

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HELEN TAYLOR,	§
	§ No. 336, 2005
Respondent Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for Sussex County
WARREN F. FORRESTER,	§ File No. CS04-01540
	§ Petition No. 04-16683
Petitioner Below-	§
Appellee.	§

Submitted: March 31, 2006

Decided: June 12, 2006

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

**ORDER**<sup>1</sup>

This 12<sup>th</sup> day of June 2006, upon consideration of the appellant’s opening brief and the record below,<sup>2</sup> it appears to the Court that:

(1) The respondent-appellant, Helen Taylor (“Mother”), filed an appeal from the Family Court’s June 21, 2005 order establishing a visitation schedule for the parties’ minor son, Kirby. We find no merit to the appeal.

Accordingly, we AFFIRM.

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<sup>1</sup> The Court has sua sponte assigned pseudonyms to the parties and their minor child. Supr. Ct. R. 7(d).

<sup>2</sup> Because the petitioner-appellee, Warren F. Forrester (“Father”), did not submit an answering brief, this Court ordered that the appeal would be decided solely on the basis of the appellant’s opening brief and the Family Court record.

(2) In May 2004, Mother filed a petition in the Family Court seeking sole custody and residential placement of Kirby, born March 29, 2004. At the November 2004 pretrial hearing, Father conceded that Mother should be granted sole custody and residential placement.

(3) In April 2005, the Family Court issued a protection from abuse (“PFA”) order prohibiting Father from contacting Mother. On June 21, 2005, the Family Court held a hearing to determine Father’s visitation rights. Mother and Father both appeared at the hearing. As of that date, the PFA order had expired. The following evidence was presented at the hearing.

(4) A couple of months after Mother filed her May 2004 custody petition, Father was incarcerated. At the time of the hearing in June 2005, Father was living in a Level IV facility where he was completing the Crest Program.<sup>3</sup> Father testified that he would complete the Crest Program in October 2005, then be placed in Aftercare for an additional six months, and, finally, be moved to Work Release. Depending upon his progress in Work Release, he might be able to return home on leave for short periods of time. At the time of the hearing, Father had not seen Kirby for approximately 11 months. Mother and Father explained that this was because a prison counselor had recommended that Kirby not be brought to the prison facility.

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<sup>3</sup> The Crest Program seeks to assist inmates with drug and alcohol problems and with transitioning to life outside prison.

(5) Mother testified that, while she did not want Father to have visitation while he was incarcerated, she did not oppose supervised visitation at her residence. The Family Court reviewed Father's criminal record, noting that it included convictions of Unlawful Imprisonment, Driving Under the Influence of Alcohol, Possessing a Destructive Weapon, and Harassment. Father testified that his convictions were the result of a "real bad alcohol problem," which had been resolved. The Family Court warned Father that, if he did not maintain a clean record, he would forfeit visitation with Kirby. Father represented that he would begin to catch up on his child support obligation as soon as he found employment. The Family Court noted that, because of Mother's work schedule and Father's intention to get a job where he would work Monday through Saturday, Sunday would be the best day for Father to begin visitation with Kirby.

(6) Stating that it would be in Kirby's best interest for him to get to know his father and for Father to begin to take responsibility for Kirby's care, the Family Court established the following visitation schedule. Once Father is placed on Work Release, he will be allowed to visit with Kirby from 2:00 p.m. until 4:00 p.m. on those Sundays when he has privileges to leave the facility. The visitation will take place at Mother's home and under Mother's supervision. Once Father is in Aftercare, he will have visitation

under Mother's supervision for increasing periods of time and then will be permitted visitation without Mother's supervision. Once Father has successfully completed this part of the visitation plan, he will be entitled to have Kirby three week-ends a month from 6:00 p.m. on Saturday until 6:00 p.m. on Sunday. The Family Court also included as part of the visitation plan a number of general rules governing drop-off and pick-up, major holidays, and emergencies, among other things. The Family Court specifically ordered that, at no time during visitation, shall Father be under the influence of illegal drugs or alcohol.

(7) This Court reviews the Family Court's application of the law to the facts and the sufficiency of evidence supporting its findings for an abuse of discretion.<sup>4</sup> This Court will not disturb the Family Court's factual findings unless they are clearly wrong and justice requires that they be overturned.<sup>5</sup> Finally, this Court will not substitute its own factual findings for the inferences and deductions made by the Family Court when they are supported by the record and are the product of an orderly and logical reasoning process.<sup>6</sup>

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<sup>4</sup> *Wife (J.F.V.) v. Husband (O.M.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

(8) We find no basis upon which to overturn the visitation schedule established by the Family Court in this case. In designing the plan, the Family Court explored Father's past criminal record and his progress on probation in detail, set up a graduated schedule that would permit Mother to monitor Father's performance, and explicitly warned Father that he would forfeit his visitation unless he maintained a clean record. The Family Court also noted that, if Mother observed any problems with Father's performance, she would have the right to file an emergency petition. While Mother claims that unsupervised visitation with Father will endanger Kirby, we find that the Family Court's visitation plan is carefully designed to avoid such problems. We further find that the purpose of the plan---i.e. to assist Father and Kirby to gradually get to know one another and to afford Father increasing responsibility for Kirby's care, is a rational one, which is supported by the evidence presented at the hearing.

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice