

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LINDA CARSON,	§	
	§	
Respondent Below-	§	No. 305, 2004
Appellant,	§	
	§	
v.	§	Court Below---Family Court
	§	of the State of Delaware,
	§	in and for Sussex County
TIMOTHY HANCOCK,	§	Petition Nos. 02-07515
	§	02-11914
Petitioner Below-	§	File No. CS01-04619
Appellee.	§	

Submitted: January 7, 2005
Decided: February 3, 2005

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices

ORDER¹

This 3rd day of February 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The respondent-appellant, Linda Carson (“Mother”), filed an appeal from the Family Court’s May 13, 2004 order awarding joint custody and shared residential placement of the parties’ minor child, Timmy, to her and the petitioner-appellee, Timothy Hancock (“Father”). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) The parties were married on March 10, 2000 and divorced on February 19, 2003. There was one minor child born of the marriage named

¹ The Court has sua sponte assigned pseudonyms to all individuals in this case. Supr. Ct. R. 7(d).

Timmy, then aged 3½. In April 2002, the Family Court entered a temporary consent order providing for joint custody of the parties' minor child, with residential placement with Mother and visitation with Father every other week-end. Later that month, the Family Court entered an emergency order awarding temporary custody to Mother with supervised visitation with Father at the Milford Visitation Center one time per week. By October 2003, the Family Court entered an order reinstating the custody and visitation arrangements previously in effect under its April 2002 order.

(3) On March 15, 2004, the Family Court held a hearing on the parties' cross petitions for custody. On that date, the Family Court entered a temporary order staying Father's visitation with Timmy because Mother had raised allegations of abuse against Father, which were being investigated by the Division of Family Services ("DFS"). In April 2004, DFS informed the Family Court that it had determined that Mother's allegations against Father were unfounded. At that point, the Family Court entered an order awarding joint custody of Timmy to Mother and Father, with the parties to share residential placement.

(4) At the hearing, the Family Court heard testimony from Mother, Father, Mother's mother, Ms. Williams, and Mother's sister, Linda. Using the

statutory factors required under Delaware law,² the Family Court made the following findings. Both Mother and Father live in Milford, Delaware. Father lives in a 3-bedroom home with his fiancée and her 9-year old daughter. They have been together for 2 years. Father has worked for the past 2 years as a warehouseman with a food company. Father has another daughter who lives with her mother and visits with him every other weekend. Mother lives in a 2-bedroom apartment with Timmy. She has been employed for the past 2 months as a cashier and previously had a job as a salesperson, which lasted 4 years. Both parents are high school graduates. Because Timmy was only 3½ years old, the Family Court did not interview him to ascertain his wishes.

(5) Father's parents live in Frederica, Delaware and visit him every other week. His sister and brother-in-law live in Houston, Delaware, with their two children and also visit him every other week. Mother's mother, Ms. Williams, lives in Millsboro, Delaware, with her daughter, Linda, a college student. Mother's 10-year old daughter, Kelly, lives with Ms. Williams. Mother testified that this is because Kelly's father was violent towards her and engaged in abusive conduct with Kelly. The Family Court noted that no medical reports, police reports or convictions were produced to substantiate the allegations of abuse. A

² Del. Code Ann. tit. 13, § 722(a) (1999).

protection from abuse (“PFA”) petition was filed by Mother, which led to a temporary PFA order being entered. However, the order was never made permanent.

(6) Ms. Williams testified that she has multiple medical problems, including chronic fatigue syndrome, fibromyalgia, diabetes and high blood pressure. She has been on disability for 6 years. Ms. Williams, Linda and Mother all testified that Timmy has engaged in disturbing behavior since visitation with his Father began in October 2003. They stated that he has been masturbating, wetting the bed and using racial epithets to refer to Mother.³ They also stated that Timmy has indicated that Father has inserted objects into his rectum. The Family Court noted that, in spite of these allegations, Timmy was taken to the hospital in connection with these allegations only once---on the day before the hearing. In its decision, the Family Court directly questioned the credibility of Mother’s testimony as well as that of her mother and sister, noting the lack of documentation to support their claims of ongoing violence and abuse by Father.

(7) The Family Court made the following additional findings. The parties live 5 minutes apart and would both use the same daycare center Timmy now attends. Neither parent has any physical condition that would limit his or her

³ Mother is African-American and Father is Caucasian.

ability to care for Timmy, although the Family Court noted that it had concerns about Mother leaving Timmy in the care of Ms. Williams. While Mother complained that Timmy was always sick when he returned from visitation with Father, she produced no medical records to substantiate that allegation. In the past, Father accrued child support arrears in the amount of \$2,000, but has not missed any child support payments for the past 1½ years.

(8) In this appeal, Mother claims that the Family Court abused its discretion by not: affording her sufficient opportunity to present the facts in support of her custody petition; crediting her testimony about Father's alleged abuse of Timmy; and awarding her sole custody of Timmy.

(9) We have reviewed carefully the transcript of the Family Court's March 15, 2004 hearing. We find no abuse of discretion on the part of the Family Court in any respect. Mother was provided ample opportunity to present her case. Moreover, it was for the Family Court to weigh the credibility of the witnesses at the hearing.⁴ There was no abuse of discretion in the Family Court's determination that Mother's testimony concerning Father's alleged violence and abusive behavior, as well as that of Mother's mother and sister, was not credible. The Family Court properly weighed the statutory factors⁵ and was well within its

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

⁵ Del. Code Ann. tit. 13, § 722(a) (1999).

discretion to order that the parties share joint custody and residential placement of Timmy.

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

BY THE COURT:

/s/ Carolyn Berger
Justice