IN THE SUPREME COURT OF THE STATE OF DELAWARE

MADISON CASTLE,[1]	§	
	§	
Respondent Below-Appellant,	§	No. 650, 2012
	§	
	§	
v.	§	Court Below—Family Court
	§	of the State of Delaware,
JACK CASTLE,	§	in and for Kent County
	§	File No. CK11-02028
Petitioner Below-Appellee.	§	Petition No. 11-26225
	§	

Submitted: April 12, 2013
Decided: June 11, 2013

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGLEY**, Justices.

O R D E R

This 11th day of May 2013, upon consideration of the appellant's opening brief and the record below,[2] it appears to the Court that:

(1) The appellant, Madison Castle ("Wife"), filed this appeal from an order of the Family Court dated November 19, 2012.[3] The Family Court's order granted the appellee Jack Castle's ("Husband") petition for permanent alimony. Among other things, Wife contends on appeal that the

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

[2] The appellee did not file an answering brief.

[3] The Family Court amended this order on December 21, 2012 to make the award of permanent alimony retroactive to July 15, 2012, the date that temporary alimony payments were scheduled to begin.

Family Court abused its discretion in awarding alimony to Husband because the evidence reflected that Husband's actual expenses were less than his imputed income. We agree. Accordingly, we conclude that the Family Court's judgment must be reversed.

(2) The record reflects that the parties were married on November 29, 2003 and separated on March 6, 2011. Husband filed for divorce in August 2011, and the Family Court issued a divorce decree on October 6, 2011. Husband's petition for divorce did not include a request for alimony. In March 2012, Husband filed a motion to reopen the divorce proceeding to include a request for alimony and attorney fees. The Family Court granted that request. In May 2012, Husband filed a petition for "interim" alimony, indicating that he had lost his job as a respiratory therapist and could not afford to meet his monthly expenses. Wife filed a response in opposition and requested a hearing. On June 29, 2012, the Family Court, without holding a hearing, granted Husband's motion for interim alimony and ordered Wife to pay Husband $2500 per month beginning July 15, 2012.

(3) Wife moved for reargument and again requested a hearing, which was held on August 6, 2012. At the start of the hearing, the parties indicated that they had resolved most of their property division issues and that the only remaining issue to be addressed was alimony. The parties

indicated that, with respect to property division, they had agreed to equally divide their retirement accounts and to equally divide the marital debts, with the exception that Husband would be solely responsible for the credit cards held in his name because he had failed to comply with the Family Court's order requiring him to provide discovery on his assets and debts.

(4) The only witnesses at the hearing were Husband and Wife. Husband presented no evidence other than a list of his claimed living expenses, which did not include any supporting documentation. Husband testified that he was trained as a respiratory therapist and currently was working part-time getting paid at a rate of $41 per hour. Prior to this position, Husband had worked for Peninsula Regional Medical. In 2011, he made about $46,000 per year plus benefits. He was fired from that position in February 2012, however, for failing to include relevant information in a patient's chart.[4] Since losing that job six months before the alimony hearing, Husband testified that he had applied for approximately eight other jobs.

(5) Husband testified that he remained living in the marital home in Delaware after Wife accepted a higher paying job and moved to Connecticut with the parties' two children. He stated that he had not made a mortgage

[4] Husband's petition for interim alimony and his pretrial stipulation both falsely stated that he had been terminated due to downsizing.

payment on the marital home since October 2011, which caused the home to fall into foreclosure,[5] and that he was not currently paying any rent. Nonetheless, Husband included on his list of expenses a mortgage/rent payment of $1150. Husband testified that the $1150 represented a "ballpark" figure for rental properties in Connecticut where he hoped to move to be nearer to the children. Husband's list of monthly expenses also included a $1000 per month court-ordered child support payment. Husband acknowledged, however, that since he had lost his job in February, he had only made one $1000 child support payment and that his court-ordered child support payment had been temporarily stayed by the Family Court and reduced to $200 per month.

(6) Husband's claimed expenses also included a payment to the IRS of $350 per month. He acknowledged, however, that he was only responsible for half of that debt pursuant to the parties' property division agreement. Husband also acknowledged that his claimed credit card payment of $250 per month was, in fact, the credit card debt that he had agreed to be solely responsible for under the terms of the parties' property

[5] Prior to the start of the hearing, counsel indicated that the parties agreed to work together to attempt to obtain a deed in lieu of foreclosure or else to attempt a short sale of the property.

settlement agreement because of his failure to provide court-ordered discovery regarding his debts.

