.g.*, *Anderson v. Anderson*, 755 A.2d 386, 386 (Del. 2000) (upholding a denial of relocation to Texas).

applicable statute,[10] Father could petition for a modification of the custody and visitation order at any time, including when there was an in-state move. Mother also believes that the Family Court improperly weighed the unilateral nature of the relocation. This Court, however, has recognized that in individual cases different weights will be attached to different factors.[11] There is nothing in the law which dictates the weight which must be placed on each factor. We therefore conclude that the Family Court did not commit legal error in applying the factors within the Model Act to Mother's in-state move from Dagsboro to Newark.

(10) Mother finally contends that the Family Court's findings were not supported by the record and were not the product of an orderly and logical deductive process. Mother's contention is without merit. The Family Court discussed at length the statutory best-interest factors under 13 *Del. C.* § 722.[12] We find that those findings are supported by the record. Consistent with this Court's prior holdings,[13] the Family Court explicitly addressed each of the statutory best-interest factors and made detailed findings for each. We therefore reject Mother's contention that the Family Court's findings were not supported by the record and were not the product of an orderly and

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[10] DEL. CODE ANN. tit. 13, § 729(a) (2005).

[11] *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997).

[12] DEL. CODE ANN. tit. 13, § 722 (2005).

[13] *See Fisher*, 691 A.2d at 623 (requiring the Family Court to explicitly address the enumerated statutory factors when the decision will result in a substantial change in the child's living arrangements).

logical deductive process.

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

By the Court:

/s/Henry duPont Ridgely
Justice