IN THE SUPREME COURT OF THE STATE OF DELAWARE

JENNIFER DAVIS,[1]	§	
	§	
Petitioner Below-Appellant,	§	No. 155, 2011
	§	
	§	
v.	§	Court Below—Family Court
	§	of the State of Delaware,
LARRY ANDERSON,	§	in and for New Castle County
	§	File No. CN98-11765
Respondent Below-Appellee.	§	Petition No. 10-01055
	§	

Submitted: August 12, 2011
Decided: October 12 , 2011

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

O R D E R

This 12th day of October 2011, upon consideration of the appellant's opening brief[2] and the record on appeal, it appears to the Court that:

(1) Appellant, Jennifer Davis (Wife), filed this appeal from a Family Court decision, dated February 25, 2011, denying her ancillary request for alimony. We find no abuse of the Family Court's discretion in this matter. Accordingly, we affirm the judgment below.

(2) The record reflects that the parties married on May 23, 2003, separated in January 2010, and divorced on July 29, 2010. The parties are

[1] The Court assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).
[2] After the appellee failed to file an answering brief, the parties were informed that this matter would be decided on the basis of the opening brief and the record below.

the parents of two minor children. The Family Court held an ancillary hearing on Wife's request for alimony on February 15, 2011. Neither Wife nor Husband was represented by counsel at the hearing. Both parties presented testimony concerning their respective income and expenses.[3] Wife testified that she had lost her job as a phlebotomist in May 2009 and currently was receiving unemployment in the amount of $247 per week. Wife testified that she is good health and is currently looking for a new position. She also testified that she received approximately $400 per month in child support from Husband. Husband testified that he had recently lost his job making $27,960 per year and currently was working part-time making $10 per hour. Husband testified that he suffers from diabetes and heart disease. After considering the parties' testimony about their respective expenses, the Family Court concluded that Wife was unable to meet her monthly expenses and had a monthly shortfall of $90. The Family Court further concluded, however, that Husband, even before he lost his full-time job, was unable to meet his own monthly expenses. Accordingly, the Family Court denied Wife's petition for alimony on the ground that Husband was unable to pay support.

[3] Wife did not order preparation of the transcript of the ancillary hearing. Accordingly, this Court's recitation of the facts is taken from the Family Court's February 25, 2011 decision.

(4) In her opening brief on appeal, Wife contends that the Family Court's decision was not fair. She does not challenge any of the Family Court's specific factual findings or the Family Court's conclusion that Husband was unable to pay spousal support. Instead, she asserts that her unemployment compensation has been exhausted and that she has no income and needs assistance.

(5) On appeal 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.[4] We review conclusions of law *de novo*.[5] If the Family Court correctly applied the law, we review under an abuse of discretion standard.[6] The Family Court's factual findings will not be disturbed on appeal unless those findings are clearly wrong and justice requires their overturn.[7] When the determination of facts turns on the credibility of the witnesses who testified under oath before the trial judge, this Court will not substitute its opinion for that of the trial judge.[8]

(6) The record in this case reflects that the Family Court reviewed all of the factors relevant to determining an alimony award under 13 Del. C. § 1512(c) and included substantial citation to testimony presented at the

[4] *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).
[5] *Forrester v. Forrester*, 953 A.2d 175, 179 (Del. 2008).
[6] *Jones v. Lang*, 591 A.2d 185, 186-87 (Del. 1991).
[7] *Forrester v. Forrester*, 953 A.2d at 179.
[8] *Wife (J.F.V) v. Husband (O.W.V., Jr.)*, 402 A.2d at 1204.

hearing that had a bearing on the relevant factors. Consideration of Husband's inability to meet his own needs while paying alimony was entirely proper under 13 Del. C. § 1512(c)(7). In the absence of any transcript of the ancillary hearing, which Wife had the burden to supply,[9] this Court is without any adequate basis to review Wife's suggestion of error.[10] Accordingly, the judgment below must be affirmed.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

[9] *See Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).
[10] *Garvey v. Garvey*, 2008 WL 5195352 (Del. Dec. 12, 2008).