

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM A. HUEY,	§
	§
Respondent Below-	§ No. 186, 2001
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
DCSE/JOALLYNN STEVENS,	§ in and for Kent County
	§ File No. 192290
Petitioners Below-	§ Petition No. 00-16535
Appellees.	§

Submitted: April 12, 2002

Decided: May 30, 2002

Before **WALSH, HOLLAND** and **BERGER**, Justices

ORDER

This 30th day of May 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The respondent-appellant, William A. Huey, filed this appeal from an order of the Family Court dated March 28, 2001, which affirmed¹ the commissioner's November 20, 2000 order finding Huey's child support payments to be in arrears, finding Huey to be in contempt of a previous child support order and ordering Huey to pay retroactive support on a monthly basis.

¹Pursuant to DEL. CODE ANN. tit. 10, § 915(d) (2001).

(2) In this appeal, Huey claims that the Family Court commissioner abused his discretion and violated Huey's right to due process by failing to suspend the hearing once Huey requested an attorney. Huey contends that he would not have agreed to proceed with the hearing if he had known the prosecutor would ask the commissioner to commit him to the work release program. To the extent Huey has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.²

(3) On November 20, 2000, Huey appeared before a Family Court commissioner on a petition for support arrears filed by the Division of Child Support Enforcement.³ The petition alleged that Huey had failed to comply with a previous order of the Family Court to pay child support. According to Huey, he informed the Family Court judge prior to the hearing that he had retained private counsel, but then agreed to proceed pro se when his attorney did not appear. The transcript of the hearing reflects that, during closing argument, the prosecutor requested that Huey

²*Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). On appeal to the Family Court judge, Huey also argued that his child support obligation should have been reduced when his son turned 18, he should have been allowed to offer proof that he had made certain child support payments not reflected on the court's account statement, and there was no evidence showing that his daughter was enrolled in high school.

³Pursuant to DEL. CODE ANN. tit. 13, § 2201 et seq. (1999).

be committed to the work release program, at which point Huey stated, “I want my lawyer here now.” The transcript further reflects that, following Huey’s statement, the commissioner directed the prosecutor to proceed with his argument and stated he would address Huey’s request at a later time. Although the commissioner found Huey to be in contempt of the Family Court’s child support order, he did not commit Huey to the work release program.

(4) It is within the discretion of the trial court to determine whether a continuance should be granted and the trial court’s decision will not be disturbed on appeal unless it was unreasonable or capricious.⁴ While it is presumed under principles of due process that counsel should be appointed for an indigent support obligor who is at risk of incarceration,⁵ in this case there was no finding that Huey was indigent.⁶ Moreover, while the prosecutor requested Huey’s commitment to the work release program, the commissioner did not grant the request. Under these

⁴*Raymond Heartless, Inc. v. State*, 401 A.2d 921, 923 (Del. 1979).

⁵*Black v. DCSE/Black*, 686 A.2d 164, 168 (Del. 1996).

⁶In fact, Huey told the commissioner that he had retained his own counsel. The Family Court record also indicates that, at the time Huey was sent notice of the child support hearing, he was sent a notice informing him that he was entitled to move for the appointment of counsel in case of indigency. The record does not reflect that Huey ever filed such a motion.

circumstances, the commissioner's denial of Huey's request for a continuance of the hearing so he could contact his attorney did not constitute an abuse of discretion.

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

BY THE COURT:

/s/ Randy J. Holland
Justice