

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

**January 2006 Term**

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**No. 32865**

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**FILED**

**October 5, 2006**

released at 3:00 p.m.  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**EDSON R. ARNEAULT,  
Petitioner Below, Appellee,**

**V.**

**MARGARET BETH ARNEAULT,  
Respondent Below, Appellant.**

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**Appeal from the Circuit Court of Hancock County  
Honorable Arthur M. Recht, Judge  
Civil Action No. 02-D-61**

**REVERSED**

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**Submitted: June 7, 2006**

**Filed: October 5, 2006**

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**CHIEF JUSTICE DAVIS delivered the Opinion of the Court.**

**JUSTICE BENJAMIN concurs and reserves the right to file a concurring opinion.**

**JUSTICE STARCHER concurs, in part, and dissents, in part, and reserves the right to file a separate opinion.**

**JUSTICE MAYNARD dissents and reserves the right to file a dissenting opinion.**

## SYLLABUS BY THE COURT

1. “In reviewing a final order entered by a circuit judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law *de novo*.’ Syllabus, *Carr v. Hancock*, 216 W. Va. 474, 607 S.E.2d 803 (2004).” Syllabus point 1, *Staton v. Staton*, 218 W. Va. 201, 624 S.E.2d 548 (2005).

2. “Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review.” Syllabus point 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995).

3. “W. Va. Code, 48-2-1(e)(1) (1986) [W. Va. Code § 48-1-233 (2001) (Repl. Vol. 2004)], defining all property acquired during the marriage as marital property except for certain limited categories of property which are considered separate or nonmarital, expresses a marked preference for characterizing the property of the parties to a divorce action as marital property.’ Syl. pt. 3, *Whiting v. Whiting*, 183 W. Va. 451, 396 S.E.2d 413 (1990).” Syllabus point 2, *Staton v. Staton*, 218 W. Va. 201, 624 S.E.2d 548 (2005).

4. “Under equitable distribution, the contributions of time and effort to the married life of the couple—at home and in the workplace—are valued equally regardless of

whether the parties' respective earnings have been equal. Equitable distribution contemplates that parties make their respective contributions to the married life of the parties in that expectation." Syllabus point 7, *Mayhew v. Mayhew*, 197 W. Va. 290, 475 S.E.2d 382 (1996), *overruled on other grounds by* Syllabus point 3, *Mayhew v. Mayhew*, 205 W. Va. 490, 519 S.E.2d 188 (1999).

5. "Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." Syllabus point 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968).

6. W. Va. Code § 48-7-105 (2001) (Repl. Vol. 2004) instructs a court how to equitably distribute a marital estate's ownership interests in a business entity and directs the court to (1) "give [a conditional] preference to the retention of the ownership interests"; (2) consider the party who has the "closer involvement" with, "larger ownership interest" in, or "greater dependency" on such business; (3) further consider "the effects" that a "transfer or retention" of such ownership interests would have on the business, itself; and (4) secure the rights of the parties to receive that to which they are equitably entitled under this provision, either through an in kind transfer of the ownership interests or by the transfer of money or other property of equivalent value.

**Davis, Chief Justice:**

This family law case involves issues of equitable distribution and the disposition of marital property.<sup>1</sup> The appellant, Margaret Beth Arneault (hereinafter “Mrs. Arneault”), ex-wife<sup>2</sup> of appellee, Edson R. Arneault (hereinafter “Mr. Arneault”) appeals from an order entered April 13, 2005, by the Circuit Court of Hancock County. By that order, the circuit court found that the rulings made by the Family Court of Hancock County were not clearly wrong and that the family court had not abused its discretion. On appeal, Mrs. Arneault argues that the lower courts improperly divided the marital estate with a 35/65 split, that certain stock should have been divided in kind rather than valued at a discount, and that the interest rate on the related payments was improper. Further, Mrs. Arneault argues that oil and gas entities controlled by Mr. Arneault were incorrectly valued for distribution purposes. In response, Mr. Arneault argues that the circuit court’s order affirming the family court’s decision was proper, with the exception of his cross assignment of error challenging

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<sup>1</sup>On a prior occasion, this Court issued an opinion on a petition for extraordinary writ wherein we awarded Mrs. Arneault \$241,034.42 in past attorneys’ fees plus *pendente lite* support in the amount of \$20,000.00 per month. The previous opinion provides background details that are irrelevant to the present action, but may provide an additional understanding of the case. *See Arneault v. Arneault*, 216 W. Va. 215, 605 S.E.2d 590 (2004) (per curiam). Subsequent to the first opinion in *Arneault*, on March 9, 2005, we granted a rule to show cause in contempt to the Circuit Court of Hancock County with directions to enforce the opinion issued by this Court in the first *Arneault* case. The circuit court entered an enforcement order on April 13, 2005. This case is now before this Court for the third time on issues involving the proper division and valuation of the marital estate.

<sup>2</sup>The parties were divorced by order of the family court entered July 22, 2004.

the amount of discount to be applied to the valuation of the aforementioned stock.<sup>3</sup> Based upon the parties' arguments, the record designated for our consideration, and the pertinent authorities, we determine that the circuit court's ratification of the equitable distribution order constituted an abuse of discretion. Thus, we reverse the decision of the circuit court.

## I.

### FACTUAL AND PROCEDURAL HISTORY

A brief synopsis of the relevant facts shows that the parties were married on July 12, 1969, and now have two adult children. The parties had been married for thirty-three years when Mr. Arneault filed for divorce on March 22, 2002. By agreement of the parties, they denominated December 20, 2002, as their date of separation. By order of the family court, the parties were granted a divorce on July 22, 2004. The parties' marital home was located in Grand Rapids, Michigan. During the marriage, Mrs. Arneault stayed home with the children until 1990, when she returned to work on a part-time basis as a teacher. In 1995, Mrs. Arneault started her own business as a counselor providing college placement and career consulting services to high school students. While there is discord as to the effort Mrs. Arneault applied to her business, there is no dispute that Mrs. Arneault's business did not generate great income.

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<sup>3</sup>Specifically, Mr. Arneault asserts that a thirty percent discount, as opposed to the fifteen percent discount applied by the family court, should have been used in reaching the value of the stock.

Mr. Arneault currently holds the same job position as he did at the time of the divorce. Mr. Arneault is Chairman, President, and Chief Executive Officer of MTR Gaming Group, Inc. (hereinafter “MTR”), which owns and controls Mountaineer Park, Inc., and operates video lottery terminals. Since 1995, Mr. Arneault has worked in Chester, West Virginia, away from the marital home. Prior to the divorce, he returned to Michigan on most weekends. There is no dispute that Mr. Arneault has been responsible for MTR’s great success. In return for his achievements, Mr. Arneault has received a lucrative income from MTR, as well as MTR stock. Mr. Arneault owns 3,308,532 shares of MTR stock in his name; 199,333 shares of stock held by a company that is owned solely by Mr. Arneault; and 300,000 shares held in option.<sup>4</sup> These stock holdings amount to Mr. Arneault owning approximately 13.25% of the total shares of MTR. The MTR stock is publicly-traded on the NASDAQ Stock Market.<sup>5</sup> All parties concede that this stock was acquired during the parties’ marriage and is properly the subject of equitable distribution.

In the bifurcated case below, the family court determined that because Mr. Arneault had contributed significantly to the marital estate, a 50/50 split of the estate would be inequitable. Thus, the family court ordered that the parties’ marital estate be divided 35/65, with Mr. Arneault receiving the larger share. Further, the family court determined that

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<sup>4</sup>This option will expire on March 13, 2010.

<sup>5</sup>The symbol under which MTR stock is traded on the NASDAQ Stock Market is “MNTG”.

the MTR stock should be retained solely by Mr. Arneault, rather than being distributed in kind to Mrs. Arneault, and that Mr. Arneault should pay Mrs. Arneault her proportionate share of the value thereof. To ascertain the MTR stock's value, the family court applied discount principles, which took into consideration the limitations on Mr. Arneault's ability to sell the stock,<sup>6</sup> and directed Mr. Arneault to pay Mrs. Arneault her share of the stock valuation at the discounted rate, over a period of ten years, at a two percent interest rate. Finally, the family court valued Mr. Arneault's oil and gas interests, which included MTR stock as one of the company assets, and again applied discount principles to the MTR stock. Mrs. Arneault appealed these adverse rulings to the circuit court. By order entered April 13, 2005, the circuit court affirmed the family court's decisions. Mrs. Arneault now appeals to this Court.

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<sup>6</sup>Pursuant to Rule 144 of the United States Securities and Exchange Commission, Mr. Arneault is deemed to be an "affiliate" of MTR, SEC Reg. § 230.144(a)(1), and the certificates of MTR stock he holds are classified as "restricted securities," SEC Reg. § 230.144(a)(3). As such, any sales of MTR stock by Mr. Arneault require him, among other restrictions, to have held such stock for a specified period of time before he is permitted to sell it and limit the number of shares he can sell in a single transaction. SEC Reg. §§ 230.144(d, e). Mrs. Arneault, however, should not be subject to these restrictions insofar as she is no longer Mr. Arneault's wife and the temporal limitations appear to have been satisfied. *See generally* SEC Reg. § 230.144(k).

## II.

### STANDARD OF REVIEW

The standard of review with which we approach this matter has been explained as follows:

“In reviewing a final order entered by a circuit judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law *de novo*.” Syllabus, *Carr v. Hancock*, 216 W. Va. 474, 607 S.E.2d 803 (2004).

Syl. pt 1, *Staton v. Staton*, 218 W. Va. 201, 624 S.E.2d 548 (2005). *See also* Syl. pt. 2, *Lucas v. Lucas*, 215 W. Va. 1, 592 S.E.2d 646 (2003) (“In reviewing challenges to findings made by a family court judge that also were adopted by a circuit court, a three-pronged standard of review is applied. Under these circumstances, a final equitable distribution order is reviewed 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.’ Syl. Pt. 1, *Burnside v. Burnside*, 194 W. Va. 263, 460 S.E.2d 264 (1995).”).

Finally, because resolution of this matter also requires the application of a statute, we note that “[w]here the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review.” Syl. pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995).

Mindful of these standards, we proceed to consider the parties' arguments.

### **III.**

#### **DISCUSSION**

On appeal to this Court, Mrs. Arneault assigns error to the circuit court's affirmation of the family court's rulings, and sets forth four assignments of error: (1) the 35/65 split of the marital estate was improper; (2) the MTR stock was improperly discounted and the value improperly split; (3) application of a two percent interest rate for ten years was improperly applied to the amount Mr. Arneault owed Mrs. Arneault for her equitable share of the marital estate; and (4) the interests in the oil and gas company were improperly undervalued.

In response, Mr. Arneault argues (1) that the statute prescribes an equitable split, not an equal one, and because of his tremendous contributions, a 50/50 split would be inequitable; (2) he should keep all MTR stock as control stock and reimburse Mrs. Arneault for her equitable shares based on the value of the stock taking into account his insider status and the stock's reduced marketability; and (3) because he provided competent testimony regarding the value of the oil and gas interests, and Mrs. Arneault failed to produce any evidence on this point, the court was correct in accepting his valuation. Mr. Arneault argues that the family court's rulings should be accepted with the exception of his cross assignment of error that a thirty percent marketability discount should be applied, as opposed to the

fifteen percent discount applied by the family court, to the valuation of the stock.

To resolve the parties' assignments of error, then, we must ascertain the appropriate percentage split to be applied to the equitable distribution of the marital estate, including a determination of the proper distribution of the MTR stock and the appropriate disposition of the oil and gas interests.

***A. Percentage Applied to Division of Marital Estate***

First, we will address the issue of the equitable distribution of the marital estate and, more specifically, the appropriate percentage split to be applied to the estate. Mrs. Arneault argues that a 50/50 split of the marital estate is appropriate, and that Mr. Arneault has not overcome the presumption of an equal division of the marital property. Conversely, Mr. Arneault avers that his contribution to the marital estate has been so substantial that it would be inequitable to require him to divide the marital estate equally. The family court accepted Mr. Arneault's argument and found that it was unjust to divide equally the vast accumulation of wealth of the marital estate. Therefore, the family court split the marital estate 35/65, and the circuit court affirmed.

In a divorce proceeding, subject to some limitations, all property is considered

marital property,<sup>7</sup> which preference is reflected in our case law.

“W. Va. Code, 48-2-1(e)(1) (1986) [W. Va. Code § 48-1-233 (2001) (Repl. Vol. 2004)], defining all property

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<sup>7</sup>W. Va. Code § 48-1-233 (2001) (Repl. Vol. 2004) provides as follows:

“Marital property” means:

(1) All property and earnings acquired by either spouse during a marriage, including every valuable right and interest, corporeal or incorporeal, tangible or intangible, real or personal, regardless of the form of ownership, whether legal or beneficial, whether individually held, held in trust by a third party, or whether held by the parties to the marriage in some form of co-ownership such as joint tenancy or tenancy in common, joint tenancy with the right of survivorship, or any other form of shared ownership recognized in other jurisdictions without this state, except that marital property does not include separate property as defined in section 1-238 [§ 48-1-238]; and

(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 liens, or otherwise increases the net value of separate property; or (B) work performed by either or both of the parties during the marriage.

The definition of “marital property” contained in this section has no application outside of the provisions of this article, and the common law as to the ownership of the respective property and earnings of a husband and wife, as altered by the provisions of article 29 [§§ 48-29-101 et seq.] of this chapter and other provisions of this code, are not abrogated by implication or otherwise, except as expressly provided for by the provisions of this article as such provisions are applied in actions brought under this article or for the enforcement of rights under this article.

acquired during the marriage as marital property except for certain limited categories of property which are considered separate or nonmarital, expresses a marked preference for characterizing the property of the parties to a divorce action as marital property.” Syl. pt. 3, *Whiting v. Whiting*, 183 W. Va. 451, 396 S.E.2d 413 (1990).

Syl. pt. 2, *Staton v. Staton*, 218 W. Va. 201, 624 S.E.2d 548. The parties do not contest the lower courts’ classification of the estate as marital or separate; thus, we now address the appropriate percentage of the property to be afforded to each party.

With a few exceptions, all of the parties’ property constituted marital property and should have been divided equally absent some compelling reason otherwise. Guidance is provided by the mandate that “[e]xcept as otherwise provided in this section, upon every judgment of annulment, divorce or separation, the court shall divide the marital property of the parties equally between the parties.” W. Va. Code § 48-7-101 (2001) (Repl. Vol. 2004). Where the language of a statute is clear and unambiguous, it must be strictly applied. *See* Syl. pt. 2, *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (1970) (“Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.”). Here, W. Va. Code § 48-7-101 plainly states that, subject to certain limitations, upon the entry of an order of divorce, “the court *shall* divide the marital property of the parties equally.” (Emphasis added). ““It is well established that the word ‘shall,’ in the absence of language in the statute showing a contrary intent on the part of the Legislature, should be afforded a mandatory connotation.” Syllabus Point 1, *Nelson v. West*

*Virginia Public Employees Insurance Board*, 171 W. Va. 445, 300 S.E.2d 86 (1982).’ Syllabus point 1, *E.H. v. Matin*, 201 W. Va. 463, 498 S.E.2d 35 (1997).” Syl. pt. 4, *State v. Brandon B.*, 218 W. Va. 324, 624 S.E.2d 761 (2005). Thus, we must presume that the parties’ marital estate will be divided equally, subject to the limitations and considerations set forth in W. Va. Code § 48-7-103 (2001) (Repl. Vol. 2004), which provides as follows:

In the absence of a valid agreement, the court shall presume that all marital property is to be divided equally between the parties, but may alter this distribution, without regard to any attribution of fault to either party which may be alleged or proved in the course of the action, after a consideration of the following:

(1) The extent to which each party has contributed to the acquisition, preservation and maintenance, or increase in value of marital property by monetary contributions, including, but not limited to:

- (A) Employment income and other earnings; and
- (B) Funds which are separate property.

(2) The extent to which each party has contributed to the acquisition, preservation and maintenance or increase in value of marital property by nonmonetary contributions, including, but not limited to:

- (A) Homemaker services;
- (B) Child care services;
- (C) Labor performed without compensation, or for less than adequate compensation, in a family business or other business entity in which one or both of the parties has an interest;
- (D) Labor performed in the actual maintenance or

improvement of tangible marital property; and

(E) Labor performed in the management or investment of assets which are marital property.

(3) The extent to which each party expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party, including, but not limited to:

(A) Direct or indirect contributions by either party to the education or training of the other party which has increased the income-earning ability of such other party; and

(B) Foregoing by either party of employment or other income-earning activity through an understanding of the parties or at the insistence of the other party.

(4) The extent to which each party, during the marriage, may have conducted himself or herself so as to dissipate or depreciate the value of the marital property of the parties: Provided, That except for a consideration of the economic consequences of conduct as provided for in this subdivision, fault or marital misconduct shall not be considered by the court in determining the proper distribution of marital property.

When the issue of the equitable distribution of the marital estate was presented to the family court judge, the family court concluded in its order entered February 20, 2004, that “[t]he presumption of equal division has been rebutted as follows: 65% shall be awarded to the petitioner [Mr. Arneault] and 35% shall be awarded to the respondent [Mrs. Arneault].” The judge explained the rationale for the unequal distribution by finding that, under the factors set forth in W. Va. Code § 48-7-103, Mr. Arneault's contributions to the

marital estate overwhelmed the contributions made by Mrs. Arneault. Specifically, the family court reasoned as follows:

Having considered the factors enumerated in West Virginia Code § 48-7-103 as above-described, this Court finds that the presumption of equal division has been rebutted. The petitioner's own overwhelming contribution as defined by § 103(2)(E) and § 103(1)(A) make it completely inequitable to divide the marital estate equally. Equity mandates that the petitioner be awarded a greater percentage of the marital estate. Were subsections 103(2)(E) and (1)(A) the only factors to be considered, the petitioner would be receiving virtually all of the marital estate. However, as [Mrs. Arneault's expert] testified, the respondent engaged in service contributions which gave the petitioner the freedom to focus on his business pursuits. Those contributions and the other factors in § 103 create the respondent's entitlement to a portion of the estate. This Court believes her contributions were substantial, but not as overwhelming as the petitioner's contributions. Thus it is equitable that her share of the estate be less, although still substantial, because of her service contributions, and this Court finds equity to require that she receive thirty-five percent (35%) of the marital estate. It is proper that the petitioner must receive an adequate award for his accomplishments, and, at the same time, the respondent be properly rewarded for her contributions to the environment which permitted him to use his personal talents to amass this fortune.

In that same order, the family court further explained that

[t]he petitioner's intelligence and ability are unique to him and the development of these attributes can not [sic] be attributed equally to the petitioner and respondent, regardless of the environment which the respondent created in order to allow the petitioner to achieve the estate that has been amassed. He must be given some additional weight and credit in equitable distribution for existence of those attributes, intelligence, and abilities, which helped him achieve the marital estate currently in question. This Court looks at these personal attributes as substantial service contributions to the marital estate. There are

many persons who have obtained an MBA and become a CPA during their marriage, but they have not accomplished nearly the achievements of the petitioner. These achievements go beyond the acquisition of degrees or experience, and must be given additional consideration in equitable distribution.

In essence, it appears that the family court judge believed Mr. Arneault's intelligence and ability led to his great financial success, and while Mrs. Arneault's homemaking and child-rearing duties were substantial, they did not compare to Mr. Arneault's contribution to the marital estate. To reach this conclusion, the family court apparently found that Mr. Arneault's personal goodwill was sufficient to overcome the presumption of an equal division of the marital estate. We do not agree.

The value of “[p]ersonal goodwill” . . . [is] a personal asset that depends on the continued presence of a particular individual and may be attributed to the individual owner's personal skill, training or reputation.” Syl. pt. 3, *May v. May*, 214 W. Va. 394, 589 S.E.2d 536 (2003). While we agree that Mr. Arneault may possess substantial personal goodwill, it is not an appropriate consideration in comparing the contributions of Mr. and Mrs. Arneault to the marriage. Rather, Mr. Arneault's personal goodwill would be relevant if we were asked to value MTR, the company for which Mr. Arneault worked during the parties' marriage and by whom he continues to be employed, and to determine its net value for division. However, that is not the case before us. This is not a situation of personal goodwill and its worth to a company, but rather of Mr. Arneault's knowledge and skill

acquired during the course of the marriage and its worth to the value of the marriage as compared to the services and income contributed by Mrs. Arneault.

Significantly, we disagree with the family court's undervaluation of the contributions made to the marital estate by Mrs. Arneault. In essence, the family court found that because Mrs. Arneault's contributions were not monetary in nature, they did not count as substantially as Mr. Arneault's contributions to the marital estate. This idea is contrary to West Virginia jurisprudence. We previously have held:

Under equitable distribution, the contributions of time and effort to the married life of the couple—at home and in the workplace—are valued equally regardless of whether the parties' respective earnings have been equal. Equitable distribution contemplates that parties make their respective contributions to the married life of the parties in that expectation.

Syl. pt. 7, *Mayhew v. Mayhew*, 197 W. Va. 290, 475 S.E.2d 382 (1996), *overruled on other grounds by* Syl. pt. 3, *Mayhew v. Mayhew*, 205 W. Va. 490, 519 S.E.2d 188 (1999). We likewise have stated that “general contributions, rather than economic contributions [a]re to be the basis for a distribution” of a marital estate. *Raley v. Raley*, 190 W. Va. 197, 199-200, 437 S.E.2d 770, 772-73 (1993) (per curiam). In *Raley* we recognized that the wife “made a significant monetary contribution to the marriage as well as many other contributions, *i.e.*, homemaker skills, in which she did not receive any sort of financial compensation.” *Id.*, 190 W. Va. at 200, 437 S.E.2d at 773. Thus, based on the value of her homemaker services, we determined that the wife was entitled to fifty percent of the investment account that was at

issue before the Court. *Id.*

The facts of the present case highlight how important the contributions of both parties were to the marital estate. It was conceded that Mr. Arneault and Mrs. Arneault did not have any unusual fortune at the time of their marriage. Mrs. Arneault had recently received an undergraduate degree, and Mr. Arneault earned his undergraduate degree soon after they married. Mrs. Arneault then earned a masters degree, while Mr. Arneault went on to obtain his CPA license and a masters degree in business administration. The family court found that Mr. Arneault's innate abilities led to the financial wealth of the marital estate. However, the facts illustrate that the opposite is more probable. Mr. Arneault and Mrs. Arneault entered the marriage on fairly equal levels. Mr. Arneault earned a professional license and a graduate degree after the marriage commenced. It is very conceivable that this accumulation of knowledge, after the commencement of the marriage, led to the development of Mr. Arneault's innate abilities.

Even though Mrs. Arneault also had an advanced degree, she abandoned her own career in order to stay home with the couple's children. She also was responsible for the majority of the housework and the maintenance of the marital residence. Her responsibilities were manifestly increased by the fact that Mr. Arneault was completely absent from the marital home during the work week, leaving Mrs. Arneault with even greater responsibilities and household duties than is normally encountered in like circumstances.

Rather than the conclusion made by the family court, the facts of this case show it is more likely that Mrs. Arneault's contributions to the marriage are precisely the reason that Mr. Arneault was able to succeed in his work.

While this Court has recognized that there are circumstances in which an unequal distribution of a marital estate is appropriate, this is not one of those cases. *See, e.g., Burnside v. Burnside*, 194 W. Va. 263, 460 S.E.2d 264 (1995) (finding that an unequal distribution of marital property can sometimes be appropriate; however, remanding the case after concluding that the family law master and the circuit court failed to make sufficient findings to justify the conclusion that payment of the mortgage on the home in question was marital property within the meaning of our equitable distribution law); *Somerville v. Somerville*, 179 W. Va. 386, 369 S.E.2d 459 (1988) (recognizing that an unequal distribution is appropriate under certain circumstances, but finding that under the facts of that case, the trial court abused its discretion by awarding less than fifty percent of the marital property without articulating a reason for the unequal division as required by the applicable statutory law); *Cross v. Cross*, 178 W. Va. 563, 363 S.E.2d 449 (1987) (recognizing importance of general contributions, rather than economic contributions, as the basis for equitable distribution principles). *But cf. Raley v. Raley*, 190 W. Va. 197, 437 S.E.2d 770 (holding homemaker wife was entitled to half of the valuation of the parties' stock investments based on her general, rather than economic, contributions to the marital estate).

In the present case, there is no allegation that Mrs. Arneault did anything to detract from the value of the marital estate, and no suggestion that she did anything to frivolously dispose of marital money or assets. Thus, we conclude that the family court abused its discretion in fixing a 35/65 split of the marital estate. Mr. Arneault's intelligence and financial prowess is not sufficient justification for straying from the presumption of a 50/50 split. This conclusion is especially true under facts such as these where it is clear that Mr. Arneault's success was due in large part to the contributions made to the marriage by Mrs. Arneault. Accordingly, we find that the marital estate should be split 50/50 and reverse the circuit court's contrary ruling.

### ***B. MTR Stock***

We next must determine whether the MTR stock acquired by Mr. Arneault during the parties' marriage was properly disbursed by the family court's order, which disposition was upheld by the circuit court. By order entered February 20, 2004, the family court determined that all of the MTR stock acquired by Mr. Arneault during the parties' marriage constituted marital property:

There is no evidence in the record suggesting that any asset(s)[,] option(s), or right(s) acquired during the marriage or any earnings, again during the marriage, of either party to this action are not marital property. The MTR Gaming Stock and options exercised and unexercised which were granted pre-separation are marital property.

In total, Mr. Arneault acquired some 3,308,532<sup>8</sup> shares of MTR stock during the parties' marriage by way of MTR's payment of some of his employment wages and benefits to him in stock in lieu of cash and through the exercise of various options<sup>9</sup> he also received as compensation. During its equitable distribution of the parties' marital estate, the family court determined that these shares of MTR stock, which constitute the largest asset of the estate, should be retained by Mr. Arneault, rather than Mrs. Arneault's portion thereof being distributed to her in kind,<sup>10</sup> and that, as a result, Mr. Arneault should pay Mrs. Arneault for the value of her portion of said stock. In determining the amount of this monetary payment, the family court concluded that because Mr. Arneault was required to abide by certain restrictions in his sale of and other dealings with this stock,<sup>11</sup> the stock's value should be discounted to account for such limitations. Specifically, the family court ordered, on July 22, 2004, that

if [Mrs. Arneault] is to receive an equitable payment for her interests in the MTR stock, then [Mr. Arneault] must be obligated to pay [her] the value of the stock as if she had

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<sup>8</sup>Mr. Arneault holds an additional 300,000 shares of MTR stock in option, and the oil and gas company, which he owns, holds 199,333 shares of MTR.

<sup>9</sup>To exercise these options, Mr. Arneault has incurred indebtedness of approximately \$8.5 million, for which the stock acquired with such funds has been pledged as collateral.

<sup>10</sup>The phrase "in kind" means "[i]n goods or services rather than money." Black's Law Dictionary 802 (8th ed. 2004). In this case, we use the term "in kind" to refer to the distribution of the actual stock, itself, as opposed to a monetary payout representing the stock's value.

<sup>11</sup>*See supra* note 6.

received her proportionate share of said stock outright, including the devaluation that would definitely be suffered by said transfer.

Accordingly, by order entered January 27, 2005, the family court applied a fifteen percent discount to the customary market value of the stock, for an approximate total of \$4,216,334.79 due to Mrs. Arneault.<sup>12</sup> The family court further permitted Mr. Arneault to pay this amount to Mrs. Arneault over a period of ten years with two percent interest being applied thereto, determining a two percent rate, which represented “the going rate” available from lending institutions, was more equitable than a ten percent “judgment rate”.

On appeal to this Court, Mrs. Arneault assigns error to the lower courts’ rulings and argues that her equitable distribution portion of the stock acquired during the parties’ marriage should be distributed to her in kind. By contrast, Mr. Arneault objects to an in-kind distribution of Mrs. Arneault’s portion of the MTR stock and suggests that the lower courts’ award to her of a cash payment of the value thereof is more appropriate in light of his status as an officer and employee of MTR and the stock’s impaired marketability as a result of these relationships.<sup>13</sup>

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<sup>12</sup>This calculation is based upon the family court’s valuation of the stock at a fifteen percent discount, which was then applied to thirty-five percent of the marital estate’s MTR stock holdings. This thirty-five percent figure corresponds with the equitable distribution to which the family court found Mrs. Arneault to be entitled and which we have determined to have been erroneous. *See* Section III.A., *supra*.

<sup>13</sup>*See* note 6, *supra*.

The parties do not dispute that Mrs. Arneault is entitled to a portion of the MTR stock acquired by Mr. Arneault during the parties' marriage. What is disputed, however, is how much stock Mrs. Arneault should receive and in what form, *i.e.*, in kind or the cash value thereof. In the preceding section, we concluded that Mrs. Arneault should receive fifty percent of the parties' marital assets, including the MTR stock. To determine the form in which Mrs. Arneault's portion of the MTR stock should be distributed to her, though, we must refer to the applicable statutory provision, W. Va. Code § 48-7-105 (2001) (Repl. Vol. 2004), which directs, in relevant part,

[i]n order to achieve the equitable distribution of marital property, the court shall, unless the parties otherwise agree, order, when necessary, the transfer of legal title to any property of the parties, giving preference to effecting equitable distribution through periodic or lump sum payments . . . . In any case involving the equitable distribution of . . . ownership interests in a business entity, the court shall, unless the parties otherwise agree, give preference to the retention of the ownership interests in such property. In the case of such business interests, the court shall give preference to the party having the closer involvement, larger ownership interest or greater dependency upon the business entity for income or other resources required to meet responsibilities imposed under this article, and shall also consider the effects of transfer or retention in terms of which alternative will best serve to preserve the value of the business entity or protect the business entity from undue hardship or from interference caused by one of the parties or by the divorce, annulment or decree of separate maintenance: Provided, however, That the court may, unless the parties otherwise agree, sever the business relationship of the parties and order the transfer of legal title to ownership interests in the business entity from one party to the other, without regard to the limitations on the transfer of title to such property otherwise provided in this subsection, if such transfer is required to achieve the other purposes of this article: Provided further, That

in all such cases the court shall order, or the agreement of the parties shall provide for, equitable payment or transfer of legal title to other property, of fair value in money or moneys' worth, in lieu of any ownership interests in a business entity which are ordered to be transferred under this subsection . . . .

Before this statute may be applied to the facts presented by the case *sub judice*, we must first ascertain its meaning.

The first step in a statutory analysis is to identify the intent expressed by the Legislature in promulgating the provision at issue. “The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature.” Syl. pt. 1, *Smith v. State Workmen’s Comp. Comm’r*, 159 W. Va. 108, 219 S.E.2d 361 (1975). Next, we look to the specific language employed by the Legislature. “Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation.” Syl. pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968). Accord Syl. pt. 5, *State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 107 S.E.2d 353 (1959) (“When a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute.”); Syl. pt. 2, *State v. Epperly*, 135 W. Va. 877, 65 S.E.2d 488 (1951) (“A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.”). Finally, although a statutory provision may be plainly written, it may nevertheless contain an undefined word. Under such circumstances,

“[i]n the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and accepted meaning in the connection in which they are used.” Syl. pt. 1, *Miners in Gen. Group v. Hix*, 123 W. Va. 637, 17 S.E.2d 810 (1941), *overruled on other grounds* by *Lee-Norse Co. v. Rutledge*, 170 W. Va. 162, 291 S.E.2d 477 (1982).

The statute governing the instant appeal, W. Va. Code § 48-7-105, clearly expresses a legislative intent to “achieve the equitable distribution of marital property” and provides detailed instructions for reviewing courts when such marital property is comprised of “ownership interests in a business entity,” *id.* Insofar as certificates of stock, such as the MTR stock at issue in this case, constitute “ownership interests in a business entity,”<sup>14</sup> the directives of this statute provide guidance as to the form in which Mrs. Arneault should receive her equitable portion of fifty percent of the parties’ MTR stock holdings. Succinctly stated, the remaining language of W. Va. Code § 48-7-105 is plain. Accordingly, we hold that W. Va. Code § 48-7-105 (2001) (Repl. Vol. 2004) instructs a court how to equitably distribute a marital estate’s ownership interests in a business entity and directs the court to (1) “give [a conditional] preference to the retention of the ownership interests”; (2) consider

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<sup>14</sup>“Stock” is defined as “the proprietorship element in a corporation usu. divided into shares and represented by transferable certificates.” Webster’s Ninth New Collegiate Dictionary 1159 (1983). *Accord* Black’s Law Dictionary, at 1456 (defining “stock” as “[a] proportional part of a corporation’s capital represented by the number of equal units (or shares) owned, and granting the holder the right to participate in the company’s general management and to share in its net profits or earnings”).

the party who has the “closer involvement” with, “larger ownership interest” in, or “greater dependency” on such business; (3) further consider “the effects” that a “transfer or retention” of such ownership interests would have on the business, itself; and (4) secure the rights of the parties to receive that to which they are equitably entitled under this provision, either through an in kind transfer of the ownership interests or by the transfer of money or other property of equivalent value. *Id.* We will proceed to consider each of these factors in light of the facts presently before us.

**1. Conditional preference for the retention of the ownership interests.** The first step a court must take when determining the proper distribution of business ownership interests is to accord preference to the retention of the ownership interests “unless the parties otherwise agree.” W. Va. Code § 48-7-105. This preference is also tempered by the statute’s recognition that a transfer of ownership interests from one party to the other may be warranted “if such transfer is required to achieve the other purposes of this article.” *Id.*

Applying this factor to the case *sub judice*, we find that while Mr. Arneault is the party who initially acquired the MTR stock, either as compensation for services he performed for MTR or by purchasing such shares, all MTR stock acquired during the parties’ marriage previously has been determined to be marital property. Thus, given that both of the parties herein, *i.e.*, Mr. and Mrs. Arneault, own the MTR stock as marital property, retention by each of them of their one-half portions of such holdings is the preferred equitable

distribution of this marital asset. The conditions which may rebut this preference do not do so in this case: the parties have not “otherwise agree[d]” to a different disposition of the MTR stock, and a transfer of the ownership interests from one party to the other would not achieve the stated legislative purpose of equitably distributing the marital property. *Id.* Rather, as will be explained further in the remaining steps of this statutory analysis, the circumstances of this case necessitate that each party receive fifty percent of the MTR stock in kind.

**2. Consideration of parties’ relationship to the business.** The next factor to consider is the relationship of the parties to the business whose ownership interests are at issue. Under the statute, “the court shall give preference to the party having the closer involvement, larger ownership interest or greater dependency upon the business entity for income or other resources required to meet responsibilities imposed under this article.” W. Va. Code § 48-7-105. Without question, Mr. Arneault has a greater affiliation<sup>15</sup> with MTR than does Mrs. Arneault since he is an actual officer and employee of this company,

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<sup>15</sup>On this point, the parties advance several arguments as to whether MTR is a closely held or publicly held corporation and suggest that that denomination is determinative of the statute’s “closer involvement” inquiry. *See* W. Va. Code § 48-7-105. We do not read the statute as requiring such a distinction to be made, but rather as simply asking the reviewing court to look at the relationship of both parties to the business in question and to determine as between them who has, or has had, a greater affiliation with or connection to that entity.

and, other than being Mr. Arneault's former spouse,<sup>16</sup> Mrs. Arneault has no connection with MTR whatsoever. Under the second criterion giving preference to the party with the "larger ownership interest" in the business, neither party is preferred here insofar as they both have an equal ownership interest in the MTR stock which has been classified as marital property. Finally, with respect to the remaining relationship to consider in this step, Mr. Arneault has a greater dependency on the business as a source of income to meet any of his obligations that should arise from the parties' divorce given that MTR is his employer. As we will explain in greater detail below, though, Mr. Arneault's closer involvement with and dependency on the business as his source of income do not automatically entitle him to retain all of the marital estate's MTR stock holdings.

**3. Consideration of the effects of the retention or transfer of the ownership interests.** The third factor to consider regarding the distribution of ownership interests in a business entity pursuant to W. Va. Code § 48-7-105 regards the effect that the transfer or retention of the ownership interests would have on the business entity itself, with a preference being accorded to the alternative that would best "preserve the value of the business entity or protect [it] from undue hardship or from interference caused by one of the parties." In this case, Mr. Arneault strongly argues that he should be allowed to retain one hundred percent of the parties' MTR stock in order to safeguard its value and to protect

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<sup>16</sup>*See supra* note 2.

MTR. Specifically, Mr. Arneault expresses concern that as a result of the peculiarities of this particular case, should Mrs. Arneault be awarded fifty percent of the parties' MTR stock, she would be holding more than five percent of the stock of a gaming entity<sup>17</sup> without a license in violation of W. Va. Code § 29-22A-8(l) (1998) (Repl. Vol. 2004),<sup>18</sup> which transaction would, in turn, void Mr. Arneault's license, and, further, that she would sustain impaired marketability of the stock should she try to sell it as a result of Mr. Arneault's close affiliation with MTR.<sup>19</sup> We are not persuaded by either of these arguments.

First, Mrs. Arneault can easily overcome the prohibitions of W. Va. Code § 29-22A-8(l) either by applying for a license to permit her to hold the 6.625% of MTR stock to which she is equitably entitled pursuant to W. Va. Code § 29-22A-7 (2000) (Repl. Vol. 2004) and/or by requesting permission from the West Virginia lottery commission to acquire such

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<sup>17</sup>The MTR stock at issue in this case represents approximately 13.25% of the ownership of MTR.

<sup>18</sup>Specifically, W. Va. Code § 29-22A-8(l) (1998) (Repl. Vol. 2004) prohibits

The sale of more than five percent of a license or permit holder's voting stock, or more than five percent of the voting stock of a corporation which controls the license or permit holder or the sale of a license or permit holder's assets, other than those bought and sold in the ordinary course of business, or any interest therein, to any person not already determined to have met the qualifications of section seven [§ 29-22A-7] of this article voids the license unless the sale has been approved in advance by the commission.

<sup>19</sup>*See supra* note 6.

stock as provided for by the terms of § 29-22A-8(l). Additionally, she could sell a portion of her stock so that her holdings would be within the parameters allowed by W. Va. Code § 29-22A-8(l). Second, the various regulations restricting Mr. Arneault's treatment and handling of his portion of the MTR stock should not affect Mrs. Arneault's shares of the MTR stock because the parties are no longer legally married and the temporal restrictions have been satisfied.<sup>20</sup> Mr. Arneault also has failed to appreciate that it is in Mrs. Arneault's best interests to refrain from flooding the market by selling an exorbitant number of her MTR shares because any depreciation in the market price of the stock resulting from such a rapid sale would correspondingly reduce Mrs. Arneault's earnings therefrom.

Finally, a 50/50 distribution of the MTR stock to each of the parties in this case would not jeopardize the value of the business entity, MTR. MTR is a public corporation,<sup>21</sup> publicly traded on the NASDAQ Stock Market, and is not closely held.<sup>22</sup> Although the MTR stock shares declared to be marital property constitute 13.25% of MTR's total stock offerings, and Mr. Arneault as the owner<sup>23</sup> of such stock is the company's majority

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<sup>20</sup>*See supra* notes 2 & 6.

<sup>21</sup>A "public corporation" is "[a] corporation whose shares are traded to and among the general public[.]" Black's Law Dictionary, at 367. By contrast, a "close corporation" is "[a] corporation whose stock is not freely traded and is held by only a few shareholders (often within the same family)." *Id.*, at 365.

<sup>22</sup>*Id.*

<sup>23</sup>The word "owner" is used here only to explain that the stock was given to or  
(continued...)

stockholder, this proportion of the stock does not approach that number of shares necessary to constitute a majority of the company's total 27,498,000 outstanding shares. Finding no detriment to MTR should Mrs. Arneault receive her portion of the parties' MTR stock in kind, we proceed to consider the remaining statutory factor.

**4. Achievement of equitable distribution of ownership interests, either through in kind transfer of ownership interests or through transfer of money or other property of equivalent value.** The final factor to consider regarding the equitable distribution of ownership interests in a business entity is whether equitable distribution may be accomplished by awarding to one party other property or money of equivalent value in lieu of an in kind transfer of the subject ownership interests. Aside from the fact that the preceding statutory factors favor distributing the MTR stock to the parties in kind, such a disposition is also proper under this factor because there is no alternative property or money of equivalent value that could be given or allocated to one of the parties in lieu of their one-half portion of the MTR stock holdings. In this case, the single largest marital asset is the MTR stock. Although the lower court permitted Mr. Arneault to retain one hundred percent of the parties' MTR stock holdings and to pay Mrs. Arneault the cash value thereof, we do not find this arrangement to be an "equitable distribution" of the parties' marital estate.

