IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 11-1056

YA MEI Y. CHEN,
Petitioner,

v.

MING CHUNG CHEN,
Respondent.

RESPONDENT'S RESPONSE BRIEF

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STATEMENT OF CASE

The parties hereto are formally husband and wife who were married approximately eleven years between 1972 and 1983, when the parties separated.

A series of Orders were entered between September 2, 1983 and December 29, 1992. The parties were divorced on June 16, 1987.

On August 3, 1983, the Family Law Master, in what appears to be a Temporary Order, granted the Petitioner, Ya Mei Y. Chen, the care custody and control of the two subject children, then ages nine and five. In that Temporary Order the Defendant [sic]/Respondent herein, Ming Chung Chen, was Ordered to pay alimony in the amount of $1,000. Child support was set at $1,000 per month beginning August, 1983 then reduced to $500 per month beginning the month of September, 1983.

Subsequent thereto, the parties appeared before the Court on January 9, 1985 pursuant to a *Motion to Modify* the Temporary Support Order entered August 3, 1983, filed by the Petitioner, Ya Mei Y. Chen. In the Order resulting from that hearing entered by the Court on April 22, 1985, the Court *increased* the previously ordered alimony from $1,000 per month to $1,500 per month and maintained the $500 per month in child support.

In 1987, the parties appeared before the Court but the Order does not reflect a date on which the parties appeared. Of interest in that order is a reference to a visitation schedule which would indicate that the mother and the two children had moved to the State of California [*Order of June 16, 1987, paragraph 4 and 5*].

The parties were divorced by *Final Decree* on December 3, 1987.

The parties next appeared on July 18, 1991, after which an Order was entered on July 1, 1992. The significance of this Order is that the Petitioner was granted a judgment through June of 1991 for spousal and child support, the amount of $60,735 plus pre-judgment interest of $5,711.55 for a total judgment of $66,447.55. The delay in the entry of the Order for one year is not explained.

The parties final appearance before the Family Law Master was on June 10, 1992, [which is apparently when the Family Law Master realized that the 1991 Order had not been entered and entered same]. This Order suggest that the parties were divorced by *Final Decree* on December 3, 1987 although there does not appear to be an Order in the file reflecting the same. In the Order entered from the June 10, 1992 hearing, which was not entered until December 29, 1992, the Court divided a substantial amount of marital property between the parties but of significance to this appeal, the Court reaffirmed the judgment amount of $58,736 granted the Plaintiff additional rehabilitative alimony of $1,000.00 per month for a period of four years and increased the child support to $750 per month effective from that date forward. Although, the hearing was held on June 10, 1992, the Order was not entered by the Clerk until December 29, 1992 and thus that was the date on which the statute of limitation began to run on those decretal judgments.

The Respondent herein/Defendant below, Ming Chung Chen, who, at or near the final divorce hearing moved to the State of Illinois and received statements from the Orange County, California child support agency from 1990 through January, 2010. He received from the *Illinois Department of Public Aid* intermittent statements including the years 2003 and 2008. It should be noted that all of the statements from the California [her state of residence] and Illinois [his state of residence] referenced the West Virginia

Civil Action Number 83-C-277 [*See Exhibit attached to Petitioner's Response to Reply to the Response and Memorandum of Law and Opposition to Respondent's Motion*].

Having continued to receive statements from the state of California, based upon their calculations of support orders from West Virginia, the Respondent filed a *Motion for Determination of Arrearages and Assertions of Statute of Limitations and Credits* in the Family Court of Nicholas County, West Virginia, on December 10, 2009.

After voluntary disqualification by Judge Bischoff, who had represented one of the parties in the proceedings during the 1980's, Family Court Judge David Sanders was appointed as the Special Family Court Judge to hear the matter.

The parties appeared before the family court on the Respondent's motion on May 12, 2010. After hearing the argument of counsel, the Family Court Judge issued its Order on August 18, 2010, in which it summarily denied the Respondent's assertion that the statute of limitations had expired on the collection of the December 29, 1992 Judgment Order, and denied the Respondent's motion to void the judgment by expiration of statute of limitations. The Respondent's *Motion for Determination of Arrearages and Assertions of Statute of Limitations and Credits* included reference to the relatively recent decisions of *Shafer v. Stanley,* 215 W.Va. 58, 593 S.E. 2d 629 (2003) and *Hedrick (Taylor) v. Hedrick* , 218 W.Va. 116, 624 S.E. 2d 463 (2005), which the Respondent asserted as the controlling legal authority for the application of statute of limitations to child and spousal support arrears.

The Family Court Judge rejected the arguments of the Respondent and denied the voiding of the judgment. It should be noted that the motion was filed **seventeen** years after the December 29, 1992 Judgment Order, was entered **thirteen** years after the

temporary spousal support would have extinguished, **eighteen** years after one child had reached the age of eighteen and **thirteen** years after the youngest child of the parties had reached the age of eighteen.

It was un-contradicted that no intervening judgment order had been entered since December, 1992.

Subsequent thereto, the Respondent timely filed a *Petition for Appeal* to the Circuit Court on September 10, 2010. Contemporaneous with the filing for the *Petition for Appeal*, the Respondent filed a *Motion for Stay of the Execution of Judgment* which was granted by the Family Court on September 14, 2010. On September 24, 2010, the Petitioner filed her response to the Respondent's *Petition for Appeal.*

The parties appeared before the Honorable Jack Alsop, Judge of the Circuit Court of Nicholas County, on January 28, 2011 for oral argument. Subsequent thereto, the Petitioner filed a *Supplementary [sic] Memorandum of Law* after which on March 1, 2011, the Respondent filed *Respondent's Reply to Petitioner's Supplementary [sic] Memorandum of Law.* Afterwhich, although not authorized by the Rules, the Petitioner filed *Petitioner's Response to Reply to the Response and Memorandum of Law and Opposition to Respondent's Motion.*

On June 6, 2011, the Circuit Court entered an Order reversing the Order of the Family Court and applied the statute of limitations to the arrears issue after which, the Petitioner filed this Petition for Appeal to this Honorable Court on October 11, 2011.

SUMMARY OF ARGUMENT

The Circuit Court correctly reversed the *Findings of Fact and Conclusions of Law of the Family Court.* In a well-reasoned, comprehensive, and analytical decision by the

Circuit Court of the 28th Judicial Circuit. In its Order, after deliberation and exchange with counsel, which the Circuit Court utilizing the socratic method, the Circuit Court determined that the arguments made by the Petitioner in her Appeal were not meritorious and that the Family Court of Nicholas County of West Virginia abused its discretion and erred in its *Findings of Fact and Conclusions of Law* and Order entered August 18, 2010.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to *Rule 18(a) of the West Virginia Rules of Appellate Procedure*, it is the opinion of the Respondent that oral argument is unnecessary.

First, the Appeal is frivolous. Second, the dispositive issue or issues have been authoritatively decided or are clear from the unambiguous applicable statute. Finally, the facts and legal arguments are adequately presented in the briefs and record on appeal and the decisional process would not be significantly aided by oral argument.

ARGUMENT

The Petitioner's argument is without substance or form, the Petitioner completely ignores the jurisprudence of West Virginia relating to statute of limitations as is applicable to child and spousal support. The Circuit Court correctly found that the statute of limitations set forth in West Virginia Code 38-3-18 are applicable to these matters [and further clarification is found in the cases of *Shafer v. Stanley,* 215 W.Va. 58, 593 S.E. 2d 629 (2003) and *Hedrick (Taylor) v. Hedrick* , 218 W.Va. 116, 624 S.E. 2d 463 (2005) for applying the statute of limitations to child support and spousal support arrears]. It is uncontradicted that the children respectively turned the age of eighteen in the years 1991 and 1996. Pursuant to West Virginia Code 38-3-18, the state of West Virginia as the state issuing the Order, child support arrears more than ten years after the entry of the last

judgment order or decretal judgment which would have been on or about February 4, 1996. Thus, collection could only be made, **after** the *Motion for Determination of Arrearages and Assertions of Statute of Limitations and Credits* was filed on December 10, 2009, for a period back to December 10, 1999, which was three years after the statute of limitations on the child support would have expired.

As it relates to the issue of spousal support, the Family Law Master, in an Order dated December 29, 1992, granted the Petitioner four additional years of rehabilitative alimony from that date forward which, by operation of law would have been forty-eight months following June 10, 1992 or June 10, 1996 which coincidently was about the same time as the child support expired by operation of law. Similarly, without either the child support or spousal support judgment having been renewed by either the Petitioner or the Bureau of Child Support Enforcement on either February, 2006 as it relates to child support or June 10, 2006 as it relates to spousal support, the judgment is void as a matter of law pursuant to West Virginia Code 38-3-18.

In its analysis, the Circuit Court correctly noted that the *Findings of Fact and Conclusions of Law* were clearly wrong for two reasons. The Circuit Court found error on the Family Court when it [the Family Court] found that the Petitioner had properly registered the Judgment Order in the State of California. The Circuit Court correctly noted that there was nothing in the record nor did counsel for Petitioner provide any evidence during oral argument that the Petitioner properly registered the judgment from West Virginia to California. In the document that was provided by the Petitioner in a document called *Response to Reply to the Response and Memorandum of Law and Opposition to Respondent's Motion* filed by the Petitioner on June 11, 2010, there is

attached to that pleading a website entry which references *Court Case Number 83-C-277* which is the West Virginia civil action number and is further support for the Circuit Court's correct determination that the Order was not registered in the State of California and therefore, making the application of *West Virginia Code 48-16-604(b),* a moot issue.

Secondly, the Circuit Court correctly noted the error and abuse of discretion by the Family Court of Nicholas County when the Special Family Court of Nicholas County attempted to exact a *reciprocal* remedy by suggesting that the Plaintiff should receive the benefit of the longer statute of limitations even though *West Virginia Code 48-16-604(b)* clearly states that "the statute of limitations of this state or the issuing state whichever longer applies." The Circuit Court correctly concluded that West Virginia is both the *issuing* state and *this* state. The Circuit Court correctly concluded that *West Virginia Code 48-16-604(b)* presumes a situation which West Virginia is not the issuing state but rather the state in which the foreign judgment is registered and at that point, the litigant would have the choice of law regarding the longer statute of limitations. The Circuit Court correctly noted in contrast to the Family Court that "the reverse situation would not be true" as that is not what the statute actually states.

Anecdotally, it should be noted to this Court that the states of California and Illinois have complied with the Order of the Circuit Court of Nicholas County and have ceased collection efforts based upon receipt of that Court's Order. This is further support that the Order was never registered, that the State of California never took jurisdiction of this matter and that the State of California is affording the Nicholas County Circuit Court Order full faith and credit.

The Respondent does not seek reimbursement of overpaid child support even though, if applied to the fullest extent of the law pursuant to *Hedrick (Taylor) v. Hedrick*, 218 W.Va. 116, 624 S.E. 2d 463 (2005), he should be reimbursed for monies collected from June 10, 2006 to the present even though in the year 2006; the Respondent paid $4,200 in arrears, in 2007; the Respondent paid $4,200, in 2008; the Respondent paid $4,222, 2009; the Respondent paid $4,200, in 2010; the Respondent paid $4,361 and to the date of the termination of support, based upon the Circuit Court of Nicholas County's ruling, the Petitioner paid $322 in 2011. The Respondent does not seek reimbursement from the Petitioner of the $21,505 overpaid.

CONCLUSION

Your Respondent prays that this Honorable Court deny the Petition for Appeal, that the Order of the Circuit Court be affirmed, and for such further relief as this Court deems just and proper.

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By Counsel

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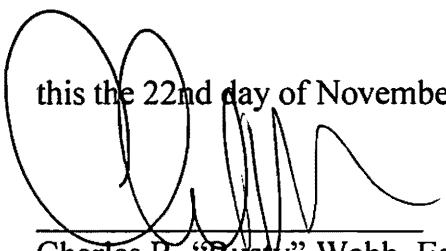
CERTIFICATE OF SERVICE

I, Charles R. Webb, counsel for Respondent, Ming Chung Chen, do hereby certify that service of the foregoing ***Respondent's Response Brief and Respondent's Supplement to the Appendix*** in the above-styled case has been made upon the following:

Kelly C. Pritt, Esq.
Pritt & Pritt, PLLC
300 Capitol Street, Suite 1101
Charleston, WV 25301

this the 22nd day of November, 2011, via regular U.S. Mail, postage pre-paid.



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