

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELLIE P. BRAHAM, ¹	§	
	§	No. 372, 2007
Respondent Below,	§	
Appellant,	§	Court Below—Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
MATTHEW J. BRAHAM,	§	
	§	File No. CN05-01594
Petitioner Below,	§	CPI No. 05-05185
Appellee.	§	

Submitted: December 21, 2007
Decided: March 20, 2008

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

ORDER

This 20th day of March 2008, upon consideration of the appellant's opening brief and the Family Court record,² it appears to the Court that:

(1) The parties were divorced in May 2005. In November 2005, the Family Court *sua sponte* dismissed all matters ancillary to the divorce because neither party had complied with Family Court Civil Rule 16(c). Wife unsuccessfully sought to reopen the default judgment under Family Court Civil Rule 60(b).

¹ By order dated August 1, 2007, the Court *sua sponte* assigned pseudonyms to the parties. Del. Supr. Ct. R. 7(d).

² The appellee did not file an answering brief. The parties were informed that this matter would be decided on the basis of the opening brief and the Family Court record.

(2) On appeal from the Family Court's denial of Wife's motion to reopen and motion to reargue, this Court reversed and remanded with directions that the Family Court consider Wife's request for relief.³ On remand, the Family Court reinstated Wife's property division claim after finding that she had demonstrated "excusable neglect" warranting relief from the default dismissal. After an ancillary hearing, the Family Court issued a decision dividing the marital property.

(3) Thereafter, at the invitation of the Family Court, Husband filed a motion and affidavit for attorneys' fees and costs seeking an award of the fees that he incurred when opposing Wife's efforts to reopen the default judgment. By decision dated June 26, 2007, the Family Court awarded Husband \$5,655.44 in fees on the ground that "absent Wife's counsel's secretary's clerical error, there was no need for a Motion to Reopen [and] the Supreme Court appeal."⁴ In her opening brief on appeal, Wife contends that the Family Court's award of attorneys' fees was an abuse of discretion. Husband did not file an answering brief.

³ *Brennan v. Brennan*, 2006 WL 1374728 (Del. Supr.).

⁴ The Family Court awarded Husband a total of \$5,930.00 in attorneys' fees. Wife is not contesting the balance of the fee award.

(4) The American Rule with respect to attorneys' fees is that each party should bear its own expenses regardless of the outcome of the case.⁵ The American Rule has been modified by statute. Title 13, section 1515 of the Delaware Code authorizes an award of attorneys' fees "after considering the financial resources of both parties."⁶ Also, title 10, section 925 of the Delaware Code provides for the assessment of fees under equitable principles.⁷ The "equity" exception to the American Rule requires that the movant demonstrate bad faith or its equivalent.⁸ Attorneys' fee awards to unsuccessful litigants are rarely justified absent exceptional circumstances.⁹

(5) After careful consideration of Wife's opening brief and in the absence of an answering brief filed by Husband, the Court concludes, contrary to the Family Court's decision on appeal, that each party should bear the cost of their own attorney. Both parties were responsible for the default dismissal of the ancillary matters, both parties incurred legal costs as a result of litigating that dismissal, and Wife prevailed on appeal. Moreover, the Family Court specifically disclaimed any finding of bad faith on the part

⁵ See *Smith v. Francisco*, 2001 WL 578571 (Del. Supr.) (citing *Goodrich v. E.F. Hutton Group, Inc.*, 681 A.2d 1039 (Del. 1996)).

⁶ Del. Code Ann. tit. 13, § 1515 (1999).

⁷ Del. Code Ann. tit. 10, § 925 (1999 & Supp. 2006).

⁸ *Jackson v. Jackson*, 1991 WL 279845 (Del. Supr.) (citing *Div. of Child Support Enforcement v. Smallwood*, 526 A.2d 1353, 1356 (Del. 1987)).

⁹ *Ableman v. Katz*, 481 A.2d 1114, 1117 (Del. 1984).

of Wife, and the record does not reflect that Wife is in a position of financial superiority over Husband.

NOW, THEREFORE, IT IS ORDERED that the Family Court's decision of June 26, 2007 is VACATED.

BY THE COURT:

/s/ Randy J. Holland
Justice