

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                     |   |                              |
|---------------------|---|------------------------------|
| KATHLEEN M. GORDON, | § |                              |
|                     | § |                              |
| Petitioner Below-   | § | Nos. 233, 234, and 235, 2004 |
| Appellant,          | § |                              |
|                     | § |                              |
| v.                  | § | Court Below---Family Court   |
|                     | § | of the State of Delaware,    |
|                     | § | in and for New Castle County |
| DONALD E. COLLINS,  | § | File Nos. CN87-1214; 1215    |
|                     | § | CPI Nos. 04-6672; 04430      |
| Respondent Below-   | § |                              |
| Appellee.           | § |                              |

Submitted: October 4, 2004  
Decided: December 28, 2004

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**ORDER**<sup>1</sup>

This 28<sup>th</sup> day of December 2004, upon consideration of the appellant’s briefs on appeal and the appellee’s motions to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:<sup>2</sup>

(1) Petitioner-appellant Kathleen M. Gordon (“Mother”) appeals from an order of the Family Court accepting the Commissioner’s dismissal of Mother’s petition for an order for protection from abuse (“PFA”) against respondent-appellee Donald E. Collins (“Father”) on behalf of the parties’ daughter, Karen. Mother also appeals from the Family Court’s orders accepting the Commissioner’s

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<sup>1</sup> The Court has sua sponte assigned pseudonyms to the parties. Supr. Ct. R. 7(d).

<sup>2</sup> All three of the instant appeals relate to the same Family Court order. Therefore, in the interest of judicial economy, we will dispose of all three appeals in this Order.

dismissal of Mother's two subsequent PFA petitions. Father has moved to affirm the Family Court's orders on the ground that it is manifest on the face of Mother's opening briefs that the appeals are without merit.<sup>3</sup> We agree and AFFIRM.

(2) This litigation has a long history, beginning in July 2000. At that time, the Delaware Division of Family Services ("DFS") filed a dependency/neglect petition for custody of Karen, who was living with Mother. The petition was denied, although DFS was permitted three unannounced visits at Mother's home during the subsequent three-month period. In March 2001, after filing a PFA petition, Father was granted temporary custody of Karen.

(3) In August 2001, DFS filed a second petition for custody. At that time, Karen was placed with her maternal grandparents. In March 2002, Karen was again placed with Mother. During 2002, Mother filed numerous motions relating to child support. In November 2002, the Family Court found it necessary to issue several orders to control Mother's filings, which the Court found to be frivolous. Despite the Family Court's orders, Mother continued to file frivolous motions during 2003.

(4) On December 5, 2003, the Family Court Commissioner held a hearing on PFA petitions filed by Mother and Father, each of whom was represented by

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<sup>3</sup> Supr. Ct. R. 25(a).

counsel. Karen, who was then 17 years old and pregnant with her boyfriend's child, appeared at the hearing. The Commissioner offered Karen representation by a guardian ad litem, but she chose to represent herself.

(5) Mother's attorney argued that Father had abused Karen by failing to provide her with health insurance or access to prenatal care for her unborn child, by failing to make sure she took her asthma medication, and by permitting conflict between Karen and Father's wife. Karen testified, among other things, that she had a good relationship with Father, but had been punched in the head and beaten with a broomstick by Mother. Based on the evidence presented at the hearing, the Commissioner granted Father's PFA petition against Mother and dismissed Mother's PFA petition against Father.

(6) On February 13, 2004, Mother filed another PFA petition, which the Commissioner dismissed on the ground that Mother's claims were res judicata. On March 1, 2004, Mother filed yet another PFA petition, which alleged that her second petition should not have been dismissed because it contained new allegations. The Commissioner dismissed that petition and issued an order prohibiting Mother from filing any further petitions on Karen's behalf without Karen's co-signature, and awarded attorney's fees to Father. Mother filed several

motions seeking review of the Commissioner's orders and several motions for reconsideration, all of which were denied by the Family Court.

(7) In this appeal, Mother claims that the Family Court erred: (a) by accepting the Commissioner's orders, because the Commissioner utilized an erroneous legal definition of "abuse" and did not permit Mother to fully present all her claims; (b) by accepting the Commissioner's order requiring Mother to pay Father's attorney's fees; and (c) by denying Mother's petitions for review of the Commissioner's orders and her motions for reconsideration.

(8) 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.<sup>4</sup> This Court's review of appeals from the Family Court extends to review of the facts and the law.<sup>5</sup> If the Family Court has applied the law correctly, the standard of review is abuse of discretion.<sup>6</sup>

(9) We have reviewed carefully the record in this case, including the transcripts of the hearings before the Family Court Commissioner, the Commissioner's orders and the Family Court judge's orders accepting the orders of the Commissioner and denying Mother's motions for reconsideration. We find

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<sup>4</sup> Del. Code Ann. tit. 10, § 915(d) (1); Fam. Ct. Civ. Proc. R. 53.1(e).

<sup>5</sup> *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

<sup>6</sup> *Jones v. Lang*, 591 A.2d 185, 186 (Del. 1991).

that the Commissioner applied the proper statutory definitions of “abuse” in granting Father’s PFA petition and dismissing Mother’s PFA petition;<sup>7</sup> that the Commissioner properly determined that the claims in Mother’s second and third PFA petitions were res judicata;<sup>8</sup> and that the Commissioner afforded Mother ample opportunity to present her claims. We also find no error or abuse of discretion in the Family Court’s acceptance of the Commissioner’s orders or in its denial of Mother’s motions for reconsideration. Moreover, the Commissioner’s award of attorney’s fees, which the Family Court accepted, was clearly justified given Mother’s pattern of vexatious filings.<sup>9</sup>

(10) It is manifest on the face of Gordon’s opening brief that these appeals are without merit because the issues presented are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

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<sup>7</sup> Del. Code Ann. tit. 10, § 1041(1); Del. Code Ann. tit. 16, § 902(1); Del. Code Ann. tit. 11, § 761.

<sup>8</sup> *Cassidy v. Cassidy*, 689 A.2d 1182, 1185 (Del. 1997); *Bradley v. DCSE*, 582 A.2d 478, 480 (Del. 1990).

<sup>9</sup> *Smith v. Francisco*, 737 A.2d 1000, 1009 (Del. 1999).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice