

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KAREN SNOW, ¹	§	
	§	No. 625, 2006
Petitioner Below-	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
ROBERT J. RICHARDS,	§	No. CN04-08566
	§	
Respondent Below-	§	
Appellee.	§	
	§	

Submitted: October 7, 2007
Decided: November 6, 2007

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

ORDER

This 6th day of November 2007, it appears to the Court that:

(1) Karen Snow (“Mother”) appeals the Family Court’s decision denying her petition for sole legal custody of her daughter, Jackie (“Child”) and awarding joint legal custody to her and Child’s father, Robert J. Richards (“Father”).² Mother contends that the Family Court did not fully consider factors (3) and (5)

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

² The parties agreed at the Oct. 30, 2006 hearing that Mother would keep primary residential custody.

and failed to consider factors (4) and (8) of 13 *Del. C.* § 722. We find no merit to this appeal and affirm.

(2) Child was born on November 30, 2003. Mother and Father lived together for four years before separating in February 2006. Mother then petitioned Family Court for sole legal and primary residential custody of Child. The Family Court held a hearing on October 30, 2006. At the hearing, Mother testified that her relationship with Father included domestic violence. In 2004, there was an incident where Father threw a cable box at Mother, giving her a black eye. She filed for a Protection From Abuse Order (“PFA”) which was later dismissed. Father did plead guilty to Offensive Touching and was required to complete an anger management course.

(3) Mother testified to further incidents after 2004, including verbal abuse as recent as the weekend before the October 2006 hearing. Father testified that he completed the anger management course and denied the claimed abuse. Father’s ex-wife acknowledged that she was aware of the 2004 incident, but Father had never been abusive to her or his children. Mother claimed that during visitation, Child suffered from an asthma attack and a bump on the head. She also claimed that after visitation, Child also would not sleep by herself and Mother had to seek counseling for her.

(4) After the Father and Mother separated, primary residential custody was with Mother. Father shared joint legal custody and limited visitation rights. According to Mother, after Child stayed with Father, she would return unruly and disobedient. Child's daycare provider also testified that she sees a noticeable change in Child's demeanor after her weekend visits with Father. Father admitted to administering Child an incorrect dosage of her medication on one occasion, and that Child suffered from an undiagnosed stress fracture on another. Mother accused Father of daily marijuana use, including sometimes when driving. Father admitted to his prior marijuana use, as well as Mother's. The Family Court found no evidence of Father currently using marijuana. Nor did it find that Father's mental faculties or decision making ability are impaired.

(5) The Family Court denied Mother's petition and ordered joint legal custody of Child, with Mother having primary residence. In making this decision, the Family Court stated that "Absent any strong or compelling evidence why Father should be eliminated from joint legal or decision making in this case the Court DECLINES Mother's request for an award of sole legal custody." Mother appealed. We remanded this case for the Family Court to make a "determination of custody consistent with the best interest analysis required by 13 *Del. C.* § 722."

(6) The Family Court has submitted a report in compliance with this Court's remand. Before making its report, the Family Court held a second hearing

to receive supplemental evidence from the parties on the issue of sole versus joint legal custody and to hear arguments concerning the applicability of the best interest factors of 13 *Del. C.* § 722(a).³ In considering the wishes of the parents, the court noted that since February 2006, Mother agreed to Father having visitation rights with Child every other weekend. The court acknowledged Father's prior domestic violence and drug use, but did not find it to affect his communications with Mother or his interest in his daughter's well-being and development. The court also considered Father's relationship with his ex-wife and other children. After balancing the relevant factors, the court concluded that in the best interests of the child, legal custody should remain joint between the parents. The case was then returned to this Court.

(7) Mother argues that the Family Court committed reversible error by not explicitly discussing all of the enumerated factors and also because it incorrectly analyzed the ones it discussed. Absent misapplication of the law, our standard of review on appeal from Family Court is for abuse of discretion.⁴ If the Family Court's inferences and deductions are supported by the record and are the product of an orderly and logical deductive process, this Court will not substitute its

³ It also incorporated the transcript of the Oct. 30, 2006 hearing as part of the record.

⁴ *Jones v. Lang*, 591 A.2d 185, 187-88 (Del. 1991).

opinion or disturb its factual findings.⁵ Questions of law, however, are reviewed *de novo*.⁶

(8) Under Section 722 of Title 13, the court “shall determine the legal custody and residential arrangements for a child in the best interests of the child” by evaluating “all *relevant* factors,” including the eight statutory factors set forth in the statute.⁷ The consideration given to one factor or combination of factors in each proceeding may be given different weight.⁸ In order for this Court to conduct a meaningful appellate review of a permanent custody judgment, the Family Court must “set[] forth a complete analysis of the consideration it gave to all of the factors in Section 722.”⁹ The reason for this analysis is “for the benefit of the parties and of this Court.”¹⁰

(9) Although the better practice is for the Family Court to make explicit reference to each of the statutory factors seriatim, we find that the Family Court performed the best interest analysis as required by 13 *Del. C.* § 722(a) in this case.

⁵ *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983); *Jones*, 591 A.2d at 187.

⁶ *Norris v. Norris*, 808 A.2d 758, 760 (Del. 2002).

⁷ 13 *Del. C.* § 722(a) (emphasis added). Here, the only determination was for legal custody.

⁸ *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997). As is well-established by this Court, it is “quite possible that the weight of one factor will counterbalance the combined weight of all other factors and be outcome determinative in some situations.” *Id.*

⁹ *Id.* The individual and explicit consideration of each § 722 factor is required in situations such as where the Family Court makes a “dramatic change in the [child’s] current living arrangement.” *Id.* The failure to “address factors for which there [is] no relevant evidence of record does not constitute reversible error.” *Harrington v. Harrington*, 2006 WL 66392, at *4 (Del. Supr.).

¹⁰ *Dalton v. Clanton*, 559 A.2d 1197, 1212 (Del. 1989) (citations omitted).

The record shows that the Family Court discussed the factors it considered most relevant and applicable in determining that joint legal custody was in the child's best interest. Although Mother argues that the Family Court failed to consider the PFA petitions and Father's criminal record, a fair reading of the record and the report shows that the trial judge did consider these incidents in reaching his decision. We find no legal error nor any abuse of discretion by the Family Court in its denial of Mother's petition for sole legal custody.

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice