

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN FISHER, ¹	§
	§
Petitioner Below-	§ No. 120, 2009
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
LILLY MORGAN FISHER,	§ in and for New Castle County
	§ File No. CN03-07811
Respondent Below-	§ Petition Nos. 07-10473,
Appellee.	§ 08-13199, and 07-36908

Submitted: June 26, 2009

Decided: August 18, 2009

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

ORDER

This 18th day of August 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Kevin Fisher (Father), filed this appeal from a decision issued by the Family Court resolving the parties' cross-petitions to modify custody. The Family Court's decision awarded sole custody of the parties' two children to the appellee, Lilly Morgan Fisher (Mother). Mother has filed a motion to affirm the judgment below on the ground that it is

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

manifest on the face of Father's opening brief that his appeal is without merit. We agree and affirm.

(2) Father's opening brief on appeal consists of several rambling pages outlining facts in the case and a single-paragraph argument stating that the Family Court judge mistreated him because of his "inabilities and disabilities." He requests that counsel be appointed for him so that he can obtain alimony and get his kids into counseling. Father does not point to any particular error in the Family Court's decision, nor does he cite any legal authority. Construing the opening brief broadly, his argument appears to be that the Family Court was biased against him as reflected by its negative rulings on Father's respective motions and petitions.

(3) The scope of this Court's review of a Family Court judgment includes a review of both law and facts.² If the Family Court correctly applied the law, we review under an abuse of discretion standard.³ The Family Court's factual findings will not be disturbed on appeal if they are supported by the record and are the product of an orderly and logical deductive process.⁴ When the determination of facts turns on the credibility

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

³ *Jones v. Lang*, 591 A.2d 185, 186-87 (Del. 1991).

⁴ *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

of the witnesses who testified under oath before the trial judge, this Court will not substitute its opinion for that of the trial judge.⁵

(4) The record in this case reflects that the Family Court reviewed all of the factors relevant to performing a best interest analysis under 13 Del. C. § 722(a) and included substantial citation to evidence in the record bearing on each factor. After considering the relevant evidence and analyzing the § 722(a) factors, the Family Court concluded that granting Mother sole custody was in the children's best interests. Among other reasons, the Family Court noted that the parties' children, both teenagers, represented to the Court that they were happy living with Mother, whom they described as loving and supportive, and did not want to be with Father, whom they described as uninterested in having a relationship with them. The Family Court also noted that the children have done well living with Mother since the parties' separation, have adjusted well to their living arrangements, and enjoy a loving and stable relationship with Mother. The Court further noted that Father has significant health problems that confine him to a wheelchair.⁶

⁵ *Wife (J.F.V) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

⁶ We reject Father's suggestion that the Family Court's consideration of Father's health reflects discrimination against him because of his disability. The respective health of the parties is simply one of the factors that the Family Court must consider in weighing the best interests of the children. *See* 13 Del. C. § 722(a)(5).

(5) Under the circumstances, we find that the Family Court correctly applied the law. Moreover, the trial judge's factual findings are supported by the record and were the product of an orderly and logical deductive process. We find no abuse of discretion in the Family Court's conclusion that sole custody with Mother was in the children's best interests. Moreover, we find nothing in the record to support Father's suggestion that the Family Court was biased against him simply because it did not rule in his favor.⁷

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁷ See *Los v. Los*, 595 A.2d 381, 384 (Del. 1991) (noting that allegations of a judge's bias must stem from an extrajudicial source and cannot be based solely on adverse rulings in the present case).