

IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | |
|------------------------------|------------------------------------|
| CHARLES JENNER, ¹ | § |
| | § |
| Respondent Below- | § No. 116, 2012 |
| Appellant, | § |
| | § |
| v. | § Court Below—Family Court |
| | § of the State of Delaware, in and |
| ALICIA JENNER, | § for Kent County |
| | § File No. CK09-02549 |
| Petitioner Below- | § Pet. No. 11-25306 |
| Appellee. | § |

Submitted: May 11, 2012
Decided: June 29, 2012

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

ORDER

This 29th day of June 2012, upon consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Charles Jenner (“Husband”), appeals from a Family Court decision and order dated February 8, 2012, which found him in contempt of two prior orders of that court. The appellee, Alicia Jenner (“Wife”), has filed a motion to affirm the judgment below on the ground that

¹ The Court previously assigned pseudonyms to the parties in accordance with Supreme Court Rule 7(d).

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

(2) The record reflects that the Family Court entered an interim alimony order on January 5, 2011, which directed Husband and to pay Wife \$841.67 per month. Following the parties' divorce, the Family Court entered a permanent alimony order on July 28, 2011, which ordered Husband to pay Wife \$1,786 per month. In August 2011 Wife filed a petition for a rule to show cause why Husband should be held in contempt of the Family Court's prior orders, because he had not made any alimony payments since May 2011. Husband failed to respond and Wife moved for default judgment.

(3) The Family Court held a hearing on the rule to show cause petition. Both parties appeared and were the only witnesses to testify. Husband did not deny that he had not made any alimony payments since May 2011. He offered a variety of reasons related to his health for why he was unable to afford the alimony payments. The Family Court noted that Husband had not provided any current medical evidence to substantiate his claims of disability. Nor had Husband filed a petition to modify the alimony orders. At the conclusion of the hearing, the Family Court found Husband in contempt of its prior orders and entered a judgment against him in the amount

of \$16,162.75 for arrearages and attorney fees. The court also ordered a wage attachment for current alimony payments. Husband appeals from that order.

(4) In his two-page opening brief on appeal, Husband does not raise any claim of error with respect to the Family Court's contempt finding. Instead, Husband asks this Court to consider new evidence to support his contention that the original alimony orders were unfair. He also requests reconsideration of any arrearages due, because his past failure to pay was a result of his medical condition. Finally, he asks this Court to order Wife to provide him with certain things that she previously was ordered to give him.

(5) Having carefully considered the parties' respective contentions on appeal, we find it manifest that the judgment below must be affirmed. It is undisputed that the Family Court ordered Husband to pay alimony and that Husband failed to comply fully with those orders or otherwise seek relief from the orders by filing a motion for modification. Accordingly, the Family Court did not err in finding Husband in contempt. The arguments Husband now raises on appeal could not be properly raised in the context of the contempt proceeding below and thus were not considered by the Family Court in the first instance. We therefore do not consider these claims for the first time on appeal.² Moreover, we do not consider the materials attached to

² Del. Supr. Ct. R. 8.

Husband's opening brief, as that evidence was not included in the trial court record below.³

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³ *Delaware Elec. Coop. v. Duphily*, 703 A.2d 1202, 1207 (Del. 1997).