

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FENWICK WATERMAN’S, LLC	§
a Delaware Limited Liability Co.,	§ No. 337, 2013
	§
Plaintiff Below,	§ Court Below – Superior Court
Appellant,	§ of the State of Delaware,
	§ in and for Sussex County
v.	§ C.A. No. S12C-02-017
	§
TINA LITTLETON,	§
	§
Defendant Below,	§
Appellee.	§

Submitted: February 19, 2014
Decided: February 19, 2014

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

ORDER

This 19th day of February 2014, it appears to the Court that:

- 1) The plaintiff-appellant, Fenwick Waterman’s, LLC (the “LLC”), appeals from a Superior Court holding that it lacked jurisdiction to hear a claim brought by the LLC. The LLC is owned by one former spouse which sued the other former spouse for conversion and fraud.
- 2) The LLC raises one claim on appeal. It contends that the Superior Court erred by dismissing the claim the LLC brought against the defendant-appellee, Tina Littleton (“Littleton”) for lack of subject matter

jurisdiction, on the basis that the claim should have been brought in the Family Court.

3) Vincent Morris (“Morris”) acquired the LLC on January 1, 2009, naming himself and Tina Littleton agents of the LLC on the same day. Morris and Littleton married a month later. Shortly thereafter, the LLC formed a business called Captain Jacob’s, for which Littleton began working.

4) In August 2010, Morris discovered that Littleton had transferred \$20,000 from the business account to her personal account. In October 2010, a fire near Captain Jacob’s occurred and caused damage to Captain Jacobs. Littleton filed insurance claims, receiving \$42,000 in damages. Neither the LLC nor Morris received any part of the insurance payments.

5) Morris and Littleton were divorced in March the following year. During the pendency of the divorce, Morris and Littleton negotiated their own property division without the participation of the Family Court. Thereafter, the Family Court dismissed its ancillary jurisdiction over the property division.

6) In 2012, Morris and the LLC filed suit in the Superior Court against Littleton, alleging that she stole money from the LLC. The suit also

sought damages from Littleton for conversion of the LLC's fire insurance proceeds and fraud that allegedly occurred during the marriage. The Superior Court found that because the insurance proceeds and other money was acquired by Littleton during the course of the marriage, the funds were marital property and jurisdiction over the claim was vested in the Family Court. The Superior Court also found that the parties already had reached an agreement about the disputed funds during the pendency of their divorce. The Superior Court dismissed the complaint without prejudice. Morris voluntarily dismissed his individual claim against Littleton.

7) The LLC raises one issue in this appeal. It contends that the Superior Court erred in determining that it lacked jurisdiction to hear the LLC's claims against Tina Littleton. "On questions of subject matter jurisdiction, the applicable standard of review by this Court is whether the trial court correctly formulated and applied legal principles. Accordingly, the scope of our review is *de novo*."¹

8) The Family Court has "original statewide civil . . . jurisdiction over family . . . matters" in Delaware.² The Family Court can grant a divorce and may also retain jurisdiction over the division of the marital

¹ *Candlewood Timber Grp., LLC v. Pan Am Energy, LLC*, 859 A.2d 989, 997 (Del. 2004) (citations omitted).

² Del. Code Ann. tit. 10, § 902(a).

property.³ Generally, “‘marital property’ means all property acquired by either party subsequent to the marriage.”⁴ Under title 13 of the Delaware Code, section 1513(b), the term “acquired” “is to be defined to reflect the reality presented to our Courts—assets are to be characterized in regard to the actual or constructive possession by the parties.”⁵ If property is non-marital, however, jurisdiction lies in the Superior Court.⁶

9) The LLC argues that because it is a distinct legal entity under Delaware law and a non-party to the divorce, it is permitted to sue in the Superior Court for damages that it incurred as a result of Littleton’s alleged theft and wrongful conversion of the LLC’s fire insurance proceeds. In support of that argument, the LLC cites to cases holding that third parties are not subject to Family Court jurisdiction in a divorce proceeding.⁷ The LLC also submits that it is a freestanding legal entity suffering harm distinct from that of its principals.⁸

³ Del. Code Ann. tit. 13 § 1513.

⁴ *Frank G.W. v. Carol M.W.*, 457 A.2d 715, 733 (Del. 1983) (but also noting three exceptions).

⁵ *Id.*

⁶ *See* Del. Const. art. IV, § 7 (“The Superior Court shall have jurisdiction of all causes of a civil nature, real, personal and mixed, at common law and all the other jurisdiction and powers vested by the laws of this State in the formerly existing Superior Court.”).

⁷ *E.g.*, *Douglas v. Thrasher*, 489 A.2d 422, 426 (Del. 1985); *Eberly v. Eberly*, 489 A.2d 433, 445-46 (Del. 1985); *Joseph B.P. v. Kathleen M.P.*, 469 A.2d 800, 802 (Del. 1983).

⁸ Del. Code Ann. tit. 6 §18-201(b); *see also* Del. Code Ann. tit. 6, § 18-16(b) (providing that an LLC can sue for injuries it incurred).

10) The difficulties in deciding this appeal began with the generality of the complaint and the LLC's failure to make a record in the Superior Court. In particular, the complaint alleges that the wife, Tina Littleton, filed a claim for fire insurance proceeds on behalf of the LLC and then had the proceeds paid to her personally. Unfortunately, no dates regarding the insurance claims were set forth in the complaint.

11) Earlier in this appeal, the LLC's attorney realized the problems with the record on appeal and filed a brief containing "exhibits E, G, and H." These documents showed that Tina Littleton filed an insurance claim on behalf of the LLC and received the proceeds personally. However, the appellee, Littleton, filed a motion to strike those exhibits. We granted that motion because the LLC conceded they were not part of the Superior Court record.

12) Nevertheless, those documents are illuminating when their dates are compared to the timeline of the Family Court proceedings. The Family Court property settlement between the parties was reached prior to November 30, 2010. That is reflected in correspondence that is properly before us. One of the exhibits that we did not allow was a "property damage release" signed by Tina Littleton on November 29, 2010. That document reflects that she was paid over \$34,000 individually as the sole owner of

Captain Jacobs Seafood. However, Morris has always been the sole owner of the LLC. Another exhibit that was not properly before us is a similar insurance release signed on January 15, 2011 by Tina Littleton for \$7,919.00.

13) It appears that the LLC may have a legitimate claim against Tina Littleton for the fire insurance proceeds that the LLC should have received. The dates in the insurance documents also appear to reflect that those insurance claims were not part of the Family Court property settlement. In fact, the sparse documents in the record about the Family Court property settlement do not mention the fire insurance proceeds.

14) The Superior Court may have jurisdiction over claims for, at least, Tina Littleton's wrongful conversion of the fire insurance proceeds owed to the LLC. We are now presented with a situation where the most relevant documents (exhibits E,G, and H) were not attached to the complaint or otherwise presented to the Superior Court and were, therefore, properly stricken by this Court.

15) The Superior Court dismissed the complaint without prejudice on jurisdictional grounds. We are concerned that neither the Superior Court nor this Court render an inaccurate determination of the law on jurisdiction based upon a confusing and deficient factual record. In the interest of

justice, we have concluded that the judgment and opinion of the Superior Court should be vacated and this matter remanded so that the LLC can file a detailed amended complaint.

NOW, THEREOFRE, IT IS HEREBY ORDERED that the judgment and opinion of the Superior Court are vacated. This matter is remanded for further proceedings in accordance with this order. Jurisdiction is not retained.

BY THE COURT:

/s/ Randy J. Holland
Justice