

**THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

S--- A-----,)	File No.: CN21-06136
Petitioner,)	Petition No.: 25-20528
)	
)	
v.)	
)	
M--- S---,)	
Respondent.)	
)	

In the Interests of

A----- A----- (D.O.B.: --/--/2017)

J--- A----- (D.O.B.: --/--/2021)

DECISION ON FATHER'S MOTION FOR REARGUMENT

On June 26, 2024, the Court entered a final custody order granting sole legal custody and primary residential placement to M--- S--- ("Mother"), now represented by Laura Brooks, Esq., and supervised in-person visitation to S--- A----- ("Father"), represented by Achille Scache, Esq. The order concerned the children A----- A----- ("A-----") (D.O.B. --/--/2017) and J--- A----- ("J---") (D.O.B. --/--/2021) (collectively, "the children"). Father filed a Petition to Modify Custody on September 12, 2025, and on December 16, 2025, this Court issued a Letter/Decision Order deciding that Father's petition would be governed by the heightened legal standard set forth in *13 Del. C. § 729(c)(1)*. Now before the Court is Father's timely Motion for Reargument of that order, which Mother opposes. For the reasons explained below, Father's Motion is **GRANTED**.

PROCEDURAL HISTORY

The parties were married on September 6, 2020, and divorced on November 21, 2022. Father filed a Petition for Custody on December 23, 2021, seeking shared placement and joint legal custody of the children.¹ In 2023, however, Father entered a no-contest plea to

¹ File CN21-06136, #21-30064, Tab 1.

Child Abuse in the Second Degree, making him a “perpetrator of domestic violence” presumptively ineligible for legal custody or primary residential placement.² Recognizing he could not rebut that presumption, Father’s counsel indicated at a pretrial Case Management Conference (“CMC”) on December 19, 2023, that he was “agreeable” to awarding Mother sole legal custody and primary residential placement.³

Following a full hearing on the merits, the Court issued an order on June 26, 2024, regarding the best interest of the children. First, the Court acknowledged Father’s concession that Mother must be awarded sole legal custody and primary residential placement of both children. Second, the Court granted Father supervised visitation with the children due to his status as a perpetrator of domestic violence.⁴

A little more than a year later, Father filed his custody-modification petition on September 12, 2025.⁵ After a CMC on December 15, 2025, the Court concluded that the underlying custody order was entered after a hearing on the merits and “concern[ed] the legal custody of a child or such child’s primary residence.”⁶ Consequently, the Court would “consider [Father’s] pending Petition to Modify Custody at the heightened legal standard.”⁷

Father filed the present Motion for Reargument on December 29, 2025, contending that the trial record demonstrated that “the issues of legal custody and residency had been ‘entered by consent of the parties’” rather than by the Court after a hearing on the merits.⁸ On January 9, 2026, Mother answered, pointing out that Father had filed a petition for custody rather than a petition for visitation and that the parties “did not enter into a written consent order or in any way memorialize that custody was an agreement and would therefore not be subject to the heightened standard” for modification.⁹ Further, the custody

² See 13 Del. C. § 705A.

³ File CN21-06136, #21-30064, Tab 77.

⁴ File CN21-06136, #21-30064, Tab 87, at 6.

⁵ File CN21-06136, #25-20528, Tab 90.

⁶ 13 Del. C. § 729(c).

⁷ File CN21-06136, #25-20528, Tab 97.

⁸ File CN21-06136, #25-20528, Tab 99, ¶7.

⁹ File CN21-06136, #25-20528, Tab 101, ¶6.

order “did not specifically state” that legal custody and residential placement were not decided on the merits “simply because Father decided on the day of trial not to pursue the same.”¹⁰

DISCUSSION

The question before the Court on reargument is whether to consider the custody modification petition under the § 722 best interest factors, as applied in *13 Del. C. § 729(b)*, or under the heightened standard of § 729(c)(1). Under Rule 59(e), a litigant aggrieved by a court order may seek reconsideration of findings of fact or conclusions of law, giving the trial court an opportunity to correct errors prior to appeal.¹¹ But it is not enough to “simply rehash the arguments already heard or decided by the Court.”¹² “Reargument will usually be denied unless the Court overlooked a controlling precedent or legal principle, or unless the Court misapprehended the law or facts in a manner that affected the outcome of the decision.”¹³ Father’s motion is best taken as a claim that the Court misapprehended the facts of this case in deciding that his new petition would be governed by § 729(c)(1).

Because children benefit from stability, our custody statute sets parameters for when custody orders may be modified. Visitation arrangements may be altered at any time if a change is in a child’s best interest.¹⁴ Changes to legal custody or primary residential placement are more disruptive, however, and orders may be modified within two years only if the parent seeking modification proves that “continuing enforcement . . . may endanger the child’s physical health or significantly impair such child’s emotional development.”¹⁵ Even after that two-year period has passed, modification requires more than a best-interest

¹⁰ File CN21-06136, #25-20528, Tab 101, ¶7.

¹¹ Del. Fam. Ct. Civ. R. 59(e); *Ramon v. Ramon*, 963 A.2d 128, 136 (Del. 2008) (citing *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969)).

¹² *Allen v. Scott*, 257 A.3d 984, 992 (Del. 2021) (quoting *Martin v. Martin*, 857 A.2d 1037, 1039 (Del. Fam. Ct. 2004)).

¹³ *T.B. v. S.R.*, No. 25-03287 and 25-01305, 2025 WL 2945818, at *3 (Del. Fam. Ct. Oct. 3, 2025) (quoting *Ramon*, 963 A.2d at 136) (cleaned up).

