

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KAYLA M. CLARK,¹

Petitioner Below,
Appellant,

v.

GARRETT S. ZANE,

Respondent Below,
Appellee.

§

§ No. 573, 2011

§

§ Court Below – Family Court
§ of the State of Delaware,

§ in and for New Castle County

§ C.A. No. CN10-05201

§ Petition No. 10-42021

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§

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Submitted: April 18, 2012

Decided: April 23, 2012

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

O R D E R

This 23rd day of April, 2012, it appears to the Court that:

1) The petitioner-appellant, Kayla M. Clark (the “Mother”), appeals from a Family Court order granting conditional joint legal custody and shared residential placement of the parties’ children to the respondent-appellee, Garrett S. Zane (the “Father”). The Mother argues that the Family Court incorrectly applied the statutory best-interests-of-the-child factors (the “best-interests factors”). We remanded the case to the Family Court for a supplemental opinion explaining its analysis of the best-interests factors.

¹ The Court *sua sponte* assigned pseudonyms to the parties by Order dated October 26, 2011. Supr. Ct. R. 7(d).

The Family Court's supplemented reasoning is logical, supported by the record, and properly applied the law to the facts of this case. Therefore, the judgment of the Family Court is affirmed.

2) The Mother and the Father are the parents of two young children. On October 1, 2010, the Mother and the Father separated. Less than a month later, the Mother was awarded sole legal custody and primary residential placement of the children, under an Order of Protection from Abuse entered against the Father. The Father retained visitation rights on alternate weekends.

The Order of Protection from Abuse against the Father arose from "a series of domestic violence charges [against the Father] in October of 2010," including Terroristic Threatening, Assault in the Third Degree, and two counts of Endangering the Welfare of a Minor. In September 2010, a month before the separation, the Mother was also criminally charged with five counts of Obtaining Controlled Substances by Misrepresentation or Fraud, related to an April 2010 incident. The Mother entered a drug diversion program in November 2010, and the charges were later dropped. As the Family Court found, the Mother "acknowledged that she was abusing the prescription drug, Percocet, which she became addicted to . . . after taking the drug as a pain medication."

3) On September 28, 2011, the Family Court held a hearing to determine permanent custody. In an opinion issued October 3, 2011, the court made passing reference to the Father's domestic abuse ("slamming a door on [the Mother's] arm"), and referred to "a great deal of lingering anger by father who initially expressed a reluctance to even participate in co-parenting counseling." The Mother (the court stated obliquely) "believes father to be very upset by her pregnancy during the time that the parties were living together." The Family Court further observed that "application of the custody statute [best interests of the children] factors do favor continuing residential custody with mother," but ordered joint custody nonetheless. Because the Family Court had not elaborated its reasoning by discussing the best-interests factors, we remanded this case for that purpose.

4) On remand, the Family Court analyzed each of the best-interests factors and relevantly found that: the Mother had the "slight advantage" of a closer relationship with the children, as the Father "was not in the children's company as much" because he had previously worked two jobs; the Father "currently has [an] excellent support structure available to him in the form of his parents, with whom he resides, while the Mother lives alone with a newborn demanding her time and attention," a factor favoring the Father; the Mother failed to inform the Father that one of their children

was seriously ill, which also favored the Father; and although there was one incident of the Father's domestic violence on record, favoring the Mother, the charges were dropped and "[t]he actual abuse involved shutting a door on the Mother's arm, which was not a premeditated act." Moreover, the Family Court observed that "[t]here does not appear to be a history of domestic violence on the part of either party."

5) Summarizing its findings, the Family Court found that the best-interests factors supported joint custody, and that "[i]t is in the current and long term best interests of these children to receive the benefits [of custody] from both of their parents and spend as much quality time as possible with each parent." On that basis, the Family Court reaffirmed its order requiring that the parties engage in counseling before April 1, 2012, at which point the parents would share custody and residency of the children. This appeal followed.

