

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHANIE STEWART, <sup>1</sup>	§
	§ No. 28, 2011
Petitioner Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for New Castle County
CALEB STEWART,	§ File No. CN03-08616
	§ Petition Nos. 09-23236
Respondent Below-	§ 03-21055
Appellee.	§

Submitted: September 9, 2011

Decided: September 21, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

**ORDER**

This 21st day of September 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The petitioner-appellant, Stephanie Stewart (“Ms. Stewart”), filed an appeal from the Family Court’s December 22, 2010 order, which recalculated the amount of alimony owed by the respondent-appellee, Caleb Stewart (“Mr. Stewart”). We find no merit to the appeal. Accordingly, we affirm.

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<sup>1</sup> The Court *sua sponte* assigned pseudonyms to the parties by Order dated January 21, 2011. Supr. Ct. R. 7(d).

(2) The record reflects that the parties were divorced on October 16, 2003. On January 18, 2007, Ms. Stewart was awarded alimony by the Family Court. In March 2010, due to a change in custody of one of the children of the parties, the Family Court reduced on an interim basis the amount of alimony to be paid by Mr. Stewart. Thereafter, Ms. Stewart filed a petition to modify alimony alleging a substantial change of circumstances. On July 1, 2010, following hearings on February 25 and June 9, 2010, the Family Court issued an order establishing Mr. Stewart's interim alimony obligation and a due date for updated expense calculations pending a further hearing on September 28, 2010. On October 29, 2010, the Family Court issued its order regarding Mr. Stewart's alimony obligation.

(3) On November 5, 2010, Ms. Stewart, through counsel, filed a motion for reargument of the Family Court's October 29, 2010 order on the grounds that the Family Court a) had failed to consider her changed financial circumstances; and b) had failed to attribute Mr. Stewart with a sufficiently high income. By order dated December 22, 2010, the Family Court granted Ms. Stewart's motion for reargument because, as it conceded, Ms. Stewart's updated expenses had not been taken into account in the calculation of Mr. Stewart's alimony obligation. The Family Court ordered that Mr. Stewart's alimony obligation would be raised to \$526.00 per month, effective January

1, 2011, and that Mr. Stewart would pay an additional \$91.67 per month until December 1, 2012 for alimony owed retroactively.

(4) In her appeal from the Family Court's December 22, 2010 order, Ms. Stewart makes a number of claims that may fairly be summarized as follows: a) the Family Court did not award her sufficient alimony; b) the Family Court abused its discretion when it denied her request for transcripts at State expense; c) her attorney did not provide adequate representation; and d) this Court should consider additional documentation in support of her claims, which was not provided to the Family Court.

(5) The record reflects that Ms. Stewart moved the Family Court for a waiver of transcript fees, which the Family Court denied by order dated April 27, 2011. The record also reflects that Ms. Stewart has not provided this Court with the transcripts of the February 25, 2010, June 9, 2010 and September 28, 2010 hearings, which provide the evidentiary basis for the Family Court's final calculation of Mr. Stewart's alimony obligation.

(6) The Supreme Court Rules direct each party to include in his or her appendix those portions of the record relevant to any claims on appeal.<sup>2</sup> The Rules also place the burden on the appellant of producing such portions of the trial transcript as are necessary to give this Court a fair and accurate

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<sup>2</sup> Supr. Ct. R. 9(e) (ii) and 14(e).

account of the context in which the error allegedly occurred.<sup>3</sup> A civil litigant does not have an absolute right to a copy of a transcript at State expense.<sup>4</sup> Even an appellant who is permitted to proceed *in forma pauperis* on appeal is required to make his or her own financial arrangements to obtain the necessary transcripts.<sup>5</sup> Because, without the hearing transcripts, we have an inadequate record for appellate review of Ms. Stewart's first claim that the Family Court awarded her inadequate alimony,<sup>6</sup> we are unable to consider that claim.

(7) Ms. Stewart's second claim is that the Family Court abused its discretion when it denied her motion for a waiver of the transcript fees. The record reflects that Ms. Stewart's motion stated only the following: "Waiver fee Family Court money reasons." She did not explain which transcripts she was requesting or an explanation as to why she needed them and appears to have provided incomplete information concerning her ability to pay for transcripts. Because Ms. Stewart did not provide the Family Court with an adequate basis for granting her request for transcripts at State expense, we conclude that the Family Court did not abuse its discretion when it denied

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<sup>3</sup> *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

<sup>4</sup> *Porter v. Mannion*, Del. Supr., No. 535, 2003, Berger, J. (July 20, 2004).

<sup>5</sup> *Smith v. Deptula*, Del. Supr., No. 333, 2003, Holland, J. (Dec. 8, 2003). The record reflects that this Court permitted Ms. Stewart to proceed *in forma pauperis* on February 1, 2011.

<sup>6</sup> *Slater v. State*, 606 A.2d 1334, 1336-37 (Del. 1992).

her request.<sup>7</sup> As such, we find Ms. Stewart's second claim to be without merit.

(8) Ms. Stewart's third claim is that her counsel did not provide adequate representation during the Family Court proceedings, a claim that was not raised in the proceedings below.<sup>8</sup> Even if Ms. Stewart had raised that claim below, a claim of legal malpractice is not properly asserted in alimony proceedings in the Family Court. Because Ms. Stewart's third claim is not properly before us, we will not address it.

(9) Ms. Stewart, finally, requests this Court to review documentation in her appeal that was not presented to the Family Court in the first instance. Because the documentation is not properly before us,<sup>9</sup> we decline to consider it in this appeal.

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> *Guest v. Guest*, Del. Supr., No. 282, 2003, Holland, J. (Dec. 8, 2003) (citing *U.S. v. MacCollum*, 426 U.S. 317, 330 (1976)).

<sup>8</sup> Supr. Ct. R. 8.

<sup>9</sup> *Id.*