IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY T. TALLEY, ¹	§	
	§	No. 593, 2012
Petitioner Below,	§	
Appellant,	§	Court Below-Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
KATIE E. TALLEY,	§	
	§	File No. CN08-01017
Respondent Below,	§	Pet. No. 12-09879
Appellee.	§	

Submitted: December 13, 2012 Decided: February 14, 2013

Before STEELE, Chief Justice, HOLLAND and BERGER, Justices.

ORDER

This 14th day of February 2013, upon consideration of the appellant's opening brief and the motion to affirm filed by the appellee, it appears to the Court that:

(1) The appellant, Larry Talley ("Father"), has filed an appeal from the Family Court's October 12, 2012 decision denying his petition to modify visitation. The appellee, Katie E. Talley ("Mother"), has moved to affirm the Family Court's judgment on the ground that it is manifest on the face of Father's opening brief that the appeal is without merit. Mother's motion to

¹ By Order dated November 7, 2012, the Court *sua sponte* assigned pseudonyms to the parties. Del. Supr. Ct. R. 7(d).

affirm also includes a request for attorney's fees "for having to file [the motion]."

- (2) It appears that the parties divorced in 2008 and have joint legal custody of their two children. Mother has primary residential placement and Father has visitation. On March 15, 2012, Father filed a petition to modify visitation, seeking permission, generally, to take the children, then ages ten and seven, on vacations outside of the United States, and specifically "to Europe for two weeks from August 3 to August 18." Mother filed a response opposing the petition, stating that "[F]ather is a citizen of Serbia and Canada, and Mother has concerns about Father returning with the children if he is allowed to take them out of the Country."
- (3) At a September 11, 2012 hearing on Father's petition to modify visitation, the Family Court heard testimony from Father, Mother, and Mother's witness, Preston Findlay, Counsel for the National Center for Missing and Exploited Children (hereinafter "Findlay"). After the hearing, the parties submitted post-hearing memoranda to the court.
- (4) By decision dated October 12, 2012, the Family Court denied Father's petition to modify visitation. Father filed an appeal.
- (5) As the appellant in the appeal, Father had the burden of providing "such portions of the [hearing] transcript as are necessary to give

this Court a fair and accurate account of the context in which the claim of error occurred."² Father did not order preparation of the September 11, 2012 hearing transcript. In the absence of the transcript, appellate review of the proceedings is limited to the parties' written pleadings and the Family Court's October 12, 2012 decision.

- (6) In an appeal from a Family Court decision, this Court reviews the facts, the law, and the inferences and deductions made by the Family Court.³ The Court does not disturb the Family Court's factual findings "unless they are clearly wrong and justice requires their overturn." If the Family Court "has correctly applied the law, our standard of review is for abuse of discretion." We review errors of law *de novo*. 6
- (7) When deciding a petition to modify visitation, the Family Court must determine what is in the best interest of the child(ren) by considering the factors enumerated in title 13, section 722 of the Delaware Code.⁷ In

² Porter v. Mannion, 2004 WL 1656507 (Del. Supr.) (quoting Tricoche v. State, 525 A.2d 151, 154 (Del. 1987)).

³ Fowler v. Fowler, 2009 WL 1372694 (Del. Supr.) (quoting Wife (J.F.V.) v. Husband (O.W.V., Jr.), 402 A.2d 1202, 1204 (Del. 1979)).

⁴ Fowler v. Fowler, 2009 WL 1372694 (Del. Supr.) (quoting Solis v. Tea, 468 A.2d 1276, 1279 (Del. 1983)).

⁵Fowler v. Fowler, 2009 WL 1372694 (Del. Supr.) (quoting *Jones v. Lang*, 591 A.2d 185, 186 (Del. 1991)).

⁶ Fowler v. Fowler, 2009 WL 1372694 (Del. Supr.) (citing *In re Heller*, 669 A.2d 25, 29 (Del. 1995)).

⁷ See Del. Code Ann. tit. 13, § 722(a) (2009) (listing best interest factors). *Morrisey v. Morrisey*, 45 A.3d 102, 105-06 (Del. 2012).

this case, it is evident from the October 12, 2012 decision, that the Family Court considered each of the best interest factors and made factual findings and assigned weight to each factor. It further appears that, in reaching its decision, the Family Court found Findlay's testimony credible "as to the significant length of time it could take a non-traveling parent to retrieve a child from a foreign country." The Family Court also appears to have relied upon Father's testimony, as reflected in the decision, "that he will not register a custody/visitation order in Serbia nor Canada," and that he is unwilling to "post a bond to provide Mother with the adequate resources to retrieve her children if necessary."

- (8) In his one-page "opening brief" on appeal, Father challenges the Family Court's denial of his petition to modify visitation, arguing that "taking the children out of the country to visit family or to experience other cultures is in the best interest of the children." Father contends that he has "strong ties to the State of Delaware" and has "never threaten[ed] to abduct the children and take them out of the country."
- (9) We have carefully considered the parties' positions on appeal and the available Family Court record. In the absence of any apparent error or abuse of discretion on the part of the Family Court, we conclude that Father's appeal is without merit.

(10) The general rule on attorney's fees is that "each party bears its own expenses regardless of the outcome of the case." By statute, however, the Family Court is authorized to award attorney's fees "after considering the financial resources of both parties."

(11) Mother's request for attorney's fees on appeal requires findings of fact that are better addressed by the Family Court. Therefore, we will deny Mother's request for fees without prejudice to her right to pursue her claim in the Family Court.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED. Mother's request for attorney's fees is DENIED without prejudice.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁸ Scarpinato v. Nehring, 2003 WL 22250510 (Del. Supr.) (citing Goodrich v. E.F. Hutton Group, Inc., 681 A.2d 1039 (Del. 1996)).

⁹ Del. Code Ann. tit. 13, § 1515.