

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VANESSA WRIGHT, ¹	§
	§ No. 647, 2011
Petitioner Below,	§
Appellant,	§ Court Below – Family Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ File No. CN11-01328
DAVID E. WRIGHT,	§ Petition No. 11-02088
	§
Respondent Below,	§
Appellee.	§

Submitted: June 27, 2012

Decided: July 10, 2012

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

Upon appeal from the Family Court. **AFFIRMED.**

Tabatha L. Castro, Esquire and Renee Duval, Esquire, The Castro Firm, Inc., Wilmington, Delaware, for appellant.

John J. Sullivan, Jr., Esquire, Morris Hardwick Schneider, Newark, Delaware, for appellee.

HOLLAND, Justice:

¹ The Court *sua sponte* assigned pseudonyms to the parties by Order dated November 11, 2011. Supr. Ct. R. 7(d).

The petitioner-appellant, Vanessa Wright (the “Wife”), appeals from a Family Court decision and order awarding \$1313 a month in alimony to respondent-appellee, David E. Wright (the “Husband”), as a result of divorce proceedings instituted by the Wife. The Wife raises two issues on appeal. First, the Wife contends that the Family Court abused its discretion and violated her rights under the First Amendment of the United States Constitution and article I, section 1 of the Delaware Constitution by reducing her tithing when calculating her monthly expenses. Second, the Wife contends that the Family Court erred in its analysis under title 13, section 1512(c) of the Delaware Code by reducing the Husband’s earning capacity calculation, and thus requiring the Wife to pay more in alimony.

We have concluded that both of the Wife’s arguments are without merit. Therefore, the judgment of the Family Court is affirmed.

Facts and Procedural History

The Husband and the Wife were married on January 28, 1989, separated on July 1, 2002, and divorced on March 15, 2011. After holding an ancillary hearing on the issues of alimony and property division, the Family Court issued an Ancillary Order on November 9, 2011, awarding the Husband \$1313 per month in alimony and dividing the marital property 60% to Husband and 40% to Wife.

At the time of the ancillary hearing, the Husband was fifty-six years old and self-employed as a computer repairman and technical consultant. The parties stipulated that the Husband's annual income was \$2000. From 1988 until 1996, the Husband was a field engineer, earning \$43,000 annually. In 1996, the Husband suffered a serious back injury, which has left him unable to carry anything over fifteen pounds and unable to maneuver. The Husband testified that he believes that he is disabled, but provided no medical experts or documents to support this claim. The Husband also testified that he suffers from congestive heart failure as a result of complications from medication he took for his back pain.

The Husband applied for Social Security disability benefits shortly after his injury and again in September 2011, but his applications were rejected. At the time of the Family Court proceeding, the Husband lived in the garage of his marital residence and was receiving financial support from his parents in the amount of \$400 per month. He was also receiving support from the Wife in the form of housing, groceries, health insurance, and her paying other routine expenses.

At the time of the ancillary hearing, the Wife was fifty-two years old and employed as a school principal earning approximately \$110,000 annually. Since the Husband's injury, the Wife was essentially the sole

wage-earner and has provided for the family. Other than some stress-related afflictions, the Wife is in good health.

The Husband and the Wife have two children who are now adults and attend college. During the course of their marriage, the Husband and the Wife purchased a home together, valued at \$225,000. The Wife has retained the home. The balance of the mortgage on the home was \$178,698 as of June 2011.

The Family Court determined an equitable division of marital assets and debts to be 60% for the Husband and 40% for the Wife. The Family Court also found that the Husband was dependent upon the Wife for support and awarded him alimony in the amount of \$1313 each month. The Family Court ordered that both parties pay their own counsel fees “because they each have sufficient income or assets to pay their obligations.”

Standard of Review

On appeal from a Family Court decision awarding alimony, we review the facts and the law, as well as the inferences and deductions made by the trial judge.² We will not disturb findings of fact unless they are clearly wrong.³ We review conclusions of law *de novo*.⁴ If the law was

² *Olsen v. Olsen*, 971 A.2d 170, 174 (Del. 2009) (citing *Forrester v. Forrester*, 953 A.2d 175, 179 (Del. 2008)).

³ *Id.*

correctly applied, we review the decision for an abuse of discretion.⁵ The standard of review for an abuse of discretion is whether the Family Court’s decision was arbitrary or capricious.⁶

Charitable Contribution Reduction

In assessing the Wife’s ability to pay alimony, the Family Court reviewed her submitted monthly expenses and reduced those expenses that were non-regular, voluntary charitable contributions, and expenses that she was not obligated to pay. With regard to the charitable contributions, the Family Court commended the “Wife on donating so much of her income to charity,” but explained that “considering her current expenses, as well as [the] Husband’s, this amount must be reduced.” The Family Court thus adjusted the Wife’s monthly charitable contribution expense from \$1,000 to \$100, finding that to be a “more reasonable amount.”

The Wife contends that the Family Court abused its discretion by reducing her tithing amount in her monthly expenses calculation in determining the appropriate alimony payment for the Husband. She argues that the alimony amount the Family Court awarded to the Husband prevents her from paying her obligatory ten percent of her income as required by her

⁴ *Id.*

⁵ *Id.*

⁶ *Boyer v. Boyer*, 1987 WL 44964 at *2 (Del. Oct. 2, 1987) (citing *Chavin v. Cope*, 243 A.2d 694, 695 (Del. 1968); *Gannett Co., Inc. v. Re*, 496 A.2d 553, 559 (Del. 1985)).

faith. The Wife further argues that this order by the Family Court is a violation of her right to freely exercise her religion.

The ability for a person to freely exercise his or her choice of religion is a concept that is guaranteed by the First Amendment of the U.S. Constitution.⁷ Article 1, section 1 of the Delaware Constitution also ensures that “no power shall or ought to be vested in or assumed by any magistrate that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship[.]”⁸

Although the Wife argues that the Family Court did not properly apply section 1512(c) in determining alimony, she fails to cite any case or statute suggesting that the reduction of voluntary charitable donations in a monthly expense calculation for alimony interferes with the freedom of religion under either the United States Constitution or the Delaware Constitution. The Wife does argue that the Religious Liberty and Charitable Donation Protection Act of 1998,⁹ an act which protects up to fifteen percent of a debtor’s charitable contributions in cases of bankruptcy, should be persuasive to this Court. But she fails to show how the policy of this statute

⁷ U.S. Const. amend. I; *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (incorporating the First Amendment’s protection of religious freedom into the Fourteenth Amendment).

⁸ Del. Const. art. I, § 1.

⁹ Pub. L. No. 105-183, 112 Stat. 517.

has been applied by analogy to state divorce proceedings or any other proceedings outside of an action for bankruptcy.

The only case the Wife relies on is *Alzos v. Alzos*,¹⁰ where the Family Court reduced a wife's tithing amount in her monthly budget to the amount reflected in her tax filings, which represented ten percent of her income.¹¹ There, the Family Court explained that the reduction was "more commensurate with what [she] can afford" and it did not believe that the husband should "be forced to subsidize [his w]ife's charitable contributions."¹²

In this case, the Family Court did not abuse its discretion. In determining an alimony award, the Family Court may evaluate any factor that it finds just and appropriate,¹³ including the voluntariness of an expense. Nothing in the Family Court's order precludes the Wife from contributing the amount she chooses to her church. The Family Court found that even after the alimony payments, the Wife still has a surplus of \$1,402—more than enough to pay for the remaining \$900 for tithing should the Wife so choose. Accordingly, the record reflects that the Wife has failed to satisfy her burden of showing that the Family Court abused its discretion in

¹⁰ *Alzos v. Alzos*, 1994 WL 814248 (Del. Fam. Ct. Feb. 18, 1994).

¹¹ *Id.* at *9.

¹² *Id.*

¹³ Del. Code Ann. tit. 13, § 1512(c)(10) (2009).

reducing the amount of expenses allowed for voluntary charitable contributions.

Dependency and Amount

The Wife contends that the Family Court abused its discretion by imputing to the Husband an annual income of only \$29,078 based upon his current earning capability.¹⁴ The Wife argues that, by not setting the Husband's income at an amount equal to his prior earning capacity, the Family Court improperly found that the Husband was dependent upon the Wife and thereby required alimony. The Wife also contends that the Family Court failed to consider her financial resources and her ability to meet her needs while paying alimony.

In determining an alimony award, the Family Court is guided by section 1512. In order to reach a "threshold determination of dependency as well as a later determination of amount of an alimony award," the Family Court must consider all of the relevant elements of the statute.¹⁵

Section 1512(b) addresses when a party is entitled to alimony as follows:

¹⁴ The Family Court concluded that the Husband's stipulated annual income of \$2000 was less than his current earning capacity.

