

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERTA L. GUEST,	§	
	§	No. 282, 2003
Respondent Below-	§	
Appellant,	§	Court Below – Family Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	File No. CN99-10116
MATTHEW J. GUEST,	§	Petition No. 02-37929
	§	
Petitioner Below-	§	
Appellee.	§	

Submitted: October 3, 2003
Decided: December 8, 2003

Before **HOLLAND, STEELE** and **JACOBS**, Justices

ORDER

This 8th day of December 2003, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The respondent-appellant, Roberta L. Guest (“Mother”)¹, filed an appeal from the Family Court’s April 30, 2003 order granting the petition for a rule to show cause of petitioner-appellee, Matthew J. Guest (“Father”). Father has moved to affirm the judgment of the Family Court on the ground that it is manifest

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

on the face of Mother's opening brief that the appeal is without merit.² We agree and AFFIRM.

(2) By order dated March 19, 2001, the Family Court awarded Mother and Father joint legal custody of their three minor children, awarded primary residential custody to Mother and established a visitation schedule for Father, with visitation to be unsupervised once Father completed an alcohol evaluation and began counseling. On October 10, 2002, the Family Court entered an order on Mother's petition for a rule to show cause which modified the visitation arrangements established in its previous order and instituted telephone visitation with Father every Tuesday at 6:00 p.m.

(3) On April 30, 2003, the Family Court held a hearing on Father's petition for a rule to show cause. Father alleged that Mother had unilaterally terminated Father's telephone visitation with the children in December 2002. It appears that Mother did not dispute this allegation and appears to have terminated the visitation because she believed Father was abusing alcohol while talking on the telephone. After hearing the testimony of the parties, the Family Court issued an order stating, "The Court is satisfied that the cessation of the telephone conversations was harmful and upsetting to the children and was in violation of the

² SUPR. CT. R. 25(a).

Court Order. There is no evidence that [Father] said anything improper, threatening, abusive, or disgusting to the children.” The Family Court also awarded Father his attorney’s fees in connection with the filing of the petition. Subsequently, on July 8, 2003, the Family Court denied Mother’s request for a transcript of the hearing at State expense. While Mother claimed she could not afford the cost of the transcript, she admitted to receiving a substantial tax refund, most of which she gave to her parents.

(4) In this appeal, Mother asserts eight separate claims that may fairly be summarized as follows: a) the Family Court abused its discretion by finding her in contempt; and b) the Family Court abused its discretion by awarding Father his attorney’s fees.³

(5) The Supreme Court Rules direct all parties to order a transcript and to include in their appendix those portions of the record relevant to any claims on appeal.⁴ 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 account of the context in which the claim of error occurred.⁵ The record provided to this Court by an appellant must include a transcript of all evidence relevant to

³ We also consider whether the Family Court abused its discretion by denying Mother a copy of the hearing transcript at State expense.

⁴ SUPR. CT. R. 9(e) (ii) and 14(e); *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

⁵ *Id.*

the challenged finding or conclusion.⁶ 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.⁷

(6) Mother's claim of abuse of discretion is unavailing. In the absence of a transcript of the hearing at which Mother was found in contempt of the Family Court's April 30, 2003 order and Father was awarded his attorney's fees, this Court has no adequate basis for evaluating the merits of Mother's claim.⁸ Moreover, we find no abuse of discretion on the part of the Family Court in denying Mother's request for a transcript at State expense. Although Mother claimed that she could not afford the cost of the transcript, she admitted that she had given most of her tax refund to her parents. Moreover, Mother failed to show a legal or factual basis for relief and a particularized need for the transcript.⁹ Under these circumstances, we find no abuse of discretion on the part of the Family Court.

(7) It is manifest on the face of Mother's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled

⁶ Id.

⁷ *Lynch v. McCarron*, Del. Supr., No. 352, 1996, Hartnett, J. (Dec. 17, 1996).

⁸ *Slater v. State*, 606 A.2d 1334, 1336-37 (Del. 1992).

⁹ *U.S. v. MacCollum*, 426 U.S. 317, 330 (1976).

Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice