

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Kimberly Jo Cole v. Belinda Anderson, Executrix of the Estate of
Dallas Ray Simons

Cole v. Anderson · No. 21-0488 · Decided September 20, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the circuit court’s refusal to entertain Kimberly Jo Cole’s appeal from an agreed final divorce order. The court held that Cole knowingly and voluntarily entered into a fair and equitable property settlement agreement addressing the marital residence, retirement benefits, tax refunds, and equalization payments. The court also concluded that the family court properly adopted and incorporated the agreement into the final order.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	September 20, 2022
DOCKET	21-0488
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Jackson County's order refusing her appeal from an agreed final divorce order entered by the Family Court of Jackson County. She challenged the equitable distribution of marital assets, including treatment of the marital residence and her retirement benefits.
STANDARD OF REVIEW	In reviewing a circuit court order refusing an appeal from a family court order, the Court reviews family-court findings of fact under the clearly erroneous standard, the application of law to the facts under an abuse-of-discretion standard, and questions of law de novo.
PRECEDENTIAL VALUE	published memorandum decision
PARTIES	Kimberly Jo Cole v. Belinda Anderson, Executrix of the Estate of Dallas Ray Simons

TOPICS

equitable distribution

divorce

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

appellate procedure

equitable distribution

QUESTIONS PRESENTED

1. Whether the family court properly adopted and incorporated the parties' oral property settlement agreement into the agreed final divorce order.
2. Whether the equitable distribution provisions concerning the marital residence and Cole's retirement benefits should be disturbed on appeal.
3. Whether the circuit court properly refused Cole's appeal from the family court's agreed final order.

HOLDINGS

1. An oral separation or property settlement agreement may be placed on the record and adopted by a family court when the parties understand its terms, voluntarily agree without coercion, receive adequate financial disclosure, and the court finds the agreement fair and equitable.
2. The equitable distribution provisions were enforceable and would not be disturbed because Cole knowingly and intelligently agreed to them, and the record supported the family court's findings that the agreement was voluntary, fair, and equitable.
3. The circuit court properly refused Cole's appeal from the family court's agreed final order.

KEY QUOTATIONS

“A skeletal ‘argument,’ really nothing more than an assertion, does not preserve a claim. . . . Judges are not like pigs, hunting for truffles buried in briefs.” (5)

“The parties understand the terms of the agreement. The agreement was entered into voluntarily and was not obtained by fraud, duress, or other unconscionable conduct.” (6)

FACTUAL BACKGROUND

Cole and Dallas Ray Simons married in 1985 and separated in 2019. Cole had purchased the underlying real property before the marriage, but a residence was constructed on it during the marriage, and Simons contributed to the construction. At the final divorce hearing, the parties placed a property settlement agreement on the record that addressed the marital residence, retirement benefits, tax refunds, personal property, and equalization payments; both testified that they understood and voluntarily accepted the agreement.

PROCEDURAL HISTORY

The Family Court of Jackson County entered an agreed final order granting the parties a divorce and incorporating their property settlement agreement. The circuit court refused Cole's appeal, finding that her

skeletal argument did not identify a cognizable family-court error. The Supreme Court of Appeals of West Virginia affirmed the circuit court's order.

DISPOSITION

affirmed

CASES CITED

- Carr v. Hancock, 216 W. Va. 474, 607 S.E.2d 803 (2004)
- State, Dep't of Health and Human Res., Child Advocate Office on Behalf of Robert Michael B. v. Robert Morris N., 195 W. Va. 759, 466 S.E.2d 827 (1995)
- United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991)
- Watts v. Ballard, 238 W. Va. 730, 735 n.7, 798 S.E.2d 856, 861 n.7 (2017)
- Sands v. Sec. Trust Co., 143 W. Va. 522, 102 S.E.2d 733 (1958)
- State ex rel. Dillon v. Egnor, 188 W. Va. 221, 227, 423 S.E.2d 624, 630 (1992)
- Franklin v. Pence, 128 W. Va. 353, 356, 36 S.E.2d 505, 508 (1945)
- Gangopadhyay v. Gangopadhyay, 184 W. Va. 695, 403 S.E.2d 712 (1991)
- Summers v. Summers, 186 W. Va. 635, 413 S.E.2d 692 (1991)