

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| MICHELE HARRIS, | § | |
| | § | |
| Respondent Below- | § | No. 110, 2004 |
| Appellant, | § | |
| | § | |
| v. | § | Court Below---Family Court |
| | § | of the State of Delaware, |
| | § | in and for Kent County |
| MICHAEL HARRIS, | § | CPI No. 03-18651 |
| | § | File No. CK02-03040 |
| 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 briefs on appeal and the record below, it appears to the Court that:

(1) The respondent-appellant, Michele Harris (“Wife”), filed an appeal from the Family Court’s February 26, 2004 order granting the petition for specific performance of petitioner-appellee, Michael Harris (“Husband”), which found Wife in contempt of a previous stipulation and order and ordered her to pay alimony to Husband in the amount of \$325.00 per month, plus arrears in the amount of \$3,050.00. We find no merit to the appeal. Accordingly, we affirm.

(2) Husband and Wife were divorced in September 2002. With the assistance of their respective counsel, they entered into a stipulation regarding the

ancillary issues of property division and alimony. On March 19, 2003, the stipulation was signed as an order of the Family Court. The order provided that Wife would pay Husband alimony in the amount of \$325.00 per month during a period of 45 months beginning on April 1, 2003. The order further provided for modification only upon a “substantial change in [Husband’s] economic circumstances.”

(3) On June 24, 2003, Husband filed a petition for a rule to show cause on the ground that Wife had failed to pay him alimony in accordance with the terms of the March 19, 2003 stipulation and order. The Family Court held a hearing on the petition on February 26, 2004, with both parties present. Husband testified that Wife had made one full and another partial alimony payment in 2003, but had made no payments thereafter. Wife testified that she had entered into the stipulation voluntarily and was in arrears on the payments due to subsequent medical and financial circumstances. While Wife testified that she currently was disabled, she did not explain why she did not pay alimony during the time she was not disabled and presented no evidence concerning either her disability or her income. There was no evidence indicating that Husband’s economic circumstances had changed.

(4) While Wife asserts in her opening brief that she has filed a petition in the Family Court requesting a modification of alimony, Husband responds that no such filing appears on the Family Court docket. The record reflects that Wife attempted to file such a petition, but it was not docketed by the Family Court clerk because it was not in the proper form.

(5) Alimony may be either judicially determined or agreed upon by the divorcing parties themselves in a stipulated alimony agreement or similar contract.¹ If the Family Court makes a judicial determination and enters an order for alimony, the conditions for modification of the order are mandated by statute.² On the other hand, a stipulated alimony agreement does not become a court order within the meaning of Section 1519 upon signature by the Family Court.³ Rather, it remains a contract governed by contract principles.⁴ Moreover, the Family Court may not modify such an agreement unless the agreement itself grants the Family Court such power.⁵

(6) The evidence presented at the hearing clearly reflected the following:
Wife breached the terms of the stipulation and order by failing to make the

¹ *Gertrude L.Q. v. Stephen P.Q.*, 466 A.2d 1213, 1217 (Del. 1983).

² Del. Code Ann., tit. 13, § 1519(a) (4).

³ The Family Court signs such a stipulation as an order in order to assert jurisdiction to construe the stipulation in the event of a future dispute. *Rockwell v. Rockwell*, 681 A.2d 1017, 1020 (Del. 1996).

⁴ *Id.* at 1020-21.

⁵ *Rockwell v. Rockwell*, 681 A.2d at 1020.

required alimony payments to Husband; Wife failed to justify that failure by demonstrating a change in Husband's economic circumstances, which was the only condition for modification permitted by the stipulation and order; and the stipulation and order itself conferred no power upon the Family Court to modify its terms. As such, the Family Court neither erred as a matter of law nor abused its discretion when, after hearing the evidence, it granted Husband's petition for specific performance.

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

BY THE COURT:

/s/ Randy J. Holland
Justice