

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH L. DAILEY, JR., ¹	§
	§
Respondent Below-	§ No. 253, 2013
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
CASSIE L. DAVIS,	§ in and for New Castle County
	§ File No. CK01-10658
Petitioner Below-	§ Pet. No. 12-41199
Appellee.	§

Submitted: January 17, 2014
Decided: February 28, 2014

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

ORDER

This 28th day of February 2014, upon consideration of the parties’ briefs and the record below, it appears to the Court that:

(1) The appellant, Joseph Dailey (“Husband”), filed this appeal from a Family Court decision dated April 26, 2013, which found him in contempt of a prior Family Court order dated July 19, 2012. The Court finds no merit to Husband’s appeal. Accordingly, we affirm the Family Court’s judgment.

(2) On July 19, 2012, the Family Court held a hearing on matters ancillary to the parties’ divorce. Husband did not file his financial information or appear at the hearing. Ultimately, the Family Court ordered Husband to pay \$800 per month in

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

alimony to the appellee Cassie Davis (“Wife”) for a period of five years and six months, which was half the length of their marriage. Neither party appealed that order.

(3) On December 27, 2012, Wife filed a motion seeking to hold Husband in contempt of the July 2012 ancillary order. The Family Court held a hearing on April 26, 2013. Both parties appeared and testified. The testimony reflected that Husband had been employed with Colonial Parking since August 2012. His notarized financial report, which was filed in April 2013, failed to identify Colonial Parking as his employer. The Family Court found that, since its alimony order, Husband had paid Wife only \$400 in alimony. The Family Court thus concluded that Husband was \$6800 in arrears. Husband was ordered to pay the arrears in four equal payments of \$1700 over a ten-month period. If Husband failed to make any one of the \$1700 payments by its scheduled due date, then the Family Court held that Husband would be incarcerated until he paid the \$1700 installment. Husband now appeals the contempt ruling.

(4) Husband’s opening brief on appeal essentially challenges the initial alimony order and takes issue with the credibility of Wife and the sufficiency of her evidence. 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 When the determination of facts turns on the credibility of the witnesses who

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).

testified under oath before the trial judge, this Court will not substitute its opinion for that of the trial judge.⁴

(5) In this case, it is undisputed that the Family Court entered an alimony order in July 2012.⁵ It also is undisputed that Husband failed to make sufficient alimony payments to Wife as of the date of the contempt hearing. Moreover, Husband's sworn financial report failed to include important employment information, which the Family Court found to be an attempt to commit a fraud. We will not substitute our opinion for the trial judge's with respect to the parties' credibility.⁶ Under the circumstances, we find sufficient evidence to support the Family Court's finding of contempt and award of damages.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁴ *Id.*

⁵ Although Husband now contends that he was never notified of the alimony hearing, he does not dispute that he was aware of the alimony order and made at least some attempt to pay alimony to Wife pursuant to the Court's order. He did not seek to appeal the order or move to reopen the judgment based on the alleged lack of notice.

⁶ *Wife (J.F.V) v. Husband (O.W.V., Jr.)*, 402 A.2d at 1204.