IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY WALKER,[1]	§	
	§	No. 217, 2012
Respondent Below,	§	
Appellant,	§	Court Below─Family Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	
LISA MARTIN,	§	File No. CN06-05909
	§	Petition No. 11-38605
Petitioner Below,	§	
Appellee.	§	

Submitted: September 7, 2012
Decided: October 15, 2012

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

O R D E R

This 15th day of October 2012, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The respondent-appellant, Larry Walker ("Father"), filed an appeal from the Family Court's April 10, 2012 order awarding sole custody of the parties' minor child to the petitioner-appellee, Lisa Martin ("Mother"). We find no merit to the appeal. Accordingly, we affirm.

(2) The Court has reviewed the entire record below, which reflects the following. The parties are the biological parents of David, born July 10,

[1] The Court *sua sponte* assigned pseudonyms to the parties by Order dated May 7, 2012. Supr. Ct. R. 7(d). We also hereby assign a pseudonym to the parties' minor child.

2006. A hearing on Mother's petition for custody was scheduled for April 10, 2012. As reflected in the Family Court's April 10, 2012 order, both parties were sent notice of the hearing. Notice was sent to Father at the address most recently on record with the Family Court. That was the address where Father previously had received mail from the Family Court and that he had listed on his response to the petition for custody. Father failed to appear for the hearing, which took place by teleconference, and did not contact the Family Court regarding his failure to appear. In its order, the Family Court awarded sole custody of David to Mother.[2] At the hearing, the Family Court indicated that visitation with Father would be by mutual agreement of the parties.

(3) In his opening brief on appeal, Father states that the paperwork for the teleconference "did not make it to [him]." Father pointed out that he has a criminal history, including an incident when he was 17 years old that placed him on the sex offender registry; and that he has been "out of trouble for 10 years" and will be off the registry next year. Father also states that he contacted the Family Court, but was told that he had missed the custody hearing. Father claims that he missed the hearing, because he was "on

[2] It appears that the Family Court judge set forth the rationale for his decision during the course of the hearing, but no transcript of the proceedings was made.

vacation with my family of 5." Although Father does not request a remedy, presumably he wants a new Family Court custody hearing to be scheduled.

(4) In her answering brief, Mother responds that she knows that Father received actual notice of the hearing, because he called her the morning after he received the notice. Mother argues that sole custody should remain with her, because she has been the sole decision-maker and caregiver for David for his entire life. She believes that it would be detrimental if David were transported between two different homes during the school year, and that it is important for David to concentrate on education and afterschool activities. In accordance with the Family Court's order, Mother is willing for Father to have visitation rights with David. After Mother filed her answering brief, Father sent a letter to the Court stating that he did not wish to file a reply brief.

(5) To the extent Father claims that he received improper notice of the hearing, he is incorrect. The Family Court's April 10, 2012 order reflects that notice of the hearing was properly sent to Father at the address then on record with the Family Court. Father does not dispute that he received actual notice of the hearing. Once the Family Court ascertained that Father had been properly notified, it was within that court's discretion to

rule on Mother's custody petition.[3] Based upon the record before us, we conclude that Father knew when the hearing would occur, but chose not to appear. He, therefore, has no factual basis to seek a new hearing. Moreover, to claim error or abuse of discretion on the part of the Family Court in connection with the hearing itself, Father was obligated to arrange for a transcript to be made of the hearing,[4] which he did not do.

(6) In the absence of any error or abuse of discretion by the Family Court, we conclude that the Family Court's April 10, 2012 order must be upheld.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

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[3] *Wilson v. Waters*, 834 A.2d 827 (Del. 2003) (citing *Ellington v. DCSE/Ledbetter*, 610 A.2d 724 (Del. 1992)).

[4] *See Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987) (holding a transcript needed to be made of Superior Court hearing in criminal case).