

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MERTON R. OLDS,	§
	§
Respondent Below-	§ No. 311, 2001
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
LINDA WEST OLDS,	§ in and for New Castle County
	§ File No. CN92-9369
Petitioner Below-	§ CPI Nos. 9916523; 0102685
Appellee.	§

Submitted: April 12, 2002

Decided: June 6, 2002

Before **WALSH, HOLLAND** and **BERGER**, Justices

ORDER

This 6th day of June 2002, upon consideration of the appellant's opening brief on appeal¹ and the record below, it appears to the Court that:

(1) The respondent-appellant, Merton R. Olds, filed this appeal from the Family Court's June 7, 2001 order finding him in contempt of the Family Court's February 17, 2000 stipulated order requiring him to make

¹On February 27, 2002, following the filing of the appellant's opening brief, counsel for the appellee filed a motion to withdraw. The motion was granted by this Court on March 5, 2002. On March 12, 2002, the Clerk sent a brief delinquency notice to the appellee. On March 22, 2002, in the absence of a response from the appellee, the Court ordered that the appeal would be considered solely on the basis of the appellant's opening brief and the Family Court record.

scheduled payments to petitioner-appellee, Linda West Olds, his former wife. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Mr. Olds claims that the Family Court committed error and abused its discretion by failing to: a) modify the February 17, 2000 order because he had not agreed to it; b) address his contention that his attorney had provided ineffective assistance in connection with the order; c) conduct a hearing on his request to reduce the amount owed to Ms. Olds; d) rule on his motion to join his request to reduce the amount owed to Ms. Olds with Ms. Olds' petition for a rule to show cause; and e) permit him to submit health records and expert testimony concerning the impact of his mental health status on his ability to secure employment.

(3) On May 21, 1999, Ms. Olds filed a rule to show cause in the Family Court against Mr. Olds seeking enforcement of two previous orders requiring him to make certain payments to her.² A hearing took place on October 28, 1999 to determine the precise amount owed. Mr. Olds was represented by counsel at that time. The hearing transcript reflects that Mr. Olds conceded he owed Ms. Olds a total of \$70,000, had paid her

²It appears that these payments included proceeds from the parties' property division and back child support, among other things.

only

\$2,175 of that amount and had paid significant amounts of money to his adult sons and his church rather than to Ms. Olds. In its written decision dated November 2, 1999, the Family Court ruled that, while Mr. Olds was not in contempt of its previous orders because they did not reflect a specific amount owed, he had, nevertheless, not made a good faith effort to reduce his debt to Ms. Olds. The Family Court's February 17, 2000 stipulated order required Mr. Olds to pay Ms. Olds \$600 a month beginning on December 1, 1999 and \$700 a month beginning on September 1, 2000 until the entire amount owed was paid.

(4) In June 2000, Ms. Olds' counsel informed Mr. Olds' counsel that Mr. Olds was not in compliance with the Family Court's order. On July 24, 2000, Ms. Olds filed another petition for a rule to show cause. Mr. Olds failed to appear for the hearing on December 21, 2000. In its written order of the same date, the Family Court held Mr. Olds in contempt of its February 17, 2000 order in absentia.

(5) Mr. Olds subsequently filed a motion to re-open the hearing as well as a petition to reduce the amount owed to Ms. Olds, which he requested the Family Court to consider at the hearing. The motion to re-open was granted and another hearing was held on June 7, 2001, with Mr.

Olds present. At the hearing, Mr. Olds, who now was acting pro se, contended that he had never agreed to the payment schedule contained in the February 17, 2000 order. He testified, however, that he made payments to Ms. Olds at least through June 2000 as required under the order.³ Mr. Olds further testified that he made no payment to Ms. Olds in August, made another payment in September, and then made no further payments. The reasons he offered for his failure to make the scheduled payments was that Ms. Olds, through one of their sons, had agreed to modify the payment schedule, he was overburdened with other debts and his psychiatric problems prevented him from securing regular employment.

(6) Following the hearing, the Family Court denied Mr. Olds' last-minute request to obtain expert testimony concerning his psychiatric condition and once again held Mr. Olds in contempt of its February 17, 2000 order. In its written decision dated June 7, 2001, the Family Court found, based upon the undisputed hearing testimony, that Mr. Olds had made payments to Ms. Olds totaling \$3,900 between December 1, 1999 and September 1, 2000, owed an additional \$12,400 through the end of June

³The parties disagreed as to whether Mr. Olds' final payment was the "June" payment or the "July" payment.

2000, and, therefore, was \$8,500 in arrears on his payments to Ms. Olds. The Family Court dismissed Mr. Olds' request for a reduction of the amount owed to Ms. Olds because it had not been properly served on Ms. Olds and did not state a cognizable claim.

(7) We have reviewed carefully the transcripts of the October 28, 1999 and June 7, 2001 hearings in this case. The transcripts reflect no error or abuse of discretion on the part of the Family Court. Based upon the evidence presented at the June 7, 2001 hearing, the Family Court properly concluded that there were no grounds upon which to reduce the amount owed by Mr. Olds to Ms. Olds, that Mr. Olds was \$8,500 in arrears on his payments to Ms. Olds and that he was, therefore, in contempt of the Family Court's February 17, 2000 order. There was, furthermore, no abuse of discretion on the part of the Family Court by refusing to hear Mr. Olds' request to reduce the amount owed to Ms. Olds and by denying Mr. Olds' request to present additional records and expert testimony related to his mental health status.

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

BY THE COURT:

/s/ Randy J. Holland
Justice