

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KINSLEY LYNCH, ¹	§ No. 31, 2024
Respondent Below, Appellant,	§
v.	§ Court Below—Family Court
	§ of the State of Delaware
	§
BEAU JACK WEBB, SR.,	§ File No. CN23-04555
Petitioner Below, Appellee.	§ Petition No. 23-20227
	§

Submitted: September 20, 2024
Decided: November 18, 2024

Before **VALIHURA, TRAYNOR, and LEGROW**, Justices.

ORDER

Upon consideration of the parties’ briefs and the record on appeal, it appears to the Court that:

(1) The appellant (“Mother”) filed this appeal from a Family Court order, dated December 27, 2023, that granted guardianship of Mother’s son (the “Child”) to the appellee (“Grandfather”). For the reasons stated below, the Family Court’s order must be vacated and the matter remanded to the Family Court for additional proceedings.

(2) The Child was born in 2019. Grandfather is the Child’s paternal grandfather. On September 21, 2023, Grandfather filed a petition for guardianship of the Child. The petition alleged that the Child was dependent, neglected, or abused

¹ The Court previously assigned pseudonyms to the parties under Supreme Court Rule 7(d).

based on domestic abuse, violence, and drug and alcohol abuse. The petition alleged that Mother had the same address as Grandfather and the Child's father had a different address. Grandfather also filed a motion for emergency relief. The court denied the motion and ordered that the guardianship action would proceed in the usual course.

(3) On November 22, 2023, the Family Court sent the parties notice that a fifteen-minute case management teleconference was scheduled for December 27, 2023 at 3:30 p.m.² The notice stated that the purpose of the teleconference was "to determine the status of the case and to issue a scheduling order." The notice stated that a party's failure to participate in the teleconference "may result in the case being dismissed or a default Order being entered by the Court."

(4) Neither parent participated in the December 27, 2023 teleconference. That day, the Family Court entered an order finding that jurisdiction was obtained over both parents by personal service; both parents had failed to file an answer within twenty days of service of the petition; and neither parent provided a phone number where they could be reached for the teleconference. The court therefore awarded guardianship to Grandfather.

² We note that the "re" line of the notice identifies a different family and case number than those in this case, but the letter was addressed to the parties in this case, at the addresses identified in Grandfather's guardianship petition.

(5) This appeal followed. Mother argues that she did not participate in the teleconference because Grandfather told her to “not worry about it.” She argues that the issue of guardianship should have been decided based on facts rather than by default.

(6) This Court reviews the Family Court’s entry of a default judgment against a party for failure to appear for abuse of discretion.³ Mother does not claim that she was not served with the guardianship petition or that she did not receive notice of the teleconference. Nevertheless, we must find that the Family Court abused its discretion in entering a default judgment on the guardianship petition. The grounds for establishment of a guardianship of a child are set forth in Title 13, Section 2330 of the Delaware Code. The parents did not consent to the guardianship. Absent parental consent to a guardianship, Section 2330(a) provides that, “[b]efore granting an order for guardianship under this chapter,” the Family Court shall find as to each parent, after a hearing on the merits and by a preponderance of the evidence, that (i) the child is dependent, neglected, or abused and the reasons therefor, and (ii) the guardianship is in the best interests of the child.⁴

³ *Fether v. McDew*, 2020 WL 4544749, at *3 (Del. Aug. 6, 2020).

⁴ 13 *Del. C.* § 2330(a)(2); *Sanders v. Sanders*, 2020 WL 7213218, at *2 (Del. Dec. 3, 2020); *see also Duncan v. Smith*, 2019 WL 3453257, at *3 (Del. July 30, 2019) (“Mother did not consent to the Paternal Grandparents’ guardianship of Grant. Therefore, under 11 *Del. C.* § 2330(a), before granting a guardianship petition the Family Court was required to find that (i) Grant is ‘dependent, neglected or abused and the reasons therefor’ and (ii) it is in Grant’s best interests for the guardianship to be granted.” (quoting 13 *Del. C.* § 2330(a)(2)). The guardianship statute defines

(7) This Court has held that the Family Court must make the findings required by the statute even when one of the parties is in default.⁵ In *Sanders v. Sanders*, in circumstances very similar to those presented in this case, this Court held that the Family Court abused its discretion by entering a default judgment without making the necessary findings under Section 2330(a).⁶ The Family Court’s order in this case, entered after a telephonic proceeding that was noticed as a fifteen-minute status and scheduling conference, does not reflect that the court made the findings required by Section 2330(a) before granting the petition for guardianship. We therefore conclude that the Family Court’s award of guardianship in this case was an abuse of discretion and must be vacated. We remand this matter to the Family Court for reconsideration of the petition for guardianship, which shall include an evidentiary hearing (after notice to the parties) that encompasses the present

dependency, neglect, and abuse in accordance with 10 *Del. C.* § 901. 13 *Del. C.* § 2302(1), (7), (12). The best-interest factors are set forth in 13 *Del. C.* § 722.

⁵ *Sanders*, 2020 WL 7213218; *see also, e.g., Fether*, 2020 WL 4544749, at *3 (holding that the Family Court was required to apply the standard set forth in 13 *Del. C.* § 729(c)(2), which incorporates the best-interest factors set forth in Section 722, before modifying a child custody order based on the mother’s failure to appear for mediation); *Tatum v. Yost*, 2007 WL 2323791, at *2 (Del. Aug. 15, 2007) (reversing order modifying a previous custody order and stating that the Family Court must “make a best interests determination even if one of the parties is in default”); *Harper v. Harper*, 826 A.2d 293, 296 (Del. 2003) (reversing Family Court order modifying a custody order as requested by the mother after the father failed to appear for the hearing and stating that “the Family Court’s entry of a default judgment against [the father] without determining ‘the best interests of the child’ in accordance with the required statutory factors constituted a clear abuse of discretion” (citation omitted)).

⁶ *Sanders*, 2020 WL 7213218, at *2.

circumstances of the parties and Child, as promptly as feasible. The Child's current residential arrangement shall continue until ordered otherwise by the Family Court.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court dated December 27, 2023, is VACATED. The matter be REMANDED to the Family Court for further proceedings consistent with this order. Jurisdiction is not retained.

BY THE COURT:

/s/ Gary F. Traynor
Justice