

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PAUL C. NEWMAN,	§
	§ No. 29, 2006
Petitioner Below,	§
Appellant,	§ Court Below – Family Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ File No. CN03-07259
E. LORRAINE NEWMAN,	§
	§
Respondent Below,	§
Appellee.	§

Submitted: June 14, 2006

Decided: June 23, 2006

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

**O R D E R**

This 23rd day of June 2006, it appears to the Court that:

1) The petitioner-appellant, Paul C. Newman (the “Husband”), appeals from the judgments of the Family Court that divided the parties’ marital assets and awarded alimony to the respondent-appellee, E. Lorraine Newman (the “Wife”). The Husband contends that the Family Court abused its discretion in three separate rulings: first, by including the Wife’s house utilities but not the Husband’s utilities when calculating alimony; second, by providing the Wife alimony to buy the Husband’s share of the martial home; and third, in awarding the Wife sixty percent of marital assets.

2) The Husband and the Wife were divorced after twenty-eight years of marriage. The Wife filed a motion for Interim Relief seeking alimony from the Husband. On December 2, 2005, the Family Court awarded temporary alimony to the Wife in the amount of \$129 per month. In reaching that decision, the Court attributed the Wife with \$31,097 annual income and the Husband with \$64,592 annual income. Total living expenses for the Wife and the Husband were determined to be \$2,152 and \$3,308, respectively. At the time, the Wife remained in the marital home. The Husband resided with his girlfriend, paying her \$500 in rent while also continuing to pay the \$1,136 mortgage on the former marital home.

3) On December 27, 2005, the Family Court held a final hearing on the division of marital property and alimony. The Family Court found the Husband's final income to be \$66,498 and the Wife's final income to be \$33,775. The Family Court amended the living expenses for the Wife, adjusting her mortgage to \$1,000, and among other items, adding \$125 per month for tuition, for a total of \$3,532 per month. The Husband's monthly living expenses were also amended to include \$1,000 for future mortgage expense (reducing the amount for current mortgage by \$136), eliminating the \$500 rent, and several other items, for a total of \$2,927 per month. The

final financial plan included a \$283 shortfall for the Wife and no shortfall for the Husband.

4) The Family Court ordered the Husband to pay \$432 per month to GMAC for the Wife's car loan as alimony and to pay an additional \$1,013 as alimony paid directly to the Wife to be reduced to \$900 on June 1, 2008. The Wife was awarded sixty percent of the marital estate and was made responsible for forty percent of the marital debt.

5) The Husband's first argument on appeal is that the Family Court abused its discretion by allowing the Wife expenses to pay home utilities, but not the Husbands, in its calculations. At the final hearing on December 27, 2005, the Family Court amended the parties' living expenses originally calculated at the interim hearing on December 2, 2005, as indicated above. The Family Court equalized the expense for future mortgage payments for each party but allowed the Wife \$412 for monthly utility expenses and allowed nothing for the husband, *i.e.*, the Family Court did not include \$412 for his utility expenses.

6) The Husband asserts that at the time of the hearing on December 2, 2005, he had no utility and household expenses, but that at the final hearing on December 27, 2005, he told the Family Court of his intent to

purchase a home where he would live alone and that he had been pre-approved for a \$250,000 mortgage. The Husband contends that this error results in a \$412 deficit for him compared to a \$283 deficit for the Wife.

7) While the Family Court did not estimate the Husband's future monthly utility and household expenses, this omission does not amount to an abuse of discretion. Although the Family Court has allowed the same expense for both the Husband and the Wife in another case, it is not an abuse of discretion for the Court to not do so in every case.<sup>1</sup> At the time of the final hearing, the Husband continued to live with his girlfriend and was paying \$500 in rent and had no utility expenses. When and if the Husband purchases and moves into his own home, he may petition the Family Court to adjust the alimony award pursuant to title 13, section 1519(a)(4) of the Delaware Code.<sup>2</sup>

8) The Husband's second claim is that the Family Court abused its discretion because part of the Wife's \$1,013 alimony funds her buyout of the Husband's share of the marital residence. The Husband claims that the Family Court abused its discretion because it overstated the Wife's monthly

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<sup>1</sup> *BJ.S v. CH.S*, 2005 WL3593359 at \*12 (Del. Fam. Ct.) (the Court allocated the same utility expense to the husband and the wife under similar circumstances).

<sup>2</sup> (a) A decree or separate order entered under § 1518 of this title may be modified or terminated only as follows: (4) Alimony or any other relief awarded, only upon a showing of real and substantial change of circumstances.

expenses by \$249. He contends that the \$36,539 of the \$159,000 mortgage owed to him equals 22.98 percent. Therefore, his 22.98 percent of the \$1,085 mortgage payment equals \$249, the amount of the overstatement in the Wife's monthly expenses that was considered in the alimony award to Wife. The Husband contends that the Family Court's decision causes him to fund the Wife's buyout of his interest in the marital residence.

9) In *Borowski v. Borowski*, the wife testified that the refinance of the marital residence to buy out her husband's interest would increase her mortgage payment by \$200 to \$300.<sup>3</sup> In that case, the Family Court concluded that it would not consider this increase in determining alimony, as "it would not be fair to Husband . . . to make him pay extra alimony so that she can buy out his interest."<sup>4</sup> In this case, the Family Court specifically addressed this issue when it computed alimony.

10) The Family Court explained its reasoning and stated that it awarded a lower amount of alimony (\$1,445 per month instead of \$1,854), thus requiring the Wife to absorb her \$283 shortfall. Further, the Family Court explained it considered the \$36,539 the Wife is refinancing to buy out the Husband's interest. The Husband contends that this is not equitable considering that he actually has a \$412 shortfall based on the omission of

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<sup>3</sup> 1997 WL 878423, at \*5(Del. Fam. Ct.).

<sup>4</sup> *Id.*

utility expenses. However, as discussed above, at the time of the decision, the Husband was paying \$500 rent to his live-in girlfriend (not the \$1,000 he was allocated) and had no expenses for utilities. The record supports the decision of the Family Court, including consideration of the statutory factors and the process it undertook to reach its decision.

11) The Husband's third and final claim is that the Family Court abused its discretion in awarding the Wife sixty percent of the marital assets, considering their respective incomes after the alimony award. The Family Court has broad discretion when dividing marital property.<sup>5</sup> The Husband contends that an equal division of the marital estate would have been the fairest result had the Family Court considered alimony, as well as his first and second claims (*i.e.*, the understatement of his monthly expenses and overstatement of the Wife's monthly expenses).

12) The Husband cites *Hanley v. Hanley* to support his argument.<sup>6</sup> In *Hanley*, the court divided the marital estate equally, but the court considered other factors in addition to economic circumstances when reaching its decision. *Hanley* is further distinguished because the marital estate was sold to give effect to the 50/50 division.<sup>7</sup>

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<sup>5</sup> *Linder v. Linder*, 496 A.2d 1028, 1030 (Del. 1985).

<sup>6</sup> 1993 WL 777367, at \*3-4 (Del. Fam. Ct.).

<sup>7</sup> *Id.*

13) In this case, the Family Court considered all of the statutory factors stated in title 13, section 1513(a) of the Delaware Code when it determined the fairest division of the marital estate. The Family Court considered the Husband's greater earning capacity, the contribution of each party to the marriage, the debts of each party, and the fact that the Family Court valued the house at the higher figure of \$193,000, thereby increasing the Husband's interest.<sup>8</sup> The Family Court decision is not arbitrary or capricious.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Family Court are affirmed.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>8</sup> *Id.*