

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|   |   |                              |
|---|---|------------------------------|
| KELLY M. HUNTER, <sup>1</sup>                               | § |                              |
| (a/k/a KELLY M. HUNTER-NEWMAN)                              | § | No. 144, 2005                |
|   | § |                              |
| Petitioner Below,   | § |                              |
| Appellant,  | § | Court Below--Family Court of |
|   | § | the State of Delaware        |
| v.  | § | and for Kent County in File  |
|   | § | No. CK00-03979.              |
| TERRY J. HUNTER,  | § |                              |
|   | § |                              |
| Respondent Below,   | § |                              |
| Appellee,   | § |                              |
|   | § |                              |
| and   | § |                              |
|   | § |                              |
| OFFICE OF CHILD ADVOCATE/<br>ATTORNEY GUARDIAN AD<br>LITEM, | § |                              |
|   | § |                              |
| Appellee.   | § |                              |

Submitted: August 25, 2006  
Decided: November 30, 2006

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**ORDER**

This 30<sup>th</sup> day of November 2006, upon consideration of the briefs on appeal and the Family Court record, it appears to the Court that:

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<sup>1</sup>The Court's Order of May 2, 2005, assigned pseudonyms to the parties. Supr. Ct. R. 7(d).

(1) The appellant, Kelly M. Hunter (“Mother”), filed an appeal from the Family Court’s decision of March 14, 2005 that denied her motion to modify custody and her petition for a rule to show cause. The same decision denied a petition for a rule to show cause filed by appellee-Terry Hunter (“Father”).

(2) Mother and Father have spent the last six years engaged in a battle over custody and visitation. In 2002, Mother and Father executed a custody and visitation agreement (“the agreement”) that was approved by the Family Court. The agreement provided that Mother and Father would share joint legal custody of their three young children. Father was allowed primary placement and final legal decision-making authority. Mother was allowed telephone contact and visitation.

(3) Under the agreement, Mother’s visitation was limited at first to supervised therapeutic visitation in the office of a qualified psychologist or psychiatrist chosen by the children’s guardian ad litem. The agreement provided that, upon the joint recommendation of the therapist and the guardian ad litem, Mother’s visitation would increase in duration and frequency and decrease in level of supervision.

(4) The agreement further provided that the parties would attempt to mediate any custody and visitation-related issues. Moreover, the parties agreed that the custody provisions would be subject to modification only if continued enforcement of the agreement could endanger the children's physical health or significantly impair their emotional development.

(5) Within five months of executing the agreement, Mother and Father had each filed a petition for a rule to show cause alleging that the other had violated the agreement. Seven months after signing the agreement, and while the rule to show cause petitions were pending, Mother filed a motion for modification of custody.

(6) Mother's motion for modification of custody alleged that Father and the guardian ad litem had coerced her into entering the agreement and that she signed the agreement under duress. Mother also alleged (a) that the legal system had been used as a weapon against her and the children; (b) Father and the guardian ad litem had breached the agreement; (c) the Children's Bill of Rights had been ignored; (d) Father had been convicted of domestic violence; (e) Father had been convicted of violating an order of Protection from Abuse; (f) Father had been arrested for Endangering the Welfare of a Child; (g) one of the children had alleged sexual abuse by Father's brother; (h) Father had not

complied with previous orders of the court; (i) Father was guilty of defamation of character; (j) Mother's civil rights had been violated; (k) the children had not received necessary medical care; (l) there had been inappropriate medication prescribed and administered to one of the children; (m) there had been repetitive put-downs of Mother in front of the children; (n) Mother was not informed of Father's petition for a rule to show cause; and (o) Father had committed perjury.

(7) In pretrial proceedings the Family Court determined that it would apply the "best interests" standard of review<sup>2</sup> when considering Mother's motion to modify custody rather than the higher "endangerment/significant impairment" standard that was contemplated by the agreement.<sup>3</sup> Moreover, the Family Court ruled that Mother was barred under the doctrine of judicial estoppel from raising claims of coercion and duress. Third, the Family Court advised the parties that it intended to limit the evidence to events occurring after the date the agreement was entered.

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<sup>2</sup>See Del. Code Ann. tit. 13, § 729(b) (1999) (providing that the Family Court may modify a consent order concerning custody at any time in accordance with the "best interests of the child"); Del. Code Ann. tit. 13, § 722 (1999 & Supp. 2004) (setting forth factors to consider when determining the best interests of the child).

<sup>3</sup>Compare Del. Code Ann. tit. 13, § 729(b) (providing for modification of custody upon determination of "best interests") and Del. Code Ann. tit. 13, § 729(c)(1) (providing for modification of custody only if there is endangerment to physical health or impairment of emotional development).

(8) The 2004 evidentiary hearing lasted a total of five days. By order dated March 14, 2005, the Family Court denied the parties' petitions for rule to show cause and Mother's motion to modify custody. This appeal followed.

(9) On appeal Father filed a motion to affirm the Family Court's judgment on the ground that it was manifest on the face of Mother's opening brief that the appeal was without merit. Also, Father and the guardian ad litem filed motions to dismiss that were based in part on Mother's failure to secure the transcript that was necessary to evaluate her claims.

(10) By Order dated October 5, 2005, this Court denied the motion to affirm and the motions to dismiss. In the same Order, this Court determined that the Family Court had erred when it barred Mother's claims of coercion and duress under the doctrine of judicial estoppel. This Court remanded the appeal to the Family Court for findings of fact and conclusions of law on Mother's claims of coercion and duress.

(11) The Family Court conducted an evidentiary hearing on remand. Over the course of the five-day hearing, the Family Court heard testimony from a number of witnesses including Mother, Father, Mother's former counsel, Father's former counsel, the guardian ad litem, Mother's fifteen-year old child

from a prior marriage, a pastor and his wife, several licensed therapists, and a State Police detective.<sup>4</sup>

(12) By order dated March 31, 2006, the Family Court determined that Mother had not established that she was coerced into entering the agreement or that she had signed the agreement under duress. The Family Court concluded that:

[M]other entered into the agreement because she believed it was the appropriate action to take. . . . Thereafter, [M]other apparently had second thoughts as to what she had done. However, those second thoughts do not affect the validity of the agreement.

In the wake of the Family Court's decision on remand, Mother's appeal is once again before this Court.

(13) Appellate review of an appeal from a custody decision extends to both the facts and the law, as well as to the inferences and deductions made by the Family Court after considering the weight and credibility of the testimony.<sup>5</sup> To the extent the Family Court's decision implicates rulings of law, our review is *de novo*.<sup>6</sup> Findings of fact will not be disturbed unless they are found to be

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<sup>4</sup>It appears that transcript of this hearing as well as prior hearings was provided to Mother at State expense.

<sup>5</sup>*Devon v. Mundy*, 906 A.2d 750, 752 (Del. 2006) (citing *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979)).

<sup>6</sup>*Id.* (citing *In re Heller*, 669 A.2d 25, 29 (Del. 1995)).

clearly erroneous and justice requires that they be overturned.<sup>7</sup> “The judgment of the Family Court must be affirmed when the inferences and deductions upon which [the decision] is based are supported by the record and are the product of an orderly and logical deductive process.”<sup>8</sup>

(14) After careful consideration of the parties’ briefs and thorough review of the record, this Court has determined that this appeal should be affirmed on the basis of the Family Court’s well-reasoned decisions dated March 14, 2005 and March 31, 2006. It is clear that the trial judge considered the evidence under the appropriate legal standards and applied an orderly and logical deductive process to arrive at findings and conclusions that are amply supported by the record. Accordingly, there is no basis upon which to disturb the Family Court’s judgment.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>7</sup>*Id.* (citing *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983)).

<sup>8</sup>*Id.* at 752-53.