SUPREME COURT OF APPEALS OF WEST VIRGINIA

Gladys J. v. Ronnie J.

No. 15-0191 (Cabell County 12-D-598) · No. 15-0191 · Decided June 3, 2016

SUMMARY

The West Virginia Supreme Court of Appeals reviewed a divorce action involving spousal support, child support, dependent-child tax exemptions, and attorney's fees. The court affirmed in part, reversed in part, and remanded for further proceedings because the lower courts did not adequately consider statutory spousal-support factors, current income, tax-benefit findings, and attorney's-fee factors.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Menis E. Ketchum; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	June 3, 2016
DOCKET	15-0191
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from circuit court order affirming family court decision in divorce action.
STANDARD OF REVIEW	Findings of fact reviewed under clearly erroneous standard; application of law to facts under abuse of discretion; questions of law de novo.
PRECEDENTIAL VALUE	published
PARTIES	Gladys J. v. Ronnie J.

TOPICS

family law procedure · divorce · dissolution of marriage · alimony · spousal support · child support · tax · appellate procedure · standard of review · preservation of error

PRACTICE AREAS

Family Law Appellate Practice

QUESTIONS PRESENTED

1. Whether the circuit court erred in affirming the family court's determination that the wife was entitled to only $500 per month permanent spousal support
2. Whether the circuit court erred in affirming the family court's award of child support that was not based upon the husband's gross income at the time of the final hearing
3. Whether the circuit court erred in affirming the family court's award of the dependent children exemptions to the husband
4. Whether the circuit court erred in affirming the family court's determination that the husband pay the wife's attorney's fees and costs in the amount of only $3,000

HOLDINGS

1. The family court erred because it failed to consider all twenty statutory factors under W. Va. Code § 48-6-301 and failed to consider the husband's fault under W. Va. Code § 48-8-104.
2. Because the spousal support award is reversed, the child support award is also reversed and remanded for consideration of all current gross income information.
3. The family court erred by failing to follow W. Va. Code § 48-13-801, which requires allocation to the payee parent unless otherwise agreed, and requires findings that the payee's income and child support is greater when exemption is awarded to payor.
4. The family court abused its discretion by failing to consider the factors set forth in Banker v. Banker.

KEY QUOTATIONS

> *"In divorce actions, an award of attorney's fees rests initially within the sound discretion of the family law master and should not be disturbed on appeal absent an abuse of discretion. In determining whether to award attorney's fees, the family law master should consider a wide array of factors including the party's ability to pay his or her own fee, the beneficial results obtained by the attorney, the parties' respective financial conditions, the effect of the attorney's fees on each party's standard of living, the degree of fault of either party making the divorce action necessary, and the reasonableness of the attorney's fee request."* (at 10)

> *"Unless otherwise agreed to by the parties, the court shall allocate the right to claim dependent children for income tax purposes to the payee parent except in cases of extended shared parenting. In extended shared parenting cases, these rights shall be allocated between the parties in proportion to their adjusted gross incomes for child support calculations. In a situation where allocation would be of no tax benefit to a party, the court need make no allocation to that party. However, the tax exemptions for the minor child or children should be granted to the payor parent only if the total of the payee parent's income and child support is greater when the exemption is awarded to the payor parent."* (at 9)

> *"In determining whether spousal support is to be awarded, or in determining the amount of spousal support, if any, to be awarded, the court shall consider and compare the fault or misconduct of either or both of the*

> *parties and the effect of the fault or misconduct as a contributing factor to the deterioration of the marital relationship."* (at 6)

FACTUAL BACKGROUND

The parties married in 1987 and had three children. The husband filed for divorce in 2012, living in Virginia and earning $145,250 annually. The wife resided in West Virginia, held a bachelor's degree but chose not to work. The family court awarded $500 per month permanent spousal support, $1,640 per month child support, granted the dependent tax exemptions to the husband, and ordered the husband to pay $3,000 in attorney's fees. The wife appealed.

PROCEDURAL HISTORY

The wife appealed the family court's orders to the circuit court, which affirmed. She then appealed to the Supreme Court of Appeals.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the family court for further proceedings consistent with this decision regarding the spousal support award, the child support award, the dependent children tax exemption, and the attorney's fee award.

CASES CITED

- United States v. Dunkel, 927 F.2d 955 (7th Cir. 1991)
- State, Dep't of Health and Human Res. ex rel. Robert Michael B. v. Robert Morris N., 195 W. Va. 759, 466 S.E.2d 827 (1995)
- Teague v. Bakker, 35 F.3d 978 (4th Cir. 1994), cert. denied 513 U.S. 1153 (1995)
- State v. Honaker, 193 W.Va. 51, 454 S.E.2d 96 (1994)
- Carr v. Hancock, 216 W.Va. 474, 607 S.E.2d 803 (2004)
- Province v. Province, 196 W.Va. 473, 473 S.E.2d 894 (1996)
- Hastings v. Hastings, 201 W. Va. 354, 497 S.E.2d 203 (1997)
- Rogers v. Rogers, 197 W.Va. 365, 475 S.E.2d 457 (1996)
- Sloan v. Sloan, 219 W. Va. 105, 632 S.E.2d 45 (2006)
- Mayle v. Mayle, 229 W. Va. 179, 727 S.E.2d 855 (2012)
- Banker v. Banker, 196 W. Va. 535, 474 S.E.2d 465 (1996)