IN THE SUPREME COURT OF THE STATE OF DELAWARE

THEODORE E. WARREN,	§	
	§	
Petitioner Below-Appellant,	§	No. 330, 2003
	§	
	§	Court Below---Family Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
PATRICIA J. MACKIE,	§	File No. CN96-06609
	§	
Respondent Below-Appellee.	§	
	§	

Submitted: February 23, 2004
Decided: April 13, 2004

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

O R D E R

This 13th day of April 2004, upon consideration of the appellant's opening brief and appendix, the appellant's submission entitled "Response/Addendum to Lower Court Submitted Docket," and the record below,[1] it appears to the Court that:

(1) The petitioner-appellant, Theodore E. Warren ("Father"),[2] filed an appeal from the Family Court's June 10, 2003 order awarding to Patricia J. Mackie

[1] By Order dated November 10, 2003, following the appellee's waiver of the right to file an answering brief, the Court ruled that the appeal would be considered on the basis of these materials.

[2] The Court sua sponte has assigned pseudonyms to the parties. Supr. Ct. R. 7(d).

("Mother") sole custody of the parties' minor son. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Father claims that: a) he was prejudiced by a prejudicial and hostile environment in the Family Court; b) as a woman and police officer, Mother had an unfair advantage in the Family Court litigation; c) the Family Court's order was based on erroneous facts concerning his penchant for violence; d) the Family Court failed to follow the rules of evidence at trial; e) the Family Court abused its discretion in denying his request for visitation pending the instant appeal; f) the Family Court's undue delay in reaching a decision was prejudicial to his relationship with his son; and g) the Family Court's erasure of the tape of the custody hearing, which was needed for the transcript, was prejudicial to his appeal.

(3) Our review of the record of the proceedings in the Family Court reflects the following. Mother filed a custody petition in April 1997 and, in May 1997, filed a petition for divorce. The Family Court issued its final decree of divorce in September 1997, retaining jurisdiction over ancillary matters, including property division, custody and visitation. In August 1997, the parties filed cross petitions for custody. Following a hearing, the Family Court issued its decision regarding property division and attorney's fees in September 1998.

(4) On July 13, 1999, the Family Court held a hearing regarding custody and visitation, and reserved its decision. The record reflects no activity in the case until February 18, 2000, when Mother's counsel wrote a letter to the Family Court judge asking when a decision would be forthcoming. By letter dated February 25, 2000, the Family Court judge awarded sole custody of the parties' son to Mother and stated that a full written decision on the merits, including findings of fact and conclusions of law, would be issued at a later time. The record reflects no further activity in the case until 2003. On May 27, 2003, Father filed a petition for a writ of mandamus requesting this Court to order the Family Court judge to issue the decision on custody and visitation that had been promised over three years before.[3] On June 10, 2003, approximately two weeks after Father filed his mandamus petition, the Family Court issued its decision awarding sole custody to Mother and denying visitation to Father.[4]

(5) We have reviewed carefully the parties' submissions and the record in this case and find no factual support for Father's first four claims. Those claims are, therefore, denied. Father's next claim that the Family Court abused its

[3] *In re [Warren]*, Del. Supr., No. 275, 2003, Veasey, C.J. (Sept. 25, 2003). We denied Father's mandamus petition because the instant appeal already was pending.

[4] The Family Court's decision states that visitation was required to take place at the Family Visitation Center because of a 1997 Protection from Abuse order against Father, but that Father's refusal to visit his child at the Center eventually resulted in termination of services to the parties. The Family Court's decision further states that if Father wishes to re-establish visitation with his child at the Center he may do so by filing an appropriate petition.

discretion by refusing to consider his request for visitation pending the instant appeal is without merit. The Family Court correctly determined that it lacked jurisdiction to rule on Father's request for visitation while his appeal from its custody and visitation order was on appeal in this Court.[5]

(6) We turn to Father's claim that the Family Court's undue delay in issuing its decision prejudiced his relationship with his son. Our review of the record in this case reflects that the hearing on custody and visitation took place on July 13, 1999. However, neither the Family Court judge nor either of the parties took any action subsequent to the hearing until February 18, 2000, when Mother's counsel wrote to the Family Court judge asking when a decision might be expected. On February 25, 2000, presumably in response to counsel's letter, the Family Court judge sent a letter to the parties awarding sole custody of the parties' son to Mother and promising a full decision on the merits. However, it was not until Father's petition for a writ of mandamus, dated May 27, 2003, was filed that the Family Court judge issued her full decision on the merits.

(7) We are troubled that the Family Court judge took no action to move this matter forward until prompted to do so, first, by Mother's counsel's inquiry about the status of the decision and, then, by the filing of Father's mandamus

[5] *Radulski v. Delaware State Hospital*, 541 A.2d 562, 567 (Del. 1988). Presumably, once the appeal process is complete, Father may once again request visitation.

petition. There is no obvious excuse for the Family Court judge's inordinate delay in issuing her decisions on custody and visitation and we do not condone such conduct. However, it is also apparent from the record that Father himself took no action to move the case forward between February 25, 2000 and May 27, 2003, a period of over three years. As such, we do not credit Father's argument that it was solely the Family Court judge's inaction that caused the delay and, therefore, deny his claim of prejudice.

(8) Father's final claim that his appeal was prejudiced by the erasure of the tape is also unavailing. Father requested the tape in connection with his appeal, which was initiated nearly four years after the custody/visitation hearing. During most of that time, Father took no steps to move the process forward and, therefore, may not now argue that he was prejudiced by the delay.[6]

[6] There is, moreover, no evidence to suggest that the destruction of the tape was outside the ordinary course of Family Court business.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.[7]

BY THE COURT:

/s/ Jack B. Jacobs
Justice

[7] On January 8, 2004, after briefing was complete, Father filed a document in this Court entitled "Psychiatric Evaluations (Attached)," seeking to add two psychiatric evaluations of him to the record on appeal. It is not clear from the record whether these evaluations were considered by the Family Court in the first instance. We have reviewed the reports in the interest of justice, but do not find that they alter the outcome of the instant appeal. On January 27, 2004, Father filed a second document entitled "Motion to Show Cause; Rule 30(c)," requesting this Court to find Mother in default for failure to respond to his arguments. Because we find no factual basis for the motion, it is denied.