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IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

BARBARA ANN CARPENTER,
Petitioner,

v.

Civil Action No. 07-D-432
Phillip M. Stowers, Judge

CHARLES ARTHUR CARPENTER,
Respondent.

2009/11/18 AM 11:13
CLERK OF COURT
PUTNAM COUNTY, WEST VIRGINIA

ORDER DENYING PETITION FOR APPEAL

This matter came before the Court¹ on November 5, 2009, pursuant to a *Petition for Appeal* filed by Barbara Carpenter, through counsel W. Bradley Sorrells. Ms. Carpenter also filed a *Motion for Stay* of the Family Court's October 6, 2009 *Order*, pending the outcome of this appeal. Mr. Carpenter filed a *Response* to the appeal *pro se* on November 10, 2009.

This Court's review of the *Petition for Appeal* is made pursuant to W.Va. Code § 51-2A-11. The Court's review of the Family Court's decision is not *de novo*; this Court merely reviews the Family Court's findings of fact and applications of law. Under the structure of the Family Court system, this Court's jurisdiction is limited to reviewing the evidence presented to the Family Court and determining whether the Family Court made an error in its (1) findings of fact, which are reviewed under a clearly erroneous standard or (2) application of law to facts, under an abuse of discretion standard. W.Va. Code § 51-2A-14. The Court acts as an appellate court; it may not accept new evidence not presented to the Family Court. This Court may affirm, reverse,

¹ Ms. Carpenter previously filed a *Motion for Stay* on October 30, 2009. The Court declined to rule on the *Motion* because a similar motion was pending before Judge Watkins. This Court declined to rule on the *Motion* until Judge Watkins issued an order or an appeal was filed before this Court.

or remand the decision of the Family Court. However, this Court is not authorized to reverse the case simply because it wishes to substitute its decision for that of the Family Court.

After reviewing the record, including Ms. Carpenter's *Petition for Appeal*, Mr. Carpenter's *Response*, the October 6, 2009 *Order* enforcing the April 17, 2009 *Order* of the Family Court, and all relevant legal precedent, this Court denies the *Petition for Appeal* for the reasons set forth below.

1. This Court first addresses the issue of late mortgage payments. In her *Petition for Appeal*, Ms. Carpenter raises the issue of the Family Court's finding that she lied to the Court and continuously flouted the Court's *Order*. Ms. Carpenter contends that she did not lie to the Family Court and was not in contempt of its April 17, 2009 *Order* because she was not late on her mortgage payments. In support of her argument, Ms. Carpenter asserts that the payment is not late because the mortgagor grants a fifteen-day grace period and that payments are not late until the thirtieth day of the month. However, the Family Court's October 6, 2009 *Order* did not distinguish between a fifteen-day grace period and a thirty-day late payment.² The Family Court's *Order* addressed payments that were not made *on the days the payments were due*. Neither party disputes that in the twenty-two months since Ms. Carpenter assumed the mortgage in January 2008, *no payments have been made prior to or on the day of the due date*. Every payment has been due on the *first day of the month*, and *no payments have been made prior to or on the first of the month*.³ The Family Court determined that Ms. Carpenter failed to keep the

² Ms. Carpenter filed documents to establish that Ms. Carpenter did not make late payments on the mortgage. One document purports to show that she does not receive the bill for mortgage payments until the thirteenth day of the month. New evidence cannot be presented to the Circuit Court on a *Petition for Appeal* from the Family Court. Another document shows a list of the payments made on the mortgage, which was presented to the Family Court in some form by Mr. Carpenter. This Court notes that the documents provided to the Family Court show that the payment due dates are always on the first of the month.

³ The January 1, 2008 payment was paid approximately 112 days later. The February 1, 2008 payment was paid eighty-two days later. The March 1, 2008 payment was paid fifty-two days later. The April 1, 2008 payment was paid twenty-two days later. The May 1, 2008 payment was paid thirty-five days later. The June 1, 2008 payment

payments up-to-date and that payments were made late, despite Ms. Carpenter's assertions that the payments were not late, *based upon the day the payment was due*. The Family Court found that in the April 14, 2009 hearing Ms. Carpenter stated that the mortgage was up-to-date, even though she currently had an outstanding payment which was due April 1, 2009 and was not paid until May 7, 2009. In its April 17, 2009 *Order*, the Family Court ordered that any "future delinquencies⁴" would result in sale of the house. The Family Court concluded that Ms. Carpenter lied because the April 1, 2009 installment was not paid on the day of the hearing.

As stated previously, the Family Court's findings of fact are reviewed under a clearly erroneous standard. W.Va. Code § 51-2A-14(b). Thus, if the Family's Court's finding that Ms. Carpenter made late payments on the mortgage, despite telling the Family Court that her payments were up-to-date, is plausible in light of the record viewed in its entirety, this Court must affirm the finding.

Clearly erroneous is a highly deferential standard, and this Court **FINDS** that the Family Court's finding of fact regarding late payments on the mortgage was not clearly erroneous.

2. In her *Petition for Appeal*, Ms. Carpenter claims that the Family Court abused its discretion by ordering her home sold when there was no evidence that the sale would be in the minor child's best interest. Ms. Carpenter argues that no evidence was presented regarding the minor child's interests in the sale of the home.

was paid forty-six days later. The July 1, 2008 payment was paid forty-four days later. The August 1, 2008 payment was paid forty-two days later. The September 1, 2008 was paid seventy-one days later. The October 1, 2008 payment was paid forty-four days later. The November 1, 2008 payment was paid seventy-five days later. The December 1, 2008 payment was paid forty-five days later. The January 1, 2009 payment was paid fifteen days later. The February 1, 2009 payment was paid twenty-seven days later. The March 1, 2009 payment was paid forty days later. The April 1, 2009 payment was paid thirty-seven days later. The May 1, 2009 payment was paid eight days later. The June 1, 2009 payment was paid eight days later. The July 1, 2009 payment was paid seventeen days later. The August 1, 2009 payment was paid twenty-eight days later. The September 1, 2009 payment was paid eleven days later. The October 1, 2009 payment was not paid as of the October hearing.

⁴ *Black's Law Dictionary*, 8th Edition, defines delinquency as "a debt that is overdue."

In its *Order*, the Family Court found that Ms. Carpenter's late payments on the mortgage was a source of "friction" between the parties and caused a concern for the well-being of the minor child. This Court finds that it is an undisputed fact that the issues regarding payment of the mortgage was a contentious issue between the parties, as evidenced by the October 1, 2009 hearing. The Court also notes that this was not the sole reason for the decision of the Family Court to order a sale of the house. Neither party denies the mortgage payments were a source of friction between the parties.

The Family Court's findings of fact are reviewed under a clearly erroneous standard. W.Va. Code § 51-2A-14(b). The West Virginia Supreme Court of Appeals has determined that a finding is clearly erroneous if the court "is left with the definite and firm conviction that a mistake has been committed." *In Interest of Tiffany Marie S.*, 196 W.Va. 223, 231, 470 S.E.2d 177, 185 (W.Va. 1996). This Court cannot overturn a finding "simply because it would have decided the case differently." *Id.* Under the structure of the West Virginia legal system, this Court cannot substitute its opinion for that of the Family Court. Thus, if the Family's Court's finding that late payments on a mortgage held in the name of both Mr. and Ms. Carpenter were a source of "friction" which could create problems for the minor child is plausible in light of the record viewed in its entirety, this Court must affirm the finding.

Clearly erroneous is a highly deferential standard, and this Court **FINDS** that the Family Court's finding of fact regarding problems caused between the parties by the late mortgage payments was not clearly erroneous.

3. In her *Petition for Appeal*, Ms. Carpenter alleges that the Family Court abused its discretion by not requiring Mr. Carpenter to meet his burden to show loss or harm from the late mortgage payments. Ms. Carpenter asserts that Mr. Carpenter bears a burden to show loss or

harm in order before the Family Court can require a sale of the home. Ms. Carpenter cites W.Va. Code § 51-2A-9(b) in support of her argument. She states that Mr. Carpenter bears the burden of proving that he is entitled to compensation “for losses sustained.” However, this section of the Code deals with powers of the Family Court Judge to issue sanctions. The Code grants the Family Court Judge the authority to issue sanctions against a party to either compensate another party for losses *or* “**to coerce obedience for the benefit of the complainant.**” W.Va. Code § 51-2A-9(b) (emphasis added). The Code does not state that a burden rests on the complainant to prove anything. The burden rests on the Family Court to show that a party should be sanctioned for either compensation to the other party *or* to coerce obedience for the benefit of after assuming the house in January 2008. The Family Court in its previous *Order* explicitly ordered Ms. Carpenter to make the house payments on time (with no delinquencies) and found that Ms. Carpenter did not do so. Neither party disputes that Mr. Carpenter’s name is on the mortgage loan. Therefore, the Family Court found that the late payments were (1) in contempt of the Family Court’s previous order and (2) harmful to Mr. Carpenter’s credit because his name is on the loan. The Family Court also made a finding that the sale of the house was the least possible sanction adequate to benefit Mr. Carpenter for Ms. Carpenter’s contempt.

The Court finds that the determination of contempt was a finding of fact issued by the Family Court. The Family Court’s findings of fact are reviewed under a clearly erroneous standard. W.Va. Code § 51-2A-14(b). Thus, if the Family’s Court’s finding that Ms. Carpenter’s numerous late payments on her mortgage held in the names of both Mr. and Ms. Carpenter were in violation of the Family Court’s previous orders is plausible in light of the record viewed in its entirety, this Court must affirm the finding.

