

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT WHARTON,¹

Respondent Below,
Appellant,

v.

JESSICA WHARTON,

Petitioner Below,
Appellee.

§

§ No. 386, 2011

§

§ Court Below – Family Court
§ of the State of Delaware,

§ in and for New Castle County

§ File No. CN90-8219

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Submitted: April 18, 2012

Decided: April 25, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

O R D E R

This 25th day of April 2012, it appears to the Court that:

1) The respondent-appellant, Robert Wharton (the “Husband”), appeals from a Family Court order dividing the parties’ marital estate 50/50 and requiring the Husband to pay to the petitioner-appellee, Jennifer Wharton (the “Wife”), \$4,188.28. The Husband raises two arguments on appeal. First, he contends that the Family Court abused its discretion in finding that the Husband was responsible for a portion of the Wife’s student loan debt. Second, he contends that the Family Court abused its discretion

¹ The Court *sua sponte* assigned pseudonyms to the parties by Order dated August 3, 2011. Supr. Ct. R. 7(d).

in using the Wife's unpaid medical bills to reduce the amount she owed to the Husband.

2) The Husband and the Wife were married on December 16, 1988, separated in August of 2008, and were divorced on May 7, 2009. The parties' assets included the family residence, motor vehicles, a Vanguard 401k plan, and an inheritance from the Husband's mother. At issue here is the Family Court's apportionment of two debts—the Wife's medical bills of \$4,334.20 and the Wife's student loan debt of \$21,974.40—both incurred during the marriage.

3) Between 1995 and 2006, the Husband earned between \$60,000 and \$80,000 per year working as a chemical process technician. Thereafter, he worked as an environmental technician and earned approximately \$40,000 per year. He was last employed for seven months and earned approximately \$17,000, but was laid off in August of 2010. He is currently in good health and collects unemployment in the amount of \$210 per week.

4) The Wife is currently in good health and is employed by Bayada Nurses. She earns \$24.50 per hour. She attended nursing school from 2003 to 2007. During that time, the Wife took out student loans in the amount of \$21,974.40. The Wife testified that the Husband was aware that she took out the loans. Specifically, the Wife testified that there existed a

mutual understanding that both would be responsible for repaying the loans. She further testified that portions of the loans were used to support the family.

5) The Family Court found that both the Wife's student loans and medical bills were marital debts, as they were incurred prior to separation. The Family Court then determined that, because the Wife would be the main beneficiary of the education funded with the student loans, she should be responsible for seventy percent of that debt. The Family Court ultimately ordered a 50/50 split of the marital estate:

Based on the evidence presented, the Court orders a 50/50 split of the marital estate. The Court finds that factors three, five, and six are dispositive. Although Husband earned more than Wife, in the past, Wife now has full time employment due to her degree which was partly paid for through marital funds.

6) In order to achieve the equal split, thirty percent of the student loan debt was credited against the Wife's award. Additionally, the Family Court listed the medical bills as a debt to be satisfied exclusively by the Wife. The Family Court entered its order on July 1, 2011. This appeal followed.

7) When reviewing a Family Court's order, our standard and scope of review involves a review of the facts and law, as well as the

inferences and deductions that the Family Court has made.² To the extent that the issues on appeal implicate rulings of law, we conduct a *de novo* review.³ To the extent that the issues on appeal implicate rulings of fact, we conduct a limited review of the factual findings of the Family Court to assure that they are sufficiently supported by the record and are not clearly wrong.⁴ We will not disturb inferences and deductions that are supported by the record and that are the product of an orderly and logical deductive process.⁵ If the Family Court has correctly applied the law, our review is limited to abuse of discretion.⁶

8) The Husband first contends that the Family Court abused its discretion in finding that the Husband was responsible for a portion of the Wife's student loan debt. The Family Court has broad discretion in dividing marital property.⁷ As with assets, debts incurred during the course of the

² *Powell v. Dep't of Servs. for Children, Youth, & Their Families*, 963 A.2d 724, 730 (Del. 2008); *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

³ *Powell v. Dep't of Servs. for Children, Youth, & Their Families*, 963 A.2d at 730–31; *In re Heller*, 669 A.2d 25, 29 (Del. 1995).

⁴ *Powell v. Dep't of Servs. for Children, Youth, & Their Families*, 963 A.2d at 731; *In re Stevens*, 652 A.2d 18, 23 (Del. 1995).

⁵ *Powell v. Dep't of Servs. for Children, Youth, & Their Families*, 963 A.2d at 731; *Solis v. Tea*, 468 A.2d at 1279.

⁶ *Powell v. Dep't of Servs. for Children, Youth, & Their Families*, 963 A.2d at 731; *Solis v. Tea*, 468 A.2d at 1279.

⁷ *Olsen v. Olsen*, 971 A.2d 170, 178 (Del. 2009) (citing *Gately v. Gately*, 832 A.2d 1251 (Del. 2003)).

marriage are presumed to be marital.⁸ The Family Court found that the Wife's student loan debt was marital in this case "because it was incurred prior to separation and the Husband was aware, or should have been aware, that [the] Wife was accumulating student loan debt for four years during the marriage." The Family Court credited the Wife's testimony that the Husband consented to her schooling and to the loans. The Wife also testified that she used some of the loan proceeds to pay marital expenses.

9) The Family Court's decision to treat the loans as marital property and apportion some to the Husband is consistent with two prior decisions of that court. In *M.R. v. A.R.*, the Family Court apportioned thirty-five percent of wife's student loan debt to husband.⁹ The Family Court determined the debts to be marital and found that, although the husband did not receive a benefit from his wife's degree, he was aware that she was incurring the loans.¹⁰ Likewise, in *C.S. v. K.S.*, the husband did not benefit from his wife's student loans but consented to her incurring them during the marriage.¹¹ Because the loans were incurred during the marriage, the Court treated them as marital property for purposes of dividing the marital

⁸ *A.S. v. R.S.*, 2010 WL 1207532, at *2 (Del. Fam. Ct. Feb. 1, 2010) (citing *In re Marriage of M.M.*, 2003 WL 22264930, at *3 (Del. Fam. Ct. May 22, 2003)); see *Olsen v. Olsen*, 971 A.2d at 178.

⁹ *M.R. v. A.R.*, 2007 WL 4793148, at *7 (Del. Fam. Ct. Aug. 30, 2007).

¹⁰ *Id.*

¹¹ *C.S. v. K.S.*, 1999 WL 33100115, at *4 (Del. Fam. Ct. Dec. 22, 1999).

property.¹² Other jurisdictions have also treated student loans incurred during the marriage as marital property, and apportioned some of that debt to the non-student spouse.¹³

10) Although the Family Court reached a different result in *P.T. v. S.T.*, where it apportioned all of the loans to the husband as the student-spouse, there the Family Court found that the husband had a greater opportunity than his wife to acquire future capital assets and also apportioned their child's student loan debt to wife.¹⁴ Here, by contrast, the Family Court found that the Husband and the Wife had equal opportunities for future earnings. Likewise, in *P.L. v. W.L.*, the wife was held solely responsible for paying her student loan debt where there was no evidence presented that husband benefited from the loan funds or her schooling, and “neither party presented any evidence about the role [h]usband played in [w]ife's decision to return to school.”¹⁵

¹² *Id.*

¹³ See, e.g., *McDougall v. Lumpkin*, 11 P.3d 990, 994 (Alaska 2000) (“We have never required either that student loan debt be treated as non-marital debt, or that the student-spouse pay the student loan debt regardless of the parties' economic position”); *Nornes v. Nornes*, 884 N.E.2d 886, 889 (Ind. Ct. App. 2008) (holding “trial court erred by assigning the Wife's student loans on the basis that Wife has the degree and she should now pay for it”); *Layne v. Layne*, 2009 WL 3352701, at *2-3 (Va. Ct. App. Oct. 20, 2009) (holding wife's loan debt acquired during marriage was marital property and husband should pay one-quarter of debt where wife testified that funds were used for family expenses).

¹⁴ *P.T. v. S.T.*, 2007 WL 4793124, at *3 (Del. Fam. Ct. Nov. 28, 2007).

¹⁵ *P.L. v. W.L.*, 2006 WL 4552932, at *4 (Del. Fam. Ct. Dec. 13, 2006).

11) The Family Court considered the parties' overall economic positions in allocating the marital assets and debts. The Family Court found that the Husband was healthy and noted that the Husband had earned more than the Wife in the past, although the Wife presently had full employment. The Family Court also found that the Wife and the Husband had a similar opportunity for future acquisitions of capital assets and income. The Wife testified that she took out the student loans with the Husband's knowledge and used portions of the funds to pay for family expenses. The Family Court did not abuse its discretion in treating the student loans as marital property and apportioning thirty percent of those loans to the Husband.

12) The Husband also contends that the Family Court abused its discretion in using the Wife's unpaid medical bills to reduce what she owed to the Husband. The Family Court credited the Wife's testimony and an insurance company statement in finding that the Wife incurred \$4,344.20 in medical expenses during the marriage. The statement indicated that it was not a bill, but stated that the listed expenses were the Wife's responsibility. The expenses were incurred three years before the hearing, and the Wife testified that she has received calls from creditors regarding the debt. The Family Court did not abuse its discretion in crediting the Wife's testimony and counting the medical expenses as a marital debt.

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

BY THE COURT:

/s/ Randy J. Holland
Justice