## IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROSE KRAFT, <sup>1</sup>	§
	§ No. 275, 2012
Respondent Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for New Castle County
MARK D. JACKSON,	§ File No. CN06-05408
	§ Petition No. 10-19735
Petitioner Below-	§
Appellee.	<b>§</b>

Submitted: January 18, 2013 Decided: February 26, 2013

## Before HOLLAND, BERGER and JACOBS, Justices

## ORDER

This 26<sup>th</sup> day of February 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

- (1) The respondent-appellant, Rose Kraft ("Wife"), filed an appeal from the Family Court's January 11, 2012 final order regarding matters ancillary to her divorce from the petitioner-appellee, Mark D. Jackson ("Husband"). We find no merit to the appeal. Accordingly, we affirm.
- (2) The record in this matter reflects the following. Husband and Wife were divorced by decree of the Family Court on July 26, 2010.

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<sup>&</sup>lt;sup>1</sup> The Court *sua sponte* assigned pseudonyms to the parties by Order dated May 23, 2012. Supr. Ct. R. 7(d).

Jurisdiction was retained on the ancillary matters of property division, alimony, attorney's fees and court costs. Hearings on the ancillary matters were held in the Family Court on April 4, 2011 and June 30, 2011. Both parties were represented by counsel. In its decision on ancillary matters dated January 11, 2012, the Family Court found, among other things, that the parties had marital assets as follows: a) the marital home at 1019 White Birch Drive, Newark, Delaware; b) an ING account; and c) a Wilmington Trust account.

- (3) The Family Court also found that the parties had marital debts, as follows: a) a debt owed to Susquehanna Bank in the amount of \$81,225.47; b) a debt owed to Amerisource Bergen in the amount of \$55,000; c) a debt owed to Roche Diagnostics in the amount of \$26,384.52; d) a debt owed to Master's Pharmaceuticals in the amount of \$12,868.67; and e) a debt owed to Swirl, Inc. in the amount of \$210,000.<sup>2</sup> The Family Court found that Husband should be responsible for 60% of the marital debts and Wife responsible for 40%. Finally, the Family Court found that each party should be responsible for his or her own attorney's fees.
- (4) The record reflects that Rome Pharmaceuticals, Inc. ("Rome"), a wholesale pharmaceutical distribution business, was begun in 2001-02.

<sup>2</sup> The marital debts that are not at issue in this appeal have not been listed.

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While Husband testified that he and Wife started Rome together, Wife testified that her involvement in the business was limited. It was undisputed that both parties worked at the business. Husband testified that Wife made phone calls for the business and did the bookkeeping and billing. During the years 2003-2005, Rome also operated two retail pharmacies. However, due to changes in the federal regulations in 2004-05 that placed limits on the way Rome conducted its operations, the business began to fail. The two pharmacies eventually were sold to a third party and Rome's wholesale business was shut down in 2007.

(5) Rome had financial problems from the beginning, which only increased as time went on and which, ultimately, spiraled out of control. In an attempt to keep the business running, pharmaceutical products were bought on credit. As the result of the failure to pay its creditors, Rome became embroiled in a number of lawsuits. At the end, borrowing at exorbitant rates from "shady" individuals was contemplated in a desperate attempt to get Rome out of debt. Husband testified that Wife was well aware of Rome's problems and that they talked about them constantly, strategizing about how to pay off the debts without losing the marital home. In spite of their financial turmoil during this time, the couple continued to send their children to private school, bought a boat, went on expensive

vacations and made major improvements to their home, including installing a pool. Husband testified that Rome's financial problems and the ensuing emotional stress caused him and Wife to separate and, ultimately, divorce.

- (6) In Wife's appeal from the Family Court's January 11, 2012 decision on ancillary matters, she claims that the Family Court abused its discretion because its findings regarding the marital debts were not the product of an orderly and logical deductive process. Wife further claims that the Family Court abused its discretion by failing to include Husband's Sun Life Financial 401(k) account in its calculation of the marital assets. Finally, Wife claims that the Family Court abused its discretion in failing to award her attorney's fees in light of Husband's "lies and contradictory testimony."<sup>3</sup>
- (7) The Family Court has broad discretion to divide marital property under Del. Code Ann. tit. 13, §1513.<sup>4</sup> On appeal from an order dividing a marital estate, this Court reviews the facts and the law as well as the inferences and deductions made by the Family Court.<sup>5</sup> The Court will not disturb findings of fact unless they are clearly wrong and justice requires

<sup>3</sup> The record does not reflect that Wife filed a motion for reargument in the Family Court on the ground that the Family Court's factual findings regarding certain marital debts and marital assets were incorrect. Husband filed a motion for reargument on the ground that the ING account and the Wilmington Trust account should not be included as marital assets. The Family Court denied the motion. Husband has not appealed that ruling.

<sup>&</sup>lt;sup>4</sup> Scott v. Scott, 2011 WL 378901 (Del. Feb. 3, 2011) (citing Linder v. Linder, 496 A.2d 1028, 1030 (Del. 1985)).

<sup>&</sup>lt;sup>5</sup> Wife (J.F.V.) v. Husband (O.W.V.), 402 A.2d 1202, 1204 (Del. 1979).

that they be overturned.<sup>6</sup> Conclusions of law are reviewed *de novo*.<sup>7</sup> If the Family Court has correctly applied the law, our standard of review is abuse of discretion.<sup>8</sup> It is the province of the Family Court, as the finder of fact, to weigh the credibility of the witnesses and to reconcile any discrepancies in the witness testimony. As such, questions of credibility will not be disturbed on appeal unless clearly erroneous.<sup>9</sup>

(8) In its January 11, 2012 decision, the Family Court stated that whether Wife should be held at least partially responsible for the debts associated with Rome was the "central issue" in this case. The Family Court held that it did not find Wife's testimony concerning her involvement with Rome, and specifically her knowledge of Rome's financial and legal problems, to be credible. Moreover, while not stated explicitly in its January 11, 2012 decision, it is apparent that the Family Court did not attribute any contradictions in Husband's testimony regarding his attempts to pay off Rome's debts to intentional deceit on Husband's part. The Family Court, finally, found that, while Wife should be responsible for some portion of the debt connected with Rome due to her involvement in the business. Husband

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<sup>6</sup> Id.

<sup>&</sup>lt;sup>7</sup> Mundy v. Devon, 906 A.2d 750, 752 (Del. 2006).

<sup>&</sup>lt;sup>8</sup> Forrester v. Forrester, 953 A.2d 175, 179 (Del. 2008).

<sup>&</sup>lt;sup>9</sup> Carter v. Harmon, Del. Supr., No. 393, 2012, Holland, J. (Jan. 2, 2013) (citing Wife (J.F.V.) v. Husband (O.W.V., Jr.), 402 A.2d 1202, 1204 (Del. 1979)).

should bear a heavier burden for the debt since he was more involved in the business on a day-to-day basis.

We have carefully reviewed the parties' briefs on appeal, the (9)Family Court's decision dividing the marital estate and the transcript of the hearing below. On the record before us, we can discern no basis for disturbing the Family Court's factual findings and no error of law. There was testimony at trial that Husband's Sun Life Financial 401(k) account was acquired prior to the parties' marriage and Wife presented no evidence that she had contributed to it. We, thus, find no error or abuse of discretion on the part of the Family Court in not including it in the list of marital assets.<sup>10</sup> It also was within the discretion of the Family Court to accept Husband's testimony regarding the nature and amounts of Rome's outstanding debts, even though there may have been discrepancies in that testimony. Moreover, the basis for the Family Court's attribution of 40% of the debt involving Rome to Wife was its finding of a lack of credibility on Wife's part regarding her involvement with the business. In the absence of any evidence that it is clearly erroneous, we will not disturb that finding. We, therefore, conclude that the judgment of the Family Court should be affirmed.

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<sup>&</sup>lt;sup>10</sup> Sandler v. O'Shea, 2012 WL 2870173 (Del. July 12, 2012) (citing Albanese v. Albanese, 1996 WL 69824 (Del. Feb. 8, 1996)).

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

BY THE COURT:

/s/ Carolyn Berger Justice