

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KAREN V. LOMAN, <sup>1</sup>	§	
	§	No. 463, 2004
Petitioner Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Family Court
	§	of the State of Delaware
STEVEN L. DOBBINS, III,	§	in and for Kent County
	§	File No. CK02-03450
Respondent Below,	§	
Appellee.	§	

Submitted: May 24, 2005  
Decided: June 28, 2005

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

ORDER

This 28<sup>th</sup> day of June, 2005, upon consideration of the briefs of the parties, it appears to the Court that:

1) Karen V. Loman appeals from a decision of the Family Court denying a petition for modification of visitation. Loman, who wanted to relocate to South

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<sup>1</sup>Pseudonyms have been assigned by this Court pursuant to Rule 7(d).

Carolina, argues that the trial court erred by failing to consider the eight factors in the Model Relocation Act.<sup>2</sup>

2) Loman and her ex-husband, Steven L. Dobbins, III, were divorced in 2002. They agreed to joint custody of their daughter, Kelly, with Loman having primary residential custody and Dobbins having visitation rights. Early in 2003, Loman became engaged to Paul O'Donald, a Navy officer who was then assigned to a ship in Florida. Although O'Donald tried to transfer to a duty station close to Delaware, he accepted the only position he was offered, which was in South Carolina. In March 2004, Loman filed this petition, seeking permission to relocate to South Carolina with Kelly. In June 2004, shortly before the hearing on her petition, Loman found suitable employment in South Carolina. She also investigated school and day care opportunities and determined that they were at least as good as those available in Delaware.

3) The Family Court denied Loman's motion, noting that this was a difficult case, but that it would not be in Kelly's best interest to be removed from her father, and both of her parents' extended families. The trial court considered all of the factors

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<sup>2</sup>See, §405, Proposed Model Relocation Act("Model Act"), 10 J. Am. Acad. Matrim. Law 1, \*18 (1998).

set forth in 13 *Del. C.* §722, but did not expressly address the eight factors identified in the Model Act.

4) Loman argues that the Family Court has “adopted” the Model Act’s relocation factors, and that the principle of *stare decisis* requires the trial court to consider the Model Act in reaching its decision. Since it did not, she contends that the decision must be reversed.

5) In advancing this argument, Loman misconstrues the Family Court’s decisions on this point. By statute, when deciding residential arrangements for a child, the Family Court must consider “all relevant factors” relating to the child’s best interests, including the seven enumerated factors.<sup>3</sup> The Model Act, which lists eight similar factors, has never been enacted in Delaware. Nevertheless, since §722 authorizes the Family Court to consider “all relevant factors,” it has discretion to “supplement[ ] its best-interest analysis under the statutory factors with those from the Model Act....”<sup>4</sup> Thus, the Family Court has not “adopted” the Model Act in the sense of mandating its use. Rather, the many decisions referring to the Model Act recognize

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<sup>3</sup>13 *Del.C.* §722(a).

<sup>4</sup>*Potter v. Branson*, 2005 WL 1403823 at \*2 (Del. Supr.).

that it can provide “guidance.”<sup>5</sup> Since the precedents do not mandate the use of the Model Act, Loman’s *stare decisis* argument fails.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>5</sup>*See, e.g., S. v. M.*, 2001 WL 1857133 at \*4 (Del. Fam. Ct.).