

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PAUL F. MOORE, JR., <sup>1</sup>	§
	§ No. 653, 2010
Respondent Below-	§
Appellant,	§
v.	§ Court Below—Family Court
	§ of the State of Delaware
	§ in and for Sussex County
DSCE/SANDRA ALLEN,	§ File No. CS00-04828
	§ Petition No. 09-35241
Petitioners Below-	§
Appellees.	§

Submitted: December 27, 2010

Decided: January 24, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 24<sup>th</sup> day of January 2011, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The respondent-appellant, Paul F. Moore, Jr. (“Father”), filed an appeal from the Family Court’s September 13, 2010 order denying his request for review of a Family Court Commissioner’s permanent child support order dated June 28, 2010. The petitioners-appellees, the Division of Child Support Enforcement (“DCSE”) and Sandra Allen (“Mother”), have

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<sup>1</sup> The Court *sua sponte* assigned pseudonyms to the parties by Order dated October 18, 2010. Supr. Ct. R. 7(d).

moved to affirm the Family Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>2</sup>

We agree and affirm.

(2) The record before us reflects that Father and Mother were divorced on May 2, 2001. They have three children, two of whom are minors. In April 2001, Father and Mother entered into an interim stipulation with respect to custody and child support. The agreement provided for joint custody, with primary placement of the children with Mother and a visitation schedule for Father. The parties also agreed that Father would pay monthly child support in the amount of \$1200. A subsequent interim order by a Family Court Commissioner entered in April 2010 required Father to pay \$521 per month.

(3) On June 22, 2010, a hearing was held before a Family Court Commissioner to establish Father's permanent child support obligation. Father failed to appear at the hearing. At the hearing, the Commissioner determined that the interim support obligation had been calculated incorrectly to provide for only one of the parties' two minor children. The Commissioner's recalculation, as reflected in the June 28, 2010 order,

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<sup>2</sup> Supr. Ct. R. 25(a).

established Father's support obligation at \$910 per month, an amount that included support arrears and reflected a credit for a change in circumstances.

(4) In this appeal, Father claims that the Family Court erred and abused its discretion when it denied his request to review the Commissioner's child support order. He contends that he did not receive notice of the support hearing and that the Family Court Commissioner incorrectly calculated the amount of his child support obligation by basing the calculation on imputed, rather than actual, income. Specifically, Father contends that the Commissioner should have reviewed his corporate and personal tax returns prior to the issuance of the April 2010 interim support order.

(5) The Family Court has the authority to review a Commissioner's order.<sup>3</sup> "Any party, except a party in default of appearance before a Commissioner, may appeal a final order of a Commissioner to a judge of the [Family] Court . . . ."<sup>4</sup> In deciding such an appeal, the Family Court may not accept any additional evidence offered by a party unless such evidence is "newly discovered" and could not, by due diligence, have been discovered in time to offer it before issuance of the Commissioner's order or unless the

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<sup>3</sup> Del. Code Ann. tit. 10, §915(d)(1).

<sup>4</sup> Id.

evidence should be accepted in the interest of justice.<sup>5</sup> The Family Court has the authority to dismiss the appeal of a party who fails to comply with the provisions of Rule 53.1.<sup>6</sup>

(6) In its order denying Father's request for review of the Commissioner's order, the Family Court determined, based on the Family Court record, that notice of the hearing was sent to Father on April 28, 2010 at the address he provided in his current petition and that the notice was not returned as undeliverable. As such, the Family Court determined that Father had failed to appear at the hearing in spite of receiving proper notice and, therefore, lacked standing to appeal from the Commissioner's order. Moreover, the Family Court determined that, even if viewed on their merits, Father's claims were unavailing because the Commissioner had, in fact, reviewed the documentation Father claims he would have presented had he been present at the hearing. We conclude that, in the absence of any evidence of error or an abuse of discretion, the judgment of the Family Court must be affirmed.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

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<sup>5</sup> Fam. Ct. Civ. Proc. R. 53.1(e).

<sup>6</sup> Fam. Ct. Civ. Proc. R. 53.1(i).

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the appellees' motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice