IN THE SUPREME COURT OF THE STATE OF DELAWARE

KAREN PONCE,¹ §

§ No. 483, 2012

Respondent Below,

Appellant, § Court Below—Family Court

§ of the State of Delaware,

v. § in and for Kent County

Ş

ZANE POTTER, § File No. CK11-02412

§ Petition No. 11-24972

Petitioner Below, § Appellee. §

Submitted: February 8, 2013 Decided: March 5, 2013

Before BERGER, JACOBS and RIDGELY, Justices.

ORDER

This 5th day of March 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The respondent-appellant, Karen Ponce ("Mother"), appeals from the Family Court August 1, 2012 order granting joint legal custody and shared placement of Kris, the parties' minor child, to Mother and the petitioner-appellee, Zane Potter ("Father"). We find no merit to the appeal and affirm.

¹ The Court *sua sponte* assigned pseudonyms to the parties by Order dated September 6, 2012 pursuant to SUPR. Ct. R. 7(d). We also hereby assign a pseudonym to the parties' minor child.

- (2) On August 2, 2011, Father petitioned for joint custody with shared placement and moved for temporary visitation with Kris in the Family Court. On October 27, 2011, Mother and Father entered into a consent agreement that was signed as an order of the Family Court. The consent agreement awarded joint custody to the parties and provided for physical placement of Kris with Mother, and visitation for Father (with Mother present).
- (3) Father later renewed his custody petition in the Family Court. A hearing on Father's petition was scheduled in the Family Court for August 1, 2012. According to the order issued on that date, Mother failed to appear for the hearing. The Family Court granted shared custody of Kris to Mother and Father, with physical placement to be shared between them based on a schedule set by the Family Court.
- (4) On appeal, Mother states that, while on her way to the hearing, she received a phone call from her older daughter who told Mother that her car had a flat tire and that she was alone on the side of the highway. Mother states that she called the Family Court to alert the judge to the problem and was told that she had a "15 minute window" to appear for the 1:30 p.m. hearing. Mother further states that she picked her daughter up and they appeared for the hearing at 1:43 p.m. She went to the front desk of the

Family Court and was told that she was not on the calendar for that day. According to Mother, her former name, and not her current name, appeared on the calendar. Mother states that as she was standing at the front desk, Father came down the stairs and told her that the hearing had taken place without her. Mother claims that the Family Court did not consider Kris' best interests at the hearing and asks this Court to remand the matter to the Family Court for a rehearing. Father asks this Court to affirm the Family Court's judgment.

- (5) The record reflects that Mother did not file a motion in the Family Court to reopen the judgment,² but instead directly appealed to this Court. The "facts" presented by Mother to this Court are outside the record and, therefore, not properly before us in this appeal. However, Mother may file a motion in the Family Court to reopen the August 1, 2012 judgment based on those "facts."³
- (6) We have reviewed the entire Family Court record in this appeal.

 The record reflects that Mother was duly notified of the hearing date. The Family Court's findings and grant of Father's petition, given the uncontested

² FAM. CT. CIV. P. R. 60(b).

³ *Id*.

evidence presented at the hearing,⁴ was supported by the record. Therefore, the judgment of the Family Court must be affirmed.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

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