IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN A. McDONALD,[1]	§	
	§	No. 205, 2012
Petitioner Below,	§	
Appellant,	§	Court Below—Family Court
	§	of the State of Delaware,
v.	§	in and for Kent County
	§	
BETHANY FORD,	§	File No. CK11-02804
	§	Petition No. 11-22114
Respondent Below,	§	
Appellee.	§	

Submitted: September 7, 2012
Decided: October 24, 2012

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

O R D E R

This 24th day of October 2012, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, John McDonald ("Father"), filed this appeal from a Family Court order, dated March 21, 2012, which adopted the trial court's interim visitation order dated December 15, 2011 as a final order. Having reviewed the parties' respective contentions and the record below, we find no merit to the appeal. Accordingly, the Family Court's judgment is affirmed.

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

(2) The record reflects that the parties are the parents of three children, ages 10, 5, and 4. Father lives in Newark, Delaware. Bethany Ford ("Mother") lives with the children in Magnolia, Delaware. Father filed a petition for visitation on July 19, 2011.[2] On December 15, 2011, the Family Court held a hearing on Father's petition for visitation. Both parties appeared without attorneys. Following the hearing, the Family Court granted Father's petition and entered an interim order, dated December 17, 2011, awarding Father visitation with the children. The order was deemed interim, because Mother indicated her intent to file a petition for custody. The Family Court indicated that the visitation matter would be rescheduled and consolidated with the custody matter once the petition for custody was filed. Father did not object. Mother failed to file a petition for custody. Therefore, on March 21, 2012, the Family Court held that the interim visitation order would become a final order. Father now appeals.

[2] Prior to filing his 2011 petition, the parties had entered into an interim consent order, which was signed by a Family Court judge on March 2, 2010. That order reflected that the parties agreed to joint custody of the children with Mother having primary residence. Father agreed to visitation every other weekend. Mother's petition for custody was dismissed on June 30, 2010, however, for her failure to timely submit the parent education certificate. Accordingly, at the time Father filed his petition for visitation, there was no court order in effect regarding either custody of, or visitation with, the children.

(3) Neither party is represented by counsel. In his opening brief on appeal, Father contends that it was not fair for the Family Court to enter the interim visitation order as a final order because Mother failed to file a petition for custody. Father requests this Court to award him more visitation time based on the reinstatement of his driver's license, and also to award him joint custody.

(4) We review a Family Court decision regarding custody and/or visitation for abuse of discretion.[3] To the extent an appeal implicates findings of fact, the scope of our review is limited to whether the findings are sufficiently supported by the record and are not clearly erroneous.[4] We will not substitute our opinion for the inferences and deductions of the trial judge if those inferences are supported by the record.[5]

(5) Father does not take issue with the Family Court's findings underlying the interim visitation order. Instead, he argues that it was unfair for the Family Court to deem the interim order a final order without giving Father the opportunity to be heard on his changed circumstances. Father

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[3] *Morrisey v. Morrisey*, 45 A.3d 102, 104 (Del. 2012).

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

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

asserts that the Family Court penalized him because Mother failed to file a petition for custody.

(6) We disagree. Father was aware that the Family Court deemed its December 2011 visitation order to be an interim order because Mother intended to file a custody petition. Although she indicated her intent to file, Mother was not legally required to do so. After nearly three months passed without any action by Mother, Father could have filed his own petition for custody, but did not. We find no error or abuse of discretion by the Family Court in making its interim visitation order a final order after three months had passed without further action by either party. To the extent that Father is arguing that circumstances have changed since the December 2011 hearing, Father may file a petition to modify the final visitation order in the Family Court at any time.[6]

[6] DEL. CODE ANN. tit. 13, § 729(a) (2009) (providing that an order concerning visitation may be modified at any time if the best interests of the child would be served).

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice