IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN M. SMITH,[1]	§	
	§	
Petitioner Below-Appellant,	§	No. 85, 2006
	§	
	§	
v.	§	Court Below—Family Court
	§	of the State of Delaware,
MARY E. SMITH,	§	in and for New Castle County
	§	File No. CN04-07643
Respondent Below-Appellee.	§	Petition No. 04-15580
	§	

Submitted: July 14, 2006
Decided: September 26, 2006

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

O R D E R

This 26th day of September 2006, upon consideration of the appellant's opening brief, the appellee's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, John Smith (Father), filed this appeal from a Family Court decision awarding the parties joint custody of their three minor children with primary residency to be with appellee, Mary Smith (Mother), during the school year and primary residency with Father during the summer with visitation awarded to the nonresidential parent. The appellee has filed a

[1] The Court has assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

motion to affirm the judgment of the Family Court on the ground that it is manifest on the face of Father's opening brief that the appeal is without merit. We agree and affirm.

(2) Father raises two issues in his opening brief on appeal. First, he contends that the Family Court abused its discretion by failing to "consider and balance the factors set forth in 13 Del. C. § 722." Second, Father argues that the Family Court erred when it considered a consent PFA order entered against him as if it were a "relevant criminal matter."

(3) The scope of this Court's review of a Family Court judgment includes a review of both law and facts.[2] If the Family Court correctly applied the law, we review under an abuse of discretion standard.[3] The Family Court's factual findings will not be disturbed on appeal if they are supported by the record and are the product of an orderly and logical deductive process.[4]

(4) The record in this case reflects that the Family Court reviewed all of the factors relevant to performing a best interest analysis under 13 Del. C. § 722(a) and included substantial citation to evidence in the record bearing on each factor. After considering the relevant evidence and

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

[3] *Jones v. Lang*, 591 A.2d 185, 186-87 (Del. 1991).

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

analyzing the § 722(a) factors, the Family Court explained its decision to keep primary residential custody with Mother during the school year. Specifically, the trial court stated that the record did not support a 50/50 custody arrangement in this case because the parties' respective parenting styles and living arrangements did not support it. The trial court noted the difficulties between the children and Father's fiancé. The Court also noted that the children's current living arrangements were stable and had allowed the children to adjust to the parties' divorce and to perform well academically. The Family Court found no evidence to support disturbing the children's current living arrangements simply because Father desired equal time. We find no abuse of discretion in the Family Court's conclusion that the primary residential custody with Mother during the school year was in the children's best interests.

(5) Father next argues that the Family Court erred as a matter of law in treating the consent PFA order entered against him as "criminal history" under 13 Del. C. § 722(a)(8). In its opinion, the Family Court discussed, in depth, the circumstances surrounding the entry of the consent PFA order against Father in its discussion of the factor of domestic violence under § 722(a)(7). In its analysis of the criminal history factor under § 722(a)(8), the Family Court's entire discussion of Father's criminal history

consisted of the following sentence: "The record reflects Father was convicted of Driving under the Influence of Alcohol in 1989 and this Court issued a consent PFA against Father on or about May 7, 2004." To the extent that the Family Court erred by referring to the consent PFA in its analysis of § 722(a)(8), we find that reference to be harmless. The Family Court already had analyzed the consent PFA as it pertained to the factor of domestic violence under § 722(a)(7). To the extent the trial court mistakenly referred to the consent PFA as criminal history, it is clear from the trial court's decision it did not give any weight to criminal history as a factor in rendering in its decision on custody.

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice