IN THE SUPREME COURT OF THE STATE OF DELAWARE

TIMOTHY E. SIMMS,[1]	§	
	§	No. 633, 2012
Petitioner Below-Appellant,	§	
	§	
	§	Court Below–Family Court
v.	§	of the State of Delaware
	§	in and for Kent County
RACHEL DOWNES,	§	File No. CK12-01472
	§	Petition No. 12-08500
Respondent Below-Appellee.	§	
	§	

Submitted: March 8, 2013
Decided: April 11, 2013

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

O R D E R

This 11th day of April 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The petitioner-appellant, Timothy E. Simms ("Husband"), filed an appeal from the Family Court's November 2, 2012 order, which decided the matters ancillary to Husband's divorce from the respondent-appellee, Rachel Downes ("Wife"). We find no merit to the appeal. Accordingly, we affirm.

(2) The record in this case reflects that, on March 8, 2012, Husband filed a petition for divorce from Wife. Wife filed an answer and counterclaim on April

[1] The Court *sua sponte* assigned pseudonyms to the parties by Order dated November 30, 2012. Supr. Ct. R. 7(d).

18, 2012. On June 1, 2012, the Family Court issued its final decree of divorce and retained jurisdiction over the ancillary matters of permanent alimony and court costs. The record reflects that a copy of the final decree of divorce was sent to both Husband and Wife along with an official Family Court Form 434 entitled "Matters Ancillary to Divorce."

(3) The form stated that "[p]ursuant to Family Court Civil Rule 16(c), a Financial Report must be completed by BOTH parties and filed with the Court . . . ." The form provided explicit instructions as to when and how the Financial Report had to be served and filed. The form then stated as follows in capital letters:

> THERE SHALL BE NO FURTHER NOTICE PROVIDED TO PARTIES OR COUNSEL WITH REGARD TO THE REQUIREMENTS OF FAMILY COURT RULE 16(C). IF BOTH PARTIES FAIL TO FILE THE FINANCIAL REPORT IN A TIMELY MANNER, THEN ALL ANCILLARY MATTERS SHALL BE DISMISSED."

The document, finally, stated that either party could request an extension of the time in which to file the Financial Report in accordance with Rule 40 for good cause shown.[2]

(4) The record reflects that Wife filed her Financial Report on June 28, 2012. Husband never filed his Financial Report, nor did he request an extension of

[2] The form tracks Family Court Civil Procedure Rule 16(c), which provides in subsection (6) that the failure of either party to comply with the requirements of Rule 16 may result in the imposition of sanctions, including, among other things, entry of default judgment against the non-complying party.

time in which to file his Financial Report. On August 23, 2012, the Family Court judge sent a letter to Husband and Wife stating that Wife had filed her Financial Report in a timely manner, but that the Family Court had received nothing from Husband. The Family Court judge then directed Wife to submit a proposed form of order relating to the ancillary matters within 10 days. The record does not reflect any response from Husband to the Family Court's letter.

(5) In accordance with the Family Court's instructions, Wife filed a proposed form of order requiring Husband to make monthly alimony payments to her in the amount of $1,000. Wife also requested the car, the washer and dryer and the furniture she brought into the marriage. Finally, Wife requested that Husband pay her court costs. Wife's proposed form of order was entered as an order of the Family Court on November 2, 2012. Husband did not file a motion to reopen the Family Court's judgment pursuant to Rule 60(b).

(6) In this appeal, Husband states that he is unable to afford $1,000 a month in alimony and provides a list of his expenses in support of that contention. Husband also states that he is having problems getting out of debt. Husband does not claim that he did not receive either the Form 434 or the judge's letter dated August 23, 2012.

(7) This Court reviews the Family Court's disposition of ancillary matters for an abuse of discretion.[3] It was within the discretion of the Family Court to grant Wife the relief she requested where Husband neither filed his Rule 16(c) Financial Report nor requested an extension of time in which to do so. Therefore, we conclude that the Family Court's judgment must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.[4]

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[3] *Burton v. Burton*, 2004 WL 692052 (Del. Mar. 29, 2004) (citing *Reynolds v. Reynolds*, 595 A.2d 385, 388 (Del. 1991)).

[4] For future reference, we note that it would have been better practice for the Family Court to have drafted its own final order rather than simply xeroxing Wife's handwritten request and pasting it into the Family Court's blank order form.