

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Carla D. Hess,
Respondent Below, Petitioner**

vs) **No. 11-0639** (Marion County 00-D-44)

**Jack R. Radford Jr.,
Petitioner Below, Respondent**

FILED
December 2, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Carla D. Hess appeals the circuit court order which reversed the family court order granting equitable distribution of the parties' marital property ten years after their final divorce order. This appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. Respondent Jack Radford Jr. has filed a response.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

In 2000, petitioner filed for divorce, asserting mental cruelty. She requested a certain vehicle in her divorce complaint, and indicated she would assume responsibility for the parties' credit card debt. In turn, she stated in the divorce complaint that respondent should be granted other vehicles and two homes, and should assume the state and Internal Revenue Service tax debts incurred by both parties. After petitioner entered into a settlement agreement in 2005 with the IRS wherein she paid some of the tax liabilities assumed by the parties, she indicated that she had an attorney send a letter to respondent, requesting that he sell the homes and split the money with her. Respondent never acknowledged the letters, and in 2009, petitioner filed a Petition for Equitable Distribution of Marital Property, seeking to have two parcels of real estate divided as marital property. The family court granted her petition and issued an order dividing the real estate as marital property. Respondent appealed the order, and the circuit court reversed the family court, finding that the family court did not have jurisdiction, and finding that the petition was barred by the doctrine of laches.

On appeal, petitioner argues that the circuit court abused its discretion in reversing the family court's order granting equitable distribution of the parties' marital property. "In reviewing a final order entered by a circuit court 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, *Allen v. Allen*, 226 W.Va. 384, 701 S.E.2d 106 (2009). The circuit court found that the petitioner's claim was barred by the doctrine of laches, due to the delay of over nine years between the final divorce decree and petitioner's filing of her petition for equitable distribution. "Laches is a delay in the assertion of a known right which works to the disadvantage of another, or such delay as will warrant the presumption that the party has waived his right.' Syllabus Point 2, *Bank of Marlinton v. McLaughlin*, 123 W.Va. 608, 17 S.E.2d 213 (1941)." *Dunn v. Rockwell*, 225 W.Va. 43, 56, 689 S.E.2d 255, 268 n.11 (2009). Based on a review of the record and the arguments filed herein, this Court finds no error in the circuit court's order reversing the family court order.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: December 2, 2011

CONCURRED IN BY:

Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Margaret L. Workman