IN THE SUPREME COURT OF THE STATE OF DELAWARE

DIANE DRIVER,[1]	§	
	§	No. 567, 2012
Petitioner Below-	§	
Appellant,	§	
	§	Court Below—Family Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
CHARLES LONG,	§	File No. CN02-07120
	§	Petition No. 12-03424
Respondent Below-	§	
Appellee.	§	

Submitted: June 7, 2013
Decided: June 24, 2013

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

O R D E R

This 24th day of June 2013, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Diane Driver ("Mother"), filed this appeal from a Family Court order, dated September 21, 2012, denying her petition for modification of custody and granting Charles Long's ("Father") cross-petition for modification of custody. Having reviewed the parties' respective contentions and the record below, we find no error in the Family Court's findings and conclusions. Accordingly, the Family Court's judgment shall be affirmed.

[1] The Court assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

(2) The parties are the parents of a son and a daughter, both teenagers. Pursuant to a custody order dated April 18, 2006, the parties shared joint legal and residential custody of their children. In January 2012, Mother filed a petition for modification of custody asserting that it was in the children's best interests to reside primarily with her because of Father's work schedule. Father filed a cross-petition to modify custody asserting that the children's expressed desired was to reside primarily with him. The Family Court held a hearing on September 18, 2012. Both parties appeared with their respective counsel[2] and testified. The Family Court also interviewed each child separately. Several days later the Family Court issued its opinion granting Father's request for primary residential custody of the children during the school year, which was the expressed wish of the children, and maintained shared residential custody during the summer months. Mother now appeals.

(3) Our review of a decision of the Family Court extends to a review of the facts and law, as well as inferences and deductions made by the trial judge.[3] We have the duty to review the sufficiency of the evidence

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[2] Neither Mother nor Father is represented by counsel on appeal.

[3] *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

and to test the propriety of the findings.[4] Findings of fact will not be disturbed on appeal unless they are determined to be clearly erroneous.[5] We will not substitute our opinion for the inferences and deductions of the trial judge if those inferences are supported by the record.[6]

(4) Under Delaware law, the Family Court is required to determine legal custody and residential arrangements for a child in accordance with the best interests of the child. The criteria for determining the best interests of the child are set forth in Section 722 of Title 13 of the Delaware Code.[7] The criteria in Section 722 must be balanced in accordance with the factual

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

[5] *Mundy v. Devon*, 906 A.2d 750, 752 (Del. 2006).

[6] *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d at 1204.

[7] Section 722(a) provides:

> The Court shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child. In determining the best interests of the child, the Court shall consider all relevant factors including:
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> (1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;
>
> (2) The wishes of the child as to his or her custodians(s) and residential arrangements;
>
> (3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabitating in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
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> (4) The child's adjustment to his or her home, school and community;
>
> (5) The mental and physical health of all individuals involved;
>
> (6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title; and
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> (7) Evidence of domestic violence as provided for in Chapter 7A of this title.

circumstances presented to the Family Court in each case. As this Court has noted, the weight given to one factor or combination of factors will be different in any given proceeding.[8]

(5) In her opening brief, Mother appears to argue that the Family Court's factual findings are not supported by the record and that Father is not credible. To the extent that Mother challenges the Family Court's factual findings, this Court is unable to review her claims because Mother failed to provide a copy of the transcript of the Family Court hearing. The Supreme Court Rules state that the appellant is required to provide the Court with "such portions of the trial transcript as are necessary to give this Court a fair and accurate account of the context in which the claim of error occurred [as well as] a transcript of all evidence relevant to the challenged finding or conclusion."[9] Even an appellant who is *pro se* and is permitted to proceed in forma pauperis on appeal is required to make his or her own financial arrangements to obtain the necessary transcripts.[10] In the absence of any transcript, the Court has no adequate basis upon which to review

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[8] *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997).

[9] Del. Supr. Ct. R. 14(e); *see also Mahan v. Mahan*, 2007 WL 1850905 (Del. June 28, 2007) (*citing Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987)).

[10] *Mahan v. Mahan*, 2007 WL 1850905 (Del. June 28, 2007).

Mother's summary claims of error regarding the Family Court's factual findings in this case.

(6) In its opinion, the Family Court enumerated all of the factors set forth in Section 722 and concluded that none of the factors favored one parent over the other, except that the children each expressed a preference to live with Father primarily during the school year because his home was more structured. Upon review, we find no basis to disturb those findings on appeal. Moreover, the Family Court properly applied the law to the facts in concluding that modifying residential placement during the school year was in the children's best interests given that each child independently articulated reasons for wishing to reside primarily with Father during the school year.

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

BY THE COURT:

/s/ Carolyn Berger
Justice