

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEFFREY WILSON, <sup>1</sup>	§
	§
Petitioner Below-	§ No. 90, 2003
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
CHERYL WATERS,	§ in and for New Castle County
	§ File No. CN94-06806
Respondent Below-	§ Petition No. 02-16899
Appellee.	§

Submitted: August 15, 2003

Decided: October 6, 2003

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

**ORDER**

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

(1) The petitioner-appellant, Jeffrey Wilson (“Father”), filed an appeal from the Family Court’s January 17, 2003 order dismissing his petition for a rule to show cause against respondent-appellee Cheryl Waters (“Mother”), terminating his visitation with his son, imposing conditions for future visitation, and assessing costs and attorney’s fees against him. We find no merit to the appeal.

Accordingly, we AFFIRM.

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<sup>1</sup>The Court *sua sponte* has assigned pseudonyms to the parties pursuant to SUPR. CT. R. 7(d).

(2) The record reflects that, in early 2002, Father filed a custody/visitation petition in the Family Court. On May 6, 2002, the Family Court issued an order as follows: a) custody of the parties' children would remain with Mother; b) the parties' daughter would be scheduled for individual counseling; c) Father's visitation with the parties' daughter would be terminated; and d) Father would continue visitation with the parties' son through the Hudson Visitation Center, with Father to be observed for alcohol consumption at each drop-off and pick-up. The Family Court further stated that "[a]ny violations with alcohol consumption will terminate visitation."

(3) On June 4, 2002, Father filed a petition for a rule to show cause in the Family Court alleging, among other things, that Mother had interfered with his visitation with his son and requesting increased visitation with both his son and his daughter.<sup>2</sup> The Family Court scheduled a hearing on the parties' submissions for October 4, 2002. On that date, the Family Court heard testimony from Father and Mother,<sup>3</sup> and then continued the hearing so that Pamela G. Denney, Coordinator for the Hudson Center, could be subpoenaed to testify.

(4) On October 25, 2002, the Family Court again continued the hearing, this time at Father's request due to a death in his family. The Family Court's order

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<sup>2</sup>Mother filed an "Answer" to Father's petition and Father then filed an "Answer to the Answer."

<sup>3</sup>The record does not contain the transcript of this testimony.

dated October 25, 2002, and mailed October 30, 2002, notes that the continued hearing will take place on January 17, 2003 at 12:30 p.m. and will last 30 minutes. The order reflects that it was mailed to the parties and to Mother's attorney.

(5) The transcript of the continued hearing on January 17, 2003 reflects that, after waiting approximately 30 minutes for Father to appear, the Family Court convened in Father's absence.<sup>4</sup> Ms. Denney was present. The Family Court Judge confirmed that notice of the hearing was mailed to Father at 4 Maple Drive, Newark, Delaware, 19713, which was the last address on record with the Family Court. The Family Court Judge further confirmed with Mother that Father was currently living at that address. The judge then dismissed Father's petition.

(6) After dismissing Father's petition, the judge confirmed with Mother that visitation was no longer taking place through the Hudson Center and asked Mother what she was requesting with respect to visitation. Mother stated that she wanted substance abuse and parenting counseling for Father. Ms. Denney then confirmed that the Center could no longer be used for drop-off and pick-up because Father had missed a scheduled appointment. She also noted that Father had displayed some "aggressive"

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<sup>4</sup> The Supreme Court docket sheet reflects that Mother requested that the testimony on this date be transcribed.

behavior. The Family Court then ordered Father's visitation to be terminated, ordered that visitation would not be reinstated until Father had filed an appropriate petition and had submitted to a psychological evaluation and a substance abuse evaluation, and assessed costs and attorney's fees against Father.

(7) In this appeal, Father claims that: a) he did not receive proper notice of the continued hearing on January 17, 2003 and, therefore, his petition should not have been dismissed; and, b) there was insufficient evidence in the record to support the Family Court's decision to terminate Father's visitation, require him to undergo psychological and substance abuse evaluations, and assess costs and attorney's fees against him.

(8) Father's claim of improper notice is without merit. The record in this case, including the transcript of the proceedings on January 17, 2003, reflects that notice of the hearing was sent to Father at his current address. The record further reflects that Father had successfully received communications from the Family Court at that address on several previous occasions. On that basis, we find no abuse of discretion on the part of the Family Court in finding that Father had received proper notice of the hearing and in dismissing Father's petition for his failure to appear.<sup>5</sup> (9) Father

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<sup>5</sup>*Ellington v. DCSE/Ledbetter*, Del. Supr., No. 408, 1991, Walsh, J. (May 12, 1992).

also claims that there was insufficient evidence supporting the Family Court's termination of visitation and imposition of conditions for future visitation. The record provided to this Court in an appeal "must include a transcript of all evidence relevant to the challenged finding or conclusion."<sup>6</sup> In this case, Father, as the appellant, had the burden of providing this Court with a transcript of those portions of the proceedings below relevant to his appeal. While Mother provided the transcript of the continued hearing on January 17, 2003, Father did not provide the transcript of the October 4, 2002 hearing, which included the testimony of the parties.<sup>7</sup> Without that transcript, this Court is not able to rule on whether the Family Court abused its discretion in terminating Father's visitation and placing conditions on Father's future visitation.

(10) With respect to Father's last claim, the Family Court has broad discretion in awarding attorney's fees.<sup>8</sup> Therefore, this Court must apply the deferential standard of review and, in the absence of an abuse of discretion, must affirm the Family Court's award, even though we might have reached a

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<sup>6</sup>*Slater v. State*, 606 A.2d 1334, 1336 (Del. 1992) (quoting *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987)).

<sup>7</sup>While the Family Court granted Father's request to proceed *in forma pauperis* ("IFP") on April 15, 2003, he was still required to make his own financial arrangements to obtain necessary transcripts. *Booth v. Mackay-Bush*, Del. Supr., No. 141, 1999, Holland, J. (Dec. 7, 1999).

<sup>8</sup>*Smith v. Francisco*, 737 A.2d 1000, 1009 (Del. 1999).

different conclusion.<sup>9</sup> In this case, and on the basis of the limited record before us, we find no abuse of discretion on the part of the Family Court in awarding Mother her attorney's fees.

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

BY THE COURT:

/s/ Myron T. Steele  
Justice

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