

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MAHMOUD A. MAHMOUD,	§
	§ No. 595, 2003
Respondent Below,	§
Appellant,	§ Court Below – Family Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ File No. CN02-09157
SUSAN F. AL-NASER,	§
	§
Petitioner Below,	§
Appellee.	§

Submitted: May 11, 2004

Decided: May 28, 2004

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

O R D E R

This 28th day of May 2004, upon consideration of the briefs of the parties and the contentions set forth therein, it appears to the Court that:

(1) The respondent-appellant, Mahmoud A. Mahmoud (the “Husband”) appeals from a Family Court decision on ancillary matters related to his divorce from the petitioner-appellee, Susan F. Al-Naser (the “Wife”). At issue is the Family Court’s jurisdiction to hear or determine claims of third party creditors. The Family Court concluded that it did not have jurisdiction to hear such claims. We have concluded that the judgment of the Family Court must be affirmed.

(2) The Husband and the Wife were married on July 20, 1985. They separated on July 20, 2002 and divorced on April 17, 2003. On November 19, 2003, the Family Court held an ancillary hearing on the matters of property division and debts. The parties stipulated that the marital property and debts should be divided equally. They also stipulated to the value of all debts and assets.

(3) At the November 19 hearing, the Family Court resolved three disputed issues. Resolved were the disposition of the marital home, the disposition of certain jewelry acquired during the marriage, and the allocation of two alleged debts to third party creditors. The Husband appeals only the Family Court's disposition of the alleged third-party debts.

(4) The Husband contends that there are substantial marital debts owed to his brother and another person for alleged loans made to the Husband and the Wife during the marriage. The Family Court ruled that it did not have jurisdiction to hear these claims because they dealt with alleged debts due and owing to third parties.

(5) The Family Court judge further ruled that three separate \$7,000 checks written by the Husband shortly before he and the Wife separated were a dissipation of marital assets. The Family Court ordered that the account from which the checks were written would be valued as of the

separation date. The three \$7,000 checks were written by the Husband to his brother for one of the alleged debts that the Family Court had concluded it did not have jurisdiction to hear. The other alleged debt was an alleged loan in the amount of \$130,000 from Hussain A. Gheith to the Husband and the Wife in 1996 in Jerusalem.

(6) In *Husband C. v. Wife C.*, we noted that “[i]t is settled law in Delaware that our courts have no inherent powers over matrimonial proceedings; that to the extent that such powers exist, they arise solely from statutes, and are strictly limited thereby.”¹ Through Del. Code Ann. tit. 13, § 1513(a) the General Assembly granted the Family Court the power to grant ancillary relief and to “equitably divide, distribute and assign the marital property between the parties” In several decisions, we have interpreted the phrase “between the parties” to mean the husband and wife only.²

(7) In *Eberly v. Eberly*, the husband challenged the Family Court’s allowance of a third party intervention by his mother-in-law concerning a loan of \$10,000 which she had allegedly made to the husband to help him start his law practice.³ This Court reversed the judgment of the Family

¹ *Husband C. v. Wife C.*, 391 A.2d 745, 746 (Del. 1978).

² See, e.g., *In the Matter of the Petition of B&F Towing and Salvage Co., Inc.*, 1988 WL 81406, *2 (Del. Jul. 21, 1988); *Eberly v Eberly*, 489 A.2d 433, 445 (Del. 1985); *Joseph B.P. v. Kathleen M.P.*, 469 A.2d 800, 802 (Del. 1983); *Husband C. v. Wife C.*, 391 A.2d at 746 (Del. 1978).

³ *Eberly v Eberly*, 489 A.2d at 444.

Court, holding that it had no jurisdiction to permit the intervention of the wife's mother as a party in the case.⁴ We stated:

It is clear from the statutory grant of jurisdiction in 13 Del. C. § 1513(a), regarding divorce or annulment proceedings, that the Family Court may assert jurisdiction over the parties to such proceedings only, i.e. the husband and wife.⁵

(8) The facts of this case are similar to those in *Eberly*. The Husband is attempting to assert a claim on behalf of his brother and another third party for loans made to the Husband and the Wife. Section 1513(a) makes clear that the Family Court does not have jurisdiction to adjudicate such claims of third parties. Such claims, this Court noted in *Eberly*, are of the type within the common law jurisdiction of the Superior Court and carry an absolute right to a jury trial, as granted by art. I, § 4 of the Delaware Constitution.⁶

NOW, THEREFORE, it is ORDERED that the judgment of the Family Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁴ *Id.* at 446.

⁵ *Id.* at 445.

⁶ *Id.* at 446.

No. 595, 2003

Marie I. LaBruyere, Esquire
2055 Limestone Road, Suite 211
Wilmington, DE 19808

Thomas B. Ferry, Esquire
299 E. Main Street
Newark, DE 19711

Honorable Jay H. Conner
Family Court
New Castle County Courthouse
500 N. King Street, Suite 9450
Wilmington, DE 19801