IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARREN BURKE,[1]	§	
	§	No. 351, 2013
Respondent Below-Appellant,	§	
	§	
	§	Court Below–Family Court
v.	§	of the State of Delaware
	§	in and for New Castle County
PATRICIA BURKE,	§	File No. CN99-10337
	§	Petition No. 99-32643
Petitioner Below-Appellee.	§	
	§	

Submitted: October 25, 2013
Decided: December 20, 2013

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

O R D E R

This 20th day of December 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The respondent-appellant, Darren Burke ("Darren"), filed an appeal from the Family Court's June 3, 2013 order denying his motion for reargument pursuant to Family Court Civil Rule 59(e) and the Family Court's April 25, 2013 order granting in part and denying in part the motion of the petitioner-appellee, Patricia Burke ("Patricia"), to reopen the

[1] The Court *sua sponte* assigned pseudonyms to the parties by Order dated July 3, 2013. Supr. Ct. R. 7(d).

judgment pursuant to Family Court Civil Rule 60. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, during their marriage, both Darren and Patricia were employees of the State of Delaware. On January 11, 2001, following their divorce in August of 2000, the Family Court entered an order dismissing the ancillary matter of property division pursuant to Rule 16(e) for the failure of both parties to submit the required financial statements. On June 6, 2004, Patricia filed a motion for pension allocation. In connection with the motion, Patricia submitted two signed Qualified Domestic Relations Orders ("QRDOs"), the first on behalf of Darren against her State pension ("QRDO I") and the second on behalf of herself against Darren's State pension ("QRDO II"). Both QDROs had been signed by the parties in 2000, subsequent to their divorce.

(3) On June 23, 2004, the Family Court, re-opening *sua sponte* its earlier dismissal of the ancillary matter of property division, granted the motion for pension allocation. A copy of QDRO I was signed by the judge, placed in the Family Court file and sent to the State pension office. However, for reasons that are unclear, a copy of QRDO II apparently was never placed in the Family Court's file and apparently was never sent to the State Pension Office. On July 15, 2004, an attorney entered his appearance

on behalf of Darren with respect to ancillary matters. The record reflects that the attorney was retained to examine the Family Court file to determine if there was any impediment to Darren's obtaining a construction loan for a house in Florida.

(4) The record reflects that neither party took any action with respect to the pension allocation issue until Patricia requested to review the Family Court's file in February 2013. On March 26, 2013, Patricia filed a motion to reopen the matter of her motion for pension allocation. In her motion, Patricia alleged that, in 2000, each party had executed a QDRO granting the other party the right to receive payments under his or her State pension and that copies of both QDRO I and QDRO II had been attached to her 2004 motion for pension allocation. Patricia stated that she had been working in Qatar from mid-June until late December 2004 and believed that the State Pension Office had received all the relevant documents from the Family Court. Finally, Patricia alleged that she was not aware of a problem until February 2013, when she contacted the State Pension Office following Darren's retirement in mid-2012 and was told, after several miscommunications, that they had no record of ever having received QDRO II. Subsequently, after reviewing the Family Court's file, she discovered that QDRO II was missing.

(5) In addition to moving to reopen, Patricia also requested that the Family Court accept a copy of the missing QDRO II, correct certain typographical errors in both QDRO I and QDRO II, enter the corrected copies of QRDO I and II and order Darren to pay her that portion of his pension benefits to which she was entitled under the formula contained in the signed QDROs---33.1%---from the date of his retirement up to the present.

(6) In response to Patricia's motion to reopen, Darren admitted signing both QDRO I and II in 2000, but claimed that, when the Family Court dismissed the ancillary matter of property division on January 11, 2001, he assumed that Patricia had abandoned her interest in his pension. He alleged that in reliance on that assumption, he had made personal and financial changes in his life, including re-marrying, purchasing certain real estate, borrowing funds for those purchases and retiring earlier than he otherwise would have done. Darren further alleged that he was unaware of Patricia's 2004 motion for pension allocation. Darren, finally, argued that Patricia's delay in asserting her rights constituted laches that should preclude the Family Court from granting her request for relief. On April 25, 2013, the Family Court granted the relief requested in Patricia's motion to reopen,

with the exception that Patricia would receive a percentage of Darren's pension benefits only prospectively, and not retroactively.

(7) In his appeal from the Family Court's April 25, 2013 order, Darren claims that the Family Court erred and abused its discretion by reopening the matter of the parties' pensions, because Patricia's delay in asserting her rights constituted laches and because the standards of Rule 60 were not satisfied.[2] Darren does not dispute the 33.1% figure asserted by Patricia as the percentage of his monthly pension payment to which she is entitled.

(8) Motions to reopen in the Family Court are governed by Rule 60. In this case, the Family Court relied upon Rules 60(a) and 60(b) (6) in granting Patricia's motion to reopen. Under Rule 60(a), clerical mistakes or mathematical errors in judgments, orders or other parts of the record and errors resulting from oversight or omission may be corrected by the Family Court at any time *sua sponte* or on motion of a party. Under Rule 60(b), the Family Court may relieve a party from a final judgment or order if that party can establish one of the following: 1) mistake, inadvertence, surprise, or excusable neglect; 2) newly discovered evidence; 3) fraud; 4) the judgment

[2] Because Darren presents no claim with respect to his appeal from the Family Court's June 3, 2013 order denying his motion for reargument, we conclude that any such argument has been abandoned and, therefore, we will not address it. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

is void; 5) the judgment has been satisfied; or 6) any other reason justifying relief from the operation of the judgment. In the absence of any legal error, our standard of review of the Family Court's decision to reopen a matter pursuant to Rule 60 is abuse of discretion.[3] This Court has ruled that the Family Court has discretion to vacate a judgment pursuant to Rule 60(b) (6) in "extraordinary circumstances" and may do so "whenever such action is appropriate to accomplish justice."[4]

(9) In its April 25, 2013 order, the Family Court found that: a) there was a clerical error on the part of the Family Court in 2004 when only QDRO I was signed by the judge and placed in the Family Court file; b) the Family Court committed a clerical error in 2004 regarding Patricia's social security number; c) Darren's address had changed since 2004 and the QDROs should be modified to reflect that change; and d) it was the original intent of the Family Court judge in 2004 to sign QDRO II, place it in the Family Court's file and send a copy of it to the State Pension Office in the ordinary course of business. The Family Court concluded that this case involved the kind of "extraordinary circumstances" contemplated in the *Jewell* case and, accordingly re-opened the matter of the parties' pensions in

[3] *Snyder v. Snyder*, 2010 WL 3463390 (Del. 2010); *Cox v. General Motors Corp*., 239 A.2d 706, 707 (Del. 1967) .
[4] *Jewell v. Div. of Soc. Services*, 401 A.2d 88, 90 (Del. 1979) (citing *Klapprott v. United States*, 335 U.S. 601, 615 (1949)).

order to "accomplish justice." The Family Court also determined in the interest of justice not to penalize Darren by declining to order him to disgorge Patricia's share of the pension benefits he had already received.

(10) The Family Court rejected Darren's argument that Patricia's claim was barred by laches,[5] finding that she had waited only one month to file her motion to reopen after discovering that the Family Court file did not contain a copy of QDRO II. The Family Court did not credit Darren's argument that he was prejudiced by any delay by Patricia in filing her motion to reopen. Finally, the Family Court noted that Darren had taken no action in 2004 to oppose Patricia's motion for pension allocation, even though he had engaged counsel to review the Family Court's file shortly thereafter and should have been aware of the filing of Patricia's motion.[6]

(11) We have carefully reviewed the parties' submissions, the Family Court's April 25, 2013 decision, as well as the Family Court record in this case. The record reflects that the Family Court appropriately considered the parties' respective positions in this matter, applied the correct legal standards and acted well within its discretion in granting in part and

[5] *Reid v. Spazio*, 970 A.2d 176, 182 (Del. 2009) (laches constitutes "an unreasonable delay" by the movant after learning "of an infringement of his rights, thereby resulting in material prejudice" to the non-moving party).
[6] Id.

denying in part Patricia's motion to reopen.[7] In the absence of any error or abuse of discretion on the part of the Family Court, we conclude that the Family Court's judgment should be affirmed.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

[7] We note that Darren's arguments regarding Rule 60(b) (1) do not appear to have been presented to the Family Court in the first instance, precluding our review in this appeal. Supr. Ct. R. 8. We are not persuaded by those arguments in any case.