

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PRODROMOS-IOANNIS (JOHN)	§	
PRODROMIDIS,	§	
	§	
Petitioner Below,	§	No. 409, 2003
Appellant,	§	
	§	
v.	§	Court Below: Family Court of
	§	the State of Delaware in and for
	§	New Castle County
SAMANTHA BURMAN,	§	
	§	
Respondent Below,	§	File No. CN99-11532
Appellee.	§	

Submitted: December 23, 2003

Decided: February 9, 2004

Before **VEASEY**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 9th day of February 2004, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

(1) Appellant, Prodromos Ioannis Prodromidis (“Father”), appeals from an Order of the Family Court denying his motion for a Rule to Show Cause why Appellee, Samantha Burman (“Mother”), should not be required to allow their minor daughter, Tasha Prodromidis (“Tasha”) to travel with Father to Greece during his scheduled visitation in December 2002.

(2) Tasha’s parents first separated in 1999. Since then, their difficult relationship has resulted in multiple court orders and stipulations governing

custody and visitation. Father, a college professor, has dual Greek and U.S. citizenship. In 1999, he relocated from the United States to Ireland to teach. Mother is a student and a resident of Delaware, although for some period she lived in Ireland with Father. In the fall of 2002, Tasha resided primarily with her mother and had visitation with her father. The terms of the visitation were governed by a complex and detailed January 22, 2002 “Stipulation and Order” that the parties signed while they were living in Ireland, and that thereafter was entered as an Order by the Family Court.

(3) That Stipulation and Order pertinently provides:

Unless otherwise agreed by the two parties, the issues of equal access and visitation (at each parent’s preferred residence or place) will be governed by the following rules: . . .

...In such case, Mother becomes the primary resident parent and Father has visitation for 5.5 weeks (in all likelihood: 2.5 weeks in the winter break and 3 weeks in his spring break).

(4) Father initially told Mother that he would be taking Tasha to Disney World in Florida during visitation for the winter break. Later, however, he announced that he planned to take Tasha to Greece in November 2002. Mother responded that she would not allow Father to take Tasha to Greece. Despite that, Father purchased airline tickets for himself and Tasha to fly to Ireland and Greece. Father then came to the United States for his visitation with Tasha on December 19, 2002, but Mother

refused to allow Tasha to go to Greece. That same day, Father filed a Motion for an Emergency *Ex Parte* Order and Rule to Show Cause. That motion was set down for a hearing on December 23. Having invoked the litigation machinery, Father then returned to Europe immediately and did not appear at that hearing, which the Court rescheduled for May 2003.

(5) In February 2003, Father moved to Greece permanently, and was drafted into the Greek army for a period scheduled to end in November 2003. The Rule to Show Cause hearing was held on May 19, 2003. At the Family Court's request, the supervising attorney for the National Center for Missing and Exploited Children gave testimony on the risk factors for international abduction, all of which factors were present in this case.¹ The record also showed that Greece is under consideration by the State Department for placement on the list of countries that are noncompliant with the Hague Convention.

(6) At the May 19 hearing, the Family Court found that Father had not met his burden, and dismissed his motion for a Rule to Show Cause. The Court also, *sua sponte*, entered a temporary order permitting Father to

¹ The factors are marriage where there is a mixed culture and different citizenships, no natural ties to the country where the child lives, stronger ties to another country, family supporting the person in the other country, no financial ties to the country where the child resides, young child who would not know to protest, marital instability or lack of cooperation between parents. Father's dual citizenship would also enable him to obtain a Greek passport for Tasha, which would be of significant concern.

have liberal visitation while he was in Delaware, but refusing him permission to take Tasha to Greece.

(7) On appeal, Father argues that the Family Court erred, because it did not enforce its own order and hold Mother in contempt. Father urges that the Family Court essentially rewrote the parties' Stipulation, and also that he did not have fair notice that the visitation issue was before the Family Court.

(8) In reviewing a decision of the Family Court, this Court will not disturb the trial judge's findings of fact unless they are clearly wrong and justice requires their overturn. Conclusions of law are reviewed for abuse of discretion.²

(9) Modification of prior Family Court orders concerning visitation is controlled by 13 *Del. C.* § 729 (b), which provides:

An order entered by the Court by consent of all parties, an interim order or a written agreement between the parties concerning the legal custody of a child or his or her residence may be modified at any time by the Court in accordance with the standards set forth in § 722 of this title.

Section 722, which is referenced in § 729 (b), provides that the Court “shall determine the legal custody and residential arrangements for a child in

² *Gertrude L.Q. v. Stephen P.Q.*, 466 A.2d 1214, 1216 (Del. 1983).

accordance with the best interests of the child” and sets forth several factors that the Court must consider.

(10) Thus, the Family Court has the inherent power to modify a custody order “at any time” in the best interest of the child. Here, the Family Court found that the Father had not proved by a preponderance of the evidence that Mother was in contempt for not permitting Tasha to travel to Greece. The Court’s determination and temporary order rested on the following facts: (i) Father was serving full time in the Greek army, (ii) other than Tasha, he had family and other ties to Greece and no ties to the United States, (iii) neither the visitation agreement (nor any prior versions thereof) contemplated travel to Greece, (iv) Father’s circumstances had changed substantially (from college professor in Ireland to soldier in the Greek army), and (v) Father had the opportunity to exercise visitation in the United States during December 2002, but instead he chose to return to Europe immediately after Mother refused to allow Tasha to travel to Greece. Based on these factors, the Court concluded that the parties’ Agreement did not clearly address the present situation and, therefore, that Mother was not in violation of that Agreement.

(11) Father’s claim that he had no notice that the issue of visitation was before the Court is without merit. The Show Cause proceeding was

occasioned by Mother's refusal to allow Tasha to travel to Greece for visitation. Moreover, the parties had notice that the Court had solicited input from the National Center for Missing and Exploited Children on international travel. Visitation was manifestly an issue of which Father had notice.

(12) We conclude, for these reasons, that the Family Court's findings of fact were not clearly erroneous and its Order denying his Motion for A Rule to Show Cause, and permitting liberal visitation in the United States until a full hearing could be held and completed, was not abuse of discretion.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice