

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SUSAN RUSSELL, ¹	§	
	§	No. 509, 2006
Respondent Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
WILLIAM C. STEVENS,	§	C.A. No. CN05-05447
	§	
Petitioner Below,	§	
Appellee.	§	

Submitted: September 19, 2007

Decided: November 1, 2007

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

ORDER

This 1st day of November 2007, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Appellant, Susan Russell (“Mother”), appeals from a Family Court judgment granting William C. Stevens, Jr. (“Father”) primary residential placement of the parties’ daughter, Carla, and providing Mother with standard visitation rights. On appeal, Mother contends that the Family Court abused its discretion. We find no merit to Mother’s contention and affirm.

¹ This Court, *sua sponte*, has assigned pseudonyms to the parties under SUPR. CT. R. 7(d).

2. The parties are the parents of Carla, a 15 month old child at the time of the hearing held in July 2006. In October 2005, Father filed a petition seeking primary residential custody of Carla, who had resided with Mother her entire life and had visited with Father periodically. Carla was born with two significant health problems—club feet, which were operated upon in December 2005, and holes in her heart, some of which apparently had healed without the need for surgery. Father was represented by counsel at the hearing; Mother was not.

3. Mother and Father both testified, as did Father's own father, Mother's former boyfriend, and Mother's own mother. The hearing transcript reflects seriously inadequate communication between Mother and Father concerning Carla's health issues. There is no evidence that Mother ever failed to have Carla's medical problems addressed appropriately, however. Mother lives in a trailer park with her parents and her other minor child (Ellen), whose father visits from time to time. Before Father was awarded primary residential custody of Carla, Mother and the two children (Ellen and Carla) shared a room in the trailer and each child had her own bed and dresser. There was evidence that Mother and her parents smoked marijuana, but recently stopped.

4. Father lives in a three-bedroom house with his parents. Carla has her own room in that house. Father has a felony record and, for that reason, does not drive. His extensive criminal record involves burglary, theft, various alcohol-

related charges and a menacing charge that was pending at the time of the hearing. Mother and Father each testified to concerns regarding Carla's health and safety while Carla was staying with the other parent. Many of their concerns appear to be based on speculation rather than actual evidence. Mother and Father are both currently employed. Father works with his father as a carpenter and Mother works at Wendy's. Both Mother and Father demonstrated a genuine concern for Carla's welfare.

5. Mother appealed from the Family Court's August 21, 2006 custody order, which transferred residential custody of Carla from Mother to Father. On May 14, 2007, we remanded to the Family Court to revisit its custody decision appropriately balancing statutory factors in accordance with the best interests of the child.

6. On remand on June 27, 2007, and after considering the eight interests-of-the-child factors under 13 *Del. C.* § 722(a),² the Family Court awarded primary residential placement of Carla to Father, with standard visitation rights to Mother.

² 13 *Del. C.* § 722(a) provides that:

(a) The Court shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child. In determining the best interests of the child, the Court shall consider all relevant factors including:

(1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;

7. Mother then filed the present appeal, claiming that the Family Court's custody decision was an abuse of discretion, and not the product of an orderly and logical deductive process, because the Family Court failed to: (i) properly consider and balance the factors set forth in 13 *Del. C.* § 722(a); and (ii) explain in detail the reasons for its custody determination, as required by this Court. Those contentions are next discussed.

8. Mother first claims that the Family Court's award of primary residential custody to Father was an abuse of discretion because the Court failed to properly consider and balance the factors set forth in 13 *Del. C.* § 722(a). Specifically, Mother argues that the Family Court did not explain how its decision

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- (2) The wishes of the child as to his or her custodian(s) and residential arrangements;
 - (3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
 - (4) The child's adjustment to his or her home, school and community;
 - (5) The mental and physical health of all individuals involved;
 - (6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title;
 - (7) Evidence of domestic violence as provided for in Chapter 7A of this title; and
 - (8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

“counterbalanced” its findings that four of the eight factors weighed slightly in Father’s favor while factor number eight weighed heavily in Mother’s favor.³

9. The scope of this Court’s review of a Family Court judgment includes a review of both law and fact.⁴ If the Family Court correctly applied the law, we review the Family Court’s decisions concerning child custody for abuse of discretion. The judgment of the trial judge will not be disturbed if it is a product of a logical and orderly reasoning process.⁵ “It is only when the rulings of law or the

³ In its supplemental custody decision, the Family Court concluded that:

Each factor is unique and cannot be given equal weight, thus, it is difficult, if not impossible, to balance one against another. However, the Court does look at the number of factors that favor each party and whether or not there are significant facts which may tip the scale in one parent’s favor. For example, the fact that Father has an extensive criminal history weighs heavily in determining the best interest of the child, while the wishes of the child is [sic] given no weigh in this particular case.

