

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DORIS A. WALTON, <sup>1</sup>	§
	§
Petitioner Below-	§ No. 637, 2002
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
RONALD G. WALTON,	§ in and for New Castle County
	§ File No. CN90-6298
Respondent Below-	§ Petition Nos. 01-29979 and
Appellee.	§ 01-30757

Submitted: April 4, 2003

Decided: May 22, 2003

Before **HOLLAND**, **BERGER** and **STEELE**, Justices

**ORDER**

This 22<sup>nd</sup> day of May 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The petitioner-appellant, Doris A. Walton (“Mother”), filed an appeal from the Family Court’s October 21, 2002 order denying her motion to reopen judgment. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) The record reflects that Mother and the respondent-appellee, Ronald G. Walton (“Father”), have been litigating custody and visitation issues in the Family Court with respect to their two minor children since at least 1999. At the

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<sup>1</sup>The Court sua sponte has assigned pseudonyms to the parties pursuant to SUPR. CT. R. 7(d).

time of this most recent litigation, the parties shared legal custody of their minor son, who resided with Father, and Mother had sole legal custody of the parties' daughter, who resided with Mother. On May 29, 2001, the Family Court ordered the parties to resume family counseling with Samuel Romirowsky, Ph.D., a licensed psychologist.<sup>2</sup>

(3) In September 2001, Mother filed a petition for a rule to show cause alleging that Father had violated the Family Court's order by failing to resume family counseling and preventing her from having contact with her son. Father filed an answer denying that he had violated the Family Court's order and referring to a letter from Dr. Romirowsky stating that, while an attempt at counseling had occurred, any further attempts would not be beneficial because the son did not wish to re-establish a relationship with Mother.<sup>3</sup> Following a hearing on Mother's petition on February 19, 2002, at which Mother and Dr. Romirowsky both testified, the Family Court issued an order denying Mother's petition based on its findings that Father had not prevented Mother from having contact with the

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<sup>2</sup>In 1999, Mother was granted residential custody of the parties' son. In 2000, however, Mother was prohibited from having contact with him and the Family Court granted residential custody to Father. Counseling with Dr. Romirowsky was part of a plan established by the Delaware Division of Family Services at that time to re-establish a relationship between Mother and son.

<sup>3</sup>Based upon this letter, the Family Court on October 1, 2001, permitted Dr. Romirowsky to withdraw from the case.

parties' son and had done nothing to prevent the resumption of family counseling with Dr. Romirowsky.

(4) On March 8, 2002, Father petitioned the Family Court for reimbursement of his attorney's fees incurred in connection with Mother's petition for a rule to show cause, alleging that Mother's petition was unduly litigious. On July 22, 2002, the Family Court granted Father's petition.<sup>4</sup>

(5) On August 20, 2002, Mother filed a motion for reargument,<sup>5</sup> which the Family Court denied as untimely.<sup>6</sup> The Family Court noted that the motion was without merit in any case, since Mother's claims were not supported by the evidence presented at the hearing. In September 2002, Mother filed a motion to reopen the Family Court's award of attorney's fees to Father.<sup>7</sup> The Family Court denied the motion on the grounds that the motion contained arguments identical to those presented in Mother's previously-filed motion for reargument and that Dr. Romirowsky's letter did not constitute "newly discovered evidence."<sup>8</sup>

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<sup>4</sup>Counsel fees in the amount of \$874.00 were awarded.

<sup>5</sup>FAM. CT. CIV. R. 59(e).

<sup>6</sup>Mother's motion was based in part on an August 18, 2002 letter from Dr. Romirowsky, which stated that there might have been confusion at the Family Court hearing concerning the dates of counseling sessions and who attended those sessions.

<sup>7</sup>FAM. CT. CIV. R. 60(b) (2).

<sup>8</sup>Id.

(6) In her appeal, Mother claims that the Family Court abused its discretion and demonstrated prejudice against her by: a) granting Father's petition for attorney's fees; b) failing to respond to her request for information about the docketing of its July 22, 2002 order awarding attorney's fees and her request that the Family Court judge recuse himself; c) denying her motion for reargument as untimely; and d) refusing to reopen its judgment.

(7) We have reviewed the transcript of the hearing before the Family Court. Dr. Romirowsky testified that, after the Family Court ordered counseling to resume, a counseling session with Mother and son took place a couple of months later. He further testified that there were scheduling difficulties that prevented additional sessions from taking place. Dr. Romirowsky stated that the ultimate reason counseling was unsuccessful was Mother's refusal to follow his directions and the son's independent decision not to resume contact with Mother. Under these circumstances, we find no error or abuse of discretion in the Family Court's factual determination that Father had not violated its May 29, 2001 order by preventing contact between Mother and son and preventing the resumption of family counseling with Dr. Romirowsky. Moreover, we find no error or abuse of

discretion on the part of the Family Court in awarding Father his attorney's fees based on a finding that Mother's petition was unduly litigious.<sup>9</sup>

(8) Mother's second claim that the Family Court failed to respond to her requests concerning docketing of the Family Court's July 22, 2002 order and recusal of the Family Court judge was not presented to the Family Court in the first instance.<sup>10</sup> We, therefore, will not consider the claim in this appeal.<sup>11</sup>

(9) Also unavailing are Mother's claims that the Family Court abused its discretion and exhibited prejudice against her by, first, denying her motion for reargument and, second, denying her motion to reopen. The record does not reflect any abuse of discretion or prejudice on the part of the Family Court in denying Mother's motions. The motions were based principally on Dr. Romirowsky's August 18, 2002 letter to Mother stating that there may have been confusion at the hearing concerning the dates of counseling sessions and who attended those counseling sessions. This letter does not provide a sufficient basis for reconsideration by the Family Court of its findings of fact or conclusions of law.<sup>12</sup>

Nor does it constitute evidence that was "in existence and hidden at the time of

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<sup>9</sup>*Linn v. Delaware Child Support Enforcement*, 736 A.2d 954, 970 (Del. 1999) (citing *Mays v. Mays*, Del. Supr., No. 364, 1987, Christie, C.J., (Nov. 23, 1988)).

<sup>10</sup>Mother submitted a letter to the Family Court administrator concerning the recusal issue prior to filing her appeal, but the issue was never presented to the Family Court judge for disposition.

<sup>11</sup>SUPR. CT. R. 8.

<sup>12</sup>*Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

judgment” and, therefore, does not provide a basis for reopening the judgment on the basis of “newly discovered evidence.”<sup>13</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.<sup>14</sup>

BY THE COURT:

/s/ Myron T. Steele  
Justice

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<sup>13</sup>*Bachtle v. Bachtle*, 494 A.2d 1253, 1255-56 (Del. 1985).

<sup>14</sup>We decline to address Mother’s complaint in her reply brief that she was prejudiced by Father’s counsel’s untimely submission of his answering brief on appeal since this Court addressed that issue at a hearing on March 13, 2003.