Clearly erroneous is a highly deferential standard, and this Court **FINDS** that the Family Court's findings of fact regarding the plethora of late payments were (1) in contempt of its previous *Order* and (2) would negatively impact Mr. Carpenter's credit were not clearly erroneous.

The Family Court's determination to sell the house as a result of Ms. Carpenter's contempt of previous orders in order to benefit Mr. Carpenter to preserve his credit was an application of law to fact. The Family Court's application of law to facts is reviewed under an abuse of discretion standard. W.Va. Code § 51-2A-14(b). The West Virginia Supreme Court has found that an abuse of discretion has occurred when a court (1) ignores a "material factor deserving significant weight," (2) relies upon an improper factor, or (3) makes a serious mistake in weighing the factors. *See Gentry v. Mangum*, 195 W.Va. 512, 466 S.E.2d 171, footnote 6 (W.Va. 1995). Moreover, the West Virginia Supreme Court grants the Family Court broad discretion in determining appropriate sanctions on parties who are in contempt of court orders to enable the Family Court the ability "to fashion a punishment that corresponds with the intransigence of the contemnor." *Dietz v. Dietz*, 222 W.Va. 46, 59, 659 S.E.2D 331, 344 (W.Va. 2008). The Supreme Court has emphasized that the Family Court may "impose whatever legal sanctions it chooses to compel the contemnor's acquiescence to the court's authority." *Id.*

Ms. Carpenter has failed to cite any law, authority, or findings which show that the Family Court committed any errors of law in ordering a sale of the house for Ms. Carpenter's plethora of late mortgage payments in contempt of the Family Court's previous order. Ms. Carpenter has failed to show that any lesser sanctions exist which would be adequate to protect Mr. Carpenter from future late house payments and to ensure her future compliance with the Family Court's April 17, 2009 *Order*. In previous orders, the Family Court provided Ms.

Carpenter time to obtain new financing on the home which would remove Mr. Carpenter from the obligations of the loan. Ms. Carpenter did not obtain new financing. Ms. Carpenter has not shown one other possible sanction which would both prevent future harm from potential violations of the court order or would restore the previous late payments on the home, and this Court is unaware of any other less restrictive sanctions available to the Family Court.

Abuse of discretion is a highly deferential standard, and this Court **FINDS** that there has been no abuse of discretion in this matter. The Family Court acted well within its broad discretion in determining that a sale of the house was an appropriate sanction for the plethora of late payments on that house.

4. In her *Petition for Appeal*, Ms. Carpenter raises several issues alleging that the Family Court improperly modified the parties' agreement and exceeded its jurisdiction in selling the home. This Court rejects those arguments. The amendment of the parties' agreed order occurred in the Family Court's April 17, 2009 *Order*. If either party contested the validity of that *Order*, a petition for appeal must have been filed within thirty days of that *Order*. No such petition was ever filed. Therefore, this Court finds that the conditions imposed by the Family Court's April 17, 2009 *Order* establish the Family Court's jurisdiction over the home.

Further, the Family Court's jurisdiction over the home arose from the fact that Mr. Carpenter's name and credit remained on the home's mortgage. The Court ordered Ms. Carpenter to make sure there were no future delinquencies on the home until the mortgage was transferred out of Mr. Carpenter's name. The mortgage continued in Mr. Carpenter's name as of the Family Court's October 6, 2009 *Order*. In the October 1, 2009 hearing, the Family Court stressed the need for finality in this matter so that Mr. Carpenter and Ms. Carpenter could be finished with their issues and each other. The Family Court emphasized the fact that the parties

continued to return to the Court with their issues over the mortgage almost two years after Ms. Carpenter took control of the house. The mortgage issue kept the two parties intertwined and interdependent on one another, as well as on the Family Court. Thus, the Family Court indisputably retained jurisdiction over the matter of the home, regardless of who lived there, because one party's credit remained on the home.

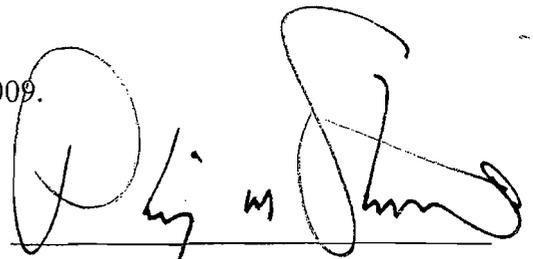
In accordance with these findings, this Court **REFUSES** said appeal pursuant to W.Va. Code § 51-2A-14(a). Because the Court has dispensed of the *Petition of Appeal*, the *Motion for Stay* is similarly **DENIED**. Furthermore, the Court finds that this *Order* is a **FINAL ORDER DISPOSING OF THE APPEAL**.

The Circuit Clerk is directed to send certified copies of this *Order* to the parties of record listed below.

W. Bradley Sorrells
Robinson & McElwee, PLLC
P.O. Box 1791
Charleston, WV 25326

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

Entered this 18th day of November, 2009.



Phillip M. Stowers, Judge

11/18/09

cc: Charles, Bradley

STATE OF WEST VIRGINIA
COUNTY OF PUTNAM, SS:
I, Ronnie W. Matthews, Clerk of the Circuit Court of said
County and in said State, do hereby certify that the
foregoing is a true copy from the records of said Court.
Given under my hand and the seal of said Court
this 18 day of November, 2009
Ronnie W. Matthews Clerk
Circuit Court
Putnam County, W.Va. aes

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IN THE FAMILY COURT OF PUTNAM COUNTY, WEST VIRGINIA

IN RE THE MARRIAGE/CHILD(REN) OF
CHARLES A. CARPENTER, JR.

Petitioner

and

BARBARA ANN CARPENTER

Respondent

CIVIL ACTION NO. 07-D-432

2009 OCT -6 PM 3:38

FILE
PUTNAM CO. CIRCUIT COURTORDER

On the 1st day of October, 2009, came the respondent, Barbara Ann Carpenter, in person and by counsel, Bradley Sorrells, and the petitioner, Charles Carpenter, Jr., in person and pro se, for a hearing before William M. Watkins, III, Family Court Judge, on the above-styled matter.

The Court finds and ORDERS as follows:

1. At the hearing on April 14, 2009, the respondent testified that all the house payments were current. This was, in fact, a lie, as documented by Respondent's Exhibit 1.
2. Also at the hearing on April 14, 2009, the Court advised the respondent that the property would be listed and sold if she was late with any future payments.
3. The respondent's defense is that Mr. Carpenter has not been harmed by her failure to comply with the Order, so his petition should be denied.
4. Counsel did not present any evidence that Mr. Carpenter was not harmed.
5. Counsel also stated that since Mr. Carpenter executed a deed to Ms. Carpenter, the Family Court no longer had jurisdiction to enforce its Orders. He again, did not cite any authority for his proposition that this Court cannot hold a party in contempt of its orders. The Court is unaware of any such provision in the law.
6. The respondent, Barbara Carpenter, answered the direct question by the Court as to why she did not comply with the Court's order by saying that sometimes "things happen{" and that sometimes you have to hold things off until the next pay day (approx. 11 min mark).
7. The Court, despite the protestations of the respondent and counsel finds this conduct to be in willful and contumacious contempt of Court.

8. In Family Court, the Judge is required to consider the best interests of the child to be the "polar star" by which it is guided. The Court is not especially concerned with notices to credit agencies and the like, although that is important, but it has a far greater interest in the well-being of the minor child of the parties.

9. The Court's Order was designed to do that by removing the main remaining source of friction between the parties.

10. Not only is the friction still there, the respondent stated on the record that she'll pay whatever she believes has priority and she "has to deal with it the next pay day". So the respondent not only freely acknowledged that she intentionally violated the Court's Order but has every intention of doing it whenever she decides she should. And counsel asserts that the Court does not have jurisdiction to enforce its Order.

11. The Court inquired of counsel if he would prefer that his client be incarcerated until she posts adequate surety for future timely payments. Mr. Sorrells allowed as how the Court did have jurisdiction to do so but that his client would not, in fact, prefer that option.

12. The Court is attempting to use the least extreme remedy, as always. On April 14, 2009, the Court attempted to do this. It emphasized that timely payments were essential to end the friction. But as late as August, 2009, Ms. Carpenter made that month's payment 28 days late. Ms. Carpenter's financial statement 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 2 pay days in that 28 day period.

13. 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.

14. Mr. Carpenter shall pick a licensed realtor and he and the realtor will be solely responsible for the terms of the sale. Ms. Carpenter shall cooperate. The Court will permit her to remain in the house pending sale, so long as she fully cooperates with the realtor in showing the property. Otherwise, she must vacate the premises.

15. The respondent objects and excepts to all the Court's rulings.

This is a Final Order which any party may appeal. An appeal of this Order must be filed in the Circuit Clerk's Office of this County. A party to this Order may appeal to

the Circuit Court if an appeal is filed within 30 days of the date of entry of this Final Order. If both parties file a notice of waiver and appeal to the Supreme Court within 14 days of the date of entry of this Order, the parties may appeal directly to the Supreme Court. If only one party 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 shall mail a copy of this Order to Charles Carpenter, Jr., 113 Mesa Drive, St. Albans WV 25177; and Barbara Carpenter c/o Bradley Sorrells, P.O. Box 1791, Charleston WV 25326.

ENTER this 5th day of October, 2009.

10/7/09
cc: Charles



WILLIAM M. WATKINS, III
FAMILY COURT JUDGE