

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD M. KRAFT, ¹	§
	§ No. 410, 2010
Petitioner Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for New Castle County
JOANNE MASON,	§ File No. CN09-06352
	§ Petition No. 09-41496
Respondent Below-	§
Appellee.	§

Submitted: November 12, 2010

Decided: December 20, 2010

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

ORDER

This 20th day of December 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The petitioner-appellant, Ronald M. Kraft (“Father”), filed an appeal from the Family Court’s June 25, 2010 order affirming the January 15, 2010 order of the Family Court Commissioner, which granted the petition for an order of protection from abuse (“PFA”) filed by the respondent-appellee, Joanne Mason (“Mother”), on behalf of herself and the

¹ The Court *sua sponte* assigned pseudonyms to the parties by Order dated July 30, 2010. Supr. Ct. R. 7(d). In this Order, we also assign a pseudonym to the parties’ minor son.

parties' three year-old son, Seth.² We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects the following. On January 15, 2010, the parties appeared before the Commissioner for a hearing on Mother's PFA petition.³ Mother testified concerning three alleged incidents of abuse of Seth by Father. Mother alleged that, on one occasion, Father took Seth with him to work in his tractor-trailer and left Seth alone in the vehicle while he completed paperwork for his employer. Mother also alleged that Father physically abused Seth on two other occasions---once in November 2009 and once in December 2009. On the first occasion, according to Mother, Father slapped Seth on the face twice and on the buttocks once, and pinched him on the arms and one of his legs, causing him to cry. On the second occasion, Father slapped Seth hard on the side of his face. Mother brought a photograph of Seth taken after the incident that showed swelling around Seth's left eye.

(3) Mother also testified that Father had abused her physically and emotionally on several occasions between June and November 2009. In June, Father took all the family photographs off the wall and took them

² Father did not seek review of the Commissioner's denial of his PFA petition or those portions of the Commissioner's order dealing with child support or visitation.

³ The Commissioner had issued an emergency ex parte order on January 8, 2010 requiring, among other things, that Father stay 100 yards away from Mother and Seth.

apart, telling Mother he did not want to see her in the photographs. In July, Father cut holes in Mother's favorite nightgown and told her he did not want her to put the nightgown on for another man. In September, Father attempted to push Mother, who was pregnant at the time, out of their bed. Father then spent the rest of the night sending texts and talking to another woman on the phone. In December 2009, Father woke Mother up and asked her to move her car so that he could move his vehicle out of the driveway. After moving her car and waiting several minutes in the snow for Father to move his vehicle out of the driveway, Mother went back inside and found Father asleep. Father denied Mother's claims, but the Family Court found his denials "questionable." Father did not deny that he had slapped Seth, but stated that it had been done playfully.

(4) In its June 25, 2010 order, the Family Court agreed with the Commissioner that the matter turned on the relative credibility of the parties. The Family Court deferred to the findings of the Commissioner, who found Mother to be more credible than Father. The Family Court noted that the Commissioner was particularly concerned about the allegations of abuse against the minor child and characterized those allegations as "a situation waiting to happen." Ultimately, the Commissioner concluded that there was a pattern of behavior on the part of Father warranting a finding of abuse.

Based upon an independent review of the record, the Family Court agreed with the findings of the Commissioner and affirmed the Commissioner's order.

(5) In this appeal, Father claims that the Family Court erred and abused its discretion when it affirmed the order of the Family Court Commissioner granting Mother's PFA petition.

(6) A party may seek review of a Family Court Commissioner's order pursuant to Del. Code Ann. tit. 10, §915(d)(1), which provides that, "a judge of the [Family] Court shall make a *de novo* determination of those portions of the Commissioner's order to which objection is made. A judge of the [Family] Court may accept, reject, or modify in whole or in part the order of the Commissioner." A petitioner who seeks protection from abuse must prove by a preponderance of the evidence that domestic violence has occurred.⁴ "Domestic violence" is defined as "abuse perpetrated by one member against another member" of a protected class of persons, such as "persons cohabiting together who are holding themselves out as a couple, with or without a child in common."⁵ "Abuse," in turn, is defined as, among other things, "[i]ntentionally or recklessly causing or attempting to cause

⁴ Del. Code Ann. tit. 10, §1044(b).

⁵ Del. Code Ann. tit. 10, §1041(2)b.

physical injury” or “engaging in a course of alarming or distressing conduct in a manner which is likely to cause fear or emotional distress.”⁶

(7) This Court’s standard of review of a decision of the Family Court, including the Family Court’s review of a Commissioner’s order, extends to a review of the facts and the law, as well as to inferences and deductions made by the trier of fact.⁷ We have the duty to review the sufficiency of the evidence and test the propriety of the findings.⁸ Findings of fact will not be overturned on appeal unless they are found to be clearly erroneous.⁹

(8) We have carefully reviewed the record in this case, including the transcript of the hearing before the Commissioner and conclude that the Family Court neither erred nor abused its discretion when it affirmed the Commissioner’s PFA order. The Family Court properly concluded that the findings of the Commissioner were supported by the facts of record and that the issuance of the PFA order was warranted. As such, the Family Court’s judgment must be affirmed.

⁶ Del. Code Ann. tit. 10, § 1041(1) a. and d.

⁷ *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

⁸ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

⁹ *Mundy v. Devon*, 906 A.2d 750, 752 (Del. 2006).

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

BY THE COURT:

/s/ Randy J. Holland
Justice