

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT T. FISCHER,	§
	§
Petitioner Below-	§ No. 11, 2001
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
DIVISION OF CHILD SUPPORT	§ File No. 98-07925
ENFORCEMENT/VICKIE L.	§ Petition No. 00-27379
FISCHER,	§
	§
Respondent Below-	§
Appellee.	§

Submitted: August 6, 2001  
Decided: August 20, 2001

Before **VEASEY**, Chief Justice, **WALSH**, and **HOLLAND**, Justices.

**ORDER**

This 20<sup>th</sup> day of August 2001, upon consideration of the Family Court's report following remand, it appears to the Court that:

(1) The appellant, Robert Fischer (Father), filed this appeal from a decision of the Family Court affirming a Commissioner's order. The Commissioner dismissed Father's petition to modify child support on procedural grounds because it was filed within two and a half years of the original child support order. After considering the appeal on the basis of the parties' briefs, this Court remanded the matter to the Family Court for reconsideration of its ruling on Father's petition to modify child support in

light of the Family Court's rulings, rendered during separate property division proceedings, concerning Father's insufficient income and inability to meet his support obligations.

(2) In its report following remand, the Family Court notes that, as of September 5, 2001, Father "will be entitled to a review and modification of his child support obligation, as two and one-half years will have elapsed since the entry of the Order he seeks to modify." The Family Court thus recommends that this appeal be remanded to the Family Court so that a hearing may be scheduled at which Father's petition to modify child support may be considered on its merits.

(3) We agree that this matter should be remanded to permit the Family Court to conduct a hearing on the merits of Father's petition to modify child support. In determining whether modification of Father's child support obligation is appropriate, the Family Court is directed to consider its prior findings made during the course of the property division proceedings that Father's income was "insufficient" to support himself and meet his child support obligations. If modification of Father's child support obligation is appropriate, the Family Court also is directed to consider whether the modification should be retroactive.

NOW, THEREFORE, IT IS ORDERED that this matter is REMANDED to the Family Court for further proceedings consistent with this order. Jurisdiction is not retained.

BY THE COURT:

s/Joseph T. Walsh

Justice