

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LACEY L. KAHN, <sup>1</sup>	§	
	§	No. 181, 2013
Petitioner Below,	§	
Appellant,	§	Court Below—Family Court of
	§	State of Delaware in and for
v.	§	New Castle County
	§	
SAMUEL J. KAHN,	§	
	§	File No. CN10-06012
Respondent Below,	§	Pet. No. 11-12915
Appellee.	§	

Submitted: September 24, 2013

Decided: October 16, 2013

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

**O R D E R**

This 16<sup>th</sup> day of October 2013, upon consideration of the appellant’s opening brief, the appellee’s motion to strike the opening brief, and the appellee’s motion to affirm, it appears to the Court that:

(1) The appellant, Lacey L. Kahn (“Wife”), has filed this appeal from the Family Court’s division of the parties’ marital estate ancillary to their divorce. The appellee, Samuel J. Kahn (“Husband”), has moved to strike the opening brief and to affirm the Family Court’s judgment. Wife has not responded to Husband’s motion to strike.

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<sup>1</sup> By Order dated April 8, 2013, the Court *sua sponte* assigned pseudonyms to the parties. Del. Supr. Ct. R. 7(d).

(2) The record reflects that the parties divorced in October 2011 after a marriage of twenty years and eight months. Following a hearing, the Family Court issued a decision dated November 2, 2012 that denied Wife's request for alimony and divided the parties' marital estate. The marital estate included Husband's pension benefits and the parties' marital home, where Husband resided with the parties' children. The court ruled in part:

Wife is seeking a 60/40 division and alimony and Husband is seeking a 50/50 division and no alimony. For the reasons that follow, it is ordered that Wife shall receive 60% of the marital estate and Husband shall receive 40%. Husband shall have the first right to refinance the [marital] home and buy out Wife's interest in the home. If Husband is unable to obtain a mortgage, Wife shall have the opportunity to refinance the home and buy out Husband's interest in the home. If neither party is able to refinance the home, the home shall be sold and the proceedings divided 60/40 in Wife's favor. Wife's claim for alimony is denied. Each party shall be responsible for their own attorney's fees.

(3) Wife filed a motion for clarification and reargument of the November 2, 2012 decision. Specifically, Wife sought the addition of time limits for the parties' respective efforts to refinance the marital home, and for the sale of the home if necessary. Wife also sought reconsideration of the court's rulings on alimony and on Husband's pension benefits. Finally, because Husband had not paid the mortgage on the home as ordered by the

court and had not paid the sewer bill on the home, Wife asked the Family Court to put the unpaid mortgage payments “back into the equity of the property, if Husband refinances or the property is sold,” and to hold Husband “responsible for paying the sewer bill, if Wife refinances the house or the house is sold.”

(4) On January 24, 2013, the Family Court held a teleconference on Wife’s motion for clarification and reargument. By order dated March 7, 2013, the Family Court clarified its November 2, 2012 decision by providing a time frame within which the parties were required to refinance or sell the marital home, but denied reargument of the decision. This appeal followed.

(5) In her opening brief on appeal, Wife requests:

a complete review [of the Family Court proceedings] to right many wrongs that have occurred through the actions, the lack of actions, clerical and mathematical errors, issuance of ambiguous orders, lengthy wait times for such orders, as well as failure to enforce their own Court orders throughout the Family Court process involving the Divorce and Ancillary Division between the couple. These wrongs have caused significant damage to wife, both financially as well as emotionally.

Also, because Husband has neither paid nor refinanced the mortgage on the marital home as required by the Family Court, Wife asks this Court to order

that Husband “immediately vacate the property” and award Wife “immediate and sole occupancy and ownership of the property.”

(6) The pendency of an appeal does not divest the Family Court of jurisdiction to enforce any of its orders that have not been stayed.<sup>2</sup> To the extent Wife alleges that Husband has disobeyed orders of the Family Court, Wife’s relief is in the Family Court.<sup>3</sup>

(7) The Family Court has broad discretion to divide marital property under title 13, section 1513 of the Delaware Code.<sup>4</sup> On appeal from an order dividing a marital estate, this Court reviews the facts and the law as well as the inferences and deductions made by the Family Court.<sup>5</sup> The Court will not disturb findings of fact unless they are clearly wrong and justice requires that they be overturned.<sup>6</sup> Conclusions of law are reviewed

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<sup>2</sup> *Wheeler v. Wheeler*, 636 A.2d 888, 890 (Del. 1993) (citing *Schmidt v. Schmidt*, 610 A.2d 1374, 1376 (Del. 1992)).

<sup>3</sup> See Del. Code Ann. tit. 10, § 925(3), (9) (2006) (conferring jurisdiction on Family Court to “[d]etermine and punish civil and criminal contempt,” and “[h]ear, determine, render and enforce judgment”). *DiSabatino v. Salicete*, 671 A.2d 1344 (Del. 1996).

<sup>4</sup> See Del. Code Ann. tit. 13 § 1513 (2006) (governing disposition of marital property). *Newman v. Newman*, 2006 WL 1725581 (Del. June 23, 2006) (citing *Linder v. Linder*, 496 A.2d 1028, 1030 (Del. 1985)).

<sup>5</sup> *Wife (J.F.V.) v. Husband (O.W.V.)*, 402 A.2d 1202, 1204 (Del. 1979).

<sup>6</sup> *Id.*

*de novo*.<sup>7</sup> If the Family Court has correctly applied the law our standard of review is abuse of discretion.<sup>8</sup>

(8) In this case, having reviewed the parties' positions on appeal and the Family Court record, we conclude that there is no basis for disturbing the factual findings of the Family Court and no errors of law. Wife fails to identify any factual findings or inferences made by the Family Court that are "clearly wrong," unsupported by the record or illogical.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED. The motion to strike is moot.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>7</sup> *Mundy v. Devon*, 906 A.2d 750, 752 (Del. 2006) (citing *In re Heller*, 669 A.2d 25, 29 (Del. 1995)).

<sup>8</sup> *Forrester v. Forrester*, 953 A.2d 175, 179 (Del. 2008) (citing *W. v. W.*, 339 A. 2d 726, 727 (Del. 1975)).