

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS J. BURNS,	§
	§
Respondent Below-	§ No. 270, 2003
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
MARJORIE S. LAMB,	§ in and for New Castle County
	§ File No. CN00-06046
Petitioner Below-	§ CPI No. 02-26694
Appellee.	§

Submitted: August 15, 2003

Decided: October 6, 2003

Before **BERGER, STEELE** and **JACOBS**, Justices

ORDER

This 6th day of October 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The respondent-appellant, Thomas J. Burns, filed an appeal from the Family Court’s May 16, 2003 order denying his petition for review of a Commissioner’s Order on the ground that the petition was untimely.¹ Because we find that Burns’ petition was timely filed, we REVERSE the judgment of the Family Court and REMAND the matter to the Family Court for consideration of the merits of Burns’ petition.

¹Burns also appealed from a Stipulation and Order Resolving All Ancillary Matters dated November 22, 2000.

(2) On February 24, 2003, a hearing was held before a Family Court Commissioner on a petition for child support arrears filed against Burns by the Delaware Division of Child Support Enforcement. Following the hearing, the Commissioner found Burns in contempt of a previous Family Court child support order and ordered him to pay child support in the amount of \$517, plus \$25 in arrears, per month. Burns questioned whether the order would be entered that day and the Commissioner answered, “Yes, it’s effective today. You’ll get a copy in the mail of the written Order stating what I have just said verbally. It may be another week or two before you get the written Order but it is effective today, that new amount.”²

(3) On March 6, 2003, Burns filed a petition for review of the Commissioner’s February 24, 2003 order. On May 16, 2003, the Family Court dismissed Burns’ petition on the ground that it was untimely.³ The Family Court’s order stated as follows: “This request for a review was not filed until 12 days after the date of the Commissioner’s Order.”

²The Commissioner’s written order was issued on March 7, 2003.

³DEL. CODE ANN. tit. 13, § 915(d) (1) (“Any party . . . may appeal a final order of a Commissioner to a judge of the [Family] court by filing and serving written objections to such order . . . within 10 days from the date of the Commissioner’s order.” See also FAM. CT. CIV. PROC. R. 53.1(b). The Family Court judge incorrectly cited the relevant statute as “§ 921(d) (1).”

(4) The Family Court's finding that Burns' petition was filed 12 days after the date of the Commissioner's Order is incorrect. The petition was filed on March 6, 2003—that is, on the 10th day following the date of the Commissioner's Order. Therefore, it was timely. Because the petition was timely filed, this matter must be remanded to the Family Court for a review of the merits of Burns' claims.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is REVERSED and the matter is REMANDED to the Family Court for further proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Myron T. Steele
Justice