

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MELISSA WATERS, ¹	§
	§ No. 460, 2010
Petitioner Below-	§
Appellant,	§
v.	§ Court Below—Family Court of the
	§ State of Delaware, in and for New
	§ Castle County
DAVID A. WATERS, JR.,	§ File No. CN03-08003
	§ Petition No. 03-21054
Respondent Below-	§
Appellee.	§

Submitted: January 4, 2011

Decided: January 31, 2011

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

ORDER

This 31st 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 petitioner-appellant, Melissa Waters (“Wife”), filed an appeal from the Family Court’s July 14, 2010 order denying her motion to reopen the proceedings ancillary to her divorce and awarding the respondent-appellee, David A. Waters, Jr. (“Husband”), his attorney’s fees in connection with the motion. Husband has moved to affirm the Family

¹ The Court assigned pseudonyms to the parties by Order dated July 23, 2010. Supr. Ct. R. 7(d).

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.² We agree and affirm.

(2) The record before us reflects that the Family Court entered a decree of divorce in this matter on September 25, 2003. Jurisdiction over matters ancillary to the divorce was retained by order dated October 15, 2003. The Family Court's final order with respect to ancillary matters was filed on September 14, 2004. It does not appear that Wife appealed that decision to this Court. Wife filed her first motion to reopen in March 2010. The Family Court denied the motion on March 9, 2010. Wife did not appeal the Family Court's decision. This appeal is from Wife's second motion to reopen.

(3) In support of her appeal, Wife claims that, during the divorce proceedings, her attorney withdrew and she was not mentally capable of representing herself. She wants to open the ancillary proceedings incident to her divorce for the purpose of determining her entitlement to alimony.

(4) Under Rule 60(b) of the Family Court Civil Procedure Rules, the Family Court may relieve a party from a final judgment in case of a) mistake, inadvertence, surprise, or excusable neglect; b) newly discovered evidence; c) fraud; d) a void judgment; e) a judgment that has been satisfied

² Supr. Ct. R. 25(a).

or discharged; or f) any other reason justifying relief from the operation of the judgment. Wife has failed to offer any evidence in support of a claim of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud or that the Family Court's judgment is void or has been satisfied. Moreover, we conclude that there was no abuse of discretion on the part of the Family Court in denying Wife's motion to reopen, since she offered no reasonable justification for the delay in filing her motion.³

(5) 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 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 motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³ *Shiple v. New Castle County*, 975 A.2d 764, 770 (Del. 2009).