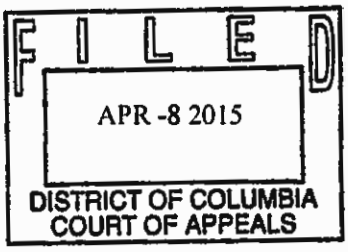
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 12-FM-1980

ROBERT H. DESELMS, APPELLANT,

v.

JAEA F. HAHN, APPELLEE.



Appeal from the Superior Court of the
District of Columbia
(DRB-3099-11)

(Hon. Alfred S. Irving, Jr., Trial Judge)

(Submitted October 24, 2014 Decided April 8, 2015)

Before WASHINGTON, *Chief Judge*, FISHER, *Associate Judge* and FARRELL, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: This case arises out of the divorce and child custody proceedings between appellant Dr. Robert DeSelms ("Dr. DeSelms") and appellee Jaea Hahn ("Ms. Hahn"). At the conclusion of trial, the Superior Court issued findings of fact and conclusions of law concerning the distribution of marital assets and child custody, ruling that it is in the best interest of the child ("L.D.") to grant joint legal custody to both parents, with Ms. Hahn having final decision-making authority and sole physical custody of L.D. Dr. DeSelms raises the following issues on appeal: (1) whether the trial court erred by failing to find that the incidents in which Ms. Hahn physically struck Dr. DeSelms constituted intrafamily offenses, (2) whether the trial court erred in the distribution of marital property, (3) whether the trial judge erred in denying alimony for Dr. DeSelms, and (4) whether the trial court committed "procedural errors" that were grounds for a new trial. We find that the trial court erred in concluding that Ms. Hahn's admitted instances of striking Dr. DeSelms were not intrafamily offenses, but because the record and the trial court's otherwise sound consideration of the factors set out in D.C. Code § 16-

914 (a)(3) nonetheless support the trial court's custody ruling, we find this error to be harmless. We find no other error, and therefore affirm.

I.

Appellant Dr. Robert DeSelms and appellee Jaea Hahn were married in March 2004. At that time, Ms. Hahn was an attorney at the U.S. Securities and Exchange Commission and Dr. DeSelms was a patent agent employed by a law firm. Dr. DeSelms lost his job later that year, and despite Ms. Hahn's objections, had not maintained a full-time job since November 2004. Dr. DeSelms' and Ms. Hahn's one child, L.D., was born June 25, 2006. Until September 2010, Dr. DeSelms and Ms. Hahn lived with their child in a condominium purchased by Ms. Hahn before their marriage. Although Dr. DeSelms was home for most of the day during their marriage, Ms. Hahn determined that he was not a reliable caregiver and enrolled the child in day care, which she paid for and to which she transported the child. Ms. Hahn testified that she took L.D. to school and to appointments, that she regularly participated in the child's school, extracurricular, and social activities, and that Dr. DeSelms did not regularly participate in these activities. Dr. DeSelms never provided financial support for his daughter. Dr. DeSelms testified that he contributed approximately $570 per month in "rent" toward the mortgage on the home during the first six months of the marriage, although he lived there for six years. Both parties testified that Dr. DeSelms rarely left the home, that he was estranged from his family, and that Ms. Hahn was responsible for all of the family's shopping, cleaning, and laundry. Ms. Hahn and Dr. DeSelms fought frequently during the marriage, often as a result of her frustration with his failure to seek employment or contribute financially to the household. Ms. Hahn admitted to several incidents where she hit or slapped Dr. DeSelms and several instances where she threw objects at him, including a book and an empty pill bottle. In November 2009, Ms. Hahn asked Dr. DeSelms for a divorce. Efforts to reach a separation agreement and to arrange for Dr. DeSelms to move out of the house failed. On September 20, 2010, Ms. Hahn locked Dr. DeSelms out of the house, in order to begin a period of physical separation. During the separation, Dr. DeSelms lived in various hotels. Prior to trial, Ms. Hahn had primary physical custody of L.D., and the child visited with Dr. DeSelms primarily on the weekends.

Ms. Hahn filed a Complaint for Absolute Divorce on October 7, 2011, and Dr. DeSelms filed a Contested Answer on October 28, 2011. Ms. Hahn asked for a determination upon the issues related to the divorce and sought sole legal and primary physical custody of L.D. Dr. DeSelms sought sole legal and physical custody of L.D., child support, and alimony payments. Both parties asked the trial

court to divide marital property and marital debt. A trial was held before the Honorable Alfred S. Irving, Jr., on June 26-27, and July 18, 2012. On September 24, 2012, the trial court issued its Findings of Fact, Conclusions of Law, and Judgment of Absolute Divorce, Custody, and Visitation ("Judgment"). Considering each of the 17 statutory factors set out in D.C. Code § 16-914 (a)(3), the trial court found that it would be in the best interest of the child to grant joint legal custody to both parents, with Ms. Hahn having final decision-making authority, and sole physical custody to Ms. Hahn.[1] In reaching this conclusion, the trial judge explained that although it made findings of fact that Ms. Hahn slapped and threw objects at Dr. DeSelms, "none of the incidents rise to the level of an intrafamily offense" and that the court "does not find what [appellant] characterized as emotional and physical abuse to be such that the Court's custody decision would be affected." Dr. DeSelms filed a Motion to Alter or Amend Judgment or for New Trial ("First Motion to Alter or Amend Judgment") on October 4, 2012, arguing in part, that the trial court erred in finding that no intrafamily offenses were committed. On November 9, 2012, the trial court issued an order denying Dr. DeSelms' First Motion to Alter or Amend Judgment ("Order Denying New Trial"). In denying the motion, the trial court again acknowledged that "striking and yelling existed" and that "[Ms. Hahn's] frustrations occasionally manifested itself in her physically striking [Dr. DeSelms]," but it nonetheless concluded that "intrafamily offenses did not occur." Dr. DeSelms filed a Notice of Appeal on December 12, 2012.

II.

Appellant argues that because Ms. Hahn admitted at trial to striking him and throwing objects at him during their marriage, and because the trial court made factual findings to that effect, the trial court committed error in failing to recognize in the court's custody ruling that an "intrafamily offense" had occurred. We agree, but find this error harmless because the outcome of the custody determination would not be different even if the trial court had found the existence of an intrafamily offense.

This court will reverse a trial court's order regarding child custody only where there has been a manifest abuse of discretion. *Jordan v. Jordan*, 14 A.3d

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[1] The trial court noted that "[w]hen Dr. DeSelms reestablishes himself and finds a home suitable for a minor child, [he] may petition the Court for joint physical custody."

1136, 1146 (D.C. 2011). In order to determine whether the trial court abused its discretion, the court must look to whether the trial court considered "all relevant factors and no improper factor . . . and then [to] evaluate whether the decision is supported by substantial reasoning . . . drawn from a firm factual foundation in the record." *In re A.M.*, 589 A.2d 1252, 1257-58 (D.C. 1991). Factual findings that inform the judge's choice are reviewed for clear error, D.C. Code § 17-305 (a), and "within limits, the choice will be sustained despite errors committed in its exercise." *Prost v. Greene*, 652 A.2d 621, 626 (D.C. 1995) (citing *Johnson v. United States*, 398 A.2d 354, 366-67 (D.C. 1979)).

In the District of Columbia, there is a rebuttable presumption that joint custody is in the best interest of the child except in certain circumstances, including when a judicial officer has found by a preponderance of the evidence that an intrafamily offense, as defined in D.C. Code § 16-1001 (8), has occurred. D.C. Code § 16-914 (a)(2). In such a case, there shall be a rebuttable presumption that joint custody is not in the best interest of the child. *Id.* An intrafamily offense is defined as "an act punishable as a criminal offense that is committed or threatened to be committed" upon a person who is in certain personal or family relationships with the offender. D.C. Code § 16-1001 (6)-(9) (defining interpersonal violence, intimate partner violence, and intrafamily violence, and intrafamily offense). Under § 16-914 (a-1), if the court finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. D.C. Code § 16-914 (a-1).

In the present case, the trial court stated in its September 24, 2012, Judgment that Ms. Hahn "admitted to shouting obscenities at [appellant], jabbing [him] with her finger, slapping [him], and throwing objects at [him]." And again in its November 9, 2012, Order Denying New Trial, the trial court acknowledged its findings that "striking and yelling existed." Notwithstanding these factual findings, the trial court stated that it "does not find what [D]r. DeSelms has characterized as emotional and physical abuse to be such that the Court's custody decisions would be affected" and that "the Court simply does not find that the incidents alleged are sufficient to make the significant finding [Ms. Hahn] committed intrafamily offenses." We hold that the trial court erred in finding Ms. Hahn did not commit intrafamily offenses, and therefore erred by not applying the requisite statutory presumption against granting custody to the offending party. Striking, slapping, and throwing objects are all assaults in violation of D.C. Code § 22-404 (a). *See, e.g., P.F. v. N.C.*, 953 A.2d 1107 (D.C. 2008) (slap found to be

an intrafamily offense); *Williams v. United States*, 887 A.2d 1000, 1002 (D.C. 2005) (throwing an object, in this case a shoe, with the intent to hit another person, found to be an assault). Ms. Hahn's relationship with Dr. DeSelms makes her violent acts against him intrafamily offenses under the plain terms of D.C. Code § 16-1001 (6)(A) (sharing mutual residence); (6)(B) (married to); (9) (related by marriage or has a child in common). Here, Ms. Hahn testified that during the marriage she threw objects including books, papers, and empty pill bottles at Dr. DeSelms, and that she hit and slapped him on multiple occasions. Given her admission of actions that constitute criminal assault against Dr. DeSelms, the trial court's finding that "intrafamily offenses did not occur" is clearly erroneous.

Consequently, in finding that Ms. Hahn's acts did not "rise to the level of an intrafamily offense," the trial court incorrectly bypassed the child custody statute's burden-shifting requirements under D.C. Code § 16-914 (2) and (a-1). When a trial court finds that an intrafamily offense has occurred, the statutory presumption in favor of joint custody is eliminated and a presumption arises against awarding custody to the offending party. *See* D.C. Code § 16-914 (2). If a judicial officer awards custody or visitation rights to a parent who has committed an intrafamily offense, the statute requires the officer to make specific written findings explaining his or her reasons for doing so. D.C. Code § 16-914 (a-1). A parent who has committed an intrafamily offense has the burden of proving that "visitation will not endanger the child or significantly impair the child's emotional development." *Id.* This requirement applies not only where an offending parent seeks visitation, but also custody. *P.F.*, 953 A.2d at 1112. Because it failed to find that an intrafamily offense occurred, the trial court did not properly apply the statute's rebuttable presumption against awarding custody to Ms. Hahn. Dr. DeSelms argues that our decision in *P.F. v. N.C.* requires a reversal of the trial court's decision because in that case, like this one, the trial court failed to adequately engage in the "inquiry required by the District of Columbia law whenever a parent has been found to have committed an intrafamily offense." 953 A.2d at 1115. In that case, a father who the court had found committed two intrafamily offenses was awarded custody of the children in the "absence of any meaningful analysis" of how the judge weighed the abuse in reaching his conclusion. *Id.* at 1116. On this basis, this court reversed because it "lack[ed] the requisite assurance that the purposes of [the child custody statute] were duly carried out by the trial judge." *Id.* We do not share that same concern on the record before us. It is not as if the trial court in the present case failed to acknowledge the incidents in which Ms. Hahn acted out physically against Dr. DeSelms. On the contrary, the trial court evaluated Ms. Hahn's acts and found them mitigated as "justified" frustrations with Dr. DeSelms' own actions, and concluded several times that the acts were not of a severity "such that the Court's

custody decision would be affected." It is apparent from the record that in the trial court's judgment Ms. Hahn's physical acts against Dr. DeSelms were relatively minor when it came to an evaluation of the entire mosaic of the family relationship. While such findings do not obviate the need to apply the required statutory burden-shifting framework, the trial court's analysis in this case considered the evidence of the intrafamily offenses in determining that Ms. Hahn's acts were not a threat to Dr. DeSelms and would "not endanger the child or significantly impair the child's emotional development." D.C. Code § 16-914 (a-1). Thus, the trial court's analysis is materially distinguishable from the situation we faced in *P.F. v. N.C.*

Based on the trial court's extensive factual findings, and the application of those facts to the seventeen factors required to be considered in making custody determinations under the statute, we are satisfied that had the trial court applied the correct presumption in this case, the outcome would not have been different. Most importantly, the court found: Ms. Hahn is "more emotionally equipped and organized to handle parenting responsibilities" and had already carried out most parenting activities during the daughter's life; the "child is attached to [Ms. Hahn] and "does not hold the same kind of affinity for Dr. DeSelms"; Dr. DeSelms "lives a transient lifestyle unsuitable for the minor child"; Dr. DeSelms' lack of "emotional stability" is a concern; Ms. Hahn's alleged anger or frustration will not "stand in the way of her parenting"; Dr. DeSelms seeks physical custody "solely to ensure that [Ms. Hahn] continues to support him financially"; Dr. DeSelms "cannot manage a few short hours with his daughter without appealing to [Ms. Hahn] for help"; Dr. DeSelms "certainly cannot handle physical custody"; and finally, Dr. DeSelms "admits he is not in a position currently to care for the minor child." For these reasons and others, the court granted joint legal custody to both parents, and sole physical custody to Ms. Hahn, with physical custody by Dr. DeSelms limited "until he is able to stabilize his life and find suitable housing and employment." On this record, we are convinced that a remand to the trial court to apply the appropriate presumption in this case would not serve the interests of justice because it would not yield a different result. Unlike situations where we were unable to determine whether the trial court considered the domestic violence in the context of its analysis or where the trial court made mention of the improper conduct but did not provide insight into how it viewed the evidence in light of the entire relationship, the trial court here gave adequate consideration to Ms. Hahn's "physical acts of frustration." Therefore, "[r]eversing and remanding the case for an explicit finding would be a waste of judicial resources and would elevate form over substance." *Jordan*, 14 A.3d at 1150. In *Jordan*, the court upheld an order awarding joint legal and physical custody notwithstanding a finding that the father committed intrafamily offenses against the mother. *Id.* at 1140-43. As in the

Jordan case, we conclude that despite the trial court's failure to specifically find that an intrafamily offense occurred, and its resulting failure to apply the correct statutory presumption, this error did not materially affect the outcome of the custody determination and, therefore, the error was harmless.

III.

Dr. DeSelms' remaining claims can be dismissed more summarily. First, he argues, in conclusory fashion, that the trial court abused its discretion in the distribution of marital property. Pursuant to D.C. Code § 16-910 (b), the court must distribute marital property in an "equitable, just and reasonable" manner. In making the distribution, the court is required to consider the factors set out in D.C. Code § 16-910 and any other relevant evidence. The trial court is accorded broad discretion in adjusting property rights of the parties incident to a divorce. *Benvenuto v. Benvenuto*, 389 A.2d 795, 795 (D.C. 1978). If the trial court's "findings of fact, conclusions of law and judgment, taken together, . . . present an integrated, internally consistent and readily understood whole," its decisions will be allowed to stand on appeal. *Bowser v. Bowser*, 515 A.2d 1128, 1130 (D.C. 1986).

Here, the trial court properly considered each of the twelve factors required under D.C. Code § 16-910, and its findings of fact and conclusions of law regarding its allocation of the assets and debts between the parties is supported by the record. Therefore, we are satisfied that the trial court did not abuse its discretion in distributing the marital property.

Next, Dr. DeSelms contends that the trial judge erred in refusing to grant him alimony in this case. Alimony may be granted pursuant to D.C. Code § 16-913 as a means of providing support to a recipient where it is "reasonable and necessary." *Leftwich v. Leftwich*, 442 A.2d 139, 142 (D.C. 1982). There is no fixed formula for determining whether to award alimony, nor in what amount or for what duration; each case must be decided on its own facts. *McEachnie v. McEachnie*, 216 A.2d 169 (D.C. 1966). The trial court carefully weighed each of the nine relevant statutory factors and denied Dr. DeSelms' request for alimony explaining that he was capable of supporting himself "given his age, health, and education." Finding no error, we affirm the trial court's denial of alimony.

Finally, Dr. DeSelms contends that the trial court committed "procedural errors," "including frequent demands that [he] not pursue otherwise relevant lines of questioning related to domestic violence and other matters" and asserts these

errors are grounds for a new trial. The vague and unsupported claim of procedural errors lacks merit, and is referenced only in passing in his brief on appeal. The record shows Dr. DeSelms was given sufficient opportunity to present his case. Responding to his assertion of procedural error in his First Motion to Alter or Amend Judgment, the trial court noted:

> The court only interceded in Defendant's examination of Plaintiff when it was necessary to bring an end to questioning that had grown redundant or had ceased to yield relevant testimony. When the court did interject, it made certain to explain why to Defendant, to give him an opportunity to refocus his questioning. Defendant's opportunity to conduct a full examination of Plaintiff, within the Rules of Evidence, was not impeded by the Court in any way.

A trial court has wide latitude to impose reasonable limits on cross-examination when the questioning becomes "repetitive or only marginally relevant." *Austin v. United States*, 64 A.3d 413, 419 (D.C. 2013). Further, trial courts enjoy broad discretion when granting or denying a motion for a new trial, and such a motion should be granted where allowing the verdict to stand would result in a miscarriage of justice. *See Wolff v. Washington Hosp. Ctr.*, 938 A.2d 691 (D.C. 2007); *United Mine Workers of Am. v. Moore*, 717 A.2d 332, 337 (D.C. 1998). Our review of the record confirms the trial court's statement that it did not unreasonably limit Dr. DeSelms examination of Ms. Hahn. In fact, at the end of the second day of trial, when Dr. DeSelms expressed concern that he had not been permitted sufficient time to fully present his case, the trial court gave him more time than had been originally anticipated. Because Dr. DeSelms was not prevented from presenting material evidence to the trial court, the trial court decision to limit his cross-examination of Ms. Hahn was not an abuse of discretion and therefore, the trial court did not err in denying his motion for a new trial.

For the reasons stated above, the decision of the trial court is

Affirmed.

ENTERED BY DIRECTION OF THE COURT:

JULIO A. CASTILLO
Clerk of the Court

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