

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| LARRY WHITAKER, ¹ | § |
| | § No. 145, 2013 |
| Respondent Below, | § |
| Appellant, | § |
| v. | § Court Below—Family Court |
| | § of the State of Delaware, |
| | § in and for Kent County |
| BETTY B. WHITAKER, | § File No. CK10-01981 |
| | § Petition No. 10-18372 |
| Petitioner Below, | § |
| Appellee. | § |

Submitted: July 5, 2013
Decided: August 23, 2013

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 23rd day of August 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The respondent-appellant, Larry Whitaker (“Husband”), appeals from the Family Court’s March 8, 2013 order, which denied his request for review of the Commissioner’s June 6, 2011 order denying Husband’s motion to set aside the Family Court’s June 8, 2010 order granting the motion of Betty B. Whitaker (“Wife”) for a protection from

¹ The Court *sua sponte* assigned pseudonyms to the parties by Order dated March 25, 2013. SUPR. CT. R. 7(d).

abuse (“PFA”) order against Husband. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, on June 3, 2010, Wife filed a motion for entry of a PFA order against Husband. An *ex parte* order was issued by a Family Court Commissioner on that date. Husband was sent a notice of hearing for June 8, 2010 at 11:30 a.m., but failed to appear for the hearing. On June 8, 2010, a second Family Court Commissioner entered an order granting the PFA by default. Thereafter, the order became a final order of the Family Court. By its terms, the order expired on June 8, 2011.

(3) In May of 2011, Husband filed a motion to set aside the PFA order. On June 6, 2011, the Commissioner denied Husband’s motion on the ground that the order had been entered in default of Husband’s appearance at the hearing. On March 8, 2013, a Family Court judge denied Husband’s request for review of the Commissioner’s order because a party in default of an appearance before a Commissioner has no right of appeal.² This appeal by Husband followed.

(4) In his appeal, Husband asserts a number of claims that may fairly be summarized as follows: The Family Court erred and abused its

² DEL. CODE ANN. tit. 10, § 915(d).

discretion when it denied his request for review of the Commissioner's order.

(5) Under Del. Code Ann. tit. 13, § 915(d), any party, "except a party in default of appearance before a Commissioner," may appeal a Commissioner's order. It is undisputed that Husband did not appear for the June 8, 2010 hearing. As such, we conclude that the Family Court properly determined that Husband was precluded from appealing the Commissioner's order to a judge of the Family Court. Moreover, we note that the PFA order expired by its terms on June 8, 2011. As such, any claims made by Husband with respect to that order after that date were, and are, moot.³ In the absence of any evidence of error or abuse of discretion, we conclude that the judgment of the Family Court must be affirmed.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³ *General Motors Corp. v. New Castle County*, 701 A.2d 819, 823-24 (Del. 1997) (an action will be dismissed if a justiciable controversy ceases to exist).