

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VALERIE RICHARDS,)
) No. 33, 2005
 Petitioner Below,)
 Appellant,) Court Below: Family Court
 v.) of the State of Delaware in
) and for New Castle County
)
 GEORGE GIBSON,) File No. CN04-08003
)
 Respondent Below,)
 Appellee.)

Submitted: July 20, 2005
Decided: August 15, 2005

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

ORDER

This 15th day of August 2005, on consideration of the parties' briefs, it appears to the Court that:

1. Valerie Richards appeals a decision of the Family Court that denied her cross-petition for residential custody of her minor child, Candice Gibson, and granted a cross-petition for residential custody in favor of Appellee George Gibson.¹ Richards claims that the trial judge's order effected a dramatic change in Candice's living arrangements, and that, as a result, the judge erred when he failed to address each statutory "best interest" factor explicitly. Richards also claims that

¹ Pursuant to Supreme Court Rule 7(d), we have *sua sponte* assigned pseudonyms to all parties involved.

the findings the trial judge did make are unsupported by the record. For the reasons set forth below, we find that the trial judge did not err by failing to address each best interest factor explicitly and that he otherwise acted within his discretion by denying Richards's petition for custody. Accordingly, we affirm.

2. Richards and Gibson separated in late September 2001, when Candice, who has asthma, was still an infant. From then until June 2004, Richards had custody of Candice. Because Richards could not afford to enroll Candice in a daycare facility, Joanne Pointer, Candice's grandmother, often provided childcare while Richards was at work. On June 14, 2004, Richards left Candice with Pointer before going to work. Later that day, Gibson called Richards and stated that he would not permit Candice to return home with her because he believed Richards's boyfriend, who had an extensive criminal background, had been sexually abusing Candice. Richards responded with various threats that prompted Gibson to file a terroristic threatening charge against her.

3. Shortly thereafter, Richards, Gibson, and several police officers met at Richards's house to discuss the situation. A police officer suggested that both parties apply for custody and each did so that very afternoon. In his petition for custody, Gibson contended that Candice often spent weeks at a time with Pointer because Richards would or could not provide care herself. After June 14, 2004, Candice remained in Pointer and Gibson's "residential" custody with Richards

visiting on Wednesday nights and every other weekend. Following a December 2004 custody hearing, a Family Court judge issued an order on December 27, 2004 denying Richards's custody petition and allowing Candice to stay with Gibson as the primary residential parent.²

4. On appeal, Richards claims that the trial judge abused his discretion by failing to properly apply the eight "best interest" factors provided in Title 13, Section 722 of the Delaware Code. Richards contends that the trial judge made a dramatic change in living arrangements and, before doing so, should have explicitly addressed each statutory factor. Specifically, Richards argues that the trial judge failed to consider Candice's interaction with parents, grandparents, and siblings; that the trial judge improperly weighed Richards's ex-boyfriend's actions against Richards's stability; and that the trial judge ignored the parties' respective health, past and present compliance with parental rights and responsibilities, and prior criminal records.

5. Our review of a Family Court judge's custody decision includes a review of both law and facts.³ If the trial judge correctly applied the law, we review under an abuse of discretion standard.⁴ Factual findings will not be

² *Richards v. Gibson*, Del. Fam., No. CN0408003 (Dec. 27, 2004) (ORDER).

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

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

disturbed on appeal if they are supported by the record and are the product of an orderly and logical deductive process.⁵ To the extent the Family Court’s judgment implicates rulings of law, our review is *de novo*.⁶

6. In determining the appropriate residential arrangement for a child, the Family Court must apply several statutory “best interest” factors to the particular circumstances of the case. Specifically, Title 13, Section 722 directs the Family Court to consider, among others, the wishes of the parties and the child, the child’s adjustment to her home and interaction with relatives, and the physical and mental health of all individuals involved.⁷ This Court has held that a trial judge generally need not explicitly address each listed factor when applying Section 722.⁸ If the trial judge has made a substantial change in the child’s living arrangement, however, the trial judge should address each factor explicitly rather than implicitly.⁹

⁵ *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

⁶ *In re Heller*, 669 A.2d 25, 29 (Del. 1995).

⁷ *See* 13 Del. C. § 722(a).

⁸ *Jones v. Lang*, 591 A.2d 185, 188 (Del. 1991). *See also Spence v. Div. of Fam. Servs.*, 817 A.2d 805 (Del. 2003) (TABLE), 2003 WL 329590 (Del.), at **3 (“Although the trial judge did not list the applicable factors in the best interest of the child analysis, he clearly applied them.”).

⁹ *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997) (“This Court cannot conduct a meaningful appellate review of a permanent custody judgment unless the Family Court sets forth a complete analysis of the consideration it gave to all of the factors in Section 722.”).

7. Here, the record indicates that for nearly two months leading up to the hearing, Candice had been permanently living with Pointer and Gibson. During that time, Gibson had enrolled Candice in the local Head Start Program in Wilmington. Even before this period, Candice was often at Pointer's home, sometimes for weeks at a time, while Richards was at work. Because Candice has spent the majority of her time with Gibson and Pointer, the trial judge's custody order did not make a dramatic change in Candice's living arrangements. We therefore find no error in the trial judge's failure to address each best interest factor explicitly. Richards' contention to the contrary is simply factually inaccurate.

8. The record also supports the trial judge's express findings that Gibson is better able to provide a home, participation in Head Start, and an environment of responsible care for Candice. Furthermore, the record supports the trial judge's findings that Richards has made poor choices by smoking in Candice's presence, despite the child's asthmatic condition, and by placing Candice in the care of a boyfriend with an extensive criminal record. Accordingly, we find that the trial judge acted within his discretion when he denied Richards's petition for custody.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice