

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Leonard E. McWhorter v. Karen L. McWhorter

No. No. 13-1062, Supreme Court of Appeals of West Virginia (May 30, 2014)

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a circuit court order upholding a family court finding of marital waste. The court held that the petitioner’s unreasonable delay in signing an oil and gas lease caused the marital estate to lose value and supported an equitable-distribution award of \$33,705.00. The court also declined to consider a hearsay challenge because no timely objection was made below.

CASE DETAILS

|                       |                                                                                                                                                                                                                            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                  |
| WRITING FOR THE COURT | Chief Justice Robin Jean Davis; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Justice Brent D. Benjamin; Justice Margaret L. Workman                                                                              |
| JURISDICTION          | West Virginia                                                                                                                                                                                                              |
| DECIDED               | May 30, 2014                                                                                                                                                                                                               |
| DOCKET                | No. 13-1062                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Leonard E. McWhorter appealed the Circuit Court of Ohio County's order affirming a family court equitable-distribution order that charged him with marital waste arising from his delay in executing an oil and gas lease. |
| STANDARD OF REVIEW    | Findings of fact made by the family court are reviewed for clear error, application of law to the facts is reviewed for abuse of discretion, and questions of law are reviewed de novo.                                    |
| PRECEDENTIAL VALUE    | Nonprecedential memorandum decision                                                                                                                                                                                        |
| PARTIES               | Leonard E. McWhorter v. Karen L. McWhorter                                                                                                                                                                                 |

TOPICS

- equitable distribution
- family law procedure
- oil and gas
- minerals
- preservation of error

## PRACTICE AREAS

Family law

Appellate procedure

Evidence

Real estate

Oil and gas

## QUESTIONS PRESENTED

1. Whether the family court clearly erred in finding that Leonard's delay in accepting the higher oil and gas lease offer caused depreciation of marital property.
2. Whether the family court could rely on testimony concerning the \$4,500-per-acre lease offer when Leonard did not object to that testimony on hearsay grounds at the hearing.
3. Whether Leonard's delay in entering the lease was unreasonable under the circumstances.

## HOLDINGS

1. A hearsay objection ordinarily must be made at the trial or hearing before the alleged evidentiary error may be raised on appeal; because Leonard did not object to the testimony at the hearing, his hearsay challenge was not preserved.
2. The family court did not clearly err or abuse its discretion in finding that Leonard's delay in accepting the \$4,500-per-acre lease was unreasonable and caused the marital property to dissipate or depreciate by \$1,500 per acre.

## KEY QUOTATIONS

*"Ordinarily, an objection to any incompetent, improper, or hearsay evidence should have been made at a trial or hearing before the admission of any such evidence can be later urged as error on appeal."* (at 2)

*"Thus, the family court did not clearly err or abuse its discretion in concluding that petitioner's delay in entering into a lease at \$4,500.00 per acre was unreasonable under the circumstances and caused the marital property to dissipate or depreciate in value by the amount of \$1,500.00 per acre."* (at 3)

## FACTUAL BACKGROUND

The parties had been married for thirty-four years and owned approximately 44.94 acres of property with oil and gas interests. Evidence indicated that the parties were offered \$4,500 per acre for an oil and gas lease, but Leonard delayed execution based on his position that a temporary order barred transfer of marital property; he later agreed to a lease at \$3,000 per acre. The family court found that his conduct unreasonably caused the marital estate to lose \$1,500 per acre and assessed \$33,705 against him as Karen's half of the depreciation.

## PROCEDURAL HISTORY

Karen McWhorter filed for divorce in 2005. Following an equitable-distribution hearing, the Family Court of Ohio County found that Leonard committed marital waste by unreasonably delaying acceptance of a higher-priced oil and gas lease and ordered him to pay Karen \$33,705. The Circuit Court of Ohio County affirmed, and the Supreme Court of Appeals of West Virginia affirmed the circuit court.

## DISPOSITION

affirmed

#### CASES CITED

- Carr v. Hancock, 216 W.Va. 474, 607 S.E.2d 803 (2004)
- Mayle v. Mayle, 229 W.Va. 179, 727 S.E.2d 855 (2012)
- Evans v. State Compensation Director, 150 W.Va. 161, 144 S.E.2d 663 (1965)
- Johnson v. State Department of Motor Vehicles, 173 W.Va. 565, 318 S.E.2d 616 (1984)

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