

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DCSE/VANESSA MORGAN,	§
	§ No. 545, 2005
Petitioner Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for Kent County
JEFFREY LUCAS,	§ File No. CK02-04472
	§ Petition No. 05-07202
Respondent Below-	§
Appellee.	§

Submitted : February 24, 2006

Decided : May 17, 2006

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

**ORDER**<sup>1</sup>

This 17<sup>th</sup> day of May 2006, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The petitioner-appellant, the Delaware Division of Child Support Enforcement (“DCSE”), on behalf of Vanessa Morgan (“Aunt”), filed an appeal from the Family Court’s October 4, 2005 order adopting the June 3, 2005 order of the Family Court commissioner.<sup>2</sup> The commissioner ordered DCSE’s child support petition against respondent-appellee, Jeffrey

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<sup>1</sup> The Court has sua sponte assigned pseudonyms to the parties and the minor child pursuant to Supreme Court Rule 7(d).

<sup>2</sup> Del. Code Ann. tit. 10, § 915(d) (1) (The Family Court “shall make a de novo determination of those portions of the Commissioner’s order to which objection is made.”)

Lucas (“Father”) to be dismissed without prejudice. We find no merit to the appeal. Accordingly, we affirm.

(2) On January 16, 2001, the minor child in question, Jarnell Lucas, was born to Father and Linda Johnson (“Mother”). In February 2002, Father petitioned for sole custody of Jarnell and the Family Court granted his petition. Mother was granted visitation. In 2003, Father was incarcerated and left Jarnell with his mother (“Grandmother”), giving Grandmother temporary custody of Jarnell in a notarized letter. At one point in 2004, Mother disappeared with Jarnell during a weekend visit. Subsequently, Mother left Jarnell with Aunt, who now receives public assistance from the State to support Jarnell. In February 2005, DCSE filed the instant petition for child support.

(3) On June 3, 2005, a hearing was held before a Family Court commissioner. The transcript of the hearing reflects the following. An attorney for DCSE appeared, but Aunt did not appear. At the time of the hearing, Father had been incarcerated for two years. He was a participant in the Key South Program and was on track to be placed in the Crest Program.<sup>3</sup> Father estimated that he would be released at least as of February 2007. Father stated that he had no assets with which to pay child support and was

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<sup>3</sup> The Key South and Crest Programs are programs for inmates to address problems with substance abuse and transitioning to life outside prison.

not earning any money while in prison. He stated that he still had sole custody of Jarnell and that Jarnell would be returned to him after his release from prison.<sup>4</sup> None of the evidence presented by Father was contested by DCSE. Based upon the evidence presented, the commissioner dismissed the petition without prejudice.

(4) In this appeal, DCSE claims that the Family Court committed legal error and abused its discretion by adopting the commissioner's order. Specifically, DCSE argues that, by failing to enter an order assessing at least the minimum amount of support owed under the Melson Formula,<sup>5</sup> the Family Court absolved Father of his duty to support his child as required by Delaware law.

(5) This Court's standard of review of the Family Court's adoption of a commissioner's order is to examine the record for legal error and abuse of discretion.<sup>6</sup> We will not disturb legal rulings or findings of fact unless they are clearly wrong.<sup>7</sup> We will affirm the inferences and deductions of the

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<sup>4</sup> The commissioner noted that the last order in the file relating to custody was the 2002 order awarding custody of Jarnell to Father.

<sup>5</sup> Under the Melson Formula, the amount of child support to be paid is calculated after determining the monthly net income of each parent, the primary support needs of the child and then making a standard of living adjustment. Fam. Ct. Civ. R. 52(c).

<sup>6</sup> *Jones v. Lang*, 591 A.2d 185, 187 (Del. 1991).

<sup>7</sup> *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

Family Court if they are supported by the record and are the product of an orderly and logical deductive process.<sup>8</sup>

(6) The proper use of the Melson Formula requires more than a mechanical application of an algebraic equation.<sup>9</sup> “The mathematical result which is the product of the Melson Formula can never be the basis of a child support order . . . until that result passes the litmus test of the rebuttable presumption. When the calculation . . . is mixed together with the specific facts in a case, the result must be equitable. If the result is inequitable, the presumption is rebutted and the support calculation . . . must yield to the extent that is necessary to balance the equities in the case.”<sup>10</sup> In the case of an inmate with a minor child, this Court has held that incarceration is a foreseeable result of criminal activity and does not *ipso facto* relieve one of the duty to pay child support.<sup>11</sup>

(7) DCSE first argues that the Family Court committed legal error by dismissing its petition for child support. Its position is that, under Delaware law, at least a minimum support order must be entered in every case where support is sought from an incarcerated person, even if that person has no income or assets. The caselaw does not compel such a result,

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<sup>8</sup> *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

<sup>9</sup> *DCSE ex rel. Harper v. Barrows*, 570 A.2d 1180, 1182 (Del. 1990).

<sup>10</sup> *Dalton v. Clanton*, 559 A.2d 1197, 1212 (Del. 1989).

<sup>11</sup> *DCSE ex rel. Harper v. Barrows*, 570 A.2d at 1183.

however. While it is clear that incarceration does not *ipso facto* relieve a person from his or her duty of support, the Family Court still must balance the equities in rendering its decision.

(8) In *DCSE ex rel. Harper v. Barrows*, a case heavily relied upon by DCSE, this Court held that the Family Court failed to properly balance the equities when it imposed a nominal support obligation on the incarcerated father, given the particular facts of that case. There, the minor child in question lived with his mother, who had limited resources. However, the father had earned a substantial salary prior to his incarceration and had an interest in a profit sharing plan. Thus, the resources available for support of the minor child were directly impacted by the father's refusal to provide support. Under those circumstances, this Court held that it "would be inequitable to have the support obligation discharged by one parent, or society, while the incarcerated parent retains available assets."<sup>12</sup>

(9) The factual circumstances of the instant case are different. Prior to his incarceration, Father petitioned for sole custody of Jarnell and the Family Court granted his petition. There is no evidence that Father ever failed to provide support for Jarnell. While Jarnell's mother also owes Jarnell a duty of support, it does not appear that Father has ever filed an

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<sup>12</sup> *DCSE ex rel. Harper v. Barrows*, 570 A.2d at 1184.

action against Mother seeking such support. While Father gave temporary custody of Jarnell to Grandmother, the record reflects that he has always intended to have Jarnell returned to him upon his release, which apparently will occur in early 2007. The record further reflects that Father has no assets and is earning no money while incarcerated and that Jarnell is being supported, at least in part, by public assistance. Thus, the resources available for Jarnell's current support have not been impacted by the dismissal of the support petition at this time.

(10) While the Family Court's decision does not expressly so state, it reflects a reluctance to penalize a custodial parent who appears to be doing the best he can for his child under the circumstances. While mindful that Father is solely responsible for his incarceration, that Father's duty of support continues even while he is incarcerated and that there is a social cost involved when a child is supported by public assistance, we will not interfere with the exercise of the Family Court's discretion in this case. The Family Court dismissed the petition without prejudice. Thus, if the circumstances of this case change at any point following Father's release, the Family Court has the authority to issue a decision reflective of the equities as they exist at that time.

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

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice