IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBIN W. ROBERTS,	§	
	§	No. 609, 2001
Respondent Below,	§	
Appellant,	§	Court Below: Family Court of the
	§	State of Delaware in and for New
v.	§	Castle County
	§	
	§	File No. CN95-11353
ROXANNE EDWARDS,	§	
	§	
Petitioner Below,	§	
Appellee.	§	

Submitted: July 17, 2002
Decided: October 30, 2002

Before **VEASEY,** Chief Justice, **HOLLAND**, and **BERGER,** Justices.

O R D E R

This 30th day of October 2002, it appears to the Court that:

(1) This is the appeal of Robin W. Roberts ("Husband"), respondent-appellant, from the judgment of the Family Court during an ancillary hearing regarding alimony and the division and allocation of marital property.

(2) Husband raises the following three issues on appeal: (a) the Family Court disregarded the statutory factors contained in 13 *Del. C.* § 1512; (b) the Family Court incorrectly entered Husband's child support obligation to Wife into a standard spreadsheet used to calculate alimony (the "FinPlan" calculation); and (c) the Family

Court failed to consider issues between the parties as to certain marital assets. We affirm the judgment of the Family Court with respect to the first issue and remand on issues (b) and (c) so that the Family Court may make the appropriate findings and rulings.

(3) The Family Court held a hearing on October 12, 2001, to determine the disposition of the marital assets. At the end of the hearing, the court made a ruling dividing the marital estate 55% to 45% in favor of Wife. The court then stated that the parties "should be able to work out the actual accounting figures," but also stated, "If you can't do it, you come back here at ten o'clock Monday morning and we'll all go over it together." Husband then observed that the parties had "some outstanding issues." The Family Court later stated, "Do you want to agree on it, you can do that. And you want to come back at ten o'clock or can you do the accounting yourselves?" Wife's counsel responded, "I think [Husband's counsel] and I can do it." Husband's counsel responded, "We can try."

(4) Subsequently, the Family Court issued a disposition in the case.[1] It divided the marital estate 55% to 45% in favor of Wife[2] and divided the marital home 75% to

[1] *Edwards v. Roberts*, Del. Fam., C.A. No. CN95-11353 (Oct. 12, 2001).

[2] *Id.* at 3.

25% in favor of Wife.[3] In addition, the court awarded Wife alimony of $825 per month.[4] On October 18, 2001, Husband's counsel informed the Family Court by letter that a meeting to resolve "the issues not resolved by the above referenced ancillary hearing" had failed, and requested "the Court schedule approximately two hours to address the outstanding property division issues not resolved by the Court on October 12, 2001."

(5) On October 22, 2001, Husband filed a Motion for Reargument requesting that the alimony award be modified to reflect the school tuition of the parties' daughter as an expense for Wife. Husband further requested that his share of the marital home be increased from 25% to 30%. In a letter decision and order dated November 16, 2001, the Family Court adjusted the division of the marital home according to Husband's request but declined to modify the alimony amount. Subsequently, Husband brought this appeal.

[3] *Id.* at 5.

[4] *Id.* at 6.

(6) Husband's first claim is that the Family Court failed to consider the statutory factors contained in 13 *Del. C.* § 1512(c) when determining the alimony award. After speaking to counsel for Husband regarding an alimony award at the October 12th hearing, the Family Court noted, "I ought to tell you that based on my application of the statutory factors . . . [this case] would be a sixty/forty case." Moreover, the Family Court specifically discussed several factors (such as "age, education, earning ability, work history, [and] the expectation of acquiring assets") as outlined in section 1512(c). The Family Court's decision on a petition for alimony "will not be disturbed on appeal if . . . its decision reflects due consideration of the statutory factors found in 13 *Del. C.* § 1512. . . ."[5] Here the Family Court considered the statutory factors of 13 *Del. C.* § 1512. Accordingly, with regard to the first issue on appeal we affirm the judgment of the Family Court.

(7) Husband next argues the Family Court incorrectly entered Husband's child support obligation to Wife in its FinPlan calculation. The FinPlan calculation attached to the Family Court's October 12th decision lists "Child Support" on line 23. No child support amount is entered on line 23, either as income to Wife or expense to Husband.

[5] *Deshields v. Harris*, 2000 Del. LEXIS 351, at *3-4 (Del. Supr.) (quoting *Gray v. Gray*, 503 A.2d 198, 201 (Del. 1986)).

(8) In its October 12th decision, the Family Court modified Husband's expenses by "adding his $611 child support obligation."[6] There was, however, no similar input of child support as income to Wife. To insure the integrity of the FinPlan calculation, the Family Court should have re-calculated the FinPlan with the child support payment at Line 23, its designated place on the calculation. On the record before this Court, the Family Court's failure to properly account for child support allows the child support payment to count as an expense to Husband without also counting as income for Wife. For this reason, we remand this matter to the Family Court to perform proper accounting. The Family Court may address any collateral issues that arise as a result of the re-calculation using its best discretion.

(9) Finally, Husband contends the Family Court failed to consider issues between the parties regarding certain marital assets. The Family Court is "accorded wide latitude in the fixing of property division incident to a decree of divorce under 13 *Del.*

[6] *Edwards v. Roberts*, Fam. Ct., F. No. CN95-11353 (Oct. 12, 2001).

C. § 1513."[7] This Court reviews such ancillary ruling under an abuse of discretion standard.[8]

[7] *Berg v. Brownell*, 2000 Del. LEXIS 118, at *1 (Del. Supr.).

[8] *Id.*

(10) Husband contends there were issues left unresolved by the Family Court after the hearing on October 12, 2001. Wife argues that these issues were not presented in a timely manner and hence Husband waived his right to have the Family Court resolve the issues. Waiver is the voluntary and intentional relinquishment of a known right.[9] The standard for finding waiver in Delaware is quite exacting.[10] Based on the record before us, we cannot say that Husband either voluntarily or intentionally waived his right to have the Family Court resolve the disputed property issues. As there was no waiver here the trial court erred by failing to address the remaining marital assets. We, therefore, remand this issue to the Family Court to rule on the remaining disputed property.

NOW, THEREFORE IT IS ORDERED that this matter is **REMANDED** for proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

[9] *Id.* (quoting *Realty Growth Inv. v. Council of Unit Owners*, 435 A.2d 450, 456 (Del. 1982)).

[10] *Am. Family Mortgage Corp. v. Acierno*, 1994 Del. LEXIS 105, at *13 (Del. Supr.).