

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAY PATTERSON, ¹	§
	§
Respondent Below-	§ No. 608, 2008
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
SARAH PATTERSON,	§ in and for Sussex County
	§ File No. CS07-02639
Petitioner Below-	§
Appellee.	§

Submitted: March 13, 2009

Decided: April 21, 2009

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

ORDER

This 21st day of April 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Ray Patterson (the "Husband"), filed this appeal from the Family Court's decision, dated December 1, 2008, which divided the parties' marital property ancillary to their divorce. The Wife has filed a motion to affirm the judgment below on the ground that it is manifest on the face of the Husband's opening brief that the appeal is without merit. We agree and affirm.

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

(2) The record reflects that the parties were married on September 17, 2002, separated on September 11, 2006, and divorced on November 16, 2007. The Wife had two minor children from a prior marriage. The Husband had one minor child from a prior marriage. Throughout the course of their brief marriage, the Husband did not work because of injuries related to an accident that occurred five months before their wedding. His only source of income was social security benefits. After the Wife filed for divorce, the Husband filed an ancillary claim for property distribution and alimony. The Family Court held a hearing. The only witnesses were the parties, neither of whom was represented by counsel. The Husband did not present any documentary evidence in support of his claims.

(3) Following the hearing, the Family Court issued its decision, which denied the Husband's request for alimony, denied his claim for an interest in the Wife's solely-owned real estate,² and divided the remaining marital estate on a 55/45 basis in favor of the Wife. The Family Court also held that the Husband was indebted to the Wife for liens that had been placed against her property, which resulted from unpaid debts associated with the Husband's legal battle for custody of his daughter. In reaching its conclusion, the Family Court reviewed all of the factors under 13 Del. C. § 1315 and

² See *Albanese v. Albanese*, 1996 WL 69824 (Del. Feb. 9, 1996).

discussed the relevant evidence presented by the parties in support of each factor.

(4) In his opening brief on appeal, the Husband does not challenge the Family Court's ruling denying his request for alimony or its ruling denying his request for an interest in Wife's solely-owned real estate. The gist of the Husband's arguments on appeal are that the Family Court erred in holding that the Husband is capable of seeking gainful employment, despite his disability. The Husband also argues that the Family Court erred in crediting the Wife's statement that she was not only the sole breadwinner, but also the primary homemaker and caregiver to the parties' three children. Finally, the Husband contends that the Family Court erred in awarding the Wife specific items of personal property in order to satisfy the Husband's indebtedness to the Wife for the liens placed against her property resulting from the Husband's custody battle. The Husband argues that it was the Wife who chose to incur the debts and that many of the legal fees associated with the custody dispute were paid or reimbursed by his parents. In support of this contention, the Husband attaches an affidavit from his parents and numerous documents that were never presented to the Family Court in the first instance.

(5) It is unfortunate that the Husband did not present this evidence at the Family Court hearing. Although the Husband offers reasons for why his

failure to present his evidence below should be excused, this Court simply cannot consider on appeal evidence that was not made part of the trial court's record.³ Having carefully considered the parties' respective positions and the record on appeal, we find it manifest that the judgment below should be affirmed on the basis of the Family Court's well-reasoned decision dated December 1, 2008. The Family Court's findings of fact are amply supported by the evidence before it, and we find no error in its division of property.⁴

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

BY THE COURT:

/s/ Randy J. Holland
Justice

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

⁴ *Gregory J.M. v. Carolyn A.M.*, 442 A.2d 1373, 1374 (Del. 1982).