

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SAMUEL JAMES KNIGHT, ¹	§
	§
Respondent Below-	§ No. 406, 2011
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
TRACY APRIL SANDERS,	§ in and for Sussex County
	§ File No. CS10-02122
Petitioner Below-	§ Petition No. 11-18434
Appellee.	§

Submitted: September 23, 2011

Decided: November 21, 2011

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

ORDER

This 21st day of November 2011, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) The appellant, Samuel Knight (“Husband”), filed this appeal from a Family Court decision, dated June 28, 2011, denying his motion to reopen a divorce proceeding for purposes of reserving ancillary jurisdiction. The appellee, Tracy April Sanders (“Wife”), has filed a motion to affirm the judgment below on the ground that it is manifest of the face of Husband’s opening brief that his appeal is without merit. We agree and affirm.

¹ The Court assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

(2) The relevant facts in the record reflect that Wife filed a petition for divorce on September 8, 2010 in Sussex County, Delaware. At that time, Wife indicated that Husband's address was the Young Correctional Institute in Wilmington. Wife's divorce petition did *not* request the Family Court to retain ancillary jurisdiction to decide such matters as property division, alimony, court costs, or counsel fees. Her only request was to legally change her last name. The divorce petition was served on Husband on October 8, 2010. Husband failed to file an answer or otherwise request the Family Court to retain jurisdiction to decide ancillary matters. The divorce decree was entered on November 22, 2010.

(3) Following entry of the divorce decree, Husband filed a petition for return of property against Wife in the Superior Court. The Superior Court dismissed Husband's petition on the ground that the Family Court has exclusive jurisdiction over any proceedings relative to the parties' divorce.² At the Superior Court hearing held on January 21, 2011, Husband was instructed that his request for return of property had to be filed in the Family Court. Husband filed his petition for return of property in the Family Court on May 26, 2011. The Family Court treated Husband's petition as a motion

² Del. Code Ann. tit. 10, § 921(11) (1999).

to reopen the divorce judgment and denied his petition on June 28, 2011. Husband filed an appeal from that ruling.

(4) Although he filed his notice of appeal from the Family Court's judgment, the only argument Husband raises in his opening brief on appeal addresses the Superior Court's dismissal of his petition for return of property, which was entered in January 2011. This Court's appellate jurisdiction, however, is dependent upon an appellant timely filing a notice of appeal from the judgment sought to be reviewed.³ When the notice of appeal is unambiguous about the judgment sought to be reviewed, then it is binding on the appellant and does not bring up any judgment for review other than the judgment specified.⁴ Husband did not file a notice of appeal from the Superior Court's judgment. Accordingly, this Court has no jurisdiction to review that judgment.

(5) To the extent Husband's brief can be construed as arguing that the Family Court erred in denying his motion to reopen the divorce proceedings, we find no merit that position. The decision to reopen a judgment is a matter within the sound discretion of the trial court.⁵ In this case, Husband makes no argument that he was not properly served with the divorce petition, nor does he offer any other justification for his failure to

³ *Eller v. State*, 531 A.2d 951, 952-53 (Del. 1987).

⁴ *Trowell v. Diamond Supply Co.*, 91 A.2d 797, 801 (Del. 1952).

⁵ *Reynolds v. Reynolds*, 595 A.2d 385, 389 (Del. 1991).

timely respond to the petition and request the Family Court to retain ancillary jurisdiction to rule upon matters of property division.⁶ Under these circumstances, we find no abuse of the Family Court's discretion in refusing to reopen the judgment because there was no credible reason justifying Husband's request for relief from judgment under Family Court Civil Rule 60(b).

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

BY THE COURT:

/s/ Randy J. Holland

Justice

⁶ Husband contends that he filed a motion for return of property in the Family Court on October 10, 2010 in response to Wife's petition for divorce. Husband offers nothing to support this contention, and the Family Court docket reflects no such filing.