

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KELLY HILL, ¹	§
	§ No. 696, 2010
Respondent Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for Kent County
RICHARD HILL,	§ File No. CK02-04432
	§ Petition No. 09-33691
Petitioner Below-	§
Appellee.	§

Submitted: May 13, 2011

Decided: June 14, 2011

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

ORDER

This 14th day of June 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The respondent-appellant, Kelly Hill (“Mother”), filed an appeal from the Family Court’s October 4, 2010 order granting the petition of the petitioner-appellee, Richard Hill (“Father”), for modification of custody with respect to the parties’ minor child, Tonya Hill.² We find no merit to the appeal. Accordingly, we affirm.

¹ The Court *sua sponte* assigned pseudonyms to the parties by Order dated November 3, 2010. Supr. Ct. R. 7(d).

² We also hereby assign a pseudonym to the parties’ minor child.

(2) The record reflects that Mother and Father are the biological parents of Tonya, who was born on September 11, 1999. Since the parties' divorce in June 2003, Tonya has lived primarily with Mother, with Father exercising visitation, as agreed by the parties in a consent order entered by the Family Court on March 3, 2004. On October 12, 2009, Father filed a petition for modification of custody of Tonya. A hearing took place on July 6, 2010. Father, Mother, Tonya's stepmother and Tonya's stepgrandparents testified. Father was represented by counsel and Mother appeared *pro se*. The Family Court also conducted an *in camera* interview with Tonya.

(3) The hearing was continued pending the appointment of an attorney guardian *ad litem* to represent Tonya's interests. The continued hearing took place on October 4, 2010. Again, Father was represented by counsel and Mother appeared *pro se*. Mother and Father testified, as did Lynn Jones, Esquire, the attorney guardian *ad litem*, and Gracie Morris, a witness for Mother. In addition to its written order dated October 4, 2010, the Family Court provided key portions of the rationale underlying its decision from the bench following the hearing.

(4) The transcript of the hearing reflects the following. Father and his wife, Tonya's stepmother ("Stepmother"), live in an apartment over the garage of her parents' house. The house is on DuPont Parkway in Smyrna,

Delaware, and sits on approximately 5 acres. Tonya has her own bedroom when she stays there. Stepmother works at a daycare. Father has worked at Metal Masters for the past 6 years. Father and Stepmother became aware through correspondence with Tonya's grade school principal that Tonya missed several weeks of school during 2008-2009. They are concerned about Tonya's ill-fitting clothing and lack of personal hygiene when she comes to visit them and the fact that she is often left in the care of her 85 year-old grandmother, who is in ill health. They also are concerned about Tonya's exposure to Mother's boyfriend, who has a criminal record. Tonya has a good relationship with Father and Stepmother, but sometimes is moody. She has a good relationship with Stepmother's parents. There have been no incidents of domestic violence between Father and Stepmother.

(5) Mother lives in a double-wide trailer in Magnolia, Delaware. She has lived there for the past year. Mother has lived in several different locations with Tonya over the past several years due to her unstable financial status. She also was living with a boyfriend, but moved out when he abused her. Mother now owns her own business called "K&J Keepsakes," which she operates out of her trailer. Mother is concerned that Father is more concerned with his own activities, such as softball and hunting, than he is with Tonya. Mother states that she has a close emotional relationship with

Tonya, which Father would be unable to replicate should he be granted custody. Mother admits that Tonya's grandmother has been ill, but stated that Tonya can telephone her aunt, who lives a couple of blocks away, if there is any trouble. Mother was charged with truancy due to Tonya's absences from school. She stated that Tonya's absences were due to a bacterial infection, severe headaches and emotional issues. She has not sought counseling for Tonya. Mother's boyfriend lives down the street from her and can easily walk to her residence.

(6) The transcript of the Family Court's interview with Tonya reflects the following. Tonya stated that she is in the fifth grade and wants to be a kindergarten teacher when she grows up. Her favorite classes are math and science. She has a lot of friends at school. She lives with her mother and her mother's boyfriend. She has a good relationship with the boyfriend and they tease each other a lot. Tonya stated that she loves visiting her father and that, while she and her stepmother did not originally get along, things have gotten much better. She stated that she wants more time to spend with her father so that they can build a relationship. She also loves her stepmother's parents. Tonya stated that she loves her mother and father "the same" and is reluctant to express a preference for one over the other.

(7) At the continued hearing, the attorney guardian *ad litem*, Lynn Jones, Esquire, testified concerning her investigation. She stated that Tonya is a bright child whose grades are now A's and B's and who tests well. She has her own bedroom in Mother's trailer. On the negative side, Mother's boyfriend was arrested for domestic violence and is now under a no-contact order. Tonya was not present at the time of the incident. Tonya told Jones that she wants to stay with Mother. Jones also testified that Tonya has her own room in Father's apartment. Father is current on his child support and visitation with Tonya is going well. The living situation with Father is more stable than it is with Mother.

(8) There also was testimony at the continued hearing concerning an incident that had occurred since the first hearing. At around 8:00 one evening, Father dropped Tonya off, at Mother's request, at Mother's friend's house. Although Father conceded that it was in a "bad neighborhood," he, nevertheless, did not escort Tonya to the door before leaving in his car. Tonya ended up at the right house, but not before she had knocked on the wrong door and somehow managed to find her way to the right one.

(9) Before the close of the continued hearing, the Family Court had a criminal background check done on Mother's boyfriend. According to the Family Court, the boyfriend has convictions of Aggravated Menacing,

Disorderly Conduct, Resisting Arrest, Possession of Drug Paraphernalia, Conspiracy, Shoplifting and a number of traffic violations. His latest arrest was for offensive touching on July 30, 2010 for which he was ordered to have no contact with Mother or her residence. In its ruling from the bench, as reflected in its October 4, 2010 order, the Family Court weighed the best interest factors of Del. Code Ann. tit. 13, §722 and determined that joint legal custody of Tonya would remain with both parents, but that Tonya's primary place of residence would be with Father. The Family Court pointedly chastised Father for irresponsibly dropping Tonya off in an unfamiliar neighborhood before determining that she was at the correct house and Mother for permitting Tonya to continue to have contact with her boyfriend even after issuance of the no-contact order prohibiting contact between him and Mother. The Family Court granted Mother visitation, but prohibited any contact between Tonya and Mother's boyfriend.

(10) In this appeal from the Family Court's order, Mother claims that a) she can provide a better environment for Tonya than Father; b) Father has tried to interfere with her relationship with Tonya; and c) her boyfriend, by whom she is now pregnant, is a positive influence on Tonya.

(11) To the extent that issues on appeal from a custody order of the Family Court implicate rulings of law, we review them *de novo*.³ To the extent that such issues implicate findings of fact, we conduct a limited review of the Family Court's factual findings to assure that they are sufficiently supported by the record and are not clearly wrong.⁴ We will not disturb inferences and deductions made by the Family Court that are supported by the record and are the product of an orderly and logical deductive process.⁵ If the Family Court correctly applied the law, our review is limited to abuse of discretion.⁶

(12) Under Del. Code Ann. tit. 13, §729(b), an order entered by the Family Court by consent of the parties may be modified at any time in accordance with the standards set forth in §722(a) concerning the best interests of the child. Under that subsection, determination of a child's best interests must include consideration of 1) the wishes of the child's parents; 2) the wishes of the child; 3) the interaction and interrelationship of the child with relatives and other members of the household; 4) the child's adjustment to home, school and community; 5) the mental and physical health of all individuals involved; 6) compliance of the parents with their responsibilities

³ *Stewart v. DSCYF*, 991 A.2d 750, 755 (Del. 2010).

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

⁵ *Id.*

⁶ *Id.*

to their child; 7) evidence of domestic violence; and 8) the criminal history of any party or resident of the child's household.

(13) We have carefully reviewed the record in this case, including the transcript of both days of the custody hearing as well as the Family Court's interview with Tonya. We are satisfied that the factual findings contained in the Family Court's October 4, 2010 custody order are fully supported by the record. Moreover, we conclude that the Family Court properly weighed the best interests factors of §§722(a) and committed no legal error or abuse of discretion.

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

BY THE COURT:

/s/ Carolyn Berger
Justice