

14-0042 COPY

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

In Re: The Marriage of:
DAVID J. RIFFLE,

Petitioner,

Civil Action No. 12-D-459-5
Chief Judge James A. Matish

vs.

SHIRLEY I. RIFFLE (NKA MILLER),

Respondent.

**ORDER AFFIRMING FAMILY COURT'S NUNC PRO TUNC
ORDER, REVERSING FAMILY COURT'S ENTRY OF A MUTUAL
RESTRAINING ORDER, AND REVERSING AND REMANDING CASE FOR
FURTHER PROCEEDINGS TO DETERMINE STATUS OF MARITAL HOME**

Presently pending before the Court is Shirley I. Miller's Amended Petition for Appeal filed on September 3, 2013. David J. Riffle subsequently filed a response to Ms. Miller's appeals on September 26, 2013. On September 27, 2013, the Court held a hearing at which Ms. Miller appeared in person, *pro se*. Mr. Riffle did not appear in person due to medical conditions. Appearing on behalf of Mr. Riffle was his counsel of record, Jerry Blair.

After reviewing the petition for appeal, the response to the petition for appeal, considering the parties' arguments at the September 27, 2013 hearing, considering the parties' briefs and responses, studying the video recordings of the family court's January 14, 2013 and August 6, 2013 hearings, reviewing the court file, and analyzing pertinent legal authority, this Court concludes that the family court's *Nunc Pro Tunc* Order is **AFFIRMED**, the family court's entry of a mutual restraining order is **REVERSED**, and the family court's order informing the parties that the last marital home is now owned as "tenants in common" is **REVERSED** and **REMANDED** for further proceedings consistent with this Order.

Standard of Review

The circuit court reviews findings of fact made by the family court judge under the clearly erroneous standard and reviews the application of law to the facts under an abuse of discretion standard. West Virginia Code § 51-2A-14(c) (2008).

The circuit court may refuse to consider the petition for appeal, may affirm or reverse the order, may affirm or reverse the order in part or may remand the case with instructions for further hearing before the family court judge. W. Va. Code § 51-2A-14(a) (2008).

In her petition, Ms. Miller asserts three grounds in attempting to assign error as a basis for this appeal:

1. That the Family Court's Order *Nunc Pro Tunc* should not have been entered;
2. That a mutual restraining order should not have been entered; and
3. That ownership in the marital home should not transform from joint tenants with the right of survivorship into tenants in common.

Findings of Fact

1. David James Riffle and Shirley I. Miller were married in Harrison County, West Virginia on December 30, 1988.
2. On August 14, 2012, Mr. Riffle filed a petition for divorce with the Family Court of Harrison County, West Virginia.
3. On August 20, 2012, Mr. Riffle petitioned the Family Court of Harrison County, West Virginia for a domestic violence protection order in Family Court Civil Action No. 12-DV-457-5.

4. On August 20, 2012, Family Court Judge Lori B. Jackson issued an "Emergency Protective Order."
5. On October 19, 2012, Family Court Judge Jackson issued an "Order Terminating Protective Order" because "[t]he parties, by counsel, reached a temporary agreement in the underlying divorce action."
6. By Order issued on October 22, 2013, Family Court Judge Jackson ordered a "mutual no contact Order" such that "neither party may contact or otherwise communicate with the other party...." By that Order, Family Court Judge Jackson ordered that Domestic Violence Case No. 12-DV-457-5 be dismissed.
7. By Order entered on November 15, 2012, Family Court Judge Jackson entered a mutual restraining order in the instant civil action.
8. On January 14, 2013, the parties attended a final hearing on Mr. Riffle's divorce petition.
9. By Order entered on February 19, 2013, Family Court Judge Jackson entered an "Agreed Final Decree of Divorce." The Order provided that "the *respondent* [Ms. Miller] shall place the last marital home on the market" (emphasis added). The Order further provided that a mutual restraining order is entered in the matter.
10. On August 6, 2013, Family Court Judge Jackson entered an "Order *Nunc Pro Tunc*" amending the "Agreed Final Decree of Divorce" by replacing "the *respondent* [Ms. Miller] shall place the last marital home on the market" with "the *petitioner* [Mr. Riffle] shall place the last marital home on the market" (emphasis added).
11. On August 27, 2013, Family Court Judge Jackson entered an "Order Following Hearing of August 6, 2013 Finding Shirley I. Riffle (nka Miller) in Contempt of Court." The Order allowed Ms. Miller to purge herself of contempt if she does not contact Mr. Riffle

directly or indirectly for the next two years, among other things. The Order also provided that "by virtue of operation of law following the divorce, the last marital home and property is now owned as 'tenants in common' and not 'with the right of survivorship'."

12. On September 27, 2013, the Circuit Court of Harrison County held a hearing on Ms. Miller's Amended Petition for Appeal.

Conclusions of Law and Analysis

Nunc Pro Tunc Order

Upon proper evidence, a court may at any time before or after final judgment by *Nunc Pro Tunc* orders correct the record so as to make it speak the truth as to what was actually done. *Ex parte Coon*, 81 W. Va. 532, 94 S.E. 957, 958 (1918). It is applicable to mere formal or clerical errors or omissions. *Id.* at 958. "An entry *Nunc Pro Tunc* is an entry made now of something which was previously done, to have effect as of the former date, the function, object, or purpose of such entry being to make the record speak the truth; to supply on the record something which has actually occurred, but has been omitted from the record through inadvertence or mistake." *Bloyd v. Scroggins*, 123 W. Va. 241, 15 S.E.2d 600, 603 (1941). "*Nunc Pro Tunc* entries are usual only in situations where something that actually occurred on a prior date was omitted from the record by inadvertence or mistake, but such an order may not be made where the entry does not reflect something that actually occurred on the date indicated." *W. Va. Judicial Inquiry Comm'n v. Casto*, 163 W. Va. 661, 664, 263 S.E.2d 79, 81 (1979).

In the case at hand, Family Court Judge Jackson changed by an order *Nunc Pro Tunc* the responsibility of placing the last marital home on the market from the respondent, Ms. Miller, to

the petitioner, Mr. Riffle. In reading paragraph nine on page three of the "Agreed Final Decree of Divorce," it is apparent to the Court that a clerical error occurred. The paragraph first provided that "the respondent shall place the last marital home on the market, listing it with Century 21 Realty, *at the specific request of the Respondent*" (emphasis added). The sentence is internally inconsistent, and thus a clerical mistake certainly occurred. After reviewing the record and the hearing video, the Court finds that the parties agreed for Mr. Riffle to list the marital home on the market. Furthermore, in Ms. Miller's first Petition for Appeal entered on August 16, 2013, she states "I know it was my suggestion on choosing Century 21." In the same Petition for Appeal, Ms. Miller continues by apologizing to the family court and Mr. Riffle for "not choosing a real estate locally to sell the home."

The Court finds that Family Court Judge Jackson corrected the record by a *Nunc Pro Tunc* order so as to make it speak the truth as to what was actually done. Accordingly, the Court **AFFIRMS** the family court's Order *Nunc Pro Tunc*.

Mutual Restraining Order

Pursuant to W. Va. Code § 48-5-509, *temporary* relief during the pendency of an action for divorce may be granted in the form of an emergency protective order. Such an order may enjoin the offending party from (1) entering the school, business or place of employment of the other for the purpose of molesting or harassing the other; (2) contacting the other, in person or by telephone, for the purpose of harassment or threats; or (3) harassing or verbally abusing the other in a public place. W. Va. Code § 48-5-509(a)(1)-(3) (2008). Subsection (c) of that statute states:

The court, in its discretion, may enter a protective order, as provided in article twenty-seven of this chapter, as part of the *final relief granted in a divorce action*, either as part of an order for temporary relief or as part of a separate order. Notwithstanding the

provisions of section five hundred five of said article, a protective order entered pursuant to the provisions of this subsection shall remain in effect until a final order is entered in the divorce, unless otherwise ordered by the judge.

W. Va. Code § 48-5-509(c) (emphasis added). To issue a protective order under chapter forty-eight, article twenty-seven, the court must find, “after hearing the evidence, that the petitioner has proved the allegations of domestic violence by a preponderance of the evidence.” W. Va. Code § 48-27-501 (2008).

In final judgments ordering divorce, allegations of abuse must also be proven. Under W. Va. Code § 48-5-608(a), “[w]hen allegations of abuse have been proved, the court shall enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other” (emphasis added). This provision makes it mandatory that a restraining order be entered against a spouse where it is shown by a preponderance of the evidence that such spouse abused the other spouse. *See Pearson v. Pearson*, 200 W. Va. 139, 488 S.E.2d 414 (1997) (reversing the issuance of a mutual restraining order because the language in now-recodified W. Va. Code § 48-2-15(b)(9) (1996) providing that “when allegations of abuse have been proven, the court shall enjoin the offending party” was a provision that made it mandatory that a restraining order be entered where there was a showing by a preponderance of the evidence of abuse by one spouse against the other spouse).

Additionally, mutual protective orders are disfavored. In domestic violence proceedings, a mutual protective order is prohibited unless both parties have filed a petition and have proven the allegations of domestic violence by a preponderance of the evidence. *See* W. Va. Code § 48-27-507 (2008). Furthermore, as explained by Chief Justice Workman in her dissent in *Pearson v. Pearson*, *supra*, “[m]utual restraining orders are a common, but very bad practice.” 200 W. Va. at 153. She continues to explain that “[t]his practice of mutual restraining orders, while perhaps

well-intentioned, causes more problems than it attempts to solve.” *Id.* She then adds that “[b]oilerplate mutual restraining orders also diminish the principal goal of a restraining order, which is to provide protection from domestic violence to one who has been subjected to it... when a law enforcement officer at the scene of a domestic violence learns of mutual restraining orders, confusion obviously results, and the officer resolves the dilemma by arresting both.” *Id.* She then outlined the problems associated with mutual orders:

When a mutual order is violated, law enforcement officers have no way to determine who needs to be arrested and may arrest both parties, further victimizing the real victim. The consequences of arrest for victims who have committed no violence or criminal act, but who are bound by a mutual order are profound; victims may suffer a loss of good reputation, lose custody of children, find employment endangered, require burdensome fees for defense counsel and be unable to make bail.

Id. (quoting chapter 3 of the Model Code on Domestic and Family Violence).

In the case at hand, Family Court Judge Jackson stated in the final hearing on Mr. Riffle’s divorce petition on January 14, 2013 that “neither party has requested a restraining order against the other, although there will be language in the decree that mutually orders them to stay away from one another.” *See* Final Hearing on Petitioner’s Divorce Petition, at 15:17 – 15:50. Further, a mutual restraining order was incorporated into the final divorce decree at paragraph fourteen, presumably by the agreement of the parties. By Order entered on August 27, 2013, Family Court Judge Jackson found Ms. Miller in contempt of court for leaving Mr. Riffle a voice mail message on May 8, 2013 and for Ms. Miller’s attempt to engage a realtor of her own. *See* Hearing on Motion to Find Shirley I. Riffle (nka) Miller in Contempt of Court, at 1:01:00 – 1:02:52. Ms. Miller was given the opportunity to purge herself of contempt if she agreed not to contact Mr. Riffle directly or indirectly, including asking others to contact him, for the next two years.

Based on the law of protective orders provided above, the Court concludes that the family court abused its discretion in ordering a mutual restraining order in the final divorce decree without specific findings of abuse by either spouse. In judgments ordering divorce, it is mandatory for the court to enjoin an offending party from molesting or interfering with the other when allegations of abuse have been proved. *See* W. Va. Code § 48-5-608(a). No such findings of abuse by either Mr. Riffle or Ms. Miller were made by the family court. Furthermore, although the code section is concerned with domestic violence, W. Va. Code § 48-27-507 prohibits mutual protective orders unless both parties file a petition and have proven the allegations of domestic violence by a preponderance of the evidence.

In reviewing the record before the Court, allegations of abuse have not been proven by either party by a preponderance of the evidence. The record merely provides allegations of non-abusive contact by Ms. Miller such as a voice mail message to Mr. Riffle and attempted contact through a mutual colleague. Such conduct does not rise to the level of abuse so as to justify the issuance of a restraining order. As such, a proper evidentiary showing of abuse has not been sufficiently made to support the issuance of a mutual restraining order.

Therefore, the family court's order issuing a mutual restraining order in the final decree of divorce is **REVERSED** and Ms. Miller is thereby absolved of contempt of court based upon contact with Mr. Riffle.

Parties' Interest in Last Marital Home

A divorce decree alone does not cause a severance of a joint tenancy. *See Young v. McIntyre*, 223 W. Va. 60, 672 S.E.2d 196 (2008). "The right of survivorship of a joint tenant does not arise out of the marriage relationship." *Id.* at 66. "Absent either an express intent to

sever or conduct inconsistent with the continuation of the joint tenancy, the right of survivorship will continue after a dissolution of the marriage of joint tenants.” *Id.* In circumstances of divorce, joint tenants can agree to hold as tenants in common and thus sever the joint tenancy. *Id.* “Such an agreement can be express or implied from conduct of the parties inconsistent with holding in joint tenancy.” *Id.*

In the case at hand, the agreed final divorce decree entered by Family Court Judge Jackson did not expressly mention severance of the joint tenancy. The only order addressing the joint tenancy was entered on August 27, 2013 following Ms. Miller’s contempt hearing, which states at paragraph two that “[t]he Court informed the parties that by virtue of operation of law following the divorce, the last marital home and property is now owned at ‘tenants in common’ and not ‘with the right of survivorship’.” At the contempt hearing held on August 6, 2013, Family Court Judge Jackson stated that by operation of the law, entry of a divorce decree causes a deed to be no longer a survivorship deed. *See* Hearing Finding Shirley I. Riffle (nka Miller) in Contempt of Court, at 1:04:00 – 1:04:33.

The family court abused its discretion in informing the parties that their last marital home is now owned as tenants in common and not as joint tenants with the right of survivorship. While Family Court Judge Jackson has authority to modify a final divorce order with respect to the distribution of marital property if the property is still held by the parties pursuant to W. Va. Code § 48-5-706(1), a divorce decree alone does not cause a severance of a joint tenancy. Instead, express or implied conduct of the parties inconsistent with holding in joint tenancy is required for severance. Though not exhaustive, conduct of the parties to be considered may include language in the property settlement agreement and the action of the parties immediately thereafter such as agreeing to list the real estate, sell it, and split the proceeds when sold, whether

a party was given exclusive possession of the property pending the sale, conduct between the parties, the context in which the agreement was made, the circumstances at the time, and the bargaining by equals with respect to the dissolution of their marital status. See *Young, supra*, 223 W. Va. at 67.

Therefore, the family court's order severing the joint tenancy is **REVERSED** and the Court **REMANDS** this case to the family court with instructions to prepare an order that includes thorough findings of fact and conclusions of law in light of the pertinent law and practical considerations concerning whether the parties expressly or impliedly agreed to sever their joint tenancy with the right of survivorship.

Conclusion

Because the family court was correcting a clerical error in the agreed final divorce decree, the family court's Order *Nunc Pro Tunc* is **AFFIRMED**.

Since an evidentiary hearing was not held finding abuse or domestic violence by a preponderance of the evidence, and insufficient evidence has been provided in the record to justify the issuance of a restraining order, the mutual restraining order is **REVERSED**.

Because appropriate consideration was not given to the parties' intent or conduct for the ownership of the last marital home, the family court's order severing the joint tenancy is **REVERSED** and this case is **REMANDED** to allow the family court to make specific findings of fact and conclusions of law to decide whether the parties intended to sever their joint tenancy.

It is **ORDERED** that this case be remanded back to the family court for the entry of an order setting forth findings of fact and conclusions of law based on the above pertinent authorities and considerations. It is **FURTHER ORDERED** that the family court proceedings

be concluded within 30 days of the date of the entry of this order pursuant to Rule 35(b) of the Rules of Practice and Procedure for Family Court Appeals.

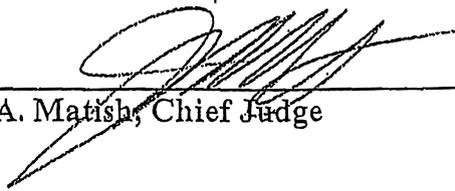
The Court DIRECTS the Circuit Clerk to send certified copies of this order to the following:

Jerry Blair
P.O. Box 1701
Clarksburg, WV 26302

Shirley I. Miller
402 Grasselli Street
Stonewood, WV 26301

Family Court Judge Lori B. Jackson
Harrison County Courthouse
306 Washington Avenue
Clarksburg, WV 26301

ENTER: 10/30/2013


James A. Matish, Chief Judge

STATE OF WEST VIRGINIA
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18th
Family Court Circuit of Harrison County, West Virginia, hereby certify the
foregoing to be a true copy of the ORDER entered in the above styled action
on the 30 day of October, 2013.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix
the Seal of the Court this 30 day of October, 2013.


Donald L. Kopp II
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia

IN THE FAMILY COURT OF HARRISON COUNTY, WEST VIRGINIA

In re: The Marriage of

DAVID J. RIFFLE,

Petitioner,

vs.

CIVIL ACTION NO.: 12-D-459-5

SHIRLEY I. RIFFLE,

Respondent.

AGREED FINAL DECREE OF DIVORCE

On the 14th day of January, 2013, came the Petitioner, David J. Riffle, in person and by and through his counsel, Jerry Blair, and came the Respondent, Shirley I. Riffle, in person and by and through her counsel, Christopher Wilson, for a regularly scheduled final hearing which was duly noticed by the Court.

Whereupon, respective Counsel indicated that the parties were in agreement to all issues pending before the Court. Then the Petitioner, after being duly sworn, gave testimony before the Court concerning the matters contained in the Petition filed herein and the agreement between the parties. Subsequently, the Respondent testified and affirmed the jurisdictional assertions of the petition and the terms of the agreement between the parties resolving all issues.

Whereupon, the Court considered the filed documents before it, as well as the sworn testimony presented by the parties and the representations of counsel, from all of which the Court made the following findings of fact and conclusions of law, and it was accordingly **ORDERED** and **DECREED** as follows:

1. Petitioner and Respondent have been bona fide residents of the

2/19/13

State of West Virginia for more than one year next preceding the Institution of this action, and Petitioner and Respondent have resided in Harrison County, West Virginia during said prior time;

2. Petitioner and Respondent were duly and legally married in the State of West Virginia, Harrison County on the 30th day of December, 1988.
3. Petitioner and Respondent last lived and cohabited together as husband and wife on or about August 10, 2012, in Harrison County, West Virginia.
4. No minor children exist of this marriage, and none are expected.
5. Petitioner has averred that irreconcilable differences have arisen between the parties, and Respondent has filed a written Answer which alleges the same, and said irreconcilable differences are sufficient to be grounds for divorce under the West Virginia Code.
6. Neither party is an incarcerated convict or a member of the military services; neither party is a minor, or incompetent as determined by a court of law; neither suffers from any legal disabilities whatsoever.
7. This Court has jurisdiction and venue over all matters herein.
8. The parties testified that they have achieved a full agreement on all existing matters regarding assets and debts, and further, that they had each entered into the said agreement with full confidence in their knowledge of the other's financial situation and the marital assets and debts; that they each entered into the agreement freely, and voluntarily without coercion or duress of any kind; that Mrs. Riffle had the advice of competent counsel, and that Mr. Riffle also had the advice of competent

counsel. Further, the Court accepts the property settlement agreement between the parties as fair and equitable.

9. The parties testified that they have previously divided all marital debts and assets, and the respondent shall place the last marital home on the market, listing it with Century 21 Realty, at the specific request of the Respondent, and as both parties agreed. Further, the last marital home shall be sold for the highest price possible, but at least as close to the fair market value as possible. The parties' marital debt with The Harrison County Bank (approximately \$2,768.00) shall be paid from the proceeds of the sale of the home. Mr. Riffle shall receive credit for the payments he has made on the Harrison County Bank debt, and the mortgage debt since the date of separation. Ms. Riffle shall receive an extra Five Hundred Dollars (\$500.00) from the proceeds of the sale. The net proceeds of the sale shall then be equally divided between the parties. Until the house is sold, Mr. Riffle shall be permitted to continue to reside in the residence.
10. Each of the parties shall be responsible for any/all credit card debt in each of their names.
11. Each of the parties shall pay his/her own attorney fees and costs incurred by this action.
12. The petitioner has expressly elected restoration of her premarital surname, and thus shall be known as "Shirley I. Miller."
13. David J. Riffle has waived his right to spousal support from Mrs. Riffle, but he shall continue pay spousal support to Shirley I. Riffle permanently in

the amount of One Hundred Fifty Dollars (\$150.00) monthly and each payment upon the same is due on the 1st day of each month. The parties agree that the spousal support is not modifiable. Further, Mr. Riffle's spousal support obligation shall be terminated upon either of the parties' death, or Mrs. Riffle's remarriage or her entry into a *de facto* marriage. Further, a one-time tax credit currently expected from the State of West Virginia for \$322.00 shall be equally divided between the parties. Additionally, any future royalties received from a marital mineral rights lease shall be equally divided between the parties, and Mrs. Riffle's rights to the same shall terminate upon either of the parties' death.

14. A mutual restraining order is entered in this matter such that neither party may have any direct or indirect contact with the other party, nor may either party interfere with the other party's quiet enjoyment of their life, and the willful failure to abide by this **ORDERED** provision shall subject the violating party to contumacious contempt of this Court.
15. Each of the parties shall keep the vehicles currently in their possession. Mr. Riffle shall keep the Ford Ranger pickup truck and Ms. Riffle shall keep the 2000 Saturn. Each of the parties shall be responsible for any/all expense related to the vehicle in their possession, including but not limited to, repairs, upkeep, insurance, and personal property taxes, and shall hold the other harmless thereon.

16. The said agreement as to equitable distribution is hereby **ADOPTED, RATIFIED, and CONFIRMED and ORDERED** by the Court, being found fair and equitable, and freely and knowingly entered into by the parties with the advice of competent counsel, and each party shall execute whatever documents are necessary to effect the terms of their agreement;

17. It is **ORDERED** that the parties are hereby divorced, that the bonds of matrimony are permanently severed upon the grounds of irreconcilable differences.

18. **This is a Final Order**, which any party may appeal. An appeal of this Order must be filed, if at all, in the Circuit Clerk's office of this County. A party to this civil action may appeal to the Circuit Court, but only within thirty (30) days of the date of entry of this Final Order. This Order may, instead, be appealed directly to the Supreme Court of Appeals of West Virginia, but only if all parties file a Notice of Waiver and Appeal to the Supreme Court within fourteen (14) days of the date of entry of this final Order. If at least one party, but not all parties, timely files a Notice of Waiver and Appeal to the Supreme Court, that appeal will be treated as a Petition for Appeal to the Circuit Court.

It is further **ORDERED** that the Clerk of this Court is hereby directed to mail attested copies of this Order to the following entities of record: to Counsel for the Petitioner, Jerry Blair, at P.O. Box 1701, Clarksburg, WV 26302; and to Counsel for the

The Court is aware via the post-trial motions and attachments thereto that the respondent is now dissatisfied with the equitable distribution agreement reached by the parties and spread upon the record during the January 14, 2013 hearing. The Court reviewed the recording of the entire hearing and finds that the parties each had competent counsel during the negotiations and hearing, that the parties voluntarily reached the agreement without coercion, and that each party understood the terms of the agreement. This Decree of Divorce accurately reflects each term of the parties' agreement placed upon the record during the hearing.

The Court stated at the hearing that the signatures of the parties and counsel would be required on the Decree of Divorce. However, that requirement is imposed by the Court merely to ensure that the parties are afforded an opportunity to review the written terms of the agreement placed orally upon the record for accuracy. Respondent's counsel was permitted to withdraw from the case on February 7, 2013. On February 8, 2013 respondent was provided a copy of the Decree of Divorce and notified that she had five days to respond to the Court. She made no such response. The Court has reviewed the recording of the hearing and compared the terms of the oral agreement to the Decree of Divorce and finds it to be accurate. Therefore, the signatures of the parties are not needed.

Accordingly, the petitioner's Motion to Enforce Agreement and Enter Final Decree of Divorce is herein granted.

Lori B. Jackson
2/19/13

Respondent, Christopher M. Wilson, 300 Adams Street, Fairmont, WV 26301.

