

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JASMINE KING, ¹	§	
	§	
Respondent Below,	§	Case No. 663, 2011
Appellant,	§	
	§	Court Below: Family Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
ZANDER KING,	§	
	§	File No. CN11-01021
Petitioner Below,	§	Petition No. 11-05359
Appellee.	§	

Submitted: July 18, 2012
Decided: September 11, 2012

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

ORDER

This 11th day of September, 2012, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Jasmine King (Mother) appeals from a Family Court decision awarding Zander King (Father) shared residency and joint custody of their two children. She argues that the trial court violated her constitutional rights by denying her an opportunity to review certain of Father's psychiatric records before the custody hearing. In addition, Mother contends that the trial court abused its discretion in

¹ This Court *sua sponte* assigned pseudonyms to the parties by Order dated December 7, 2011, pursuant to Supreme Court Rule 7(d).

allowing certain medical records to be redacted. Finally, she argues that the trial court erred in its application of the best interests standard. We find no merit to these claims, and affirm.

2) Mother and Father married in December 2000 and divorced in July 2011. Their two children, N.K. and W.K., were born in October 2008 and June 2010, respectively. The parties separated on December 30, 2010, after Father loaded the gun that was kept in the drawer of a bedside table, and threatened suicide. Mother called the police the next day, after Father went to work, and Father was involuntarily committed to the Rockford Center, a psychiatric facility in Newark, Delaware.

3) Father acknowledged that, when he was 7 years old, and again when he was 13 years old, he needed mental health treatment to address isolated, traumatic events. He explained that the December 2010 suicide incident was prompted by the fact that the marriage was failing, he drank alcohol and took Ambien, and he was arguing with Mother.

4) After his treatment at Rockford Center, Father began seeing a psychiatrist, Dr. Constantine Azarcon, and a therapist, Meryl Brownstein. The doctor and the therapist testified at the custody hearing. Both stated that Father's mental health was good and that he was not a danger to himself or others.

5) About six weeks before the scheduled custody hearing, Mother requested the production of Father's medical records, including records from Rockford Center. Father attempted to obtain all the requested records, but he was only able to obtain records from Azarcon and Brownstein. Two weeks before the hearing, Mother obtained a court order authorizing her to obtain Rockford Center's records. She issued a subpoena, but Rockford Center still failed to produce the records on the hearing date, as requested.

6) At the custody hearing, the trial court denied Mother's motion for a continuance, which was based on the absence of Father's Rockford Center records. But the court explained that the parties would be allowed to review the missing records, which were provided to the court two days after the hearing. After that, the court said, "we'll decide where we go then."² Consistent with that approach, the court told Azarcon, when he testified, that he might have to be recalled.

7) Mother never asked the court to reconvene the hearing, and made no proffer of any line of questioning or rebuttal evidence she would have presented if she had the medical records prior to the hearing. The trial court issued its decision one week after the parties were advised that the medical records were available.

² Appellant's Appendix, A-54.

8) Mother argues that the trial court abused its discretion in denying her request for a continuance. She points out that she made diligent efforts to obtain the medical records, and that they were relevant and discoverable. But Mother reviewed the records after the hearing and, apparently, did not find them important enough to request that the hearing be renewed. The trial court adopted a practical approach to the problem presented by the missing records. It essentially invited the parties to take further action, if, upon review, they believed that the medical records were material to their case. Under these circumstances, we are satisfied that the trial court acted well within its discretion in denying the continuance, and that Mother suffered no constitutional deprivation.

9) Mother also argues that the trial court abused its discretion in allowing Father's medical records to be redacted to include only "[r]ecords containing diagnosis, treatment plans, recommendations, prescriptions, dates of service and discharge instructions."³ The medical records were relevant to the issue of Father's mental health and stability. The treating professional's diagnosis, recommendations, prescriptions, etc., provided that information. The trial court did not abuse its discretion in deciding that personal statements Father made during therapy sessions could be redacted.

³ Appellant's Opening Brief, Ex. B.

10) Mother's last argument is that the trial court did not apply the statutory best interests standard in deciding that the parents should have shared custody. It is true that the court focused on Father's mental health and stability, but that was the only seriously disputed issue. The court considered both parents' interaction with the children; their demonstrated ability to care for the children; and their ability to provide for the children's needs. The court recognized Father's past mental and emotional problems, but accepted the medical evidence that those problems were resolved. Even so, the court required Father to undergo a drug and alcohol evaluation, and to complete any recommended treatment program before his visitation would be increased. In sum, the trial court did consider the best interests standards set forth in 13 *Del. C.* §722(a).

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