

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARK SIMON, ¹	§
	§
Petitioner Below-	§ No. 265, 2011
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
CATHERINE ORMAND,	§ in and for Sussex County
	§ File No. CS10-1442
Respondent Below-	§ Petition No. 10-08196
Appellee.	§

Submitted: December 9, 2011

Decided: January 23, 2012

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

ORDER

This 23rd day of January 2012, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) Appellant, Mark Simon (Husband), filed this appeal from a Family Court decision, dated April 26, 2011, granting appellee Catherine Ormand's 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 were married on April 27, 2002, separated in August of 2009, and divorced on July 1, 2010. Following the divorce, the Family Court held an ancillary hearing on January 19, 2011

¹ The Court assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

to decide Wife's request for alimony. Both parties appeared at the hearing without counsel. Wife testified that she is 39 years old and was a homemaker for most of the parties' marriage. She put her educational plans on hold during the course of the marriage to stay home with the parties' children. Toward the end of their marriage, Wife started taking college courses to work toward her Associate's Degree. She would like to continue to pursue her Associate's Degree and is eligible for student financial aid, but she is unable to matriculate due to an outstanding educational bill that was incurred during the course of the marriage. She is generally in good health and currently makes about \$16,640 per year working for a housekeeping service. Husband testified that he is 41 years old, is in good health, and manages an automobile repair shop earning over \$59,000 per year. At the conclusion of the hearing, after considering the statutory factors,² the Family Court concluded that Wife was dependent upon Husband for support and ordered that Husband pay alimony in the amount of \$432 per month for a period of four years and one month.

(3) In his opening brief on appeal, Husband does not challenge any of the Family Court's factual findings or the Family Court's conclusion that Wife is dependent upon Husband for support. Husband's sole allegation is

² DEL. CODE ANN. tit. 13, §§ 1512(b), (c) (2009).

that Wife committed adultery during the course of the marriage and that she left him voluntarily. He argues, therefore, that she should not be entitled to alimony as a result of her conduct.

(4) 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.³ We review conclusions of law *de novo*.⁴ If the Family Court correctly applied the law, we review under an abuse of discretion standard.⁵ The Family Court's factual findings will not be disturbed on appeal unless those findings are clearly wrong and justice requires their overturn.⁶ 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.⁷

(5) The record in this case reflects that the Family Court reviewed all of the factors to determine an alimony award under 13 Del. C. § 1512(c) and included substantial citation to testimony presented at the hearing that had a bearing on the relevant factors. Section 1512(c) specifically provides that the Family Court shall award alimony to a dependent party in an amount and for such time as the trial court deems just *without regard to marital*

³ Wife (J.F.V.) v. Husband (O.W.V., Jr.), 402 A.2d 1202, 1204 (Del. 1979).

⁴ *Forrester v. Forrester*, 953 A.2d 175, 179 (Del. 2008).

⁵ *Jones v. Lang*, 591 A.2d 185, 186-87 (Del. 1991).

⁶ *Forrester v. Forrester*, 953 A.2d at 179.

⁷ Wife (J.F.V.) v. Husband (O.W.V., Jr.), 402 A.2d at 1204.

*misconduct.*⁸ Accordingly, Husband's argument that alimony is not justified solely because of Wife's alleged misconduct has no merit. The Family Court correctly applied the law and its factual findings are supported by the record. Consequently, the judgment below must be affirmed.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁸ DEL. CODE ANN. tit. 13, § 1512(c) (2009).