ENTER: 2/19/13

Lori B. Jackson

LORI B. JACKSON, JUDGE

* See Rulings Contained on Page 5A. *ZBJ*

Approved By:

DAVID J. RIFFLE

SHIRLEY I. RIFFLE

CHRISTOPHER M. WILSON, WWSB NO. _____
300 Adams Street
Fairmont, WV 26301
Counsel For Mrs. Riffle

*Mr. Wilson was released as
counsel on 2/7/13. ZBJ*

Prepared by:

Jerry Blair

JERRY BLAIR WWSB ID No.: 5924
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(304) 622-3334
Counsel For Mr. Riffle

IN THE FAMILY COURT OF HARRISON COUNTY, WEST VIRGINIA

IN RE: THE MARRIAGE OF:

DAVID J. RIFFLE,

Petitioner,

and

SHIRLEY I. RIFFLE (now MILLER),

Respondent.

CIVIL ACTION NO.s 12-D-459-5
Judge Lori B. Jackson

ORDER FOLLOWING HEARING OF NOVEMBER 21, 2013
UPON REMAND FROM CIRCUIT COURT

On the 21st day of November, 2013, came the Petitioner, David J. Riffle, in person and by and through his counsel, Jerry Blair, and came the Respondent, Shirley I. Riffle, in person and without counsel, on for a hearing upon the remand of this case pursuant to an Order of the Circuit Court entered on October 30, 2013.

WHEREUPON, pursuant to the said Order, the Court made the following findings of fact and conclusions of law. It was accordingly ORDERED that:

1. The Circuit Court's Order of October 30, 2013, reversed this Court's ruling regarding the agreed mutual restraining Order of the Final Decree Of Divorce entered on February 19, 2013, and is not, therefore, the subject of the instant hearing before this Court.

2. The subject of the hearing before this Court is limited to the Circuit Court's reversal and remand regarding this Court's ruling that the marital real estate was now, by virtue of the parties' agreement and divorce, converted to a *tenancy in common* rather than a *tenancy with the right to survivorship*.

3. The Court finds that, based upon what was agreed and of previous record, it was the intention of the parties to sever the joint tenancy with a right to survivorship and to hold the real estate as tenants in common: *following the divorce.*

4. The intention of the parties as testified to by Ms. Miller is that the parties intended to hold the property as tenants in common, i.e., that the parties did not intend that if one party died *after the divorce* but before the marital home was sold, that the full interest in the real estate

goes to the surviving former spouse instead of a one-half interest in the real estate going to lawful heirs of the decedent former spouse.

5. This is the only proper ruling as the interest in the real estate was severed at the final hearing by the agreement of the parties very specifically delineating the details of the shares and credits to be applied at the sale of the real estate, and to hold otherwise would work an injustice and be contrary to the adopted agreement of the parties, which agreement was entered into freely and voluntarily by the parties, each having competent counsel.

6. **This is a Final Order**, which any party may appeal. An appeal of this Order must be filed, if at all, in the Circuit Clerk's office of this County. A party to this civil action may appeal to the Circuit Court, but only within thirty (30) days of the date of entry of this Final Order. This Order may, instead, be appealed directly to the Supreme Court of Appeals of West Virginia, but only if all parties file a Notice of Waiver and Appeal to the Supreme Court within fourteen (14) days of the date of entry of this final Order. If at least one party, but not all parties, timely files a Notice of Waiver and Appeal to the Supreme Court, that appeal will be treated as a Petition for Appeal to the Circuit Court.

The Clerk of this Court shall forward an attested copy of this Order to Jerry Blair, Esq., P. O. Box 1701, Clarksburg, WV 26302; and to the Respondent, Shirley I. Riffle, 402 Grasselli Street, Stonewood, WV 26301.

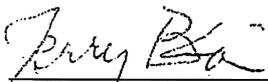
ENTER: 12/6/13



JUDGE LORI B. JACKSON

Respondent's December 6, 2013 objection was considered. (J.B.)

Prepared by:



JERRY BLAIR, WV State Bar ID (#5924)
Counsel for the Petitioner
P. O. BOX 1701
Clarksburg, WV 26302
Phone: 304-622-3334

STATE OF WEST VIRGINIA
COUNTY OF HARRISON. TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18th
Family Court Circuit of Harrison County, West Virginia, hereby certify the
foregoing to be a true copy of the ORDER entered in the above styled action
on the 6 day of December, 2013.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix
the Seal of the Court this 9 day of December, 2013.

Donald L Kopp II
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia