

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Donna S. v. Travis S.

No. 21-0166 (W. Va. May 6, 2022) · No. No. 21-0166 · Decided May 6, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the circuit court’s decision setting aside a mediated settlement agreement in a divorce proceeding. The court held that the family court had jurisdiction under West Virginia Code § 48-5-706 to modify the final divorce order and that the agreement was unenforceable because it depended on illusory promises and lacked a meeting of the minds regarding the transfer of marital property and a right of way. The court further held that the invalid provisions were integral to the agreement and that the entire mediated settlement agreement was properly set aside.

CASE DETAILS

|                       |                                                                                                                                                                                                            |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                  |
| WRITING FOR THE COURT | Justice Armstead; Justice Bunn did not participate                                                                                                                                                         |
| JURISDICTION          | West Virginia                                                                                                                                                                                              |
| DECIDED               | May 6, 2022                                                                                                                                                                                                |
| DOCKET                | No. 21-0166                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Petitioner appealed the Circuit Court of Mercer County's order affirming a family court order that set aside and declared unenforceable a mediated settlement agreement incorporated into a divorce order. |
| STANDARD OF REVIEW    | Findings of fact made by the family court are reviewed under the clearly erroneous standard; application of law to facts is reviewed for abuse of discretion; questions of law are reviewed de novo.       |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                             |
| PARTIES               | Donna S. v. Travis S.                                                                                                                                                                                      |

TOPICS

- family law procedure
- dissolution of marriage
- equitable distribution
- mutual assent
- statutory interpretation

## PRACTICE AREAS

family law

contracts

statutory interpretation

appellate procedure

real estate

## QUESTIONS PRESENTED

1. Whether West Virginia Code § 48-5-706 gave the family court jurisdiction to modify or set aside the final divorce order and incorporated mediated settlement agreement based on the effect of the disputed land exchange on equitable distribution.
2. Whether the statutory disjunctive "or" in West Virginia Code § 48-5-706 should be construed as "and," thereby requiring all listed conditions before a final divorce order may be modified.
3. Whether the mediated settlement agreement was unenforceable for lack of mutual assent because it depended on promises by the respondent's parents, who were not parties to the agreement and were not bound by it.
4. Whether only the provisions concerning the land transfer should be invalidated or whether the entire mediated settlement agreement had to be set aside.

## HOLDINGS

1. West Virginia Code § 48-5-706 gives a family court jurisdiction to modify a final divorce decree when any one of the statute's listed requirements is met. The catch-all provision in subsection (3) applied because the inability to consummate the exchange of the three acres for the right of way directly affected equitable distribution of marital property.
2. The court declined to replace the Legislature's use of "or" with "and" and held that § 48-5-706 is not limited to modifications involving alimony, child support, or child custody.
3. The mediated settlement agreement was unenforceable because its bargained-for exchange depended on promises by the respondent's parents, who were not parties to the divorce proceeding, had not agreed to be bound, and could not be compelled by the family court to convey the right of way or pay the associated costs.
4. The respondent's parents were not third-party beneficiaries of the mediated settlement agreement because the agreement was not made for their sole benefit; instead, their performance was part of the consideration supporting the parties' own property-division agreement.
5. The entire mediated settlement agreement had to be set aside rather than severing only the disputed land provisions because those provisions were integral and inextricably intertwined with the parties' overall bargained-for exchange and equitable distribution of marital property.

## KEY QUOTATIONS

*"Based upon our analysis of the statute in question, we reach the inescapable conclusion that the clear and unambiguous provisions of West Virginia Code § 48-5-706 (2001) provide a family court jurisdiction to modify a final divorce decree if any of the requirements contained in its subsections are met."* (at 10)

*"Accordingly, the parents are not third-party beneficiaries as they were required to give up something in the MSA rather than benefitting from it, making them an integral part of the bargained-for exchange forming the*

MSA.” (at 15)

“Thus, the family court was obligated to reopen the entire distribution of marital assets to recalculate equitable distribution.” (at 16)

## FACTUAL BACKGROUND

The parties were married in 2000 and had two children. During their divorce proceedings, they mediated an agreement dividing marital property, including an agreement to transfer three acres of marital land to Travis S.'s parents in exchange for the parents' conveyance of a right of way to Donna S. and payment of certain surveying and conveyance costs. The sketch identifying the three acres was destroyed, and the parties later disputed the land's size, location, and the parents' obligations. The family court concluded that the agreement lacked a meeting of the minds and set aside the entire mediated settlement agreement.

## PROCEDURAL HISTORY

Donna S. filed for divorce in Mercer County. The family court entered bifurcated divorce orders and incorporated the parties' mediated settlement agreement concerning equitable distribution, including a proposed transfer of three acres to Travis S.'s parents in exchange for a right of way. After disputes arose concerning the land transfer, the family court found no meeting of the minds, declared the entire agreement unenforceable, vacated the related order, dismissed Donna's contempt petition, and reopened equitable distribution. The circuit court affirmed, and the Supreme Court of Appeals of West Virginia affirmed the circuit court.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

No express remand was ordered. The family court's reopening of the entire equitable-distribution proceeding was upheld.

## CASES CITED

- Carr v. Hancock, 216 W. Va. 474, 607 S.E.2d 803 (2004)
- Slack v. Jacob, 8 W. Va. 612 (1875)
- State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars, 144 W. Va. 137, 107 S.E.2d 353 (1959)
- Burdette v. Burdette Realty Improvement, Inc., 214 W. Va. 448, 590 S.E.2d 641 (2003)
- Segal v. Beard, 181 W. Va. 92, 380 S.E.2d 444 (1989)
- State ex rel. Johnson v. Robinson, 162 W. Va. 579, 251 S.E.2d 505 (1979)
- Stone v. United Eng'g, a Div. of Wean, Inc., 197 W. Va. 347, 475 S.E.2d 439 (1996)
- Bullman v. D & R Lumber Co., 195 W. Va. 129, 464 S.E.2d 771 (1995)
- Anderson v. Town of Friendly, 86 W. Va. 554, 104 S.E. 48 (1920)

- St. Mary's Hosp. v. State Health Planning and Dev. Agency, 178 W. Va. 792, 364 S.E.2d 805 (1987)
- McClanahan v. Putnam County Comm'n, 174 W. Va. 478, 327 S.E.2d 458 (1985)
- Boggess v. Workers' Compensation Div., 208 W. Va. 448, 541 S.E.2d 326 (2000)
- Smith v. State Workmen's Comp. Comm'r, 159 W. Va. 108, 219 S.E.2d 361 (1975)
- Vest v. Cobb, 138 W. Va. 660, 76 S.E.2d 885 (1953)
- Hill v. Peoplesoft USA, Inc., 412 F.3d 540 (4th Cir. 2005)
- Toney v. EQT Corp., No. 13-1101, 2014 WL 2681091, at \*4 (W. Va. June 13, 2014)
- State ex rel. Evans v. Robinson, 197 W. Va. 482, 475 S.E.2d 858 (1996), cert. denied, 519 U.S. 1121 (1997)
- Riner v. Newbraugh, 211 W. Va. 137, 563 S.E.2d 802 (2002)
- Eastern Steel Constructors, Inc. v. City of Salem, 209 W. Va. 392, 549 S.E.2d 266 (2001)
- Woodford v. Glenville State Coll. Hous. Corp., 159 W. Va. 442, 225 S.E.2d 671 (1976)
- State ex rel. Saylor v. Wilkes, 216 W. Va. 766, 613 S.E.2d 914 (2005)
- Virginian Exp. Coal Co. v. Rowland Land Co., 100 W. Va. 559, 131 S.E. 253 (1926)
- Banner Window Glass Co. v. Barriat, 85 W. Va. 750, 102 S.E. 726 (1920)
- Whiting v. Whiting, 183 W. Va. 451, 396 S.E.2d 413 (1990)
- Stuck v. Stuck, 218 W. Va. 605, 625 S.E.2d 367 (2005)
- Mulugeta v. Misailidis, 239 W. Va. 404, 801 S.E.2d 282 (2017)
- Mayhew v. Mayhew, 197 W. Va. 290, 475 S.E.2d 382 (1996), overruled on other grounds by Mayhew v. Mayhew, 205 W. Va. 490, 519 S.E.2d 188 (1999)

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