

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAURA MARSHALL, ¹	§	
	§	No. 606, 2005
Respondent Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Family Court
	§	of the State of Delaware
GEORGE NICKERSON,	§	in and for New Castle County
	§	File No. CN02-08058
Petitioner Below,	§	Petition No. 04-37618
Appellee.	§	

Submitted: May 17, 2006
Decided: July 17, 2006

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

ORDER

This 17th day of July, 2006, on consideration of the briefs of the parties, it appears to the Court that:

1) Laura Marshall appeals from a Family Court decision modifying visitation. She contends that the trial court based its decision to eliminate her bi-weekly Monday night visitation on the mistaken assumption that she had weekly Thursday night visitation. She asks this Court either to enter an order requiring weekly Thursday night visitation or to remand this matter with instructions that the Family Court enter such an order.

¹The names used in this decision are pseudonyms, adopted *sua sponte*, pursuant to Supreme Court Rule 7(d).

2) Marshall and her ex-husband, George Nickerson, have three school-aged children. In 2003, they entered into a consent order, which provided for joint custody with Father having primary residential custody. During the school year, the order provided for Mother to have visitation every other weekend and every other Monday and Thursday overnight.

3) In October 2005, the Family Court held a hearing on the parties' cross-petitions to modify custody. The trial court decided that it would be in the children's best interest not to make any major change to the existing visitation schedule, since the children were thriving. Father had requested that Mother's visitation be limited to the standard visitation guidelines. He complained that the Monday visitation schedule was interfering with the children's activities because Mother was chronically late and occasionally forgot some of the children's sports gear. Mother agreed to give up the Monday visitations, and the trial court concluded its decision by stating:

There is no reason to make any major change and interrupt the excellent development and progress in these young boys' lives. The Court will make the minor change of eliminating the Monday night overnight visit following the weekends the boys are with their Father. Staying in the same home and following the same schedule each Monday will provide slightly more predictability in their lives and eliminate change.

4) Although the decision clearly addresses only Monday visitation, Mother argues that a statement at the beginning of the decision means that she was awarded

weekly, instead of bi-weekly, visitation on Thursdays. In reciting the stipulated visitation schedule in effect prior to the hearing, the court said, “[u]nder this current Stipulation..., [Father] has primary residential custody, and the children are with [Mother]... every other weekend..., overnight on the Monday following the weekend that they stay with their Father, and overnight every Thursday evening.” In fact, the parties’ stipulation provided for Mother to have visitation every *other* Thursday evening.

5) After receiving the Family Court’s decision modifying visitation, Mother moved for reargument, and asked the court to “clearly order that Mother shall have overnight visitation every Thursday night to avoid disputes....” The Family Court denied Mother’s motion, stating, “[t]he prior Order remains in effect, except for the Monday nights.”

6) Notwithstanding the trial court’s clarification of its decision, Mother argues on appeal that the Family Court made a finding that she should have visitation every Thursday, and that the court did not intend to deny her midweek visitation every other week. There is no support for Mother’s argument. It was apparent from the outset that the trial court modified only one aspect of the visitation schedule by eliminating Monday visitation. To the extent that there was any possible ambiguity, the court’s

response to Mother's motion for reargument removed it. The court expressly stated that it was not changing the prior order except as it applied to Monday visitation.

7) Since there was ample record support for the trial court's decision, it must be affirmed.²

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

² *Mundy v. Devon*, 2006 WL 902233 at *2 (Del. Supr.).