However, in analyzing the above best interest factors, the Court has determined that four of the eight best interest factors weigh in favor of Father (1, 3, 4 and 6), while only one factor weighs in favor of Mother (8). As stated in the previous paragraph, not all of the factors are given equal weight, but the Court has determined that, overall, it is in [Carla’s] best interest for Father to have primary residency and for both parties to share joint custody of Carla. Mother’s visitation shall occur pursuant to the August 21, 2006 Order.

Russell v. Stevens, Del. Fam., No. CN05-05447, Buckworth, J. (June 27, 2007), pp. 5-6.

⁴ See *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

⁵ See *Jones v. Lang*, 591 A.2d 185, 186-87 (Del. 1991).

findings in the Family Court are clearly wrong and the doing of justice requires their overturn that we are free to make contradictory findings.”⁶

10. We have held that “[t]he statute anticipates that the Family Court will weigh the amalgam of all of the listed best interest factors that favor one parent against the amalgam of factors that favor the opposing parent *and* all other relevant evidence and only then make an independent determination of the placement that will be in the best interest of the children.”⁷ The Family Court must consider “each of the eight ‘best interest’ factors under 13 *Del. C.* § 722(a), none of which is solely determinative.”⁸ The law vests wide discretion in the trial court to determine where custody shall be placed.

11. In its decision on remand, the Family Court listed each statutory factor and reviewed all of the factors relevant to performing a best interest analysis under 13 *Del. C.* § 722(a). Specifically, the Court found that factor number eight weighed heavily in favor of Mother, given Father’s two driving under the influence convictions and his felony convictions of burglary and theft. The Family Court also clearly noted that four of the eight best interest factors weigh in favor of Father, while only one factor weighs in favor of Mother. Because “[t]he trial judge

⁶ *Delong v. Stanley*, 1997 Del. LEXIS 374, at *2 (Del. Supr.), citing *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

⁷ *Holmes v. Wooley*, 2002 Del. LEXIS 2, at *4 (Del. Supr.) (emphasis in original).

⁸ *Clark v. Wright*, 2007 Del. LEXIS 370, at *12 (Del. Supr.).

was not required to make an explicit reference to the exact weight [awarded], to each factor,”⁹ the Family Court properly concluded that “overall, it is in [Carla’s] best interest for Father to have primary residency and for both parties to share joint custody of [Carla].”¹⁰ Therefore, we conclude that the Family Court properly held that the best interests of Carla were served by awarding primary residential placement of Carla to Father.

12. Alternatively, Mother claims that the Family Court’s award of primary residential custody to Father was an abuse of discretion because the Family Court failed to explain in great detail the reasons for its custody determination, as required by this Court. In our view, that argument lacks merit as well. Here, Mother simply misstates the record, because the Family Court did explicitly list and take into account all the statutory factors, and also unequivocally explained the reasons in awarding the primary residential placement to Father.

13. Regarding the four factors found to tip in Father’s favor, the Family Court detailed the testimony influencing its decision. Specifically, the Family Court found that: (i) Mother’s trailer was overcrowded and filthy and the minor

⁹ *Vargas v. Gamino*, 2007 Del. LEXIS 3, at *3 (Del. Supr.) (citing *Gomez v. Morning*, 2002 Del. LEXIS 223, at *2 (Del. Supr)).

¹⁰ *Russell v. Stevens*, Del. Fam., No. CN05-05447, Buckworth, J. (June 27, 2007), p. 6.

child was usually unbathed when Father picked her up from that residence;¹¹ (ii) Mother and Maternal Grandmother fed the 15-month old minor child an unhealthy diet;¹² (iii) Mother and Maternal Grandmother smoked cigarettes in the bedroom where the minor child sleeps;¹³ (iv) Maternal Grandmother would care for the minor child more than Mother;¹⁴ (v) Mother's residence increased the minor's exposure to second-hand smoke;¹⁵ and (vi) Mother allowed the minor child to be regularly exposed to her abusive ex-boyfriend.¹⁶ Given these findings, this Court is satisfied that the Family Court properly and fully explained in detail its decision to award Father primary residential placement of Carla.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹¹*Id.*, p. 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*, p. 4.

¹⁵ *Id.*, p. 5.

¹⁶ *Id.*