IN THE SUPREME COURT OF THE STATE OF DELAWARE

AMBER HANES,[1]	§	
	§	No. 621, 2012
Petitioner Below-Appellant,	§	
	§	
	§	Court Below–Family Court
v.	§	of the State of Delaware
	§	in and for Sussex County
THOMAS CANNON,	§	File No. CS09-02724
	§	Petition No. 09-27544
Respondent Below-Appellee.	§	
	§	

Submitted: April 26, 2013
Decided: May 23, 2013

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

O R D E R

This 23rd day of May 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The petitioner-appellant, Amber Hanes ("Wife"), filed an appeal from the Family Court's November 9, 2012 order regarding the ancillary matters of property division, alimony and counsel fees. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, in March 2010, Wife and respondent-appellee Thomas Cannon ("Husband") were divorced after 11

[1] The Court *sua sponte* assigned pseudonyms to the parties by Order dated November 21, 2012. Supr. Ct. R. 7(d).

years and 4 months of marriage. The Family Court retained jurisdiction over the ancillary matters of property division, alimony and attorney's fees. The hearing on ancillary matters took place on October 3, 2012. Both parties appeared and testified. Neither party was represented by counsel and neither party called any witnesses. The Court has reviewed the transcript of the hearing, which reflects the following.

(3) Both Husband and Wife agreed that there were no marital debts to be divided.[2] The parties further agreed that the only marital assets to be divided consisted of a 2005 Toyota Rav4 automobile valued at $5,000, which was in Wife's possession, a 401K account owned by Wife valued at $14,907.30 and a 1994 Ford Aerostar automobile valued at $2,425, which was in Husband's possession. The total value of the assets was $22,332.30. The parties agreed to a 50/50 division of those assets.

(4) Husband requested alimony from Wife. Wife testified that she did "not have any money to pay him alimony." The Family Court heard testimony and reviewed documents from Husband relating to his income and expenses, consisting of 8 pages of hearing transcript. The judge then asked Wife if she had any objection to the testimony and documentary evidence

[2] Both parties had gone through bankruptcy proceedings. As noted by the Family Court in its November 9, 2012 order, all such proceedings were concluded as of October 15, 2012.

presented by Husband. Wife stated that she objected to a loan from Husband's parents that was used to pay attorney's fees in the Family Court litigation.[3] The following colloquy between the judge and Wife then took place. The Court: ". . . I'm asking you if you see anything that . . . looks not reasonable as far as a monthly expense [for Husband]. Do you see anything, ma'am?" Wife: "I don't."

(5) The judge then heard testimony and reviewed documentary evidence from Wife regarding her income and expenses. When the judge asked Wife if there were anything else she wanted to say, she stated that she wanted Husband to pay either for their daughter's extracurricular activities or for her medical expenses.[4] The transcript does not reflect that either Husband or Wife was prevented from objecting to testimony or documentary evidence presented by the other party regarding income and expenses. At the end of the hearing, the judge asked for final comments and Wife stated, "I don't feel like I am obligated to pay him alimony. . . . I believe he's got along just fine in the . . . almost three years that we've been divorced. That's all."

(6) In this appeal, Wife claims that there were a number of numerical discrepancies in the Family Court's order on the matters ancillary

[3] Wife does not raise this issue in her appeal.
[4] Wife also does not raise this issue in her appeal.

to her divorce from Husband, including a miscalculation of the total amount of the marital assets and debts and a miscalculation of the amount owed in alimony. While Wife requests that a federal credit loan be included for purposes of the division of marital property, she explicitly agreed at the hearing that the loan should not be considered. In several instances, Wife seeks to present information and argument in this appeal that was not presented to the Family Court in the first instance. The record does not reflect that Wife filed a motion for reargument in the Family Court on the ground that the Family Court's decision contained numerical errors and inconsistencies.

(7) The Family Court has broad discretion to divide marital property under Del. Code Ann. tit. 13, §1513.[5] On appeal from the Family Court's order dividing a marital estate, this Court reviews the facts and the law as well as the inferences and deductions made by the Family Court.[6] This Court will not disturb the Family Court's findings of fact unless they are clearly wrong and justice requires that they be overturned.[7] Conclusions of law are reviewed *de novo*.[8] If the Family Court has correctly applied the

[5] *Linder v. Linder*, 496 A.2d 1028, 1030 (Del. 1985).
[6] *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).
[7] Id.
[8] *Mundy v. Devon*, 906 A.2d 750, 752 (Del. 2006).

law, our standard of review is abuse of discretion.[9] It is the province of the Family Court, as the finder of fact, to weigh the credibility of the witnesses and to reconcile any discrepancies in the witness testimony.[10] As such, questions of credibility will not be disturbed on appeal unless clearly erroneous.[11]

(8) In determining whether a former spouse is dependent upon the other spouse for alimony, the Family Court is guided by the statutory factors set forth in Del. Code Ann. tit. 13, §1512. Under §1512(b), a party may be awarded alimony only if he or she is a dependent party in that he or she a) is dependent upon the other party for support; b) lacks sufficient property, including any award of marital property, to provide for his or her reasonable needs; and c) is unable to support him or herself through appropriate employment. In order to reach the threshold determination of dependency, the Family Court must consider all of the relevant factors of §1512(c).[12]

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[9] *Forrester v. Forrester*, 953 A.2d 175, 179 (Del. 2008).
[10] *Carter v. Harmon*, Del. Supr., No. 393, 2012, Holland, J. (Jan. 2, 2013) (citing *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d. 1202, 1204 (Del. 1979)).
[11] Id.
[12] *Wright v. Wright*, Del. Supr., No. 647, 2011, Holland, J. (July 10, 2012) (citing *Adelaide A.G. v. Peter W.G.*, 458 A.2d 702, 703-04 (Del. 1983)). Those factors include: 1) the financial resources of the party seeking alimony; 2) the time and expense necessary to enable that party to find appropriate employment; 3) the standard of living during the marriage; 4) the duration of the marriage; 5) the age and physical and emotional condition of the parties; 6) any financial or other contribution of one party to the earning capacity of the other party; 7) the ability of the other party to meet his needs while paying alimony; 8) tax consequences; 9) whether either party has foregone educational or

(9) In its November 9, 2012 decision, the Family Court divided the marital assets in accordance with the parties' agreement at the time of the hearing. The Family Court also weighed the required statutory factors in determining that Husband was dependent upon Wife for alimony and utilized the information provided to it at the hearing in reaching an alimony award for Husband of $250.00 per month for a period of 5 years and 8 months, in accordance with Del. Code Ann. tit. 13, §1512(d).[13] The Family Court, finally, denied Husband's request for reimbursement of his attorney's fees.

(10) We have carefully reviewed the parties' briefs on appeal, the Family Court's decision on ancillary matters and the transcript of the hearing below. We are satisfied that the Family Court acted within its discretion when it divided the marital property and awarded alimony in this case, based upon the evidence it had before it at the hearing. Moreover, we can discern no error of law. We, therefore, conclude that the judgment of the Family Court must be affirmed.

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employment opportunities during the marriage; and 10) any other factor it is just and appropriate to consider.

[13] Under that statute, Husband was eligible for alimony for a period not to exceed 50% of the term of the marriage.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice