

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARTHUR KANE, ¹	§
	§
Respondent Below-	§ No. 343, 2002
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
SUSAN BURNETT,	§ in and for New Castle County
	§ File No. CN98-09498
Petitioner Below-	§ CPI No. 9934909
Appellee.	§

Submitted: August 9, 2002

Decided: August 29, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 29th day of August 2002, 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:

¹Pseudonyms have been assigned to the parties in this case. SUPR. CT. R. 7(d).

(1) Respondent-appellant, Arthur Kane (“Father”), claims error in the Family Court’s June 11, 2002 denial of his motion to amend/reopen the Family Court’s award of attorney’s fees to petitioner-appellee, Susan Burnett (“Mother”). Mother has moved to affirm the judgment of the Family Court on the ground that it is manifest on the face of Father’s opening brief that the appeal is without merit.² We agree and AFFIRM.

(2) Father filed an appeal to this Court from the Family Court’s March 23, 2001 order adopting the Commissioner’s determination of his child support obligation, which relied on the Melson Formula. Father’s fundamental complaint was that the Family Court failed to consider his proposed findings of fact and his oral submission on March 20, 2001, which demonstrated that the child’s extended visitation schedule with him rendered application of the Melson Formula inequitable in determining his child support obligation. By Order dated March 18, 2002, this Court determined that the Family Court applied the

²SUPR. CT. R. 25(a).

proper standards in adopting the Commissioner's report and affirmed the Family Court's judgment.³

³*Kane v. Burnett*, Del. Supr., No. 380, 2000, Steele, J. (Mar. 18, 2002).

(3) Following the issuance of this Court's Order, Mother filed a motion in the Family Court for reimbursement of her attorney's fees incurred in defending Father's appeal. On April 16, 2002, the Family Court, in the absence of any response from Father, granted Mother's motion for attorney's fees.⁴ Following the issuance of the Family Court's decision, Father filed a motion to amend/reopen the judgment,⁵ which was denied by the Family Court. In his motion, Father's sole argument was that the Family Court should not have awarded attorney's fees to Mother. The issue for this Court in this appeal is whether the Family Court abused its discretion in denying Father's motion under these circumstances.

⁴Mother requested reimbursement of \$2,947.75; the Family Court awarded \$2,875.75.

⁵FAM. CT. CIV. PROC. R. 59(d) and (e); FAM. CT. CIV. PROC. R. 60(b).

(4) The record in this case reflects that Father filed no response to Mother's application for attorney's fees. Nor did Father offer any justification for his failure to respond to Mother's application for attorney's fees in his motion to amend/reopen judgment. Father's sole argument was that Mother was not entitled to an award of attorney's fees, an argument that should have been made originally in response to Mother's application for attorney's fees. Because Father's motion to amend/reopen judgment did not provide any argument justifying a reconsideration of the Family Court's decision pursuant to the applicable standards,⁶ we affirm the decision of the Family Court, albeit on alternative and independent grounds.⁷

(5) It is manifest on the face of Father's 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, clearly there was no abuse of discretion.

⁶Id.

⁷*McDuffy v. DeGeorge Alliance, Inc.*, Del. Supr., No. 60, 1999, Walsh, J. (Apr. 12, 2000) (citing *Deibler v. Atlantic Properties, Inc.*, 652 A.2d 553, 558-59 (1995)).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED.

BY THE COURT:

s/ Joseph T. Walsh
Justice