

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**ROSS STANLEY,  
PETITIONER BELOW,  
PETITIONER ,**

**VS.**

**CAROLYN HAYNES STANLEY,  
RESPONDENT BELOW,  
RESPONDENT.**

**NO: 13-0960**

**BRIEF OF RESPONDENT,  
CAROLYN HAYNES STANLEY.**

**J. MICHAEL ANDERSON  
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WVSB #134**

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COUNSEL FOR RESPONDENT**

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**ROSS W. STANLEY,**

**PETITIONER,**

**V.**

**CASE NO.: 13-0906**

**CAROLYN HAYNES STANLEY,**

**RESPONDENT.**

**BRIEF OF RESPONDENT,**  
**CAROLYN HAYNES STANLEY**

**RELIEF REQUESTED**

The Respondent, Carolyn Haynes Stanley, respectfully requests that this Honorable Court affirm the Order of Circuit Court of Greenbrier County, West Virginia, dated the 30<sup>th</sup> day of July, 2013 and entered on the 2<sup>nd</sup> day of August, 2013.

**STATEMENT OF CASE**

The Respondent owned a 27 acre tract of real estate that she and her then husband acquired in the year 1989. Respondent and her then husband divorced and she acquired full title to said land in 1995, which real estate was encumbered at that time in the amount of \$70,000.00.

The Petitioner and Respondent herein were married on July 3, 1997 in Greenbrier County, West Virginia. The Respondent transferred interest in the land to her children in 2011 but retained a Life Estate to herself. Respondent did not notify Petitioner of the transfer of interest. Petitioner had contributed \$30,000.00 to the reduction of debt against the real estate after the marriage of the parties and made some improvements to the real estate.

Petitioner claims that the transfer in 2011 without notice to him requires the Family Court to include one-half interest in the 27 acres in the marital estate of the parties to the Petitioner.

### **SUMMARY OF ARGUMENT**

The Trial Court was correct in finding that W. Va. Code 42-3-1 was not enacted for the purpose of the division of separate property, as the Petitioner has no dower or curtesy rights in the Respondent's separate property as dower and curtesy rights were abolished in 1992, five years before the parties were married and the Family Court is without jurisdiction to act regarding W. Va. Code 42-3-1.

### **AUTHORITIES RELIED UPON**

Mayhew v. Mayhew 205W. Va. 490, 519 SE2d 188(1999)

Rosier v. Rosier 227 W. Va. 88, 705 SE 2d 595 (2010)

W. Va. Code 42-3-1

W. Va. Code 43-1-1

W. Va. Code 43-1-2

W. Va. Code 48-1-233(2)

### **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Oral argument is not necessary in this action.

A memorandum decision is sufficient in this action, no new or novel issues are being presented on this record.

### **ARGUMENT**

The Circuit Court of Greenbrier County, West Virginia properly found that W. Va. Code 42-3-1 was not enacted for the purpose of the division of separate property. This code section states "...if the conveyance involves an interest in real estate to which dower would have attached

if the conveyance had been made prior to the date of enactment of this statute.” (Emphasis added) Clearly, this code section, which was enacted in 1992, does not apply to a marriage which occurred five years later in 1997 due to the fact that dower and curtesy were abolished in 1992. W. Va. Code 43-1-1. Petitioner had no dower or curtesy which would have attached prior to the effective date of enactment of W. Va. Code 42-3-1.

This Court in Rosier v. Rosier 227 W. Va. 88, 705 SE 2d 595 (2010) stated at page 15, “This statute requires any married person who conveys an interest in real estate to notify his or her spouse prior to or within thirty days of the time of the conveyance if the conveyance involves an interest in real estate to which dower would have attached if the conveyance had been made prior to the date of enactment of this statute. This statute was part of the abolition of dower and revision of the laws of intestate succession by the Legislature in 1992. Prior to the effective date of this statute, a surviving spouse had an interest in his or her spouse’s real estate holdings to the extent that he or she would be granted a lifetime interest on one-third of the holdings upon the spouse’s death. The intent of the notice provision was to make certain that transfers of real estate holdings solely in one spouse’s name were known to the other spouse.” It is respectfully submitted this statute only applied in a divorce action which was initiated within five years of the transfer of dower would have attached and in the case at bar no dower interest could attach to this Petitioner herein and therefore W. Va Code 42-3-1 does not apply in this case.

Evidence in this case indicated Petitioner reduce debt against the separate property of Respondent in the amount of approximately \$30,000.00. It is respectfully submitted that there are no cases nor statutes which allow reimbursement for funds spent on separate property. As W. Va. Code 48-1-233 defines marital property as:

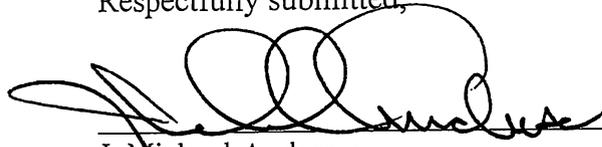
“(2) the amount of any increase in value in the separate property of either of the parties to a marriage which increase results from : (a) an expenditure of funds which are marital property, including an expenditure of such funds which reduces indebtedness against separate property extinguishes items, or otherwise increases the net value of separate property...” The Legislature has provided a means to be compensated for enhancement of separate property by making such enhancement marital property. In Mayhew v Mayhew 205 W. Va. 490, 519 SE 2d 188 (1999) ( this is Mayhew II) wherein the Court established a formula for such determination when the Court set out in Syllabus Point 5 the following:

“The formula for an active or passive appreciation analysis requires a determination of the following five-step test: (1) whether the property, in general, is either separate or marital property; (2) placing a value on the non-marital property at the commencement of the action; (3) the value of the non-marital property, before it became subject to the active and passive appreciation analysis; (4) the Circuit Court calculation of the property’s value at the commencement of the action, in relation to its value on the date(s) gifted; and (5) a determination as to what extent the increase in the value of the non-marital property is active appreciation or passive appreciation. The resulting amount due to active appreciation is marital property and subject to equitable distribution.” Therefore, the Petitioner in this case has a remedy to recoup his active appreciation of separate property as this formula contemplates gifting of separate property which has appreciated in value as a result of Petitioner’s action. Therefore, Petitioner is in no way prejudiced by Respondent’s failure to provide notice of the transfer of the title. Certainly, the Legislature did not intend to give Petitioner a windfall by lack of notice.

CONCLUSION

The Order of the Greenbrier Circuit Court dated July 30, 2010 and entered on the 2<sup>nd</sup> day of August, 2013 appealed from in this case should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Michael Anderson", written over a horizontal line.

J. Michael Anderson  
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ROSS W. STANLEY,  
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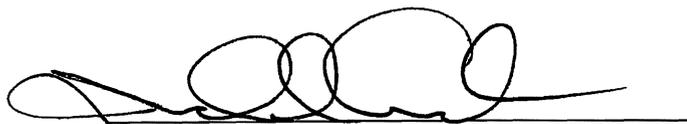
AND

CASE NO.: 13-0906

CAROLYN HAYNES STANLEY,  
RESPONDENT.

CERTIFICATE OF SERVICE

I, J. Michael Anderson, Counsel for Respondent, Carolyn Haynes Stanley, do hereby certify that service of the attached BRIEF OF RESPONDENT was made upon Martha J. Fleshman, Counsel of Record, by forwarding a true and exact copy thereof to her at 611 Main Street, Post Office Box 366, Union, West Virginia 24983, on this 14<sup>th</sup> day of January, 2014 in properly addressed and stamped envelope deposited in the regular course of the United States mail.



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