

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NEIL BRENNER,	§	
	§	No. 237, 2004
Appellant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below:
	§	Family Court of the
ELOISE FARRELL,	§	State of Delaware in
	§	and for New Castle County
Appellee Below,	§	File No. CN01-10300
Appellee.	§	

Submitted: November 3, 2004
Decided: January 11, 2005

Before **STEELE**, Chief Justice, **HOLLAND**, **BERGER**, **JACOBS** and **RIDGELY**,
Justices, constituting the Court *en banc*.

ORDER

This 11th day of January, 2005, on consideration of the briefs of the parties, it
appears to the Court that:

1) Neil Brenner appeals from a Family Court decision awarding alimony to his
former wife, Eloise Farrell. He argues that the Family Court erred in awarding
alimony in excess of the statutorily prescribed maximum number of years.

2) Brenner and Farrell were married for eleven years, and were divorced by
final decree entered on December 13, 2001. Pursuant to a stipulated order, Brenner
paid Farrell \$1,000 per month in alimony beginning on March 8, 2002. In its January
2004 decision on ancillary matters, the Family Court awarded Farrell alimony in the

amount of \$848.00 per month from January 15, 2004 until June 15, 2009 (66 months). The Family Court noted that Brenner had been paying alimony since 2002, but decided to calculate his alimony obligation from January 2004, “[b]ased on the unique facts and circumstances of this case....”

3) Pursuant to 13 *Del.C.* §1512(a), a dependent party may be awarded “interim alimony” “during the pendency of an action for divorce or annulment.” In addition, pursuant to §1512(d) “a person shall be eligible for alimony for a period not to exceed 50% of the term of the marriage” unless the marriage lasted 20 years or more. As this Court explained in *DeShields v. Harris*,¹ §1512(a) addresses pre-divorce, or “interim” alimony. Section 1512(d), addresses post-divorce alimony, which is either “temporary” or “permanent” depending on whether or not the parties were married for 20 years. Since Farrell was married for 11 years, her post-divorce alimony is temporary, and is limited to 66 months.

4) Here, as in *DeShields*, the terminology may have had a bearing on the Family Court’s decision. The stipulated order whereby Brenner paid Farrell post-divorce alimony in the amount of \$1,000 per month described the payment as “interim alimony.” In fact, since it was post-divorce alimony, it should have been identified as “temporary alimony.” Regardless of the terminology, however, the statute controls

¹2000 WL 1504962 (Del. Supr.).

Farrell's eligibility for post-divorce alimony, and limits it to 66 months. The Family Court had no discretion to exceed that limit by ignoring Brenner's post-divorce alimony payments under the stipulated order.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court awarding temporary alimony from January 15, 2004, through June 15, 2009, is REVERSED, and this matter is REMANDED for further action in accordance with this decision. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice