IN THE SUPREME COURT OF THE STATE OF DELAWARE

MATTHEW R. RANDALL,[1]	§	
	§	
Petitioner Below-Appellant,	§	No. 166, 2012
	§	
	§	
v.	§	Court Below—Family Court
	§	of the State of Delaware,
CHRISTINE E. RANDALL,	§	in and for New Castle County
	§	File No. CN05-05695
Respondent Below-Appellee.	§	Pet. No. 08-17620
	§	

Submitted: August 3, 2012
Decided: September 25, 2012

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

O R D E R

This 25th day of September 2012, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Matthew R. Randall ("Father"), filed this appeal from a Family Court decision, dated March 6, 2012, denying his second motion to reopen a 2008 child support order. We find no merit to Father's appeal. Accordingly, we affirm the Family Court's judgment.

(2) The relevant facts in the record reflect that Father and Christine Randall ("Mother") are the parents of triplets who were born in 1996. On September 11, 2008, the Family Court entered a permanent default support

[1] The Court assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

order requiring Father to pay $1856 per month in current child support plus $50 per month in arrears. On September 26, 2008, Father filed a motion to reopen the default judgment on the ground that the support order left him destitute because he was not working full-time. Father also asserted that he had not received proper notice of the scheduled mediation hearing that resulted in the default order. The Commissioner denied Father's motion to reopen on October 24, 2008 but indicated that Father could file a petition for modification if his circumstances had changed through no fault of his own. Father did not seek review of the Commissioner's order.

(3) Instead, Father filed a petition for modification of support on November 11, 2008. He subsequently sought to dismiss that petition voluntarily on December 5, 2008. On December 31, 2009, Father filed a second motion for modification of support. On June 20, 2010, the Family Court issued an order reducing Father's child support obligation to $1020 per month in current support, plus $50 per month in arrears. On January 13, 2012, Father filed a second motion for relief from judgment. Father sought relief from the Family Court's September 11, 2008 permanent default support order on the grounds that he had not been properly served with notice of the support mediation hearing. On January 27, 2012, the Family Court Commissioner denied Father's motion. After de novo review, a judge

of the Family Court denied the motion to reopen on the alternative grounds that Father had received notice of the mediation scheduled in 2008 and that Father had waived any right to seek relief from the 2008 judgment by failing to timely seek review of the Commissioner's 2008 order denying his first motion to reopen. This appeal followed.

(4) Father enumerates five overlapping arguments in his opening brief on appeal. Essentially, Father contends that the Family Court erred in granting the 2008 default judgment and in denying his second motion to reopen that judgment.

(5) We find no merit to Father's appeal. This Court generally reviews the grant or denial of a Rule 60(b) motion to reopen for an abuse of discretion.[2] In this case, Father sought in 2012 to reopen a 2008 judgment that was no longer current because it had been superseded by the Family Court's 2010 order modifying Father's child support obligation. Accordingly, we find no abuse of the Family Court's discretion in denying Father's motion to reopen a 2008 judgment that was moot.[3] Moreover, to the extent that Father sought retroactive relief from the 2008 support order based on circumstances that existed at the time the order was entered, we find no error in the Family Court's ruling that Father could not use a second

[2] *Reynolds v. Reynolds*, 595 A.2d 385, 389 (Del. 1991).
[3] *See Bistawros v. Bistawros*, 2002 WL 1988265 (Del. Aug. 23, 2002).

Rule 60(b) motion as a substitute for his failure to timely seek review of the Family Court's denial of his first Rule 60(b) motion.[4]

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

BY THE COURT:

/s/ Carolyn Berger
Justice

[4] *White v. State*, 2007 WL 604723 (Del. Feb. 28, 2007).