

IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | | |
|-------------------|---|----------------------------|
| CHARLES R. SMITH, | § | |
| | § | |
| Petitioner Below- | § | No. 36, 2004 |
| Appellant, | § | |
| | § | |
| v. | § | Court Below---Family Court |
| | § | of the State of Delaware, |
| | § | in and for Sussex County |
| CRYSTAL L. SMITH, | § | File No. CS02-04844 |
| | § | Petition No. 02-36532 |
| Respondent Below- | § | |
| Appellee. | § | |

Submitted: August 27, 2004

Decided: October 26, 2004

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

ORDER

This 26th day of October 2004, upon consideration of the appellant's opening brief and the record below,¹ it appears to the Court that:

(1) The petitioner-appellant, Charles R. Smith ("Husband"), filed an appeal from the Family Court's December 30, 2003 property division order, pursuant to which Husband owes respondent-appellee, Crystal L. Smith ("Wife"), the sum of \$8,070.60. We find no merit to the appeal. Accordingly, we affirm.

(2) In December 2003, the Family Court held a hearing to divide the marital property of Husband and Wife. Neither party was represented by counsel.

¹ On July 29, 2004, this Court ordered that the appeal would be decided on the basis of the plaintiff's letter filed April 14, 2004, which would be deemed to be the opening brief, and the record below.

Based upon the evidence presented at the hearing, and in accordance with the required statutory factors,² the Family Court made the following findings: a) the parties' marriage lasted five years and there were no children born of the marriage; b) although both parties were in good health, Husband had the greater opportunity to earn income; c) there was no unusual contribution to or dissipation of assets from the marriage by either party; d) the parties' property settlement failed to consider the value of Husband's 401K plan and a debt owed jointly to Husband's mother; e) the parties had agreed that the mortgage debt on the marital home would be assumed solely by Husband; f) each of the parties would receive one of their two vehicles and assume the debt associated with that vehicle; g) Husband's retirement benefit should be assigned its full market value, since Husband had chosen to leave his employment; h) the parties' personal property already had been divided; and i) because the parties could not agree on the amount of the debt owed to Husband's mother, the parties' proposed figures would be averaged. With respect to the contested marital assets, and based upon a 56%/44% ratio favoring Wife, the Family Court determined that Husband owed Wife \$8,070.60.

(3) In his appeal, Husband claims that the Family Court abused its discretion by dividing the contested marital assets as it did and, moreover, that

² Del. Code Ann., tit. 13, § 1513 (1999).

Wife is not entitled to any of his assets because she was “unfaithful” and “walk[ed] out on” him.

(4) We review a property division order of the Family Court for abuse of discretion.³ We have reviewed carefully the transcript of the property division hearing and the Family Court’s order and find no abuse of discretion on the part of the Family Court. It appears that the arguments made by Husband in support of his appeal are the same arguments made to and rejected by the Family Court within its discretion. Finally, contrary to Husband’s argument, the circumstances of the parties’ separation and divorce have no bearing on how the marital property is divided by the Family Court.⁴

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

BY THE COURT:

/s/ Randy J. Holland
Justice

³ *Reynolds v. Reynolds*, 595 A.2d 385, 388 (Del. 1991).

⁴ Del. Code Ann., tit. 13, § 1513 (1999) (“ . . . the Court shall . . . equitably divide, distribute and assign the marital property between the parties without regard to marital misconduct . . . ”).