

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Harold Lee Weaver v. Barbara Jo Weaver

No. 20-0690 (Barbour County 17-D-70) · No. No. 20-0690 · Decided April 15, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a Barbour County Circuit Court order upholding a family court’s rulings in a divorce proceeding. The court rejected challenges to the valuation and classification of marital property, the designation of temporary and permanent spousal support, the denial of a continuance, and the award of attorney fees. The court concluded that the family court’s findings were not clearly erroneous and that it had not abused its discretion.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice William R. Wooton; Justice Alan D. Moats, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	April 15, 2022
DOCKET	No. 20-0690
DISPOSITION	affirmed
PROCEDURAL POSTURE	Harold Lee Weaver appealed the Circuit Court of Barbour County's order denying his appeal from a family court divorce order. The Supreme Court of Appeals reviewed the equitable-distribution, spousal-support, attorney-fee, continuance, and evidentiary issues and affirmed.
STANDARD OF REVIEW	A final equitable-distribution order is reviewed for abuse of discretion; underlying factual findings are reviewed for clear error; and questions of law and statutory interpretations are reviewed de novo. Awards of attorney fees and spousal support are reviewed for abuse of discretion. The Court does not reweigh evidence and will not reverse merely because it might have viewed the evidence differently.
PRECEDENTIAL VALUE	Memorandum decision with limited precedential value under West Virginia Rule of Appellate Procedure 21
PARTIES	Harold Lee Weaver v. Barbara Jo Weaver

TOPICS

equitable distribution

spousal support

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

equitable distribution

spousal support

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the circuit court erred in upholding the family court's denial of Harold's motion to continue the final hearing.
2. Whether the family court used unsupported or arbitrary valuations for the marital residence, restaurant, and Jackson Street property.
3. Whether the family court erred by refusing to allow Harold to testify about an appraisal of the restaurant that he had not produced during discovery or at the hearing.
4. Whether payments made to Barbara before March 1, 2019, were improperly classified as temporary spousal support rather than advanced equitable-distribution payments.
5. Whether the family court improperly classified Harold's IRA as entirely marital property rather than partly separate property.
6. Whether the family court abused its discretion by awarding Barbara \$6,440 in attorney fees.
7. Whether the family court abused its discretion by awarding Barbara temporary and permanent spousal support.

HOLDINGS

1. The circuit court properly upheld the family court's equitable-distribution findings concerning the marital residence, restaurant, Jackson Street property, and IRA. The valuations were supported by evidence and were not clearly erroneous, and Harold failed to prove what portion of the IRA was separate property.
2. A final equitable-distribution order is reviewed under a three-pronged standard: abuse of discretion for the ultimate order, clear error for underlying factual findings, and de novo review for questions of law and statutory interpretation.
3. The family court did not abuse its discretion in awarding temporary and permanent spousal support or in designating the relevant payments as temporary spousal support.
4. The family court did not abuse its discretion by awarding Barbara \$6,440 in attorney fees.
5. The circuit court properly upheld the family court's denial of Harold's motion to continue and its refusal to allow testimony concerning an undisclosed restaurant appraisal.

KEY QUOTATIONS

“In reviewing challenges to findings made by a family court judge that also were adopted by a circuit court, a three-pronged standard of review is applied.” (at 4)

“Equitable distribution under W. Va. Code, 48-2-1, et seq., is a three-step process.” (at 5)

“We agree with the circuit court that the family court’s temporary spousal support award was well within its wide discretion.” (at 6)

FACTUAL BACKGROUND

The parties were married for fourteen years and had twin daughters. Barbara was the primary caregiver, worked part-time at the parties' restaurant, and had monthly income of less than \$900; Harold received Social Security disability benefits and had substantially greater financial resources. The family court valued and divided a marital estate exceeding \$580,000, including the marital home, restaurant, Jackson Street property, and an IRA that Harold claimed was partly separate property. The family court awarded Barbara \$350 per month in permanent spousal support and \$6,440 in attorney fees, finding that Harold had failed to cooperate with financial disclosures and had increased Barbara's fees.

PROCEDURAL HISTORY

Barbara Jo Weaver filed for divorce in August 2017. After a final hearing in January 2019, the family court entered a March 5, 2020, order adopting the parties' parenting agreement, dividing a marital estate, awarding permanent spousal support, and awarding Barbara \$6,440 in attorney fees. The circuit court denied Harold's appeal on August 11, 2020, and the Supreme Court of Appeals affirmed that order.

DISPOSITION

affirmed

CASES CITED

- Banker v. Banker, 196 W. Va. 535, 474 S.E.2d 465 (1996)
- Lucas v. Lucas, 215 W. Va. 1, 592 S.E.2d 646 (2003)
- Mulugeta v. Misailidis, 239 W. Va. 404, 801 S.E.2d 282 (2017)
- Nichols v. Nichols, 160 W. Va. 514, 236 S.E.2d 36 (1977)
- Whiting v. Whiting, 183 W. Va. 451, 396 S.E.2d 413 (1990)
- Mayhew v. Mayhew, 197 W. Va. 290, 475 S.E.2d 382 (1996)
- Mayhew v. Mayhew, 205 W. Va. 490, 519 S.E.2d 188 (1999)
- Gentry v. Mangum, 195 W. Va. 512, 466 S.E.2d 171 (1995)
- Hillberry v. Hillberry, 195 W. Va. 600, 466 S.E.2d 451 (1995)
- Mertz v. Mertz, 858 N.W.2d 292, 300 (N.D. 2015)
- Dahl v. Dahl, 459 P.3d 276, 298-99 (Utah 2015)