

IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | |
|----------------------|--------------------------------|
| DANA M. BUTLER, | § |
| | § |
| Respondent Below- | § No. 109, 2004 |
| Appellant, | § |
| | § Court Below—Family Court |
| v. | § of the State of Delaware, |
| | § in and for New Castle County |
| ANTHONY BUTLER, SR., | § File No. CN02-09196 |
| | § Petition No. 03-30161 |
| Petitioner 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 opening brief and the record below, it appears to the Court that:

(1) The petitioner-appellant, Dana Butler (“Mother”), filed this appeal purportedly from three separate orders of the Family Court dated December 12, 2003, February 23, 2004, and March 12, 2004. The December 12 order granted appellee, Anthony Butler (“Father”), sole custody of the parties’ son. The February 23 order denied Mother’s motion to reopen the Family Court’s custody judgment. The March 12 order denied Mother’s motion “to accept answer to extend.” The Court finds no merit to Mother’s appeal. Accordingly, we affirm the Family Court’s judgment.

(2) The record reflects that Father filed a petition for sole custody of the parties' minor son. The child had been living with Father since the time of the parties' separation in August 2002. Mother filed an answer to the petition for sole custody. The Family Court sent notice to the parties of the hearing scheduled for December 12, 2003. Mother's notice was sent to the address she had listed in her answer to Father's petition. Mother failed to appear at the hearing. Father appeared and informed the judge, among other things, that Mother was scheduled to be tried on December 18, 2003 on criminal charges relating to her assault on Father.¹ Following the hearing, the Family Court granted Father's petition and awarded him sole custody of the parties' son. The Family Court indicated that Mother could file a petition for visitation if she so desired.

(3) Mother did not file a timely appeal from the Family Court's custody decision. Instead, on February 3, 2004, Mother filed a motion to reopen the Family Court's judgment. Mother argued that she had been hospitalized from November 21 until December 23, 2003 and was physically unable to attend the custody hearing on December 12. The Family Court

¹ The Superior Court criminal docket reflects that Mother was arrested in August 2002 and charged with second degree assault, possession of a deadly weapon during the commission of a felony, and endangering the welfare of a child. She pled guilty in April 2004 to the lesser included offense of third degree assault. The State dismissed the remaining charges. The Superior Court sentenced Mother to one year of incarceration suspended entirely for one year of probation.

held that, even assuming Mother was hospitalized on the date of the December hearing, she had failed to offer any explanation for why she had waited nearly two months to file her motion to reopen. The Family Court thus denied Mother's motion to reopen, but it did so without prejudice to Mother's right to file a motion to modify the December 2003 custody order. Mother did not file a motion to modify. Instead, she filed a motion "to accept answer to extend." The Family Court denied Mother's motion. This appeal ensued.

(4) In her opening brief on appeal, Mother again asserts that she was unable to attend the December 12 hearing due to her hospitalization. She contends that her son was never in danger during the incident that led to her arrest for assault. She requests this Court to reinstate her joint custody privileges.

(5) In the absence of a timely-filed motion for reargument, Mother was required to file her appeal from the Family Court's December 12 custody ruling within 30 days of its docketing.² Mother's appeal from the Family Court's December 12 custody decision is clearly untimely under the circumstances of this case and, thus, we lack jurisdiction to review the

² Del. Supr. Ct. R. 6(a)(i).

Family Court's custody order.³ With respect to the Family Court's denial of Mother's subsequent motions to reopen, we review these orders abuse of discretion.⁴ Mother's motion to reopen failed to explain why she did not seek a continuance of the hearing prior to December 12 or explain why she waited until February to request reconsideration of the Family Court's order. Under the circumstances, we find no abuse of the Family Court's discretion in denying Mother's motion to reopen the judgment.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

³ *Riggs v. Riggs*, 539 A.2d 163, 164 (Del. 1988).

⁴ *See Battaglia v. Wilmington Savings Fund Soc'y*, 379 A.2d 1132, 1135 (Del. 1977).