

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DOUGLAS L. WALKER, <sup>1</sup>	§
	§
Respondent Below-	§ No. 543, 2013
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
ELLEN WALKER,	§ in and for Kent County
	§ File No. CK11-02249
Petitioner Below-	§ Pet. No. 11-22015
Appellee.	§

Submitted: February 14, 2014

Decided: April 4, 2014

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

**ORDER**

This 4th day of April 2014, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Douglas Walker ("Husband"), filed this appeal from a Family Court decision dated September 18, 2013, which ruled on matters ancillary to the parties' divorce. The Court finds no merit to Husband's appeal. Accordingly, we affirm the Family Court's judgment.

(2) The testimony presented at the ancillary hearing held on August 15, 2013 reflects that the parties were married for almost twenty-four years.

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<sup>1</sup> The Court previously assigned pseudonyms to the parties in accordance with Supreme Court Rule 7(d).

They had no children together. Wife is 71. Husband is 66. Both are retired and receiving pensions. The parties were married for the entire period of time during which Wife earned her pension and were married for twenty-four of the twenty-six years during which Husband earned his pension. Wife has had open heart surgery and suffers from diabetes and high blood pressure. Husband is in good health. Most of the parties' marital debts previously were discharged in their respective bankruptcies.

(3) Based on the parties' agreement, each retained a Cadillac that was in their possession. Husband's 2006 vehicle was valued at \$2000 more than Wife's 2003 vehicle. Thus, to achieve an equitable division of those assets, the Family Court ordered Husband to pay Wife \$1000. The Family Court also distributed the parties' respective pensions by applying the *Cooper* formula.<sup>2</sup> Husband received 50% of Wife's monthly pension benefit. Wife received 46% of Husband's pension monthly pension benefit. The net result required Husband to pay Wife \$519.51. In light of this pension distribution, the Family Court found that Wife was not a dependent person and thus was not entitled to alimony.

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<sup>2</sup> See *Jerry L.C. v. Lucille H.C.*, 448 A.2d 223, 225-26 (Del. 1986) ("The marital interest in each [pension] payment will be a fraction of that payment, the numerator of the fraction being the number of years (or months) of marriage during which benefits were being accumulated, the denominator being the total number of years (or months) during which benefits were accumulated prior to when paid.")

(4) Husband's opening brief on appeal asserts that he does not have \$1000 to pay Wife. He also requests that each party get to keep their own pension without distribution to the other. Other than challenging the value that the Family Court assigned to his vehicle, Husband does not argue that the Family Court committed any legal or factual error.

(5) Our standard of review of a decision of the Family Court extends to a review of the facts and law, as well as inferences and deductions made by the trial judge.<sup>3</sup> We have the duty to review the sufficiency of the evidence and to test the propriety of the findings.<sup>4</sup> When the determination of facts turns on the credibility of the witnesses who testified under oath before the trial judge, this Court will not substitute its opinion for that of the trial judge.<sup>5</sup>

(6) In this case, the Family Court considered all of the factors set forth in 13 Del. C. § 1513 and the evidence presented by the parties in support of each factor.<sup>6</sup> The parties had few remaining marital assets or debts other

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<sup>3</sup> *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

<sup>4</sup> *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

<sup>5</sup> *Id.*

<sup>6</sup> DEL. CODE ANN. tit. 13, § 1513(a)(1)-(11) (2009). In achieving an equitable division of the marital estate, the Family Court is directed to consider all relevant factors, including: (i) the length of the marriage; (ii) any prior marriages; (iii) the age, health, employability, and needs of each party; (iv) whether the property award is in lieu of alimony; (v) the opportunity for future acquisitions; (vi) the contribution to or dissipation of the marital estate by each party; (vii) the value of property set aside to each party; (viii) the economic circumstances of each party; (ix) whether the property was acquired by gift; (x) the parties' debts; and (xi) tax consequences.

than their vehicles, which were divided by agreement, and their pensions. We note that the Family Court has broad discretion in the division of marital property, in general, and in disposing of pension benefits, in particular.<sup>7</sup> The Family Court equitably divided the parties' pensions in accordance with the *Cooper* formula. We find no error or abuse of the Family Court's discretion in this case.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>7</sup> *Forrester v. Forrester*, 953 A.2d 175, 179 n.10 (Del. 2008).