

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TARA SCOTT, <sup>1</sup>	§
	§
Petitioner Below-	§ No. 181, 2012
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
ETHAN SCOTT,	§ in and for New Castle County
	§ File No. CN93-07448
Respondent Below-	§ Petition No. 99-41043
Appellee.	§

Submitted: July 20, 2012

Decided: July 25, 2012

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

**ORDER**

This 25th day of July 2012, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Tara Scott (the "Wife"), filed this appeal from a Family Court decision, dated March 6, 2012, which denied her motion to reopen a 2001 judgment. We find no merit to the appeal. Accordingly, we affirm the Family Court's judgment.

(2) The parties were married in 1985, separated in 1999, and divorced in 2000. The Family Court issued a final order resolving matters ancillary to the parties' divorce on February 5, 2001. Among other things, the Family Court noted

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<sup>1</sup> The Court assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

in its decision that the parties had “agreed to award each other their percentage interest in their 401(k) Plans by QDRO’s to rollover into tax deferred accounts held or open by the other party.” The Family Court also noted that the Husband’s pension would be divided and distributed pursuant to a QDRO to be prepared by the Wife’s lawyer. The stipulated QDRO for the Husband’s pension was filed on July 2, 2001 and signed by the Family Court on July 5, 2001. The Wife’s lawyer filed an amended stipulated QDRO for the Husband’s pension on April 25, 2002, which the Family Court signed on April 29, 2002. No QDRO was ever filed regarding either party’s 401(k) plan.

(3) On February 20, 2012, the Wife, acting pro se, filed a motion to reopen the divorce proceedings in the Family Court. The Wife contended that, although she was awarded an interest in the Husband’s 401(k) plan, she never received any portion of it. She requested the Family Court to enter an order awarding her her interest in the Husband’s 401(k) plan. The Husband filed a response to the motion asserting that the Wife had failed to prepare a QDRO for the Husband’s 401(k) plan because the parties had agreed orally, notwithstanding the Family Court’s February 5, 2001 order, that each party would keep their own 401(k) plan rather than divide them. The Husband also argued that the Wife’s claim was barred by the doctrine of laches.

(4) On March 6, 2012, the Family Court denied the Wife's motion to reopen on the ground that the Wife already had been awarded an interest in the Husband's 401(k) plan by virtue of the February 5, 2001 judgment. The Wife had failed to file the necessary QDRO to accomplish the terms of the Family Court's order. The Family Court accepted the veracity of the Husband's lawyer's representation that the parties had orally agreed post-trial to waive their counter-interests in each other's 401(k) plans. This conclusion was substantiated by the fact that the Wife's counsel had prepared a QDRO and an amended QDRO for the Husband's pension plan but never filed one for the Husband's 401(k) plan, nor had the Husband filed a QDRO for the Wife's 401(k) plan.

(5) In her opening brief on appeal, the Wife disputes that she and the Husband orally agreed to waive their counter-interests in each other's 401(k) plans. The Wife instead asserts that her lawyer simply failed to prepare the proper paperwork because the Wife had not paid her lawyer's fees. She contends that she only recently became aware that the QDRO for the Husband's 401(k) plan had never been filed. The Wife's contentions on appeal were not raised in the motion to reopen that she filed in the Family Court.

(6) The decision to reopen a judgment is a matter within the sound discretion of the trial court.<sup>2</sup> In this case, the Wife offered no explanation in her

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<sup>2</sup> *Reynolds v. Reynolds*, 595 A.2d 385, 389 (Del. 1991).

motion to reopen justifying her failure to timely file a QDRO for the Husband's 401(k). Even if the Wife had argued that the failure to file the QDRO was the result of her lawyer's mistake, we find no abuse of discretion in the Family Court's finding that the parties had agreed to waive their respective claims in each other's 401(k) plans, as evidenced by the Husband's counsel's representation to that effect and as reflected by the Wife's counsel's filing of a QDRO and an amended QDRO regarding the Husband's pension plan and neither party filing a QDRO for the other's 401(k) plan.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice