

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                       |   |                              |
|-----------------------|---|------------------------------|
| GERRY S. HAROLD, III, | § |                              |
|                       | § |                              |
| Respondent Below-     | § | No. 285, 2004                |
| Appellant,            | § |                              |
|                       | § |                              |
| v.                    | § | Court Below---Family Court   |
|                       | § | of the State of Delaware,    |
|                       | § | in and for New Castle County |
| MARY D. HAROLD,       | § | Petition Nos. 02-01867;      |
|                       | § | 03-16186                     |
| Petitioner Below-     | § | File No. CN98-11535          |
| Appellee.             | § |                              |

Submitted: December 3, 2004

Decided: January 21, 2005

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

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

This 21<sup>st</sup> day of January 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) Respondent-appellant Gerry S. Harold, III (“Father”), filed an appeal from the Family Court’s June 29, 2004 order granting the motion of petitioner-appellee Mary D. Harold (“Mother”) for an award of attorney’s fees. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) The parties are the parents of two minor children. On January 18, 2002, Mother filed a motion requesting the Family Court to grant her sole custody of the children and, on November 17, 2003, filed a petition for a rule to show cause

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

based on Father's failure to exercise his court-ordered visitation with the children. On March 9, 2004, following a hearing, the Family Court entered an order: a) finding Father in contempt of three previous Family Court visitation orders;<sup>2</sup> b) suspending visitation; and, c) granting sole custody to Mother based upon Father's continuing pattern of irresponsible and emotionally abusive behavior toward the children.<sup>3</sup> On June 29, 2004, the Family Court awarded Mother \$1,325.00 in attorney's fees, to be paid directly to the law firm of Mother's attorney at the rate of \$100.00 per month.<sup>4</sup>

(3) In arriving at the amount of the award, the Family Court addressed Mother's counsel's experience in Family Court, the time and labor required, the fee customarily charged for similar legal services, the results obtained and the relative financial resources of the parties.<sup>5</sup> The Family Court noted that, even though Mother's income exceeded Father's, an award of attorney's fees was justified because “. . . it was [Father's] refusal to exercise the visitation awarded him and to comply with his responsibilities as the parties' son's joint custodian that caused Mother to incur the fees she did.”

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<sup>2</sup> The orders were dated September 13, 2002, April 23, 2003 and October 21, 2003.

<sup>3</sup> Father did not appear at the hearing despite proper notification. Mother testified that Father told her he did not plan to attend the hearing.

<sup>4</sup> The Family Court disallowed \$200.00, which represented Mother's counsel's travel time to and from the courthouse.

<sup>5</sup> Del. Code Ann. tit. 13, § 731 (1999); Del. Law. R. Prof. Conduct R. 1.5.

(4) In his appeal, Father claims that the Family Court abused its discretion by granting Mother's motion for attorney's fees because Mother has a higher income than he does.

(5) The Family Court has broad discretion to award attorney's fees.<sup>6</sup> On appeal from an award of attorney's fees by the Family Court, we apply the deferential standard of review and, in the absence of an abuse of discretion, must affirm the Family Court's decision.<sup>7</sup> In this case, we find no abuse of discretion on the part of the Family Court in awarding Mother her attorney's fees incurred in connection with court proceedings necessitated by Father's flagrant failure to comply with previous orders of the Family Court, despite the fact that Father's income is less than Mother's.

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>6</sup> *Smith v. Francisco*, 737 A.2d 1000, 1009 (Del. 1999).

<sup>7</sup> *Id.*