(7) The Family Court accepted all of Husband's listed expenses without adjustment and determined that his monthly obligations totaled $4362. Based on Husband's prior position at Peninsula Regional Medical, the Family Court imputed Husband with a monthly income of $3833, which left Husband with a monthly shortfall of $529. The Family Court thus concluded that Husband was dependent on Wife for support. After considering the factors of 13 Del. C. § 1512(c),[6] the Family Court ordered

[6] DEL. CODE ANN. tit. 13, § 1512(c) (2009). Section 1512(c) provides that the trial court, in determining whether a party is entitled to alimony, must consider:

> (1) The financial resources of the party seeking alimony, including the marital or separate property apportioned to him or her, and his or her ability to meet all or part of his or her reasonable needs independently;
>
> (2) The time necessary and expense required to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment;
>
> (3) The standard of living established during the marriage;
>
> (4) The duration of the marriage;
>
> (5) The age, physical and emotional condition of both parties;
>
> (6) Any financial or other contribution made by either party to the education, training, vocational skills, career or earning capacity of the other party;
>
> (7) The ability of the other party to meet his or her needs while paying alimony;
>
> (8) Tax consequences;
>
> (9) Whether either party has foregone or postponed economic, education or other employment opportunities during the course of the marriage; and
>
> (10) Any other factor which the Court expressly finds is just and appropriate to consider.

Wife to pay Husband alimony of $1500 per month "until such time it is modified or terminated in accordance with the applicable statutes."

(8) In her opening brief on appeal, Wife contends that the Family Court abused its discretion in granting Husband's petition for alimony for several reasons. First, Wife contends that the record established that Husband's actual expenses were *less* than his imputed income. Second, the Family Court credited Husband with paying certain expenses that Husband expressly stated he was *not* paying. Third, the Family Court credited Husband with paying expenses that previously had been disposed of by the parties' property division agreement. Finally, Wife asserts that the Family Court failed to address Husband's refusal to seek proper employment as a factor in determining alimony.

(9) An award of alimony by the Family Court is governed by section 1512 of title 13 of the Delaware Code. Under § 1512(b), a party may be awarded alimony *only* if he or she is found to be dependent upon the other party after consideration of all relevant factors in § 1512(c) in that the party: (i) is dependent upon the other party for support; (2) lacks sufficient property to provide for his or her reasonable needs; and (3) is unable to support himself or herself through appropriate employment.[7] On appeal

[7] *Tribbitt v. Tribbitt*, 963 A.2d 1128, 1132-33 (Del. 2008) (*citing* DEL. CODE ANN.

from a Family Court decision regarding alimony, this Court reviews both the law and the facts, as well as the inferences and deductions made by the trial judge.[8] A trial court's ruling on the issue of alimony will not be disturbed on appeal if: (1) its findings of fact are supported by the record; (2) its decision reflects due consideration of the statutory factors found in 13 Del. C. § 1512; and (3) its explanations, deductions and inferences are the product of a logical and deductive reasoning process.[9]

(10) After careful consideration of the record in this case, we conclude that the Family Court's finding that Husband was dependent on Wife is unsupported by the record. The Family Court accepted, *en toto*, Husband's list of claimed expenses, which were not supported by any evidence and, in some instances, were flatly contradicted by Husband's own testimony. Husband's testimony established that he had not made a mortgage or rent payment since October 2011, almost eight months prior to the alimony hearing. Husband also testified that, in the six months prior to the alimony hearing, he had made only one court-ordered child support payment of $1000. Husband also included tax debt and credit card debt that were resolved by the parties' property settlement agreement.

---

tit. 13, § 1512(b)) (emphasis supplied).

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

[9] *Id.*

(11) Parties requesting alimony bear the burden to prove their dependency and an inability to support themselves through appropriate employment.[10] An award of alimony may not be based on speculation or conjecture.[11] In this case, Husband failed to prove that he was dependent and unable to gain support through appropriate employment. Under the circumstances, we find the Family Court's award of alimony to Husband to be reversible error.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is REVERSED. This matter is REMANDED for further proceedings not inconsistent with this order. Jurisdiction is not retained.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

[10] *Gregg v. Gregg*, 810 A.2d 474, 483 (Del. 1986).

[11] *Olsen v. Olsen*, 971 A.2d 170, 176 (Del. 2009).