

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CAROL E. SMITH,

Respondent Below-
Appellant,

v.

RICHARD S. DEPTULA,

Petitioner Below-
Appellee.

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No. 333, 2003

Court Below – Family Court
of the State of Delaware,
in and for Sussex County
File No. CS94-4263
Petition No. 03-06259

Submitted: October 8, 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, Carol E. Smith (“Wife”), filed an appeal from the Family Court’s May 28, 2003 order granting the petition for a rule to show cause of petitioner-appellee, Richard S. Deptula (“Husband”). Husband has moved to affirm the judgment of the Family Court on the ground that it is manifest

on the face of Wife's opening brief that the appeal is without merit.¹ We agree and affirm.

(2) It appears that, on May 17, 2002, the Family Court issued an order setting forth a procedure for the sale of marital real estate (the "property") located at 99 Culpepper Court, Millsboro, Delaware. Under that procedure, each party would have thirty days in which to obtain a new appraisal of the property and buy out the interest of the other party. If, after thirty days, neither party had bought out the interest of the other, Wife's attorney would forward a list of three realtors to Husband, who would then choose one of them to list the property for sale. It further appears that, on December 27, 2002, Wife's attorney forwarded a list of realtors to Husband, who chose one of them, and the property was listed for sale.

(3) It appears that Husband attempted throughout the winter of 2002 to contact Wife to discuss the listing of the property and the execution of a contract of sale. Because he was unsuccessful in contacting Wife, Husband listed the property and, in March 2003, signed a contract of sale.² Wife refused to sign the contract and Husband filed a petition for a rule show cause seeking to compel the sale of the property.

¹ SUPR. CT. R. 25(a).

² The property was listed at \$125,000 and the contract of sale provides that the property will be sold for \$117, 500.

(4) On May 16, 2003, the Family Court held a hearing on Husband's petition at which both parties appeared pro se. After hearing the testimony of the parties, the Family Court issued an order dated May 28, 2003 finding Wife in contempt of its May 17, 2002 order and ordering the sale of the property pursuant to the contract of sale. The Family Court also directed the Family Court clerk to execute any documents on behalf of Wife necessary for settlement.³

(5) In this appeal, Wife claims that: a) she lacked information about the sale of the property due to the negligence of her former counsel, which prejudiced her position at the hearing; b) the decision of the Family Court was not supported by the facts; c) the sanctions imposed by the Family Court were excessive and irrational; and d) her constitutional rights, as well as those of her former mother-in-law, were violated.

(6) 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

³ The Family Court noted that this was necessary in light of Wife's reluctance to sell the property and Husband's past difficulty in sending mail to Wife at her home in Florida.

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

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 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

(7) Wife's claims are unavailing. In the absence of a transcript of the hearing at which Wife was found in contempt of the Family Court's May 17, 2002 order and the property was ordered to be sold, this Court has no adequate basis for evaluating the merits of Wife's claims.⁸ They must, therefore, be denied.

(8) It is manifest on the face of Wife's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

⁵ Id.

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).

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