

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES OWENS, ¹	§	
	§	No. 300, 2010
Respondent Below,	§	
Appellant,	§	Court Below—Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
RACHEL OWENS,	§	
	§	
Petitioner Below,	§	File No. CN05-05791
Appellee.	§	

Submitted: November 29, 2010

Decided: January 14, 2011

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

ORDER

This 14th day of January 2011, upon consideration of the briefs on appeal, the appellant’s post-briefing motion to submit an additional exhibit, the appellee’s response to the motion, and the appellant’s reply, it appears to the Court that:

(1) The parties were divorced on May 23, 2006 after a marriage of nearly twenty years. The Family Court retained jurisdiction to determine ancillary matters.

(2) On June 23, 2008, the Family Court issued an ancillary order dividing the marital estate, fifty percent to the appellant, Charles Owens (formerly known as

¹ By Order dated May 21, 2010, the Court *sua sponte* assigned the pseudonyms “Charles Owens” and “Rachel Owens” to the parties. Del. Supr. Ct. R. 7(d).

Caleb Olsen) (hereinafter “Husband”), and fifty percent to the appellee, Rachel Owens (formerly known as Rita Olsen) (hereinafter “Wife”).² Neither Husband nor Wife was completely satisfied with the Family Court’s decision, so each moved for reargument. In his motion for reargument, Husband argued, in relevant part, that the Family Court’s valuation of Wife’s DuPont Savings and Investment Plan (hereinafter “the SIP”) was incorrect.

(3) By order dated October 23, 2008, the Family Court denied the parties’ motions for reargument, and Husband filed an appeal. By Opinion issued on April 28, 2009, this Court affirmed the judgment of the Family Court.³

(4) Upon return of the matter to the Family Court, Husband continued in his efforts to revise the June 2008 property division based on an alleged error in the court’s calculation of the SIP. Eventually, Husband’s efforts to revise the property division included a claim that the marital home had declined in value.

(5) On March 9, 2010, Wife filed a motion to dismiss Husband’s various motions and to enter a “‘case management order’ to limit future filings.” By order dated March 19, 2010, the Family Court ruled that Wife’s motion to dismiss was moot, and that the Clerk of Court should not accept any more filings initiated by

² In a prior appeal, the Court *sua sponte* assigned the pseudonyms “Caleb Olsen” and “Rita Olsen” to the parties.

³ *Olsen v. Olsen*, 971 A.2d 170 (Del. 2009).

Husband without submission to the court for a determination of any legal grounds and basis for relief.⁴

(6) Husband filed a motion for reargument of the March 19, 2010 order. By order dated April 23, 2010, the Family Court denied Husband's motion, ruling as follows:

[The motion for reargument] is denied. Husband raised his dispute of the SIP valuation in his motion for reargument of the [June 23, 2008] ancillary decision. . . . The Court denied Husband's claim at pages 9-10 of the October 22, 2008 decision on Reargument. . . . Husband failed to raise [the SIP claim] in his subsequent appeal to the Delaware Supreme Court. He therefore waived it and cannot raise it now before this Court.

This appeal followed.

(7) After briefing on appeal but prior to submission of the case for decision, Wife filed a motion seeking to clarify the record. In the motion, Wife conceded that the Qualified Domestic Relations Order still to be prepared should reflect that the beginning balance of the SIP is \$151,009.30 and not \$117,032.71 as stated in footnote 18 of the June 23, 2008 property division order. By Order dated September 14, 2010, the Court granted Wife's motion.

(8) On November 8, 2010, forty-five days after the case was submitted for decision, Husband filed a motion for leave to include an additional exhibit in support of his arguments on appeal. Wife opposed Husband's motion, arguing that

⁴ In the interim, the Family Court had decided Husband's pending motions.

it is “irrelevant/outdated as to the issues before the Court, especially after the September 14, 2010 order correcting the record.” The Court agrees with Wife’s position and has not considered Husband’s additional exhibit.

(9) In her answering brief on appeal, Wife argues, in part, that Husband’s motion for reargument of the March 19, 2010 order was untimely filed and should not have been considered by the Family Court. Wife is correct. Family Court Civil Rule 59(e) requires that a motion for reargument must be filed within ten days after the filing of the order. In this case, Husband’s motion for reargument of the March 19, 2010 order was not filed until April 6, 2010, beyond the required ten-day period. As such, the Family Court did not have jurisdiction to entertain the motion.⁵

(10) Even if the motion for reargument had been timely filed, however, Husband would not prevail on the issues he seeks to raise on appeal, *i.e.*, the valuation of the SIP and alleged post-trial reduction in value of the marital residence. In essence, Husband asks this Court to substitute its own opinion for the factual findings and deductions made by the Family Court. Such a substitution would be an improper exercise of this Court’s appellate jurisdiction.⁶

⁵ See *Howard v. Howard*, 2009 WL 1122116 (Del. Supr.) (citing *McDaniel v. DaimlerChrysler Corp.*, 860 A.2d 321, 323 (Del. 2004)).

⁶ *Wife (J.F.V.) v. Husband (O.W.V.)*, 402 A.2d 1202, 1204 (Del. 1979).

NOW, THEREFORE, IT IS ORDERED that, the judgment of the Family Court is AFFIRMED.⁷ This matter is remanded for further proceedings consistent with this Order.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁷See *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (providing that this Court may affirm a trial court's ruling on grounds different from those relied upon by the trial court).