IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY SAMUEL WILLARD,[1]	§	
	§	No. 421, 2012
Respondent Below-	§	
Appellant,	§	
	§	Court Below—Family Court
v.	§	of the State of Delaware
	§	in and for New Castle County
CINDY MELISSA HINES,	§	File No. CN10-05368
	§	Petition Nos. 12-06413
Petitioner Below-	§	12-10821
Appellee.	§	

Submitted: February 22, 2013
Decided: March 4, 2013

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

O R D E R

This 4th 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, Gary Samuel Willard ("Father"), filed an appeal from the Family Court's July 9, 2012 order granting custody of the parties' minor child, Eric, to the petitioner-appellee, Cindy Melissa Hines ("Mother"). We find no merit to the appeal. Accordingly, we affirm.

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

(2) The record before us reflects that the hearing on the parties' cross-petitions for custody was scheduled for July 9, 2012.[2] It is undisputed that Father was duly notified of the hearing date. The transcript of the hearing reflects the following. The judge noted that the Family Court had received a telephone call from Father several days before the hearing indicating that he was on his way to Florida to visit his father, who was dying. The judge also noted that thereafter Mother was contacted by the Family Court and stated that she did not believe that information was true and that Father was attempting to avoid the hearing.

(3) At the hearing, the judge noted, among other things, that Father had three separate warrants out for his arrest and that Mother had obtained a Protection From Abuse Order against Father in April 2012, after a full hearing on the merits. Father previously had been convicted of domestic abuse, DUI and assault. Also, Father had been awarded visitation, with his mother supervising, but was unable to exercise his right to visitation on several occasions due to his incarceration. Finally, the judge noted that Father had been ordered to pay monthly child support in the amount of $138.00, but that he had not done so. After considering the uncontested

[2] The record reflects that Mother filed her petition for custody on February 23, 2012 and then Father filed his cross-petition on March 28, 2012.

evidence, the judge explicitly weighed the best interests factors[3] and granted Mother's petition for custody of Eric, with visitation to take place upon mutual agreement of the parties.

(4) In his appeal from the Family Court's custody order, Father states that he filed his cross-petition for custody of Eric because Mother was denying his right to visitation. Father claims that, once he found out about his father's condition, he made plans to go to Florida to see him and called the Family Court to find out about postponing the hearing. He claims that he spent two weeks in Florida and assumed he would receive word on the postponement from the Family Court, but never did. He appears to ask the Court to remand this matter to the Family Court so that a new custody hearing may be scheduled.

(5) In an appeal from a decision of the Family Court, this Court reviews the factual findings, including the inferences and deductions, of the Family Court.[4] This Court will not overturn the Family Court's factual findings unless they are clearly wrong and justice requires that they be

[3] Del. Code Ann. tit. 13, §722(a).
[4] *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

overturned.[5] If the Family Court has correctly applied the law, our standard of review is abuse of discretion.[6] We review errors of law *de novo*.[7]

(6) We have reviewed the entire Family Court record in this case, including the transcript of the July 9, 2012 hearing. We find no error or abuse of discretion on the part of the Family Court in granting Mother's petition for custody on the basis of the uncontested evidence presented at the hearing, and conclude that the Family Court properly weighed the best interests factors in reaching its decision. Although Father now complains that the hearing should not have proceeded without him, the Family Court was within its discretion to find that Father had not demonstrated good cause to postpone the hearing. We, therefore, conclude that the judgment of the Family Court must be affirmed.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

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[5] *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).
[6] *Jones v. Lang*, 591 A.2d 185, 186 (Del. 1991).
[7] *In re Heller*, 669 A.2d 25, 29 (Del. 1995).