

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM JOHNSTON,)
) No. 604, 2012
 Petitioner Below,)
 Appellant,) Court Below: Family Court
) of the State of Delaware, in and for
 v.) New Castle County
)
 MADISON LAUREN JOHNSTON,) File No. CN10-05598
)
 Respondent Below,) Petition No. 10-36742
 Appellee.)

Submitted: March 20, 2013

Decided: April 16, 2013

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

ORDER

This 16th day of April 2013, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

1. Petitioner–Appellant William Johnston (Husband)¹ appeals the Family Court's Order dated October 12, 2012, denying Husband's motion under Family Court Civil Rule 60(b).

2. Husband and Respondent–Appellee Madison Lauren Johnston (Wife) divorced on December 21, 2010. After the Family Court entered the divorce decree, the parties completed a financial report detailing their respective assets and

¹ We assigned pseudonyms to the parties in this matter. *See* Supr. Ct. R. 7(d).

debts (the Rule 16(c) Financial Report).² The parties signed a stipulation dividing the marital property on September 14, 2011. Nearly nine months after the parties entered the stipulation, Husband moved to reopen the proceeding under Rule 60(b), alleging that Wife fraudulently misrepresented the nature of \$12,000 in United States government bonds (the Bonds) and the existence of \$428,678 in a bank account (the Account).³ The Family Court judge denied the motion without a hearing and allowed Wife to move for an award of attorneys' fees. Husband appeals, claiming that the Family Court erred by denying his Rule 60(b) motion without a hearing.

3. Rule 60(b) allows the Family Court to reopen a final judgment under certain circumstances, such as fraud.⁴ We review a Family Court judge's denial of a motion for relief under Rule 60(b) for an abuse of discretion.⁵ We will not

² Fam. Ct. Civ. R. 16(c).

³ App. to Opening Br. A49. Husband's own documents contradict his assertion that the Account had a balance of \$428,678. While the statement shows deposits totaling approximately that amount, this is not the same thing as the account's balance. *See id.* at A55.

⁴ The rule provides that "[o]n motion and upon such terms as are just, the [c]ourt may relieve a party or legal representative from a final judgment, order, or proceeding for. . . fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party" Fam. Ct. Civ. R. 60(b).

⁵ *Hoffman v. Hoffman*, 616 A.2d 294, 297 (Del. 1992) (citing *Wife B. v. Husband B.*, 395 A.2d 358, 359 (Del. 1978)).

disturb the Family Court judge’s factual findings unless they are clearly erroneous and justice requires that we overturn them.⁶

4. The Family Court judge rejected Husband’s claims regarding the Bonds because Husband failed to show that Wife fraudulently misrepresented the Bonds’ nature to Husband and the Family Court. The original Rule 16(c) Financial Report incorrectly described the Bonds as a “[g]ift from W[ife]’s mother; cashed in to pay bills.”⁷ Wife actually purchased the Bonds, but claims she corrected this error before the parties entered into the stipulation. The hearing transcript indicates that Wife’s counsel noted that the Bonds were cashed and deposited in a bank account before the parties separated and were not at issue.⁸ The parties’ 2009 joint federal income tax return reflects this income,⁹ and there is no evidence that Wife diverted any of the proceeds. Husband’s counsel at the hearing did not object to Wife’s counsel’s statements or the Family Court judge’s statement that the Bonds were not at issue.¹⁰ Although Husband’s current counsel alleges that

⁶ *Adams-Hall v. Adams*, 3 A.3d 1096, 2010 WL 373922, at *2 (Del. Sept. 27, 2010) (ORDER).

⁷ App. to Opening Br. A18.

⁸ *Id.* at A26, A31.

⁹ *Id.* at A88.

¹⁰ Wife’s counsel noted: “There were a number of savings bonds that wife had cashed in and put in the bank account prior to separation. So, the savings bonds are not an issue” *Id.* at A26. Later in the hearing, Wife’s counsel repeated that “the US Saving Bond[s] are not at issue” because all remaining proceeds were in “the bank account as of the time of separation.” *Id.* at

Husband's previous counsel failed to object only because Wife had represented that the Bonds were a gift from Wife's mother, the transcript does not support this allegation.¹¹ The Family Court judge was therefore within his discretion in rejecting Husband's claims concerning the Bonds.

5. Husband also argues that Wife fraudulently concealed the Account, which was not mentioned in the Rule 16(c) Financial Report. He presented a 2008 bank statement as evidence,¹² but did not present any evidence indicating the Account's balance or existence when the parties separated in 2009 or when the parties filed the Rule 16(c) Financial Report. The parties' stipulation for the division of marital property and debts mentions the Account, noting that "Wife shall also retain [the Account,] which was originally titled jointly with her mother (and was funded entirely by her mother)."¹³ As the Family Court judge found, Husband signed the stipulation after reviewing it with counsel and indicated that his approval was knowing, intelligent, and voluntary. Moreover, Wife's

A31. The Family Court judge repeated that the Bonds were not at issue without any objection from Husband's previous counsel. *Id.*

¹¹ We note that, despite waiting several months to file the Rule 60(b) motion, Husband's current counsel never contacted his previous counsel to confirm any of these allegations.

¹² *Id.* at A55.

¹³ *Id.* at A7.

submissions indicate that the money in the Account came from the sale of Wife's mother's home and would not be considered marital property.¹⁴

6. The Family Court judge did not provide Husband with an evidentiary hearing on his Rule 60(b) motion, but the law does not require him to do so.¹⁵ Here, Husband did not meet his burden to show that Wife fraudulently misrepresented the Bonds' nature or concealed the Account from the Family Court. We discern no abuse of discretion in the Family Court judge's decision to deny the Rule 60(b) motion without a hearing and to allow Wife to file a motion for attorneys' fees.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹⁴ *Id.* at A103.

¹⁵ *See Casson v. Hornberger*, 587 A.2d 454, 1991 WL 22364, at *2 (Del. Jan. 28, 1991) (ORDER) (citing *Wife B. v. Husband B.*, 395 A.2d 358, 359 (Del. 1978)) (“The decision to grant or deny a motion for relief under Rule 60(b), with or without a hearing, is addressed to the sound discretion of the trial court.”).