

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARVIN A. HAMILTON,	§
	§ No. 153, 2005
Petitioner Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for Kent County
DCSE/LINDA S. BOLDEN,	§ File No. CK01-03486
	§ Petition Nos. 04-28424
Respondents Below-	§ 04-03729
Appellees.	§

Submitted: September 9, 2005

Decided: November 28, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER¹

This 28th day of November 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The petitioner-appellant, Marvin A. Hamilton (“Father”), filed an appeal from the Family Court’s March 16, 2005 order, which established his current child support obligation and found him in contempt of a prior child support order. We find no merit to the appeal. Accordingly, we affirm.

¹ This Court has sua sponte assigned pseudonyms to the parties and their minor child. Supr. Ct. R. 7(d).

(2) Father and respondent-appellee Linda S. Bolden (“Mother”) are the biological parents of one minor child, Marvin, Jr., born January 28, 2001. On March 26, 2002, the Family Court commissioner issued a child support order regarding Marvin, Jr., which required Father to pay child support in the amount of \$400 total per month (\$340 in current support and \$60 in arrears). On January 9, 2004, Father filed a motion to vacate the arrears portion of his support obligation on the ground that the arrears already had been paid in full. By order dated January 29, 2004, the commissioner granted Father’s motion and modified the original support order to require Father to pay only \$340 per month.

(3) On that same date, Father filed a petition for modification of child support on the ground that he had lost his employment. A mediation conference was held on June 3, 2004 and, because the parties were unable to agree on Father’s child support obligation, the matter was referred to a commissioner. The Division of Child Support Enforcement (“DCSE”) subsequently filed a petition for support arrears on behalf of Mother. The petition alleged that Father had failed to comply with the Family Court’s January 29, 2004 order, had failed to make any child support payments since March 3, 2004, and owed arrears in the amount of \$1,708.00 as of August 24, 2004.

(4) On November 10, 2004, a hearing on the petitions was held before a Family Court commissioner. Mother and Father both testified. On November 12, 2004, the commissioner issued an order holding Father in civil contempt of the Family Court's January 29, 2004 support order and requiring Father to pay support in the amount of \$350 per month (\$305 in current support and \$45 in arrears). The commissioner attributed to Mother her 2003 earnings pursuant to her 2003 federal tax return. Because Father was earning below the minimum income attribution of \$7.50 per hour based on a 40 hour work week pursuant to the Family Court's Child Support Guidelines, the commissioner attributed \$1,300 per month from employment to Father as well as his non-taxable monthly disability benefit of \$545. The commissioner made the order retroactive to the date of the Family Court mediation, which had taken place on June 3, 2004.

(5) Citing error on the part of the commissioner, Father requested review of the commissioner's order by a Family Court judge.² By order dated March 16, 2005, the Family Court judge found that the commissioner's child support calculation erroneously credited Mother with two additional dependents rather than one and, accordingly, recalculated Father's child support obligation to require a monthly payment of \$284 in

² Del. Code Ann. tit. 10, § 915(d) (1) (1999).

current support, plus \$45 per month in arrears, but otherwise found no error on the part of the commissioner.

(6) In this appeal, Father claims that: a) the Family Court erred by failing to make the recalculated child support obligation retroactive to the date he filed his petition for support modification, improperly calculating his income, improperly calculating Mother's income, and finding him in contempt; and b) the Family Court's order is void because it is based on a 2002 default judgment, is contrary to Delaware law and violates his due process rights.

(7) The Family Court reviews de novo those portions of a commissioner's order to which objection is made and may accept, reject or modify the order in whole or in part, and may receive further evidence or remand the matter to the commissioner with instructions.³ On appeals from the Family Court, this Court reviews the facts and the law.⁴ If the Family Court has applied the law correctly, our standard of review is abuse of discretion.⁵

We find no error on the part of the Family Court in making Father's child support obligation retroactive only to the date of the mediation rather

³ Del. Code Ann. tit. 10, § 915(d) (1); Fam. Ct. Civ. Proc. R. 53.1(e).

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

⁵ *Jones v. Lang*, 591 A.2d 185, 186 (Del. 1991).

than the date Father filed his petition for support modification, since Father could not produce proof of notice of the petition to Mother by certified or registered mail.⁶ We also find that the Family Court properly found that the commissioner had erroneously credited Mother with two dependents and corrected that error, and that it properly accepted the remaining findings of the commissioner. Father's claim that the Family Court's order is void and constitutes a violation of his rights is without any factual or legal support.

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁶ *Kenton v. Kenton*, 571 A.2d 778, 781 (Del. 1990); Del. Code Ann. tit. 13, § 513(d) (2) (1999).