

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KATIE A. CLARK,)
) No. 73, 2009
 Respondent Below,)
 Appellant,) Court Below: Family Court
 v.) of the State of Delaware in
) and for New Castle County
)
 ROBERT W. CLARK,) File No. CN04-09446
) Petition No. 04-36824
 Petitioner Below,)
 Appellee.)

Submitted: July 7, 2010
Decided: August 18, 2010
Corrected: September 3, 2010

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

ORDER

This 18th day of August, it appears to the Court that:

(1) Spouses Clark¹ divorced and sought judicial division of their marital property. Wife alleges that by delaying the final judgment on ancillary matters beyond 90 days – after which Husband overpaid Wife’s mortgage, and Wife sought neither refinancing nor full-time employment – the trial judge forced Wife into personal bankruptcy. Because Wife has not demonstrated that the delay financially prejudiced her, we **AFFIRM** the property division.

¹ A pseudonym assigned by this Court pursuant to Rule 7(d).

STANDARD OF REVIEW

(2) We will defer to the Family Court judge's factual findings if substantial evidence supports them and they are not clearly wrong.²

OVERPAYMENT

(3) Husband's alimony overpayments *prevented* – not caused – foreclosure of the Clarks' marital home, where Wife continued to reside without Husband. At the March 28, 2006 Eberly hearing,³ the trial judge discovered that Husband had been paying the Clarks' two mortgages, rather than Court-ordered interim alimony.⁴ Husband began making mortgage payments after Wife failed to make those court-ordered mortgage payments, and he received notice of foreclosure.⁵

(4) On January 30, 2009, the trial judge stated in her ancillary property division order that Husband had overpaid alimony by \$9,171.⁶ On April 23, 2010, a different Family Court judge on remand stated that Husband had overpaid \$10,235 on the mortgage, in lieu of alimony, from December 2004 to September

² *Bay City v. Williams*, 2010 WL 2179801, at *1 (Del. Supr. June 1, 2010) (citing *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972)).

³ A Family Court judge may arrange an Eberly Hearing to determine matters ancillary to a divorce, including custody, visitation, property division, alimony, and support.

⁴ [*Clark v. Clark*], Pet. No. 08-32950, at *4-5 (Fam. Ct. Apr. 23, 2010).

⁵ *Id.*, at *3.

⁶ *Id.*, at *7.

2005 and from November 2005 to February 2006, but failed to pay \$1,064 in alimony for August 2006, for a net overpayment to Wife of \$9,171.⁷

MORTGAGE APPROVAL

(5) Wife had no cash, sought no job, knew not to rely on Husband for mortgage payments, and allowed the only financing option she pursued to expire before she could have reasonably expected the trial judge to issue the final order.

(6) At the March 2006 Eberly hearing, the trial judge notified Wife that the trial judge would follow expert testimony attributing \$25,000 earning capacity to her.⁸ Wife obtained a Quaker Financial Mortgage Inc. “Approved Homebuyer Certificate” that would expire on August 31, 2006, more than a month before the trial judge should have issued her final order.⁹ Wife did not seek an extension, nor did she apply for another mortgage from Quaker Financial or any other entity.¹⁰ Wife received \$3,500 annual salary, after the trial judge determined that she possessed \$25,000 earning capacity; Wife did not submit evidence that she had sought additional employment, and did not obtain full-time employment until December 2006.¹¹

⁷ *Id.*, at *7.

⁸ *Id.*, at *4-5.

⁹ *Id.*, at *10.

¹⁰ *Id.*, at *11.

¹¹ *Id.*, at *11.

DELAY

(7) Before the lender's refinancing offer expired, Wife repeatedly delayed discovery by failing to submit mandatory pre-trial forms. This delay does not justify the trial judge's inexplicable delay in issuing a final order, but it does militate against wife's contention that the adverse financial consequences to the parties would have been avoided had the trial judge decided these issues at the Eberly hearing on or before the lender's offer to refinance expired.

(8) The trial judge ordered Wife to submit her portion of the Rule 52(d) Pre-Trial Stipulation Form by May 8, 2006, in order to highlight any discovery matters in dispute before the May 15 pre-trial conference.¹² Wife failed to submit her 52(d) Form (1) by the May 8 court-ordered deadline, (2) at the May 15 pre-trial conference, (3) at the June 8 continued hearing, (4) by the June 20 court-ordered deadline, and (5) at the June 27 ancillary hearing.¹³

(9) A District of Delaware Bankruptcy Court order stayed the Clarks' ancillary proceedings from October 2007 until March 2008.¹⁴

(10) Substantial evidence supports the trial judge's findings of fact in her January 30, 2009 Order. On remand, the record supports the judge's findings and

¹² *Id.*, at *5.

¹³ *Id.*, at *5.

¹⁴ *Id.*, at *6.

conclusions of law in regard to the consequences of delay on the parties' equitable positions in his April 23, 2010 Order on Remand.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice