IN THE SUPREME COURT OF THE STATE OF DELAWARE

HOWARD B. POE,[1]	§	
	§	No. 502, 2004
Petitioner Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
KIMBERLY D. POE,	§	File No. CN02-10558
	§	Petition No. 0239033
Plaintiff Below,	§	
Appellee.	§	

Submitted: April 20, 2005
Decided: May 6, 2005

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

O R D E R

This 6th day of May 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Howard Poe, the petitioner-below appellant, appeals from a Family Court's child support order, and from that Court's denial of his motion for relief from that order. Because the Family Court made a mathematical error in calculating a portion of Mr. Poe's child support obligation, we reverse on that issue and remand to the Family Court to recalculate that expense. Because the remainder of the Family Court's rulings are supported by the record and are the

[1] The Court, *sua sponte*, has assigned pseudonyms to the parties under SUPR. CT. R. 7(d).

product of an orderly and logical deductive process, we affirm the balance of the order of the Family Court.

2. In June 2003, Howard and Kimberly Poe physically separated and were finally divorced in December 2003. The Poes have two children by their marriage. Mrs. Poe also has three children by a previous marriage. Most of the property division and alimony issues were resolved in the parties' Antenuptial Agreement, and the parties stipulated to shared custody of their two children. The primary issue before the Family Court was the amount of Mr. Poe's child support obligation.

3. Mr. Poe is a vice-president of a construction firm, and earns approximately $1,000,000 per year. Mrs. Poe is currently unemployed but is working toward a Ph.D. in community counseling. The evidence presented to the Family Court established her current income potential at about $42,000. Because of that disparity in income, the parties agreed that the Melson Formula[2] was an inappropriate method to calculate child support.

4. The Family Court determined that Mr. Poe should be responsible for one-third of Mrs. Poe's total household and living expenses from which the two

[2] The Melson Formula, named for its judicial craftsman, the late Judge Elwood Melson, is a uniform procedure adopted by the Family Court to calculate child support. FAM. CT. CIV. R. 52(c). Application of the Melson Formula is a rebuttable presumption and the Family Court may adopt a different method where it concludes that application of the Melson Formula would be inequitable. *Dalton v. Clanton*, 559 A.2d 1197, 1211 (Del. 1989).

children of their marriage received a benefit. The Court considered each of Mrs. Poe's expenses, determined which of those expenses benefited the Poes' children, and then allocated one-third of those expenses to Mr. Poe as his child support obligation. After the Family Court's final disposition, Mr. Poe moved to reopen the judgment under Rule 60(b) to recover certain payments he had made during the separation period. The Family Court denied the motion.

5. Mr. Poe appeals from both the denial of his Rule 60(b) motion and the Court's determination of his child support obligation. We review the amount of child support ordered by the Family Court for abuse of discretion.[3] This Court will not disturb the Family Court's findings of fact unless they are clearly wrong, and we defer to the Family Court's inferences and deductions so long as they are supported by the record and are the product of an orderly and logical deductive process.[4]

6. Mr. Poe claims that the Family Court erred by setting his child support obligation at one-third of Mrs. Poe's total household expenses. He points out that that amount constitutes 100% of the expenses being incurred by Mrs. Poe for their children. That argument was not properly preserved for appeal, however, because

[3] *Ford v. Ford*, 600 A.2d 25, 30 (Del. 1991) (citing *Dalton v. Clanton*, 559 A.2d 1197 (Del. 1989)).

[4] *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

Mr. Poe agreed to pay one-third of the expenses,[5] which is the precise result reached by the Family Court. Mr. Poe therefore waived his right to advance this argument on appeal.

7. Even if that argument was properly preserved for appeal, the Family Court had discretion to determine what amount of child support is necessary for the children to "share in the heightened standard of living of their more affluent parent."[6] The Family Court carefully considered all expenses submitted by Mrs. Poe, and properly exercised its discretion to apportion the vastly disparate incomes of the two parties. Because the Family Court's allocation of expenses was the product of a logical and orderly deductive process, the Court did not abuse its discretion by establishing Mr. Poe's obligation at one-third of Mrs. Poe's household expenses.

8. Mr. Poe also challenges the Family Court's disposition of expenses related to their beach house located on Fenwick Island, which the parties purchased during their marriage. Mr. Poe contends that the Family Court duplicated vacation expenses by including an allowance for monthly vacations and monthly entertainment, as well as expenses for the taxes, insurance, and utilities of the

[5] DEL. SUPR. CT. R. 8. Although Mr. Poe initially argued that Mrs. Poe should be responsible for 20% of the expenses attributed to their children, he later took the position that he should pay no more than one-third of Mrs. Poe's total household expenses.

[6] *Ford*, 600 A.2d at 32.

summer home. This argument fails, because expenses of maintaining a summer home are not equivalent to expenses related to taking vacations or seeking entertainment. The awards were not duplicative, and the Family Court did not abuse its discretion by including both types of expenses in its child support calculation.

9. Mr. Poe has identified a mathematical error in the Family Court's disposition of the expenses related to the Fenwick Island house.[7] The Family Court included the tax and insurance expenses for the Fenwick Island house in its calculation of monthly expenses, but mistakenly used improper figures in its calculation. The yearly insurance costs and taxes on the Fenwick Island property were $432 and $549, respectively, while the monthly insurance and tax expenses were $36 and $45.78, respectively. In its calculations, the Family Court used the yearly figures, rather than the monthly figures, to determine Mrs. Poe's monthly expenses. If that error is corrected, the basic housing expenses are reduced

[7] Contrary to appellant's argument, Mr. Poe raised this issue in response to Mrs. Poe's motion for reargument. Therefore, this issue was properly preserved for appeal, although the Family Court failed to address the argument in its Order.

from $2,995 to $2,096. That, in turn, reduces Mr. Poe's monthly obligation for those housing expenses from $997 to $699.[8]

10. Mr. Poe also appeals from the denial of his Rule 60(b) motion to reopen the child support proceeding to enable him to seek reimbursement for the payments he made to Mrs. Poe during the parties' separation. A final judgment may be reopened under Rule 60(b) for mistake, inadvertence, excusable neglect, or other reasons justifying relief.[9] The standard of review of the denial of a Rule 60(b) motion is abuse of discretion.[10] That standard is not satisfied here.

11. Mr. Poe claims that he is entitled to credit for the child support payments he made during the parties' separation, to the extent those payments exceeded the support obligation calculated by the Family Court. Mr. Poe also seeks reimbursement for certain car payments and other expenses he made during the separation period. The Family Court duly considered the expense figures Mr. Poe submitted, together with Mr. and Mrs. Poes' arguments that each side owed the

[8] The Court determined that Mrs. Poe's total monthly housing expenses were $2,995, and that the children's one-third share (for which Mr. Poe was responsible) was $997. That figure was based on $2,013.79 in expenses attributable to Mrs. Poe's home in New Castle County, which included the mortgage, taxes, and insurance for that property. The figure also included $981, which the Family Court mistakenly calculated as the monthly taxes and insurance expense for the Fenwick Island property. When the tax and insurance figures are readjusted to the proper monthly expenses, Mrs. Poe's monthly housing expenses are reduced to $2,095.57.

[9] FAM. CT. CIV. R. 60(b).

[10] *Albu Trading, Inc. v. Allen Family Foods, Inc.*, 822 A.2d 396 (Del. 2002).

other money.[11] The Family Court determined that the amounts Mr. Poe paid were reasonable and that those payments were made voluntarily and unconditionally. The evidence supports that conclusion. The Family Court did not abuse its discretion in refusing to disturb the payments, particularly those made pursuant to a Protection From Abuse order. Because the Family Court's determination was not an abuse of discretion, and because its findings were the product of a logical deductive process, we uphold them.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED IN PART, REVERSED IN PART, and REMANDED for further proceedings in accordance with this order.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

[11] *Id.*