6) On appeal, the Mother claims that the Family Court erred because the court incorrectly analyzed the best-interests factors in its opinion on remand, and deviated from its findings in its earlier opinion. We review a Family Court custody and visitation order for abuse of discretion.² To the extent an appeal implicates findings of facts, the scope of our review is

² *Potter v. Branson*, 2005 WL 1403823, at *2 (Del. June 13, 2005) (citing *Jones v. Lang*, 591 A.2d 185, 186 (Del. 1991)).

limited to whether the findings are sufficiently supported by the record and are not clearly wrong.³ Questions of law are reviewed *de novo*.⁴

7) The Family Court “shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child,”⁵ based upon the statutory factors set forth in title 13, section 722(a) of the Delaware Code. Those factors are: (1) the wishes of the parents; (2) the wishes of the children; (3) the children’s relationships with the parents and other householder members; (4) the children’s adjustment to “home, school and community;” (5) the mental and physical health “of all individuals involved;” (6) past and present compliance by both parents with their parental rights and responsibilities; (7) evidence of domestic violence; and (8) the criminal histories of the parents and household members.

8) The Mother takes issue with the Family Court’s analysis of factors three, four, six, and seven. As to the third factor, the Family Court found that the Mother’s closer relationship with the children only “slightly” favored her, and thus concluded that the Father “cannot be penalized for working a second job to better support his children.” The Mother claims

³ *Id.* (“We will also not substitute our own opinion for the inferences and deductions made by the Family Court where those inferences and deductions are supported by the record and are the product of an orderly and logical deductive process.”).

⁴ *Warner v. Dep’t of Serv. for Children, Youth & Their Families, Div. of Family Servs.*, 2008 WL 5008828, at *2 (Del. Nov. 26, 2008).

⁵ Del. Code Ann. tit. 13, § 722(a).

that was error, because the third best-interests factor is concerned only with the quality of the children's relationships with their parents, not the reasons therefor. The Mother's claim disregards the Family Court's duty, which is to *balance* the statutory factors. Nothing in section 722 prevents the Family Court from inquiring into the reasons one factor favors (or disfavors) a particular parent in order to determine how much weight to afford that factor. Therefore, this claim fails.

9) As to factor four, the Mother claims the Family Court erred by finding that the Father's "support structure" of his parents at home favored Father over Mother (who lives alone), because the Mother works only part-time whereas the Father works full-time. That point alone does not demonstrate that the Family Court abused its discretion. For that reason, this claim also lacks merit.

10) The Mother next challenges the Family Court's analysis of the sixth best-interests factor: the extent to which the parents have fulfilled their parental responsibilities. The Father alleged that the Mother had failed to inform him that their son had pneumonia, during a period of time when the protective order against the Father remained in place. Although the Family Court faulted the Mother for not having tried to inform the Father of their son's illness through a third party, it found that fact only "slightly favors

[the] Father's position." Because that factor was insignificant in the best-interests analysis and the court's reasoning is supported by the record, the Family Court did not abuse its discretion as to this factor.

11) The last factor the Mother claims that the Family Court incorrectly analyzed is the evidence of domestic violence, which she agrees involved "Father . . . intentionally shutting a door on Mother's arm." The Mother does not dispute the Family Court's finding that that act was not premeditated. Nor does the Mother dispute the Family Court's statement that no other evidence of domestic violence existed. She claims, however, that "a brutal physical attack of this magnitude should carry significant weight against Father." The Mother is no doubt correct that evidence of domestic violence such as this incident should be afforded considerable weight in a best-interests analysis. Nevertheless, section 722 does not impose a *per se* bar against joint custody for a parent against whom evidence of domestic violence is introduced. The Family Court evaluated all the evidence presented. The Mother has not shown that the weight (or lack thereof) that the Family Court afforded the domestic violence factor in its best-interests determination amounted to an abuse of discretion.

12) Finally, the Mother claims the Family Court disregarded its earlier finding that the parties are unable to communicate. That finding, the

Mother claims, requires that she be granted sole custody. The problem with this claim is that the Family Court did not fail to consider the issue. To the contrary, the Family Court actually fashioned a custody and residential order with that particular issue in mind: the court ordered that the Mother and the Father engage in counseling *before* the shared custody and residential arrangement begins. Therefore, this claim also fails.

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

BY THE COURT:

/s/ Randy J. Holland
Justice