

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WALTER A. CLARK, ¹	§
	§
Respondent Below-Appellant,	§ No. 41, 2012
	§
v.	§
	§ Court Below—Family Court
	§ of the State of Delaware,
JENNIFER C. CLARK,	§ in and for New Castle County
	§ File No. CN07-01072
Petitioner Below-Appellee.	§ Pet. No. 11-29509
	§

Submitted: October 19, 2012
Decided: December 17, 2012

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

ORDER

This 17th day of December 2012, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Walter Clark (“Husband”), filed this appeal from a Family Court decision dated December 28, 2011, which found him in contempt of multiple prior orders of the court. The Court finds no merit to Husband’s appeal. Accordingly, we affirm the Family Court’s judgment.

(2) The parties were married on October 21, 1978 and divorced on July 20, 2007. The Family Court entered an ancillary property division order

¹ The Court previously assigned pseudonyms to the parties in accordance with Supreme Court Rule 7(d).

on September 9, 2008. Since that time, the appellee, Jennifer Clark (“Wife”), has filed four separate petitions seeking to hold Husband in contempt for failing to comply with the Family Court’s property division order. After Wife filed her second contempt petition, the Family Court entered an order dated February 1, 2010, which directed Husband to refinance the former marital home within 120 days in order pay Wife the money that she was due. The Family Court further ordered that, if Husband failed to pay Wife by the due date, then Wife was to select a real estate broker in order to list the house for sale.

(3) Thereafter, Wife filed a third petition seeking to hold Husband in contempt for failure to pay her the sums due and owing to her pursuant to the property division order. Following a hearing, the Family Court issued an order dated July 19, 2011, declining to find Husband in contempt. Nonetheless, the Family Court increased the amount of Wife’s property division judgment and ordered Husband to cooperate in all aspects of the sale of the former marital home, including signing a listing agreement, maintaining the house in good repair for prospective buyers, and cooperating with all requests to show the home to prospective buyers.

(4) Wife filed her fourth petition seeking to hold Husband in contempt on September 26, 2011. She alleged that she had provided

Husband's then-counsel with a copy of a listing agreement on July 26, 2011, but Husband had failed to sign it. Wife requested that Husband be found in contempt and that the Clerk of the Court be allowed to sign the listing agreement on Husband's behalf. Wife also requested that Husband be ordered to sign a quitclaim deed and related documents transferring the property to Wife to be held in escrow pending sale of the property. Wife also requested an award of attorney fees.

(5) The Family Court held a hearing on Wife's petition on December 28, 2011. Both parties appeared with counsel. The Court heard testimony from Joseph P. Hurley, III, the real estate broker selected by Wife to list the house for sale, and also from Husband. Husband acknowledged receipt of the listing agreement. He also acknowledged that he had not signed it. Husband had contacted Hurley to ask him to reduce his commission and to contest the listing price. Hurley testified that the listing price was based on comparable properties in the area and his exterior review of the property. He indicated that the listing price was subject to adjustment once he had the opportunity to review the interior of the house. Hurley asked Husband to contact him to arrange a time for Hurley to review the interior, but Husband never called him to make those arrangements.

(6) At the conclusion of the hearing, the Family Court found Husband in contempt of its prior orders. The Family Court awarded Wife \$750 in attorney fees plus costs and order Husband to vacate the property on or before February 29, 2012 if Husband was unable to obtain a written commitment by January 30, 2012 to refinance the property to acquire sufficient funds to pay Wife's judgment. If Husband obtained a timely commitment to refinance the mortgage, then the order to vacate the premises would be void. The Family Court further ordered that Husband meet with Hurley on January 31, 2012 to sign the listing agreement and to allow Hurley to inspect the property. It is from this order that Husband now appeals.

(7) Husband raises four arguments in his opening brief on appeal. First, he asserts various reasons why he delayed signing the listing agreement. Next, Husband contends that he made an offer in compromise, which meant that refinancing the property would not be possible if Husband signed the listing agreement. Third, Husband contends that he suffers from a psychological disorder that caused him difficulty in handling the situation. Finally, he contends that forcing him out of his home is unfair because it will cause further litigation with his mortgage company.

(8) Our standard of review of a decision of the Family Court extends to a review of the facts and law, as well as inferences and deductions made by

the trial judge.² We have the duty to review the sufficiency of the evidence and to test the propriety of the findings.³ In this case, it is undisputed that the Family Court entered a final property division order in 2008. As a result of Husband's failure to satisfy the judgment owed to Wife, the Family Court had previously ordered Husband either to refinance the former marital home or cooperate fully with Wife's real estate agent, including signing a listing agreement, in order to sell the home. The evidence at the December 2011 hearing reflected that Husband had done neither. Accordingly, we find no error in the Family Court's finding of contempt.

(9) Husband testified at the hearing that he did not sign the listing agreement because he disputed the listing price and had filed an ethical complaint with the Board of Realtors. The Family Court rejected Husband's explanation as a valid cause for his delay in complying with the Family Court's prior orders. To the extent that Husband now offers other explanations for failing to sign the listing agreement, including his mental health issues, these claims were not fairly presented to the Family Court in the first instance. We therefore do not consider these claims for the first time on appeal.⁴ Moreover, some of the materials attached to Husband's opening and

² *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

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

⁴ Del. Supr. Ct. R. 8.

reply briefs were not submitted to the trial court at the contempt hearing. We will not consider on appeal any evidence that was not included in the trial court record below.⁵

(10) Furthermore, we find no merit to Husband's suggestion that the Family Court erred in awarding to Wife attorney fees of \$750 plus \$75 in costs. Husband has failed since 2008 to satisfy the Family Court's property division judgment in Wife's favor. Wife has been required on multiple occasions to seek the Family Court's intervention to compel Husband's compliance. Under these circumstances, we find no abuse of discretion in the Family Court's award of attorney fees pursuant to 13 Del. C. § 1515.⁶

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁵ *Delaware Elec. Coop. v. Duphily*, 703 A.2d 1202, 1207 (Del. 1997).

⁶ *Wheeler v. Wheeler*, 636 A.2d 888, 892 (Del. 1993) (holding that the Family Court has broad discretion to award attorney fees pursuant to 13 Del. C. § 1515).