¹⁵ *Adelaide A.G. v. Peter W.G.*, 458 A.2d 702, 705 (Del. 1983) (interpreting prior version of section 1512).

A party may be awarded alimony only if he or she is a dependent party after consideration of all relevant factors contained in subsection (c) of this section in that he or she:

(1) Is dependent upon the other party for support and the other party is not contractually or otherwise obligated to provide that support after the entry of a decree of divorce or annulment;

(2) Lacks sufficient property, including any award of marital property made by the Court, to provide for his or her reasonable needs; and

(3) Is unable to support himself or herself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that he or she not be required to seek employment.¹⁶

Section 1512(c), in relevant part below, provides the factors to consider in determining the amount of alimony a party may receive.

According to that section:

The alimony order shall be in such amount and for such time as the Court deems just, without regard to marital misconduct, after consideration of all relevant factors, including, but not limited to:

(1) The financial resources of the party seeking alimony, including the marital or separate property apportioned to him or her, and his or her ability to meet all or part of his or her reasonable needs independently;

....

(5) The age, physical and emotional condition of both parties;

¹⁶ Del. Code Ann. tit. 13, § 1512(b).

....

(7) The ability of the other party to meet his or her needs while paying alimony;¹⁷

....

In evaluating the section 1512(b) factors, the Family Court found that the Husband was dependent upon the Wife for support. This determination is supported by the record. The Husband has been relying on the assistance of others, including the Wife, in order to subsist. Other than the marital property, the Wife concedes that the Husband does not possess any significant property of worth. Although the Husband had been formally employed as a field engineer, he has not held this position for more than ten years. Instead, there is evidence indicating that Husband has been operating a computer repair business, with little success. The Family Court properly based its earning determinations on this evidence.

The Wife submits that the Family Court made its determination of the Husband's dependency based on his alleged disability, which does not have sufficient support in the record. The Wife further argues that the Family Court should have attributed the Husband with the higher salary of his previous occupation. Although the Family Court does note the Husband's

¹⁷ Del. Code Ann. tit. 13, § 1512(c).

medical issues and the fact that he was unsuccessful in obtaining Social Security disability benefits, these facts do not appear to be the sole basis for the alimony determination. Rather, the Family Court based its income attribution on the fact that the Husband had not worked as a field engineer in more than ten years and is now a computer technician. Accordingly, this finding is not arbitrary or capricious. Therefore, the Family Court did not abuse its discretion in making its dependency determination.

In its evaluation of the 1512(c) factors, the Family Court appropriately considered the financial resources of the Husband in seeking alimony. As we have already concluded, it was appropriate for the Family Court to attribute the Husband with a salary of \$29,078—even though the record suggests that with alimony, the Husband may still have financial difficulty.

As to factor five, the Family Court noted that the Husband claimed to be disabled and testified to having suffered from a work-related injury to his back in 1996—which the Wife does not dispute. The Husband also testified that he suffered from congestive heart failure and was hospitalized shortly before the ancillary hearing. Conversely, the Family Court found that the Wife was in good health except for suffering from stress related to the divorce proceedings.

With respect to factor seven, the Wife is employed as a school principal and receives an annual salary of \$110,000. The Family Court found that her salary more than covered her monthly expenses in addition to her obligation to pay alimony. Although the Family Court did reduce voluntary tithing amounts and automobile insurance from her monthly expenses, such reductions were appropriately supported by the record. As discussed above, the reduction in voluntary donations was not an abuse of discretion. These reductions still left the Wife with a surplus of \$1,402 after the alimony award is applied. Additionally, the Family Court only considers the expenses of the parties, not of their adult children, when determining alimony since the children can pay for their own auto insurance, unless such expenses are just and appropriate to consider.

The Family Court has broad discretion in determining an alimony award.¹⁸ The Family Court did not abuse its discretion in finding that factors one and five weighed in favor of the Husband, and outweighed factor seven and the remaining neutral factors. There is no requirement that the Family Court equally weigh each factor. Instead, the Family Court must analyze and balance the factors to reach a prudent alimony award that is fair for both

¹⁸ *Cf. Olsen v. Olsen*, 971 A.2d at 178 (stating “court has broad discretion in dividing marital property”).

parties. The record reflects that the Family Court properly performed such an analysis in this case.

Conclusion

The judgment of the Family Court is affirmed.