

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLAIRE ADRIA ZIMMER, ¹	§
	§
Respondent Below,	§ No. 517, 2024
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§
JORDAN E. NICHOLS,	§ File No. CN17-06619
	§ Petition No. 21-21708
Petitioner Below,	§
Appellee.	§

Submitted: June 6, 2025

Decided: August 11, 2025

Before **SEITZ**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

ORDER

After consideration of the parties’ briefs, the motion to strike, the response to the motion, and the record below, it appears to the Court that:

(1) Claire Adria Zimmer (“Wife”) and Jordan E. Nichols (“Husband”) were married on December 31, 2018, separated on July 23, 2021, and divorced on February 21, 2022. The Family Court retained jurisdiction over property division, alimony, court costs, and attorneys’ fees. After resolving the parties’ disputes as to property division and alimony, the Family Court shifted approximately \$39,000 in attorneys’ fees from Husband to Wife. Wife filed this appeal from the court’s orders

¹ The Court previously assigned pseudonyms to the parties under Supreme Court Rule 7(d).

regarding fees. For the reasons set forth below, we reverse the Family Court's judgment to the extent that it shifted fees from Husband to Wife for the period from December 2, 2022, to July 23, 2023, and affirm the court's judgment to the extent that it shifted fees from Husband to Wife from July 23, 2023, forward.

(2) Husband is a chiropractor who owned the practice where he worked (the "Practice") during the parties' marriage. Before the parties' separation, the Practice paid Wife—or a business that she owned (the "Management Company")—a six-figure annual income to manage the Practice. After the separation, the Practice stopped paying Wife. She filed a motion for interim alimony on February 1, 2022, alleging that she could not pay her monthly expenses. Husband opposed the motion. He alleged that although his income from the Practice previously had been approximately equal to Wife's, revenues had dropped significantly because of changes in insurance-reimbursement rates. He alleged that he had been unable to take any salary from the business since September 2021, had taken only \$23,808.89 in distributions from the Practice between September 2021 and February 2022, and was behind on payroll taxes for the fifteen other employees of the practice. The Family Court denied Wife's petition for interim alimony, finding that both parties' alleged expenses exceeded their alleged incomes and it was therefore inappropriate to award interim alimony before evidence of the income and expenses was presented at a final hearing.

(3) The parties filed the ancillary financial disclosure report on April 22, 2022. The report identified two key areas of dispute relevant to this appeal—whether their residence and the Practice were marital property subject to division. As to the Practice, Wife took the position that the Practice was marital property, and Husband indicated that he was “investigating” whether or to what extent the Practice was marital property.² During a case management conference the following month, the parties informed the court that they were in the early stages of discovery but were working on obtaining a valuation of the Practice. By August 2022, Husband had hired an expert to conduct a business valuation, and Wife planned to hire an expert to review the report that would be prepared by Husband’s expert. The court scheduled a pretrial conference for January 26, 2023, and an ancillary hearing for February 27 and 28, 2023.

(4) The parties filed the ancillary pretrial stipulation on January 25, 2023. The pretrial stipulation reflected that the parties had agreed that Wife would keep the marital residence, with the value of the home equity going on Wife’s side of the *Wright* chart.³ With respect to the Practice, Husband argued that it was a premarital asset and should not be divided, asserting that the practice was a “continuation” of

² See Family Court Docket Entry No. 103, Ancillary Financial Disclosure Report, at 8 (filed Apr. 22, 2022) (stating, as the “basis for [Husband’s] claim that [the Practice] is non-marital,” that Husband was “[i]nvestigating pre-martial [sic] goodwill/Patient accounts”).

³ “A ‘Wright chart’ is a chart accounting for and dividing the various marital assets and liabilities according to a ratio determined by the court.” *Parker v. Parker*, 2012 WL 686045, at *2 n.4 (citing *Wright v. Wright*, 469 A.2d 803 (Del. Fam. Ct. 1983)).

the chiropractic practice that he had operated for decades. Wife argued that the Practice was a marital asset that should be divided, asserting that (i) she had been instrumental in growing and managing the business; (ii) Husband had testified that the Practice, which was incorporated only a few months before the parties married, was not a continuation of his prior practice and he had taken only eight patients from the prior business; and (iii) Wife had shown Husband that his former partner was embezzling from the prior practice, resulting in a favorable arbitration award that Husband was expected to retain.

(5) Disputes also remained concerning the parties' respective income. Husband asserted that Wife was voluntarily unemployed and should be attributed income of \$70,886 per year. Wife asserted that her earning capacity was lower, pointing to her income before she worked for the Practice and injuries that she had sustained. She also asserted that Husband's income was unclear and that he appeared to pay substantial amounts of personal expenses from his business accounts. On the pretrial stipulation, Husband asserted that his annual income was \$160,000.⁴

(6) Husband claimed that the marital property should be divided 50/50 based on the short duration of the marriage; Wife sought a 60/40 division. Each

⁴ He later agreed that his adjusted gross income in 2022 was more than \$250,000, and the court used that figure in its alimony calculation.

party claimed that attorneys' fees should be shifted. Husband asserted that Wife should pay his fees "based on Husband's good faith attempts to resolve the matter." Wife asserted that Husband should pay her fees "due to the financial disparity of the parties and [Husband's] lack of good faith in resolving the matter." As to alimony, Husband argued that alimony should be denied based on the short duration of the marriage, and Wife sought alimony retroactive to the date of the divorce.

(7) After the pretrial conference on January 26, 2023, the court agreed to bifurcate the ancillary hearing based on counsel's representation that the court's determination of whether the Practice was a marital asset would facilitate settlement negotiations. The court heard evidence as to that issue on February 27, 2023, and the parties submitted post-hearing briefing. In an order dated July 12, 2023, the Family Court determined that the Practice was not marital property and therefore was not subject to equitable division by the court.

(8) The court held a two-day hearing on the remaining ancillary matters in February 2024. After the parties submitted case law in support of their positions regarding alimony and property division in a three-year marriage, the court issued its decision on ancillary matters. The court determined that the marital debts and assets—including more than \$200,000 in equity in the marital residence—should be divided equally. The court awarded Wife retroactive alimony of \$2,468 per month for the nineteen-month period from February 21, 2022 (the date of divorce), through

September 2023.⁵ Wife could retain the marital residence if she paid Husband \$46,935.50 as calculated in the *Wright* chart. Otherwise, the residence would be sold and the proceeds divided equally.

(9) The parties then filed motions seeking to shift attorneys' fees. Husband asked the court to order Wife to pay the approximately \$39,000 in fees that Husband incurred beginning December 2, 2022, arguing that Wife rejected the reasonable settlement offers that Husband had made with the goal of minimizing litigation and fees. Wife asked the court to order Husband to pay 60% of the approximately \$37,000 in attorneys' fees that she had incurred with her second counsel, based on the disparities in the parties' financial resources and earning potential and because Husband was unduly litigious.

(10) The Family Court denied Wife's motion and granted Husband's motion, finding that Wife engaged in excessively litigious conduct by failing to participate sufficiently in settlement negotiations and that it was therefore equitable to shift Husband's fees to Wife. The court ordered Wife to pay the \$39,015 in fees that Husband had incurred beginning December 2, 2022, when the parties held a settlement conference. Wife moved for reargument, contending that the court erroneously found that she had unreasonably rejected Husband's settlement offers.

⁵ The alimony award was subject to reduction if it was determined elsewhere that the Practice owed funds to the Management Company from the period when alimony would have been due.

She argued that his settlement offers were not reasonable because they required her to relinquish contractual claims that the Management Company had against the Practice. The court denied the motion for reargument. Wife has appealed to this Court.

(11) On appeal, Wife argues that the Family Court abused its discretion by shifting Husband's fees to her. She contends that rejecting Husband's settlement offers was not unreasonable because the offers required her to give up the Management Company's contractual claims against the Practice. She emphasizes that the claims that the Management Company has filed against the Practice in Superior Court have survived a motion to dismiss, demonstrating that they are not frivolous. Wife also asserts that the selection of December 2, 2022, as the date after which she was deemed to have acted unreasonably is unwarranted. Husband contends that the Family Court appropriately exercised its discretion in shifting fees under the equitable exception to the American Rule,⁶ as set forth in *Mays v. Mays*.⁷

(12) This Court applies the deferential abuse of discretion standard of review when reviewing a Family Court award of attorneys' fees.⁸ Absent an abuse of

⁶ "The American Rule with respect to attorneys' fees is that each party should bear its own expenses regardless of the outcome of the case." *Braham v. Braham*, 2008 WL 732013, at *1 (Del. Mar. 20, 2008).

⁷ See *Mays v. Mays*, 1988 WL 141148, at *2 (Del. 1988) ("In this case, the trial court found that the excessively litigious conduct of Wife had an adverse financial effect upon Husband. Under all the circumstances, we find no abuse of discretion in the award of attorney's fees.").

⁸ *Tanner v. Allen*, 2016 WL 6135339, at *2 (Del. Oct. 21, 2016).

discretion, we must affirm the Family Court’s award, even though we might have reached a different conclusion.⁹ The Family Court’s discretion when deciding whether to award attorneys’ fees is broad.¹⁰ A fee award must be supported by the evidence and not made arbitrarily.¹¹ A statement of the Family Court’s reasons for an award of fees should appear in the record.¹²

(13) Title 13, Section 1515 of the Delaware Code authorizes the Family Court to shift a party’s fees to another party “after considering the financial resources of both parties.”¹³ Although Section 1515 is most often invoked to provide a financially disadvantaged spouse with the financial resources to prosecute or defend an action, the Family Court may also award attorneys’ fees based on other, equitable considerations.¹⁴ Family Court Rule of Civil Procedure 88 permits the Family Court to order a party to pay the other party’s fees when “there is a legal or equitable basis” for such order.¹⁵ “The ‘equity’ exception to the American Rule requires that the movant demonstrate bad faith or its equivalent.”¹⁶

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 13 *Del. C.* § 1515.

¹⁴ *Olsen v. Olsen*, 971 A.2d 170, 176-77 (Del. 2009); *see id.* (“In this case, the court’s award was based on Husband’s evasive and untruthful testimony regarding his income and employment, which imposed unfair and burdensome additional costs on Wife.”).

¹⁵ DEL. FAM. CT. R. CIV. PROC. 88; *see also* 10 *Del. C.* § 925(10) (providing that the Family Court has jurisdiction to “[a]ssess fees, costs, and fines”); *Braham*, 2008 WL 732013, at *1 (stating that 10 *Del. C.* § 925 “provides for the assessment of fees under equitable principles”).

¹⁶ *Braham*, 2008 WL 732013, at *1.

(14) A “finding that a party’s conduct prolonged litigation or made it unnecessarily expensive, if supported by the record, may constitute an equitable consideration warranting a fee award.”¹⁷ This Court has recognized the importance of holding overly litigious parties accountable for their conduct.¹⁸ But a fee award cannot be supported only by the fact that the party ordered to pay fees was the losing party.¹⁹

(15) After careful consideration, we cannot conclude that the Family Court’s decision to award Husband the full amount of attorneys’ fees that he incurred from December 2, 2022, forward was equitable and supported by the record. The Family Court did not explicitly find that Wife acted in bad faith as to every aspect of the litigation after that date. Nor does the record support the conclusion that Wife was solely responsible for the continuation of litigation after that time. Between December 2022 and July 2023, Wife was asserting that the Practice was a marital asset that was subject to division. Although she ultimately lost on that issue, the record does not demonstrate that she took that position in bad faith. As the Family Court found in its July 2023 decision, the Practice was formed when the parties were engaged, shortly before they married. The court also found that Wife substantially contributed to the Practice’s growth and success, observed that the Practice was the

¹⁷ *Tanner*, 2016 WL 6135339, at *2.

¹⁸ *Id.*

¹⁹ *Id.*

“largest asset” in dispute in the case, and noted that in 2020 Husband wrote a note to Wife stating that Wife owned 50% of the business. Moreover, even if the business was not marital property, its value was relevant to the parties’ respective financial positions.

(16) Nor do we agree with the Family Court’s determination that Wife’s failure to engage in sufficient settlement efforts before the court’s July 2023 ruling that the Practice was not a marital asset caused Husband adverse financial consequences. Husband did incur significant fees between December 2022 and July 2023, but it appears that the additional litigation resulted in a net financial benefit to him when the value of his settlement offers are compared to the final result of the ancillary matters. As Husband contends, in December 2022 he offered that Wife could keep 100% of the equity in the home—the largest asset aside from the business—“which would have paid Wife \$232,095.”²⁰ But the Family Court’s final order dividing the property and awarding Wife retroactive alimony required Wife to pay Husband approximately \$47,000 (not including the fees that were later awarded). Wife’s insistence on further litigation between December 2022 and July 2023 appears to have been a detriment to Wife—and to judicial economy—but not to Husband. For these reasons, we reverse the Family Court’s judgment as to

²⁰ Answering Brief at 24.

attorneys' fees to the extent it ordered Wife to pay all of Husband's fees incurred from December 2, 2022, forward.

(17) It does appear that further litigation after the court determined in July 2023 that the Practice was not marital property was likely to yield rapidly and significantly diminishing returns. On July 23, 2023, Husband offered to divide the marital property 60/40 in Wife's favor, consistent with Wife's position on the pretrial stipulation, in exchange for no alimony. Wife's response to Husband's motion for attorneys' fees offered no evidence that Wife reasonably responded to that offer. Indeed, Wife's response misleadingly stated that Husband's July 2023 offer "stat[ed] that Wife was legally not entitled to alimony, based on the brevity of the marriage."²¹ Husband's settlement offer belies that assertion; the letter from Husband's counsel conveying the offer stated: "This marriage was short and the alimony eligibility duration is approximately 15 months. The parties have been separated for more than two years. It makes little sense to litigate alimony as the parties will only incur more legal fees than either is likely to realize."²² Husband recognized the legal entitlement but offered to settle it through a 60/40 division of the marital assets. In light of the Family Court's broad discretion to award attorneys'

²¹ Family Court Docket Entry No. 226, Respondent's Answer to Petitioner's Motion for Attorney Fees ¶ 28 (filed July 19, 2024).

²² Family Court Docket Entry No. 219, Petitioner's Notice and Motion for Fees Exhibit I (filed June 27, 2024). Husband moved to strike the portions of Wife's reply brief and appendix on appeal that were not presented to the Family Court in the first instance. In resolving this appeal, we have considered only those documents and arguments that were presented to the Family Court.

fees and the Family Court record—which reflects that Wife did not show in response to Husband’s fee motion how she meaningfully participated in settlement discussions after his July 2023 offer—we find no abuse of discretion as to the Family Court’s decision to shift fees from July 25, 2023, forward.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED in part, REVERSED in part, and REMANDED TO THE Family Court for further proceedings consistent with this order. Jurisdiction is not retained.

BY THE COURT:

/s/ Karen L. Valihura
Justice