

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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No. 35631
=====

IN RE: The Marriage/Child of

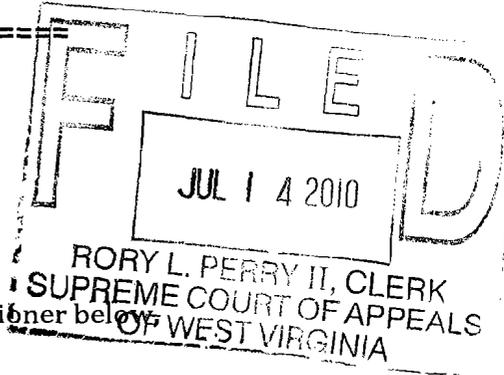
CHARLES ARTHUR CARPENTER, JR.,

APPELLEE, Petitioner below

and

BARBARA ANN CARPENTER,

APPELLANT, Respondent below.



BRIEF OF APPELLANT, BARBARA A. CARPENTER

W. Bradley Sorrells (WVSB 4991)
ROBINSON & McELWEE PLLC
Post Office Box 1791
Charleston, West Virginia 25326
(304) 344-5800

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I. Kind of Proceeding and the Nature of the Ruling in the Lower Tribunal

This matter comes before the Court upon the Order entered on November 18, 2009, by the Putnam County Circuit Court, which denied the appeal of a contempt order entered on October 6, 2009 (“the Family Court Order”) by the Putnam Family Court. The Family Court Order found Barbara Carpenter in contempt for making late payments on a joint obligation, even though the payments were less than 30 days late. As a sanction for contempt the Family Court Order requires that Barbara Carpenter’s home (“the Home”), be sold against her wishes, even though it is owned solely by her. Further, the Family Court Order directs that Barbara Carpenter’s ex-husband and his realtor “shall be solely responsible for the terms of the sale.” The Family Court Order, para. 14. This extraordinarily harsh sanction was characterized by the Family Court as being “the least extreme” and “the only remaining remedy” available. *Id.* at 2.

II. Statement of Facts

The parties separated in early September, 2007, with Barbara Carpenter and her daughter briefly moving out of the Home and into an apartment. Mr. Carpenter remained in the Home, which was jointly owned at the time. The parties originally agreed to sell the Home and split the proceeds evenly. “However, after listing the [Home] with a competent Realtor for several months, the parties . . . determined that it [was] unlikely to sell for any amount in excess of the debt” and that there was “currently no equity in the [Home].” Jan 14, 2008 Agreement.

In light of the inability to sell and the lack of any equity in the Home, Mr. Carpenter transferred his interest in the Home to Barbara Carpenter, and she assumed sole

responsibility for payments on the mortgage. *Id.* Mr. Carpenter moved out and Barbara Carpenter moved back to the Home with the parties' daughter.

Mr. Carpenter's first Petition for Contempt, filed on February 10, 2009, alleged that Barbara Carpenter was in contempt of the Final Order because she "[f]ailed to obtain [new] financing on marital home." The petition also alleged that Mr. Carpenter's credit was being harmed because Barbara Carpenter was making late payments. In fact, the Final Order did not require Barbara Carpenter to obtain new financing, but merely noted that "wife agrees to **attempt** to refinance the 1st deed of trust . . . [and if] she cannot refinance, she will be solely liable on the 1st deed of trust." (emphasis added).

The first petition came on for hearing on April 14, 2009, and the Family Court found that Barbara Carpenter was not in contempt because she had done exactly what the parties had agreed: she had made a good faith attempt to refinance the first deed of trust. However, the Family Court was concerned with Mr. Carpenter's allegation that late payments were doing damage to his credit rating. The Family Court's position regarding this complaint is clearly shown by its comment in the digital video transcript ("DVT") of the April 14 hearing:

I know what your point is, and it's a well made point. This is not what the Order contemplated was for your credit to keep getting a beating ever year.

4/14/09 DVT min. 12:50.

Every month that she's late is a negative report on his . . . credit report and that's not part of the deal. He shouldn't have to deal with that.

Id. min. 14:19.

But the Court was equally clear in its assurance to Barbara Carpenter that it would take no action on any request for sanctions ***unless there was demonstrable harm to Mr.***

Carpenter's credit in the future: "I'm not going to . . . you know, **he will have to show an adverse affect**, okay? But I don't want to sit here and say 'well, there's this exception, this exception, this exception.' **There's always a, you know, necessity of showing harm and so forth.**" *Id.* min. 20:25 (emphasis added).

The Court's message to Barbara Carpenter was loud and clear: don't do any damage to Mr. Carpenter's credit in the future. Barbara Carpenter took that message to heart. Beginning with the May, 2009 payment, she has made sure that no house payment has been 30 days late.¹

On August 31, 2009, Mr. Carpenter filed another Petition for Contempt asking that the Home be "SOLD WITHOUT DELAY" because "THE JULY 2009 PAYMENT DUE ON JULY 01, WAS MADE ON JULY 19TH , THE AUG 2009 PAYMENT DUE ON AUGUST 01, HAS STILL NOT BEEN RECEIVED, TODAY BEING THE 28TH DAY OF AUG, 2009." 8/31/09 Contempt Petition at 2 (capitalization original). Despite the Family Court's clear admonition that "there's always a . . . necessity of showing harm," Mr. Carpenter neither alleged, nor attempted to show that he had suffered **any** harm on account of the payments that were admittedly late (*but less than 30-days late*) in July and August of 2009.

Initially, the Family Court seemed to focus on the missing element that it previously recognized as being necessary – a showing of some harm by Mr. Carpenter. *See* 10/1 DVT min 4:05. However, the Family Court quickly abandoned this legitimate inquiry and seized upon the demonstrably incorrect belief that Barbara Carpenter was "a liar" and that it

¹ It is a well and commonly known fact that negative credit reporting does not occur for late payments if the payments are not over 30 days late. In fact, the policy of this mortgage holder is that a payment is not reported as late unless it is 35 days late. *See* Exhibit A.

couldn't "believe a word she says."² That belief by the Family Court is memorialized in the Family Court Order at paragraphs 1 and 12, and is presented in paragraph 13 as the basis for ordering not only that the Home be sold, but that it be sold by Barbara Carpenter's ex-husband. See Family Court Order, para. 13 and 14 ("Mr. Carpenter shall pick a licensed realtor and **he and the realtor will be solely responsible for the terms of the sale.**" (emphasis added)).

III. Assignments of Error

A. It was an abuse of discretion to order the sale of the Home on a finding that such sale was in the minor child's best interest, when there was absolutely no evidence presented as to how such sale would affect the child.

B. It was an abuse of discretion to order the sale of the Home as a sanction for contempt, without requiring Mr. Carpenter to show that he had been harmed in any way by the conduct about which he complained.

C. It was an abuse of discretion to order the sale of the Home as a sanction for contempt, when that sanction:

does not allow Barbara Carpenter "an opportunity to purge" the contempt as required by *West Virginia Code* § 51-2A-9(b);

fails to use "the least possible power adequate to the end proposed," as required by *West Virginia Code* § 51-2A-9(b);

was imposed without taking any consideration of (or taking any evidence on) the economic harm to Barbara Carpenter that will come from such sale;

makes the Ex-Husband, and his realtor, "solely responsible for the terms of the sale" of the Home, when he has an obvious

² For reasons unknown to counsel, the quoted language is missing from the DVT of the October 1, 2009 hearing, which was requested on October 5, 2010. As provided by the Family Court on October 27, the hearing is saved on the disk in three separate files, with time gaps totaling 25 seconds. However, counsel and Barbara Carpenter both have a clear and vivid recollection of the quoted statements being made by the Family Court Judge. Further, counsel made contemporaneous notes of the statements, and he discussed the statements with numerous credible third-parties beginning shortly after the hearing and long before the DVT was finally made available on October 27, 2009.

conflict of interest, is by definition adverse to Barbara Carpenter, and is openly hostile to her;

constitutes injunctive relief (requiring the Home to be sold), that was granted without requiring a bond, or reciting good cause as to why no bond was required, as mandated by *West Virginia Code* § 53-5-9;

D. It was an abuse of discretion to effectively modifying the parties' previously approved Separation Agreement, without making (or having evidence providing a basis to make) any of the findings required by *West Virginia Code* § 48-7-102;

E. The findings that Barbara Carpenter told "multiple lies," that she had a "stated intention to continue flouting the Court's order when it suits her," and that she was "in willful and contumacious contempt" were clearly erroneous.

F. The Family Court should have been disqualified from hearing this matter due to an appearance of impropriety, apparent bias and prejudice towards Barbara Carpenter, and apparent bias and prejudice toward counsel.

IV. DISCUSSION OF LAW

A. Standard of Review

In reviewing the findings of fact and conclusions of law of a circuit court supporting a civil contempt order, we apply a three-pronged standard of review. [This Court] reviews the contempt order under an abuse of discretion standard; the underlying factual findings are reviewed under a clearly erroneous standard; and questions of law and statutory interpretations are subject to a de novo review.

Watson v. Sunset Addition Property Owners Ass'n, Inc., 664 S.E.2d 118, 120 (W.Va. 2008).

B. The Family Court Abused its Discretion by Ordering That the Home Sold When There Was No Evidence That it Would be in the Minor Child's Best Interest

The Family Court observed that it "is required to consider the best interests of the child to be the single 'polar star' by which it is guided." Family Court Order at para. 8. This is certainly a correct statement of law. As this Court stated in *In re Ryan B.*, 686 S.E.2d 601,

607 (W.Va. 2009) “this Court has frequently emphasized, the best interest of the child is the polar star by which all matters affecting children must be guided.” It is axiomatic that a decision as to whether a child will remain-in or be forced-from her long time home is a matter that will affect that child.

However, the record of this case is absolutely devoid of any evidence to support a finding that sale of the Home is in the child’s best interest. Indeed, the child was not even mentioned in the Second Hearing. In the First Hearing she was mentioned by her parents, but only with respect to her age and the fact that she presented no discipline problems. 4/14/07 DVT min 10:50.

With no evidence to support it in the record, the Family Court’s finding that the sale of the Home was in the child’s best interest was clearly erroneous. Thus, ordering the Home to be sold was an abuse of discretion. Accordingly, the Family Court Order should be reversed.

C. The Family Court Abused its Discretion by Not Requiring Mr. Carpenter to Show Loss or Harm

Pursuant to *West Virginia Code* § 51-2A-9(b), a Family Court Judge “may enforce compliance with his or her lawful Orders with remedial or coercive sanctions designed to ***compensate a complainant for losses sustained*** and to coerce obedience ***for the benefit of the complainant.***” (emphasis added.) The Family Court acknowledged this point of law during the April 14 hearing, stating that in order to obtain relief Mr. Carpenter “will have to show an adverse affect . . . there’s always, you know, a necessity of showing harm, and so forth.” 4/14 DVT min 20:25.

However, Mr. Carpenter did not even attempt to show that there had been any harm, “losses sustained” or that the sale of Barbara Carpenter’s *separate property* would operate for his legitimate benefit. This Court can take judicial notice of the fact that negative credit reporting does not take place unless payments are over 30 days late. Further, as shown by Exhibit A, there is no negative credit reporting on the subject loan unless a payment is 35 days late.

The Family Court abused its discretion by not requiring Mr. Carpenter to carry *his* burden, and by shifting that burden to Barbara Carpenter and her counsel. *See* Family Court Order, para. 4. (“Counsel did not present any evidence that Mr. Carpenter was not harmed.”) Accordingly, the Family Court Order should be reversed.

D. The Family Court Abused its Discretion by Ordering a Sale of the Home Because That Sanction Did Not Allow Barbara Carpenter an Opportunity to Purge The Contempt

Even if Mr. Carpenter had sustained some harm or loss in connection with the July or August payments, and it was appropriate to sanction Barbara Carpenter (which she denies), the Family Court was required to follow the law in imposing sanctions. *West Virginia Code* § 51-2A-9(b) provides that “[s]anctions *must* give the contemnor an opportunity to purge himself or herself.” (emphasis added). This Court recently addressed this mandate:

When imposing sanctions for contempt, a court must afford the contemnor an opportunity to purge him/herself of the contempt. With respect to the contempt powers of family court judges, *W. Va. Code* § 51-2A-9(b) directs that “[s]anctions must give the contemnor an opportunity to purge himself or herself.” Similarly, *W. Va. Code* § 48-1-304(b) requires “the

court shall afford the contemnor a reasonable time and method whereby he may purge himself of contempt.”

Deitz v. Deitz, 659 S.E.2d 331, 343 (W.Va. 2008). Likewise, §51-2A-9(b) mandates that in “selecting sanctions, the Court must use the least possible power adequate to the proposed end.” *Id.*

The Family Court Order does not meet either mandate. With a court-ordered sale of the Home, there can be no opportunity for Barbara Carpenter to purge herself: the Home (along with all the tangible benefits of home ownership)³ will simply be lost. Likewise, it is difficult to imagine that ordering a person’s home sold by a hostile ex-spouse is the *least possible* use of the Family Court’s power that would have been adequate to the end proposed.

It was an abuse of discretion to impose a sanction that did not allow Barbara Carpenter an opportunity to purge herself of the contempt. It was a further abuse of discretion to use more than the least possible power adequate to the end proposed. Accordingly, the Family Court Order should be reversed.

**E. The Family Court Abused its Discretion by
Improperly Modifying the Parties’ Agreement**

The Final Order approves and incorporates the parties’ settlement agreement, which required Barbara Carpenter to assume sole responsibility for debt secured by the Home and to hold Mr. Carpenter harmless on that debt. As this Court has held, a

³ For example, Barbara Carpenter would lose the yearly deduction of over \$6,000 for mortgage interest, thereby substantially increasing her federal tax burden. Thus, beyond the initial loss of her home, the “sanction” imposed by the Family Court will penalize Barbara Carpenter year after year after year.

“settlement agreement entered into between the parties is binding.” *Williams v. Williams*, 501 S.E.2d 477, 478 (W.Va. 1998) (citing Syl. Pt. 2, *Warner v. Warner*, 394 S.E.2d 74 (W.Va. 1990)). The parties did **not** agree that all payments must be made on time. Rather, they agreed only that Barbara Carpenter would assume responsibility for the payments and that she would “indemnify and hold [Mr. Carpenter] harmless on” the debt. Final Order, p.2, para. 9.

Thus, under the court-approved settlement agreement, Mr. Carpenter was entitled to indemnification by Barbara Carpenter only if he alleged and proved a loss arising from the debt. In that event, he would be entitled recover money damages from Barbara Carpenter to compensate him for the loss sustained. However, unless and until he suffers a loss in connection with the indemnified debt, Mr. Carpenter has no right to make a claim against Barbara Carpenter:

A mere promise to indemnify against damages must also be distinguished. Here the promisor's liability does not arise until the promisee has suffered loss or expense. Until then the promisee has no right of action, and consequently one claiming damages can assert no derivative right against the promisor, much less a direct right.

Williston, Samuel, *The Law of Contracts*, § 408.

The Family Court effected a substantial modification of the parties’ agreement by giving Mr. Carpenter a right to relief **before** he had suffered any indemnified loss. Moreover, instead of granting the type of relief to which he *might* have been entitled (i.e., money damages), it granted him the extraordinary relief of an injunction forcing the involuntary sale of the Home. Further, the Family Court granted this injunctive relief without requiring Mr. Carpenter to meet the required showing that he had no adequate

remedy at law and without protecting Barbara Carpenter by requiring that a bond be posted. Thus, the Family Court abused its discretion by ordering that Barbara Carpenter be deprived of her separate and wholly owned property, and the benefit of her bargain, without due process of law. Accordingly, the Family Court Order should be reversed.

F. The Family Court's Finding That Barbara Carpenter Lied and Flouted its Orders Was Clearly Erroneous

The Family Court justified its sanction as follows: "In light of Ms. Carpenter's multiple lies to the Court and her stated intention to continue flouting the Court's Order when it suits her, the only remaining remedy is to Order the property sold." The Family Court Order para. 13. More specifically, the Court found that Ms. Carpenter lied at both the hearing held on April 14 and the hearing on October 1, 2009. *See Id.* at paras. 1, 12 and 13. Indeed, in the course of the October 1 hearing the Court referred to Barbara Carpenter as "a liar" and stated that it "can't believe anything she says." *See* Footnote 3, above. These conclusions were not supported by the facts in this case and were clearly erroneous.

-- Barbara Carpenter Did Not Lie at the April 14 Hearing --

On October 1, 2009, the Family Court decided that Ms. Carpenter lied at the April 14, 2009 hearing when she testified that her house payments were current. The Family Court founds that "[t]his was, in fact, a lie, as documented by Respondent's [sic] Exhibit 1."⁴ Family Court Order at para. 1. The partial payment history printout referred to as Respondent's Exhibit 1 does show that the April payment was not made until May 7, 2009.

⁴ The exhibit was actually tendered by the Ex-Husband.

However, it does not support the conclusion that Ms. Carpenter was lying **on April 14, 2009**, because on that date the payment wasn't late.

Barbara Carpenter, like all PHH Mortgage customers, is allowed a 15 day "grace period" each month and "payments are considered timely if received before 7:30 p.m. on the 16th of the month." See Exhibit A. According to PHH Mortgage, on April 14, 2009, Barbara Carpenter's "account was paid current with no late charges assessed." *Id.* As Ms. Carpenter sat in the Family Court on April 14, 2009, within the grace period for that month, **she was current on her payments**. If her mortgage company says she's current, how can it be lie for her to believe and say the same thing?

Beyond the technical fact that she was within the grace period, Barbara Carpenter had another reason to believe and testify that she was current on April 14, 2009. After taking over the Home and assuming sole responsibility for the payments in February of 2008, Barbara Carpenter signed up to receive only electronic statements and to make her mortgage payments on-line. Each month she receives an e-statement at her office from "mortgagequestions.com" advising her that her "bill is now available online for to view and pay." As shown by Exhibit B, Barbara Carpenter's e-statement for the April, 2009 payment was sent *after business hours on April 13, 2009*. She received that e-statement when she came to work the morning of April 14, 2009. Thus, when she went to the Family Court on the afternoon of April 14, she knew that she had received the April e-statement only hours earlier and that it had been sent *just the previous evening*. Who wouldn't believe they were current, when the bill's not even twenty-four hours old? Barbara Carpenter did not lie to the Court on April 14th -- she told the truth. Accordingly, the Family Court Order should be reversed.

-- Barbara Carpenter Did Not Lie at the October 1 Hearing --

The Family Court also concluded that Ms. Carpenter lied in the following exchange on October 1, 2009:

The Court: Why can't you make your payments in a timely fashion?

Ms. Carpenter: Well, there are some things that happen in a household, that sometimes you have to hold something until the next paycheck, and then it was paid.

10/1/09 DVT min 10:48

The Court concluded that Ms. Carpenter's answer was "an outright lie":

But as late as August, 2009, Ms. Carpenter made that month's payment 28 days late. Ms. Carpenter's financial statements states that she is paid every two weeks, so even her statement about "the next payday" *is an outright lie, since there were at least two paydays in that 28 day period.*

The Family Court Order at para. 12 (emphasis added). The payment for August, 2009 was made on the 28th day of that month. However, that fact provides no basis for the finding that Barbara Carpenter told "an outright lie." As shown by the attached Affidavit of John C. Palmer IV, Barbara Carpenter's second payday "in that 28-day period" was on August 28, 2009, the very same day on which Barbara Carpenter made the August payment. See Exhibit C. Barbara Carpenter did not lie to the Court on October 1st, she told the truth. Accordingly, the Family Court Order should be reversed.

-- Barbara Carpenter Did Not Flout the Court's Order --

The American Heritage Dictionary defines "flout" as "to treat with contemptuous disregard: to scorn." Nothing that Barbara Carpenter said, did, or failed to do, equates to contemptuous disregard of, or scorn for, the Court's Orders. She simply explained that the

payments at issue had been late (*but less than 30 days late*) because “there are some things that happen in a household, that sometimes you have to hold something until the next paycheck.” 10/1/09 DVT min 10:50

That statement was not intended to convey contemptuous disregard of, or scorn for, the Family Court’s Orders. It was a truthful and humble explanation of how a single mother sometimes has to juggle the bills to make ends meet. Because of the Family Law Judge’s warning to her on April 14, in each of the subsequent months Barbara Carpenter has ensured that no mortgage payment hit the all-important 30-day mark. That track record continues and from May, 2009 to the present, there has not been a single 30-day payment on the account. This is a dramatically positive turnabout from the relatively poor payment history the parties established on this loan, either when they were together or when they individually held sole responsibility.

The Family Court clearly warned Barbara Carpenter that it would not allow Mr. Carpenter’s “credit to keep getting a beating,” and that sanctions would be imposed *if* he was subjected to such harm in the future. However, the threat of sanctions was tempered by the requirement for Mr. Carpenter to show harm before Barbara Carpenter would be subjected to sanctions (“he will have to show an adverse affect There’s always a, you know, necessity of showing harm and so forth”). Barbara Carpenter took heed of the Family Court’s statements.

The payments about which Mr. Carpenter complained were less than 30 days late, so they caused no harm to him or his credit. As noted by the PHH Mortgage: “Credit reporting does not take place until the 35th day of delinquency, so a payment received in the same month in which it is due would never be reported to the credit bureaus.” Exhibit

A. Since May, 2009, each payment on the Home has been made “in the same month in which it [was] due,” so there was no reporting that could have harmed Mr. Carpenter’s credit. There was no harm and, therefore, no foul about which Mr. Carpenter could reasonably or legitimately complain. Accordingly, the Family Court Order should be reversed.

**G. The Family Court Exceeded its
Jurisdiction in Ordering the Home Sold**

As this Court has recently held, a Family Court is a court of limited jurisdiction:

The power of family courts to exercise jurisdiction over various matters is narrowly prescribed by the Legislature. “The jurisdiction of family courts is limited to only those matters specifically authorized by the Legislature, while circuit courts have original and general jurisdiction and other powers as set forth in Article VIII, § 6 of the Constitution of West Virginia.” Syl. pt. 5, in part, *Lindsie D.L. v. Richard W.S.*, 214 W. Va. 750, 591 S.E.2d 308 (2003). Accord Syl. pt. 2, *State ex rel. Silver v. Wilkes*, 213 W. Va. 692, 584 S.E.2d 548 (2003) (“A family court is a court of limited jurisdiction. A family court is a court of record only for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court is specifically authorized in this section and in chapter forty-eight [§§ 48-1-101 et seq.] of this code.’ *W.Va. Code* § 51-2A-2(d) (2001), in part.”).

Deitz v. Deitz, 659 S.E.2d 331, 338 (W.Va. 2008).

The Family Court is authorized by law to exercise jurisdiction over eighteen enumerated types of proceedings. *W.Va. Code* § 51-2A-2(a). Actions to force the sale of separately owned real property, not related to equitable distribution, are not included in that list. The Family Court obviously has jurisdiction over real property within the context of “proceedings for property distribution brought under article seven, chapter forty-eight of this code.” *W.Va. Code* § 51-2A-2(a)(15). But the Family Court Order does not arise from

a proceeding for property distribution. Mr. Carpenter's interest in the Home was voluntarily transferred to Barbara Carpenter, as per their agreement, before they were divorced. All matters with respect to property distribution were fully and finally resolved on March 10, 2008, when the appeal period for the Final Order expired without either party taking an appeal.

The Family Court exceeded its jurisdiction when it ordered that the Home be sold. Accordingly, the Family Court Order should be reversed.

H. Disqualification of the Family Court Judge

Grounds for disqualification, including the fact Mr. Carpenter is, and was at all relevant times, employed as a Security Office in the Putnam County Courthouse, were discovered by counsel well after entry of the Family Court Order. A verified Motion to Disqualify the Family Court Judge was timely served on Friday, November 20, 2009. The motion was stamped in at the Circuit Clerk's office on Monday, November 23, 2009. Counsel expected that the Family Court Judge would respond to the motion "forthwith," as required by Rule 17(b)(2) of the Trial Court Rules, but no response was ever made.

On December 7, 2009 counsel contacted the Family Court to make sure the Family Court Judge had received his copy of the Motion to Disqualify. By voice mail left at counsel's office at 11:29 a.m. on December 8, 2009, counsel was informed:

Hello Mr. Sorrells, this is Putnam County Family Court. I was calling you back. Yes, the Judge does have your motion and it is on his desk. Evidentially he didn't have time to take care of it before he left, but it is on desk. Just wanted to let you know that it is there. Thank you.

Counsel is aware that the Family Court Judge was required to undergo serious surgery in December, 2009. Counsel assumes that the delay in making the required response to the Motion to Disqualify is related only to that surgery and the lengthy recovery period that followed. However, the Motion to Disqualify does raise substantive issues regarding the propriety of the contempt proceeding below and the extreme sanction imposed. Accordingly the Motion to Disqualify is incorporated into this Brief.⁵

CONCLUSION

Barbara Carpenter faces a severe and irreversible sanction for the perceived offenses of lying to the Family Court and flouting its Order. Even if she was guilty of these offenses, the forced sale of her home would be an excessive and impermissible punishment. As explained above, however, Barbara Carpenter is not guilty of these offenses. Moreover, because there has been no harm to Mr. Carpenter, his cry of "foul" should have been summarily rejected. For all of these reasons, the Family Court Order should be reversed.

Respectfully submitted,



W. Bradley Sorrells (WV 4991)
Robinson & McElwee, PLLC
Post Office Box 1791
Charleston, West Virginia 25326
(304) 344-5800

BARBARA ANN CARPENTER

By counsel, *pro bono*

⁵ Beyond being a part of the record below, the Motion for Disqualification was attached to the Petition for Appeal as Exhibit D.

CERTIFICATE OF SERVICE

I, W. Bradley Sorrells, hereby certify that on this 12th day of July, 2010, I served the foregoing Brief by depositing a true and exact copy thereof in the regular United States Mail, postage fully paid, addressed as follows:

Charles A. Carpenter, Jr.
113 Mesa Drive
St. Albans, WV 25177



W. Bradley Sorrells (WV 4991)

EXHIBITS

ON

FILE IN THE

CLERK'S OFFICE