

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VERA M. HOLMES, )  
 ) No. 447, 2002  
 )  
 ) Petitioner Below, )  
 ) Appellant, ) Court Below: Family Court  
 ) of the State of Delaware in  
v. ) and for New Castle County  
 )  
 )  
 ) DAVID F. WOOLEY, ) File No. CN00-07650  
 )  
 ) Respondent Below, )  
 ) Appellee. )

Submitted: December 17, 2002

Decided: March 4, 2003

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**.

***ORDER***

This 4<sup>th</sup> day of March 2003, it appears to the Court that:

(1) In November 2002, Vera M. Holmes filed in the Family Court a Petition for Accounting pursuant to 13 *Del. C.* § 518 directed to David F. Wooley. Holmes alleged that Wooley breached his fiduciary duty to manage the child support paid by Holmes. On April 5, 2002, the Commissioner, after hearing testimony from Holmes and Wooley, dismissed the Petition.<sup>1</sup> Holmes appealed the Commissioner's decision and in July 2002, a Family Court judge affirmed the Commissioner's Order.<sup>2</sup> This is Holmes' appeal.

---

<sup>1</sup> *Holmes v. Wooley*, Del. Fam., File No. CN00-07650, Sackovich, C. (April 5, 2002).

<sup>2</sup> *Holmes v. Wooley*, Del. Fam., File No. CN00-07650, Conner, J. (July 3, 2002).

(2) In this appeal, Holmes asserts two grounds of error: (i) the Family Court judge committed reversible error by failing to address three of Holmes' objections to the Commissioner's Order and (ii) the Family Court judge based his decision on erroneous facts thereby committing reversible error.

(3) This Court's review of appeals from the Family Court extends to review of the facts and law as well as to a review of the inferences and deductions made by the judge.<sup>3</sup> This Court will not disturb findings of fact unless they are clearly wrong and justice requires they be overturned.<sup>4</sup> If the Family Court has correctly applied the law, the standard of review is abuse of discretion.<sup>5</sup> Errors of law, however, are reviewed *de novo*.<sup>6</sup> 13 *Del. C.* § 518 provides:

A person who receives funds from another person for the support of a child in his or her care is a fiduciary with respect to such funds and maybe be ordered by the Court to account for the expenditure and management of such funds on application by any payer of such funds for good cause shown. Any application filed for such accounting shall state with particularity the reasons why it is being sought and the basis for believing that such an accounting is necessary. The Court may dismiss any application for an accounting if the application does not show good cause why such an accounting should be ordered, and the Court shall order that all costs and reasonable counsel fees incurred by the fiduciary in his or her defense be paid by the unsuccessful applicant. If an accounting is granted by the Court, it may equitably apportion the costs, including reasonable counsel fees, of the action among the parties to the proceeding after taking into account the legal and factual basis for the action, the results obtained, the financial

---

<sup>3</sup> *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

<sup>4</sup> *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

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

<sup>6</sup> *Driscoll v. Division of Family Servs. (In re Heller)*, 669 A.2d 25, 29 (Del. 1995).

resources of the parties, and such other factors as the Court deems just and equitable.

(4) On March 5, 2002, the Commissioner held a hearing to address the Holmes' Petition. Holmes claims the Commissioner determined that Holmes established good cause to conduct an accounting based solely on the written Petition submitted to the Court and that the later hearing constituted an accounting to determine whether Wooley misused the child support funds. Wooley on the other hand, argues that the Commissioner conducted the hearing to determine whether good cause existed to order an accounting and that the Commissioner properly determined that Holmes failed to establish good cause to order an accounting. The following exchange took place before the Commissioner and Wooley's counsel:

MR. LEVINE: Your Honor, this is not, if I may, at this point object or interject, this is, again, the Court has not ruled that she is entitled to an accounting. So I don't think until the Court rules on that it is appropriate to do the accounting.

THE COURT: *Then I found that there was enough alleged in her petition that I find at this point, yes, she is entitled to an accounting.* So, I'm moving forward on that.

MR. LEVINE: Well, again, this isn't the hearing for the accounting, this is...

THE COURT: *No, it is the hearing for the accounting.*

MR. LEVINE: No, this is the hearing to determine whether she is entitled to an accounting. If Your Honor has

determined that already, then we'll need time to submit to an accounting.

THE COURT: No. And I've asked some judges because I have not, they used to do the accountings. The Judges, all that I talked to, gave me the same answer – they haven't done them. I had the accounting sheet. I asked one Judge, I said, don't you send this out, and if it appears that it satisfies the amounts, you dismiss it. I was told, no. I have a hearing. So that's what I'm doing. I'm having a hearing now. Either of you can appeal whatever I do, but I'm going to go forward with the hearing. I've determined that Mother has a right to ask for an accounting. If Father doesn't have his documentation with him, then I will certainly give you time to provide that.

MR. LEVINE: Because all she is asking for is an accounting. She's not asking that the accounting be done. The Hearing today is to do the accounting. The hearing today is to determine whether or not she is entitled to an accounting.

THE COURT: Well, I'm going to take and hear how the funds are being used. Go ahead Mr. Wooley.<sup>7</sup>

(5) Based on the above exchange, it appears the Commissioner determined that Holmes established good cause to order an accounting based on Holmes' written Petition submitted to the Court. The later hearing, contrary to Wooley's counsel's belief, was the accounting to determine if

---

<sup>7</sup> *Holmes v. Wooley*, Del. Fam., File No. CN00-07650, Sackovich, C. (March 5, 2002) (Transcript of Petition for Accounting hearing).

