

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## Jolene H.W. v. David P.W.

No. 13-0535 (W. Va. Mar. 28, 2014) · No. No. 13-0535 · Decided March 28, 2014

### SUMMARY

The West Virginia Supreme Court of Appeals affirmed a circuit court order upholding a family court’s divorce judgment. The decision addressed spousal support, child support, equitable distribution of marital property and debts, attorney’s fees, and the adoption of a proposed final order. The Court found no abuse of discretion, reversible error, or substantial question of law.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Per Curiam; Chief Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Allen H. Loughry II; Justice Menis E. Ketchum; Justice Brent D. Benjamin                                                                                                                                                                  |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                                                                                              |
| DECIDED               | March 28, 2014                                                                                                                                                                                                                                                                                                             |
| DOCKET                | No. 13-0535                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Wife appealed the Kanawha County Circuit Court's refusal to review the family court's final divorce order, which denied spousal support, awarded child support, and equitably distributed marital property.                                                                                                                |
| STANDARD OF REVIEW    | Family court factual findings are reviewed for clear error, application of law to facts for abuse of discretion, and questions of law de novo. Equitable distribution orders are reviewed for abuse of discretion, underlying factual findings for clear error, and legal questions and statutory interpretations de novo. |
| PRECEDENTIAL VALUE    | Memorandum decision under West Virginia Rule of Appellate Procedure 21; the opinion text does not state a reporter publication or precedential designation.                                                                                                                                                                |
| PARTIES               | Jolene H.W. v. David P.W.                                                                                                                                                                                                                                                                                                  |

### TOPICS

family law procedure

spousal support

child support

equitable distribution

appellate procedure

## PRACTICE AREAS

family law

divorce

spousal support

child support

equitable distribution

appellate procedure

## QUESTIONS PRESENTED

1. Whether the family court abused its discretion by denying wife spousal support based on evidence that she was able to work and on the statutory alimony factors.
2. Whether the family court committed reversible error in equitably distributing the marital property and debts, including awarding the marital home, valuing property and accounts, and granting Conrad credits.
3. Whether the family court improperly calculated child support by using husband's actual pay stubs rather than an anticipated contract and by attributing \$151,000 in annual income to wife.
4. Whether wife was entitled to attorney's fees when that issue had not yet been decided by the lower court.
5. Whether the family court erred by adopting husband's proposed final order verbatim.

## HOLDINGS

1. The family court did not abuse its discretion by denying wife spousal support.
2. The family court did not abuse its discretion or commit reversible error in distributing the marital estate, awarding the marital home, valuing accounts and personal property, or granting credits for marital debt payments.
3. The family court properly calculated child support using husband's actual pay stubs and attributed \$151,000 in annual income to wife.
4. The Supreme Court would not address wife's attorney's-fee assignment because the issue had not been decided by the lower court and was therefore premature.
5. The family court did not err by adopting husband's proposed final order verbatim because wife cited no authority forbidding that practice and the Supreme Court found none.

## KEY QUOTATIONS

*“Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error.”* (p. 1)

*“Considering all of the above, this Court does not find that the family court abused its discretion in denying petitioner’s request for spousal support.”* (p. 3)

*“For the foregoing reasons, we affirm.”* (p. 5)

## FACTUAL BACKGROUND

The parties were married in 1985 and had one minor child. Wife, a dentist who had primarily been a stay-at-home parent, claimed that hand injuries prevented her from returning to dental work and sought spousal support.

Conflicting medical evidence addressed her hand strength and ability to work, while vocational evidence identified available dental positions and an earning capacity of approximately \$151,000 annually. The family court denied spousal support, attributed income to wife for child-support purposes, ordered husband to pay monthly child support, and equitably distributed the marital estate.

## PROCEDURAL HISTORY

The husband filed for divorce in 2011. After several hearings, the family court entered a final order on March 20, 2013, granting the divorce, denying wife spousal support, attributing \$151,000 in annual income to her for support purposes, ordering husband to pay \$801.51 per month in child support, and distributing the marital estate. The circuit court refused wife's appeal by order dated April 25, 2013. The Supreme Court of Appeals affirmed the circuit court's order, finding no substantial question of law or prejudicial error.

## DISPOSITION

affirmed

## CASES CITED

- State ex rel. West Virginia Department of Human Services v. Cheryl M., 177 W. Va. 688, 356 S.E.2d 181 (1987)
- Carr v. Hancock, 216 W. Va. 474, 607 S.E.2d 803 (2004)
- Melinda H. v. William R., 230 W. Va. 731, 742 S.E.2d 419 (2013)
- Nichols v. Nichols, 160 W. Va. 514, 236 S.E.2d 36 (1977)
- Lucas v. Lucas, 215 W. Va. 1, 592 S.E.2d 646 (2003)
- Conrad v. Conrad, 216 W. Va. 696, 612 S.E.2d 772 (2005)
- Burnside v. Burnside, 194 W. Va. 263, 460 S.E.2d 264 (1995)
- McGee v. McGee, 214 W. Va. 36, 585 S.E.2d 36 (2003)

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