

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LISA D. BENTLEY,	§
	§
Respondent Below-	§ No. 660, 2002
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
DIVISION OF CHILD SUPPORT	§ in and for Kent County
ENFORCEMENT,	§ File No. CK91-4145
	§ Petition No. 02-19568
Petitioner Below-	§
Appellee.	§

Submitted: August 15, 2003
Decided: October 21, 2003

Before **BERGER, STEELE** and **JACOBS**, Justices

ORDER

This 21st day of October 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The respondent-appellant, Lisa D. Bentley (“Mother”), filed an appeal from the Family Court’s November 12, 2002 order affirming a commissioner’s order, which found that Mother owed \$6,150 in child support arrears to the Division of Child Support Enforcement (“DCSE”)¹ and directed Mother to pay \$40 a month to reduce the arrears. We find no merit to the appeal. Accordingly, we **AFFIRM**.

¹Mother’s three children have been in foster care with the State of Delaware since at least 1994.

(2) In June 2002, DCSE filed a support arrears petition against Mother alleging that she owed back child support in the amount of \$6,150 and requesting that she be ordered to make monthly payments to DCSE to reduce the amount of the arrears.² Mother appeared *pro se* at a hearing before a Family Court commissioner on September 4, 2002. After determining that the State did not seek a finding of contempt against Mother, which could result in her incarceration, the commissioner denied Mother's motion for the appointment of counsel. DCSE records presented at the hearing reflected that Mother owed \$6,150 in support arrears. Mother testified that she currently is not able to work. She also testified, however, that she receives a \$490.50 Social Security check each month and could send \$40 of that amount to DCSE as reimbursement for back child support.

(3) In this appeal, Mother claims that the Family Court abused its discretion by: a) failing to decide her August 1994 petition for review *de novo* in an expeditious manner, thereby allowing significant arrears to accrue;³ and b) failing to reverse the commissioner's decision, which incorrectly determined that she was not entitled to the appointment of counsel and that she should pay \$40 each month to DCSE.

²DEL. CODE ANN. tit. 13, § 2201 *et seq.* (1999).

³It appears that the petition sought judicial review of a 1994 commissioner's order regarding child support.

(4) 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.⁴ This Court's review of appeals from the Family Court extends to review of the facts and the law.⁵ If the Family Court has applied the law correctly, the standard of review is abuse of discretion.⁶

(5) To the extent Mother asks this Court to review the alleged failure of the Family Court to address a petition she filed in August 1994, any such request is untimely and will not be addressed by this Court.⁷ There is no evidence that the Family Court is responsible for any delay that prejudiced Mother's position with respect to the arrears in any case. The record does not reflect that Mother made any payments pursuant to the 1994 order. A subsequent order dated May 1997 found that Mother owed arrears in the amount of \$6,150, but would not be required to pay DCSE until she had income. It does not appear that Mother filed a timely request for review of that order. DCSE, thus, properly filed its June 2002 petition

⁴DEL. CODE ANN. tit. 10, § 915(d) (1); FAM. CT. CIV. PROC. R. 53.1(e).

⁵*Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

⁶*Jones v. Lang*, 591 A.2d 185, 186 (Del. 1991).

⁷SUPR. CT. R. 6.

against Mother for the arrears once it could be established that Mother had income from which monthly payments could be deducted.

(6) Mother's second claim of abuse of discretion on the part of the Family Court is meritless. As reflected in the Family Court's order, the commissioner acted within his discretion in denying her request for counsel, since the State was not seeking a finding of contempt against Mother that could result in her incarceration.⁸ Moreover, Mother's own testimony clearly established that she had a reliable source of income and was able to make monthly payments to reduce the amount of support arrears owed to the State. Thus, as the Family Court concluded, it was appropriate for the commissioner to institute a \$40 per month payment schedule for Mother.

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

BY THE COURT:

/s/ Myron T. Steele
Justice

⁸*Black v. DCSE/Black*, 686 A.2d 164, 168-69 (Del. 1996).