IN THE SUPREME COURT OF THE STATE OF DELAWARE

DERRICK ZAPPA,[1]	§	
	§	
Respondent Below,	§	No. 86, 2013
Appellant,	§	
	§	
v.	§	Court Below—Family Court
	§	of the State of Delaware,
GLORIA LOGAN,	§	in and for New Castle County
	§	File No. CN12-02147
Petitioner Below,	§	Pet. No. 12-18796
Appellee.	§	

Submitted: July 19, 2013
Decided: August 23, 2013

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

O R D E R

This 23rd day of August 2013, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Derrick Zappa ("Father"), filed this appeal from the Family Court's decision awarding sole custody of the parties' two minor daughters to the appellee, Gloria Logan ("Mother"). On appeal, Father argues that the Family Court abused its discretion in granting Mother sole custody without awarding Father any visitation rights based solely on

[1] The Court previously assigned pseudonyms to the parties.

Mother's testimony, which was not credible. We find no error in the Family Court's judgment. Accordingly, we affirm.

(2) The record reflects that Mother filed a petition for custody in June 2012. Father filed his response in July 2012. A hearing was scheduled for January 31, 2013. Father failed to appear. The Family Court held the hearing in his absence and entered an order, dated February 1, 2013, granting Mother sole legal custody of the parties' daughters and suspending Father's visitation, which may be reestablished under such terms and conditions that Mother decides. Father did not move to reargue or reopen the judgment but, instead, filed this appeal.

(3) In his opening brief, Father contends that he missed the Family Court hearing on Mother's custody petition because he had to attend a mandatory meeting in New York for his employer, and he missed his train back to Wilmington. Father asserts that it was unfair for the Family Court to award sole custody to Mother and to suspend his visitation without hearing his evidence. Father contends that Mother's testimony regarding domestic abuse was not true and that he has evidence reflecting negatively on Mother's credibility.

(4) Father, however, did not file a motion to reopen the Family Court's judgment.[2] Instead, he appealed directly to this Court. Father's explanation for his failure to attend the custody hearing and the evidence that he offers to refute Mother's allegations of abuse are outside the record on appeal and, therefore, cannot properly be considered by this Court.[3] Moreover, Father failed to order a transcript of the custody hearing. We thus lack any basis to review Father's suggestion that the Family Court erred in finding Mother to be a credible witness at the hearing.[4] Accordingly, we find no basis to overturn the Family Court's judgment.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

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[2] *See* FAM. CT. CIV. R. 60(b) (2013).

[3] *See* DEL. SUPR. CT. R. 9; *Delaware Elec. Co-op., Inc. v. Duphily*, 703 A.2d 1202, 1207 (Del. 1997) (holding that materials not offered into evidence and considered by the trial court are not part of the record on appeal).

[4] *Mahan v. Mahan*, 2007 WL 1850905 (Del. June 28, 2007) (citing *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987)).