

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DERRIK SCARPINATO,)
) No. 626, 2002
 Petitioner Below,)
 Appellant,) Court Below: Family Court of
 v.) the State of Delaware in and
) and for New Castle County
)
 JANIFFER NEHRING,) File No. CN99-10451
)
 Respondent Below,)
 Appellee.)

Submitted: September 3, 2003

Decided: September 26, 2003

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

ORDER

This 26th day of September, 2003 upon consideration of the briefs of the parties, it appears to the Court as follows:

1. Derrik Scarpinato appeals from an order of the Family Court awarding attorney's fees to his ex-wife, Janiffer Nehring. Specifically, Scarpinato claims that the Family Court judge failed to provide sufficient explanation for the discretion he exercised by entering the order.

2. Family Court granted a final decree of divorce on September 28, 2000. A Family Court judge heard and decided the financial ancillary matters in December 2001. Scarpinato contested the property division order by requesting Reargument. The judge granted his motion in part and denied it in part. In August

2002, Scarpinato's appealed and this Court summarily affirmed both the ancillary orders. Thereafter, Nehring timely filed a motion for attorneys fees and the Family Court judge found that Scarpinato's appeal "created unnecessary and excessive litigation," and awarded Nehring \$3,550.00 in counsel fees. Scarpinato appealed.

3. By Order dated May 2, 2003 this Court remanded and asked the Family Court to explain the basis for its award of attorney's fees and to compare the parties' litigation behavior. In its Report following remand, the Family Court judge explained that Scarpinato's elusive behavior during the proceedings precluded any possibility of settlement. Scarpinato failed, before and at the ancillary hearing, to make full disclosure of certain marital assets that were under his control and failed to produce the documentation regarding the value of his 401(k) and stock purchase plans. Further, after failing to provide this evidence and refusing to proceed with full candor, Scarpinato claimed error in the judge's stock valuation. The trial judge found Scarpinato's testimony evasive, his conduct egregious, and his appeal wholly without merit.

4. The general rule regarding attorneys' fees is that each party bears its own expenses regardless of the outcome of the case.¹ However, in *Smith v.*

¹ *Goodrich v. E.F. Hutton Group, Inc.*, Del. Supr., 681 A.2d 1039 (1996).

Francisco,² we interpreted 13 *Del.C.* §731³ to allow a Family Court judge to award attorney's fees where, "the enumerated factors and any other equitable considerations warrant an exception..."⁴

5. In this case, the Family Court judge awarded attorney's fees because Scarpanito's improper conduct at trial and wholly meritless appeal from the alimony award imposed a bevy of unfair and burdensome additional costs upon Nehring. We conclude that the Family Court judge articulated reasons that were entirely supported by the original record. Accordingly, we affirm.

NOW, THEREFORE, IT IS ORDERED that the Order of the Family Court dated October 11, 2002 is hereby AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice

² Del. Supr., No. 230, Berger, J. (May, 16 2001); 2001 Del. LEXIS 216.

³ *Attorney's fees*. The Court from time to time, after considering the legal and factual basis for the action, the results obtained, the financial resources of the parties, and such other factors as the Court deems just and equitable, may order a party to pay all or part of the cost to another party of maintaining or defending any proceedings under this chapter and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of such proceedings. The Court may order that the amount be paid directly to the attorney, who may enforce the order in his or her name.

⁴ *Francisco*, Del. Supr., No. 230, Berger, J. (May, 16 2001); 2001 Del. LEXIS 216.