

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TROY J. CARTER,	§
	§ No. 333, 2005
Petitioner Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for Sussex County
PAMELA J. CARTER,	§ File No. CS96-03382
	§ Petition No. 04-29487
Respondent Below-	§
Appellee.	§

Submitted: November 4, 2005

Decided: March 9, 2006

Before **STEELE**, Chief Justice, **HOLLAND**, **BERGER**, **JACOBS** and **RIDGELY**, Justices, constituting the Court *en banc*.

ORDER¹

This 9th day of March 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The petitioner-appellant, Troy J. Carter (“Father”), filed an appeal from the Family Court’s July 7, 2005 order, which modified a Family Court commissioner’s order that established the child support obligation of respondent-appellee, Pamela J. Carter (“Mother”). Because the Family Court committed legal error, we REVERSE and REMAND this matter to the Family Court for further proceedings in accordance with this Order.

¹ The Court has sua sponte assigned pseudonyms to the parties and their minor children. Supr. Ct. R. 7(d).

(2) Father and Mother are the parents of two daughters, Hannah, age 16, and Leslie, age 13. In October 2002, pursuant to a consent custody order, Father was given primary residential custody of Hannah. In December 2002, a Family Court commissioner entered an order setting Mother's support obligation at \$93 per month,² which was made retroactive to the date of mediation.

(3) In August 2004, again pursuant to a consent custody order, Father also was given primary residential custody of Leslie. In September 2004, Father filed a petition for support, which the parties agree was served on Mother by regular mail.³ Following mediation in November 2004, the parties entered into a consent order providing that Mother would pay \$896 per month in current support on behalf of both children.

(4) A hearing was held before a Family Court commissioner in January 2005. The commissioner determined that Mother should pay a total of \$996 per month in child support, representing \$896 in current support and \$100 in arrears. The commissioner also determined that Father was entitled to retroactive support, but only as of the date of the mediation.

² This amount reflected support arrears owed by Father during the time Hannah's primary residence was with Mother.

³ While the petition was filed in the interest of both children, it was characterized as a petition for "support" rather than a petition for "modification of support." In addition, Father's counsel had checked the box that requested support ". . . up to a maximum of two years prior to the date of filing"

(5) Father appealed the commissioner's order to a judge of the Family Court on the ground that Mother should be required to pay retroactive support beginning at the time of Leslie's change of residence in May 2004.⁴ In its order dated July 7, 2005, the Family Court held that Father was not entitled to any retroactive support under this Court's decision in *Taylor v. Taylor*, 672 A.2d 44, 50 (Del. 1996).⁵ The Family Court modified the commissioner's determination of Mother's child support obligation and gave her a credit for her overpayment of child support between the date of the mediation and the date of the commissioner's order.⁶

(6) In this appeal, Father claims that the Family Court's order was based on an error of law and constituted an abuse of discretion. According to Father, the Family Court should have ordered Mother to pay child support retroactive to the date Leslie came to live with him because Mother, who had consented to Leslie's change of residence, was on notice that she would be obligated to pay additional child support for Leslie as of that date.

⁴ Father also claimed that the commissioner erred by ordering him to provide Mother, as the "support recipient," with all documentation concerning the children's health insurance coverage.

⁵ In *Taylor*, this Court held that, under Del. Code Ann. tit. 13, § 513(d) (2), service by regular mail of a petition for prospective modification of support is sufficient notice to a support obligor, but that a petition for retrospective modification of support requires service by certified or registered mail.

⁶ The judge also agreed with Father that the commissioner had incorrectly referred to Mother as the "support recipient."

(7) The Family Court reviews de novo those portions of a commissioner's order to which objection is made and may accept, reject or modify the order in whole or in part, and may receive further evidence or remand the matter to the commissioner with instructions.⁷ This Court's review of appeals from the Family Court extends to review of the facts and the law.⁸ If the Family Court has applied the law correctly and has made no factual finding that is clearly wrong, the standard of review is abuse of discretion.⁹

(8) Following a careful review of the record, we conclude that the Family Court erroneously applied this Court's ruling in *Taylor* to the facts of this case. The record reflects that the purpose of Father's support petition, which followed Mother's consent to Leslie's change of residence, was to request additional support from Mother on behalf of Leslie. The petition did not request a modification of the support that Mother already was providing for Hannah, rendering the *Taylor* case inapposite. Under the relevant Delaware case law, it is within the discretion of the Family Court to award support retroactively for up to two years prior to the date on which the

⁷ Del. Code Ann. tit. 10, § 915(d) (1); Fam. Ct. Civ. Proc. R. 53.1(e).

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

⁹ *Jones v. Lang*, 591 A.2d 185, 186 (Del. 1991).

petition for support was filed.¹⁰ In this case, the Family Court had discretion to award Father retroactive support on behalf of Leslie for up to two years prior to September 2004, when Father filed his support petition.¹¹

(9) Because the Family Court relied on an inapposite Delaware case in modifying the commissioner's order, the matter must be remanded to the Family Court for reconsideration of the commissioner's order in light of the appropriate legal authority.¹²

NOW, THEREFORE, IT IS ORDERED that this matter is hereby REVERSED and REMANDED to the Family Court for further proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹⁰ *Snader v. Dudley*, Del. Supr., No. 73, 1999, Berger, J. (Sept. 29, 1999) (citing *Patricia M.D. v. Alexis I.D.*, 442 A.2d 952, 955-56 (Del. 1982)).

¹¹ Moreover, we find no impropriety in Father serving Mother with the support petition by mail, given that the Family Court already had exercised its jurisdiction over a number of ancillary matters stemming from Mother's and Father's divorce.

¹² We find no error with respect to the Family Court's determination that the commissioner incorrectly referred to Mother as the "support recipient."