Wooley misused the child support payments. After the hearing, the Commissioner issued a written Order that stated:

In consideration of the litigiousness of one or both parties the Court determined that the best way to proceed was to schedule a hearing to address two of the allegations in mother's petition ... *The balance of mother's allegations failed to set forth a basis for an accounting.* ... The Court finds mother did not show by a preponderance of the evidence that father failed in his duty as a fiduciary of the child support funds. The petition for accounting is dismissed. Petitioner is liable for attorney fees incurred by father to defend said petition.<sup>8</sup>

(6) The Family Court judge affirmed the Commissioner's Order and held that the Commissioner conducted a thorough good cause hearing, receiving testimony that normally would not be presented until the actual accounting hearing. "This plethora of evidence, however, better enabled her to determine whether the children's basic needs were being met and whether they enjoyed a lifestyle consistent with the combined income of the parties, or in the legal terms, whether probable cause had been shown to require a detailed accounting."<sup>9</sup>

(7) With respect to Holmes' objections to the Commissioner's Order, we conclude that the Family Court judge adequately reviewed and correctly concluded that her three objections had no merit. Those objections were:

(i) The Written Order of the Court dated April 5, 2002 states Holmes did not meet her burden by a preponderance of the evidence after ruling from the bench that cause had been

---

<sup>8</sup> *Holmes v. Wooley*, Del. Fam., File No. CN00-07650, Sackovich, C. (April 5, 2002) (emphasis added).

<sup>9</sup> *Holmes v. Wooley*, Del. Fam., File No. CN00-07650, Conner, J. (July 3, 2002).

shown to order an accounting and then proceeding to perform an accounting from the bench;

- (ii) The Court abused its discretion by circumventing the established procedures for conducting an accounting based upon the “litigiousness of one or both parties;” and
- (iii) The Court abused its discretion by basing its decision on Holmes’ failure to illicit [sic] testimony that cause had been shown to order an accounting and by proceeding nevertheless to conduct an accounting, effectively foreclosing the need to illicit any additional testimony on this point.<sup>10</sup>

(8) The Family Court judge adequately addressed the above arguments.

In particular, the Family Court judge noted that the record revealed that the Commissioner accepted testimony to determine if Holmes was entitled to an accounting and that Holmes was afforded an opportunity to question Wooley on his management of the funds. Whether the hearing before the Commissioner constituted a “good cause” hearing, an accounting, or both is irrelevant to the analysis because the questions put to Wooley clearly revealed that he had properly exercised his duties as a fiduciary to the children. The Family Court judge so concluded and the record supports this conclusion. 13 *Del. C.* § 518 could be more explicit in spelling out the procedures contemplated by the General Assembly. Nevertheless, it is clear that absent a successful Motion to Dismiss an application, the parties should contemplate the possibility that the judicial officer may elect one hearing where the Court first considers whether good cause for an accounting has

---

<sup>10</sup> Appellant’s Op. Br. at 20.

been established and then, if so, moves immediately to the accounting itself. Nothing, it seems to us, prevents a judicial officer from bifurcating the proceeding, however, where one deems it appropriate after notice to the parties. We believe it is within the ordinary exercise of the Commissioner's or the Family Court judge's discretion to tailor the proceedings to fit the parties' needs and the Court's scheduling demands. Here, it seems to us, combining the two issues within one proceeding was a reasonable exercise of the Court's discretion.

(9) With respect to Holmes' second argument, we conclude that the Family Court Order should be affirmed despite the possibility that the Family Court judge may have misinterpreted the nature of the hearing before the Commissioner. Whether the Commissioner followed a "good cause" determination immediately by a rendering of an accounting within the same hearing is not relevant in light of the fact that the testimony at the hearing revealed that Wooley had, in fact, fulfilled his fiduciary duties. Thus, the Family Court judge reached the right result despite the suggestion that he confused the nature of the Commissioner's proceeding. Neither party suffered prejudice even if it were so.

(10) Holmes argues that the statutory scheme implies that where "good cause" has been found an applicant should not have to bear a fiduciary's costs for defending the petition for an accounting. She suggests that this is so because if

“good cause” were not so found, she *would* be required to pay those costs. The statute provides in relevant part that:

. . . . if the *application* does not show good cause . . . the court *shall* order that all costs and reasonable counsel fees . . . be paid by the unsuccessful applicant. If [however] an accounting is granted by the Court, it may equitably apportion the costs, including reasonable counsel fees, of the action among the parties to the proceeding after taking into account 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.<sup>11</sup>

Holmes asserts that the Commissioner determined that Holmes established good cause to order an accounting based on her written Petition or otherwise would not have proceeded to address the accounting issues. Holmes then argues that the Commissioner’s Order requiring Holmes to pay Wooley’s costs constituted an abuse of discretion. Although it would have been advisable for the Commissioner to state clearly why Holmes should bear all the costs, we cannot hold that the Commissioner’s decision that she should constitute an abuse of discretion. 13 *Del. C.* § 518 allows the Court to consider a number of factors in deciding the apportionment of costs *after good cause has been found*, including: (i) the legal and factual basis for the action; (ii) the results obtained; (iii) the financial resources of the parties; and (iv) such other factors as the Court deems just and equitable. The record shows that Holmes is an attorney with an income greater than Wooley and that there was little, if any, basis for asserting that he had breached his

---

<sup>11</sup> 12 *Del.C.* § 518 (emphasis supplied).



fiduciary duties to the children and, therefore, supports the factual conclusions relied upon by both the Commissioner and the reviewing Judge. There was a reasonable factual basis for the Commissioner to conclude that it would be “just and equitable” for Holmes to bear Wooley’s costs for defending the petition.

NOW, THEREFORE, IT IS ORDERED that the decision of Family Court be, and hereby is AFFIRMED.

BY THE COURT:

Myron T. Steele  
Justice