¹⁴ *13 Del. C. § 729(a)*.

¹⁵ *13 Del. C. § 729(c)(1)*.

showing.¹⁶ But these restrictions do not apply when a previous custody order was “entered by the Court *by consent of all parties*” rather than “after a full hearing on the merits.”¹⁷

Father does not dispute that the Court determined visitation on the merits. With respect to legal custody, however, Father contends his concessions on the record amounted to consent—even though the order described itself as making “an initial custody determination . . . after a trial on the merits” and expressly found that it was in the children’s best interests for Mother to have sole legal custody and primary residential placement.¹⁸

By contrast, Mother opposes viewing the previous case as an agreement to legal custody with a dispute remaining over only the quality and type of visitation. Essentially, Mother’s position boils down to a formalistic distinction between “consenting” and “conceding”—and between petitions for visitation and petitions for custody.¹⁹ Some authority for her argument can be found in the law of preclusion. A consent judgment “results not from adjudication but from a basically contractual agreement of the parties” and “can be entered only if the parties have in fact agreed to entry.”²⁰ “[T]he central characteristic . . . is that the court has not actually resolved the substance of the issues presented.”²¹ Here, of course, the Court made a finding that awarding Mother sole legal custody and primary residential placement was in the children’s best interests. If a court makes findings on the merits of a petitioner’s claims, the fact that the parties ultimately agreed to the result does not alone make it a consent order.²²

If Mother were correct that Father simply “decided on the day of trial not to pursue

¹⁶ 13 Del. C. § 729(c)(2); *Gilbert v. Bradley*, No. 466, 2012, 2013 WL 1633270 (Del. Feb. 26, 2013).

¹⁷ 13 Del. C. §§ 729(b), (c) (emphasis added).

¹⁸ File CN21-06136, #21-30064, Tab 87, at 1, 6.

¹⁹ To consent is “to give assent or approval,” signifying some degree of affirmative agreement. *Consent*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/consent> (last visited Jan. 30, 2026). To concede, by contrast, is “to acknowledge grudgingly or hesitantly” or “to accept as true, valid, or accurate.” *Concede*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/concede> (last visited Jan. 30, 2026).

²⁰ 18A Charles Alan Wright, et al., *Federal Practice and Procedure* § 4443 (3d ed. 2005).

²¹ *Id.*

²² *Riddick ex rel. Riddick v. Sch. Bd. of City of Norfolk*, 784 F.2d 521, 530 (4th Cir. 1986).

[legal custody or residential placement],"²³ there is little doubt that spontaneously and unilaterally conceding the issue on the record would fail to turn the resulting judgment into "[a]n order entered by the Court by consent of all parties."²⁴ Better practice would have been for Father's counsel to formally agree to a consent order on legal custody and residential placement and convert his petition to one for visitation.

But Father did substantially more than Mother suggests, repeatedly and consistently communicating his legal position. At a CMC months before trial, he informed Mother and the Court that he did not oppose Mother having sole legal custody and primary residential placement.²⁵ Father's counsel then reaffirmed that point in his preliminary remarks to the Court during trial, and the Court understood that the hearing on the merits exclusively concerned the dispute over visitation.²⁶ Although the parties did not formally consent to a stipulation for Mother to have sole legal custody and primary residential placement, *13 Del. C. § 729(b)* directs the Court to issue orders "by consent of all parties" rather than using the technical terms "consent order" or "consent judgment." Consequently, the Court misapprehended the facts by reviewing the custody order in isolation.

There was a time when securing legal relief required intricate knowledge of pleading rules and legal formalities.²⁷ That time is long past. More importantly, Family Court's mission is to "provide equal access to justice for the families and children under [its] jurisdiction" and to do so "fair[ly]" and "efficient[ly]."²⁸ Our rules are designed to "secure the just, speedy[,] and inexpensive determination of every proceeding."²⁹ Whether parties are represented by counsel or not, to stand on form over function in a custody proceeding would be a disservice to this Court's purpose of serving the best interests of children.

²³ File CN21-06136, #25-20528, Tab 101, ¶7.

²⁴ *13 Del. C. § 729(b)*.

²⁵ File CN21-06136, #21-30064, Tab 77, at 1.

²⁶ Final Custody Hearing at 9:34 a.m., March 20, 2024.

²⁷ See *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 573-76 (2007) (Stevens, J., dissenting).

²⁸ *Mission and Jurisdiction of the Family Court*, Delaware Judicial Branch, <https://courts.delaware.gov/family/jurisdiction.aspx> (last visited Dec. 19, 2025).

²⁹ Del. Fam. Ct. Civ. R. 1.

A----- v. S-----

File No. CN21-06136, Petition No. 25-20528
Decision on Father's Motion for Reargument
February 5, 2026
Page 6 of 6

CONCLUSION

Here, the legal custody and residential placement portions of the Court's order of June 26, 2024, were entered "by consent of all parties" because both parties agreed to Mother's position. Father's Petition to Modify Custody is not subject to the restrictions of 13 Del. C. § 729(c), and, instead, will proceed under 13 Del. C. § 729(b). Accordingly, Father's Motion for Reargument is **GRANTED**.

IT IS SO ORDERED.

/ Eliza M. Hirst /

ELIZA M. HIRST, JUDGE

Date Written Order Issued: 2/5/2026

cc: Petitioner via
Respondent via
Date emailed / mailed: 2/5/2026