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<sup>23</sup>(...continued)

purchased by Mr. Arneault, instead of by some other third party, and should not be construed as deviating from our affirmance of the lower courts' classification of the Arneaults' MTR stock holdings as marital property owned jointly by Mr. *and* Mrs. Arneault.

Because the marital estate does not have any other asset that even approaches the value of the MTR stock, much less is comparable thereto, there is no other property or money of equivalent value that could be awarded to Mrs. Arneault in lieu of the fifty percent of the MTR stock to which she is entitled. Moreover, Mr. Arneault incurred substantial debt in order to purchase certain of the shares of MTR stock at issue herein.<sup>24</sup> Just as it would be inequitable to deprive Mrs. Arneault of the certain receipt of the value of the MTR stock she is entitled to receive, it likewise would be unfair to entirely absolve Mrs. Arneault of the debt involved in the acquisition of her portion of such stock. Accordingly, we reverse the circuit court's order that permitted Mr. Arneault to pay Mrs. Arneault a discounted value for her portion of the MTR stock over a period of time and award Mrs. Arneault one-half of the parties' MTR stock in kind.<sup>25</sup> Additionally, Mrs. Arneault is charged with one-half of the debt<sup>26</sup> attributable to the acquisition of the parties' MTR stock.<sup>27</sup>

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<sup>24</sup>*See* note 9, *supra*.

<sup>25</sup>This result is consistent with our resolution of similar cases in which the assets of a marital estate included a substantial amount of stock holdings. *See, e.g., Boyle v. Boyle*, 190 W. Va. 655, 660, 441 S.E.2d 376, 381 (1994) (recognizing that “[t]he actual distribution should be of the stock itself”); *Kapfer v. Kapfer*, 187 W. Va. 396, 419 S.E.2d 464 (1992) (per curiam) (same).

<sup>26</sup>Similarly, Mrs. Arneault is responsible for any tax consequences that may arise from her receipt or sale of such stock. *See generally Kapfer v. Kapfer*, 187 W. Va. 396, 419 S.E.2d 464.

<sup>27</sup>Because we have determined that the marital estate should be equitably distributed 50/50 and that the MTR stock should be distributed in kind, we do not need to address the parties' remaining arguments regarding the proper valuation of the stock or the interest rate applicable thereto. Our resolution of this case also obviates the need to address  
(continued...)

### *C. Oil and Gas Interests*

The final issue of contention presented for our resolution involves the disposition of several interrelated oil and gas companies, which Mr. Arneault solely or partially owns. One of these companies, Century Energy Management Co. (hereinafter “CEMCO”), which is owned solely by Mr. Arneault, holds approximately 199,333 shares of MTR stock.<sup>28</sup> These shares were pledged as collateral for a loan from Huntington National Bank, which has a balance of approximately \$845,090.00. There is no dispute that this conglomeration of companies is closely held and, to protect the ownership status, that Mr. Arneault should be awarded the corporations and Mrs. Arneault should receive her equitable share of the value thereof.

With respect to Mrs. Arneault’s equitable portion of these interests, the parties conceded that Mr. Arneault owned only fifty percent of CEMCO at the time of the parties’ separation. Thus, Mrs. Arneault is entitled only to fifty percent of Mr. Arneault’s fifty percent share, which amounts to twenty-five percent of the oil and gas interests. In addition to her entitlement to twenty-five percent of the corporate ownership, Mrs. Arneault is correspondingly responsible for twenty-five percent of CEMCO’s debts and liabilities.

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<sup>27</sup>(...continued)

Mr. Arneault’s cross assignment of error.

<sup>28</sup>These 199,333 shares of MTR stock are registered in the name of CEMCO.

The primary source of contention on this point concerns the proper valuation of these oil and gas interests. It is generally recognized that the valuation of a closely-held corporation is more difficult to determine because such stock is not publicly traded. *See Tankersley v. Tankersley*, 182 W. Va. 627, 630, 390 S.E.2d 826, 829 (1990). During the underlying proceedings, the parties presented testimony regarding the proper valuation of the interests, which included assessments for the companies' real estate, personal property, other assets, and liabilities. The family court accepted Mr. Arneault's valuation of the oil and gas interests at *negative* \$1,628,891.00, rejecting Mrs. Arneault's valuation of the interests at *positive* \$571,292.80. Also disputed by the parties is the proper valuation of the 199,333 shares of MTR stock owned by CEMCO as its asset and providing security for its loan. Taking into account all of CEMCO's assets and liabilities, including its MTR stock and the accompanying loan, we find that Mrs. Arneault's entitlement to twenty-five percent of CEMCO's assets coupled with her responsibility for twenty-five percent of its liabilities cancel each other, resulting in a net value of zero. Therefore, Mr. Arneault retains full ownership interests in the oil and gas properties, Mrs. Arneault is entitled to no payout for her share of such interests, and Mrs. Arneault is not responsible for any of CEMCO's debts or liabilities associated therewith. Accordingly, the decision of the circuit court reaching the opposite conclusion is reversed.

#### IV.

#### CONCLUSION

In summary, we find that the circuit court abused its discretion in affirming the family court's final equitable distribution of the marital estate. *See* Syl. pt. 1, *Staton v. Staton*, 218 W. Va. 201, 624 S.E.2d 548. First, the proper equitable distribution of the marital estate is the statutorily presumed fifty percent distribution to each party. *See* W. Va. Code § 48-7-101. Additionally, the proper distribution of the MTR stock is a disbursement of the stock in kind. Finally, given the limited assets and substantial liabilities of the oil and gas interests, as well as their closely-held character, the entirety of the ownership interests therein and associated debts thereof are awarded to Mr. Arneault. Accordingly, the decision of the circuit court affirming the contrary decisions of the family court is reversed.

Reversed.