

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN LEONARD, <sup>1</sup>	§
	§ No. 49, 2005
Respondent Below-	§
Appellant,	§ Court Below—Family Court of the
	§ State of Delaware in and for Kent
v.	§ County
	§ File No. CK03-06768
LYNN LEONARD,	§ Petition Nos. 03-18019
	§ 04-19199
Petitioner Below-	§
Appellee.	§

Submitted: August 4, 2005  
Decided: October 18, 2005

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 18<sup>th</sup> day of October 2005, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The respondent-appellant, John Leonard ("Father"), appeals from the Family Court's January 4, 2005 custody/visitation order. The petitioner-appellee, Lynn Leonard ("Mother"), has moved to affirm the judgment of the Family Court on the ground that it is manifest on the face of Father's opening brief that the appeal is without merit. We agree and affirm.

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<sup>1</sup> The Court has sua sponte assigned pseudonyms to the parties, Father's current wife and the parties' minor children. Supr. Ct. R. 7(d).

(2) On January 4, 2005, a hearing was held in the Family Court on Mother's petition for custody and Father's petition for modification of visitation rights. The evidence presented at the hearing showed that Mother and Father are divorced and have two minor children, James, age 5, and David, age 4. James has neurological problems and is developmentally delayed. Mother and Father originally lived in western Pennsylvania. Both Mother and Father have criminal convictions stemming from a domestic altercation involving Father's romantic involvement with the parties' nanny. Mother pleaded guilty to domestic violence involving Father, and Father pleaded guilty to endangering the welfare of his son, David, in connection with the same incident.

(3) Father is now married to Grace, the former nanny, and he and Grace have an infant son. Grace became pregnant with Father's child while Father was still married to Mother. Grace pleaded *nolo contendere* to third degree assault in connection with injuries to James. Mother, Father and Grace all have successfully completed court-ordered domestic abuse programs. Father, who has a history of alcohol abuse, does not have extended family living close by. Mother's extended family is in Western Pennsylvania, where she plans to return. Mother has been primarily responsible for caring for the children's physical and emotional needs. The

University of Pittsburgh in Western Pennsylvania employs physicians who specialize in developmentally delayed children. James already has received treatment from several physicians at the University of Pittsburgh.

(4) After a full hearing on the merits at which Mother, Father, Grace and two relatives of Mother testified, the Family Court determined that Mother and Father would continue to share joint legal custody of their two children, primary residential placement being with Mother. The Family Court further ordered that supervised visitation with Father would continue at the Visitation Center until the end of the childrens' school year, at which time they would relocate with their Mother to Pennsylvania. At that time, visitation with Father would be every other Sunday at a time and place to be mutually agreed upon by the parties, with additional visitation to take place upon 72 hours notice by Father.

(5) In this appeal, Father claims that the Family Court should have awarded him full custody of James and David because: Mother engaged in domestic violence against Father, James and David; Mother manipulated Grace's arrest; Mother's mental health is unstable; and the conditions placed upon Grace by the Superior Court at the time she was sentenced for third degree assault have been satisfied.

(6) Our review of a decision of the Family Court extends to a review of the facts and the law, as well as to deductions and inferences made by the trial judge.<sup>2</sup> If the Family Court has applied the law correctly, our review is limited to abuse of discretion.<sup>3</sup> We will not substitute our opinion for the findings of the trial judge where those findings are supported by the record and are the product of an orderly and logical reasoning process.<sup>4</sup> In a case such as this where custody and residential placement are at issue, Delaware law requires the Family Court to render its decision in accordance with the child's best interests.<sup>5</sup>

(7) We have reviewed carefully the transcript of the January 4, 2005 hearing in the Family Court and the Family Court's written order dated January 4, 2005.<sup>6</sup> Properly weighing the best interests of the children in this case in accordance with the required statutory factors, the Family Court manifestly acted within its discretion in deciding this matter as it did. In the absence of any error or abuse of discretion on the part of the Family Court, we find Father's claims to be without merit.

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<sup>2</sup> *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Del. Code Ann. tit. 13, § 722(a) (1999).

<sup>6</sup> Following the hearing, the Family Court judge placed the rationale for his decision on the record. His written order incorporates that rationale by reference.

(8) It is manifest on the face of Father's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the appellee's motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice