

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

**Arthur H.,
Respondent Below, Petitioner**

vs.) **No. 11-1751** (Putnam County 11-D-6)

**Lillian H.,
Petitioner Below, Respondent**

FILED

September 21, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Arthur H. appeals, pro se, the December 7, 2011, order of the Circuit Court of Putnam County denying his appeal from the September 20, 2011, bifurcated divorce order of the Family Court of Putnam County granting respondent a divorce based upon cruel and inhuman treatment and denying petitioner's motion to have respondent undergo a psychiatric evaluation.¹ Respondent Lillian H., by Christine D. Wallace, her attorney, filed a response.

The Court has considered the parties' briefs and the record on appeal. 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 that a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner and respondent were married on October 28, 1978, and last cohabited as husband and wife on or about November 10, 2010. Respondent filed a petition for divorce based on irreconcilable differences and cruel and inhuman treatment. Petitioner filed an answer denying respondent's allegations. Petitioner also filed a motion to have respondent undergo a psychiatric evaluation asserting that it was questionable whether respondent had the ability to proceed with the divorce proceeding.

Petitioner and respondent appeared before the family court for a hearing on August 22, 2011, with both parties appearing in person and by counsel. The family court allowed petitioner to present three witnesses, including himself, in support of his motion to have respondent undergo a

¹ "We follow our past practice in . . . cases which involve sensitive facts and do not utilize the last names of the parties." *State ex rel. West Virginia Dept. of Human Services v. Cheryl M.*, 177 W.Va. 688, 689 n.1, 356 S.E.2d 181, 182 n.1 (1987).

psychiatric evaluation. As to the other witnesses petitioner would have presented, petitioner's counsel informed the family court, in response to a question, that they would be generally repetitive. After hearing the testimony from the three witnesses presented, the family court denied petitioner's motion finding that "[n]o evidence was provided to this Court that a psychiatric evaluation of [respondent] is warranted."

Following the August 22, 2011, hearing, the family court also granted respondent a divorce based upon cruel and inhuman treatment, and in so doing, the family court relied on "testimony and evidence previously presented to this Court [in Family Court Civil Action No. 10-DV-323] and the Domestic Violence Protective Order which has been granted against [petitioner]."² In addition, the family court bifurcated the divorce proceeding, found that each party had waived alimony, addressed the disposition of the marital home and of certain personal property items, and held the remaining personal property issues in abeyance until a final hearing.

Petitioner appealed the family court's bifurcated order to the circuit court which denied his appeal. The circuit court ruled as follows:

After reviewing the recording of the hearing which occurred on August 22, 2011, [³] this Court does not find a statement from Judge Watkins that he is prejudiced against [petitioner]. Additionally, this Court does not find evidence from the Family Court record that shows the Family Court had pre-determined this case prior to the hearing on August 22, 2011. The Family Court conducted fully the first part [of] a bifurcated divorce hearing and issued a bifurcated divorce order based on that hearing which dissolved the marriage between [respondent] and [petitioner] and a Final Order will be issued within six (6) months of the entry of this order.

. . . This Court finds that the Family Court properly allowed witnesses to testify about [petitioner]'s *Petition for a Psychological Evaluation*. While the Family Court limited [the number] of witnesses, the Court did allow for several witnesses to testify regarding [respondent]'s mental and physical state. The Family Court has wide latitude in conducting its divorce hearings. In the recording of the divorce hearing, the Family Court determined that [respondent] has had physical and mental problems for quite some time and had been under a doctor's care for a number of years. Therefore, this Court finds that the Family Court did not abuse its

² In No. 10-DV-323, the family court found that respondent presented "credible evidence" and that her allegations were corroborated by her daughter.

³ This Court has now also reviewed the recording of the August 22, 2011, hearing.

discretion in denying [petitioner]'s *Petition for a Psychological Evaluation*.

On appeal, petitioner argues that the family court abused its discretion in denying his motion to have respondent undergo a psychiatric evaluation. Petitioner asserts that the family court should have allowed more of his witnesses to testify and that respondent would never seek a divorce from him in her right mind. Petitioner argues that the family court also abused its discretion in granting respondent a divorce based upon cruel and inhuman treatment. Petitioner asserts that he has fifty to 100 witnesses who can vouch that he is not abusive and that he has an excellent reputation in the community, having been in the ministry for over forty years. Petitioner notes respondent's history of being sexually molested as a minor. Respondent responds and argues that the family court did not abuse its discretion in denying petitioner's motion that she undergo a psychiatric evaluation when the family court considered evidence from both parties, did not rely on any improper factor, and properly weighed each factor before it. Respondent argues that the family court also did not abuse its discretion in granting her a divorce when West Virginia Code § 48-5-203 provides that a divorce may be granted based upon cruel and inhuman treatment. Respondent argues that the family court properly relied on the corroborative testimony of her daughter in the domestic violence proceeding.

In its factual findings and its application of law to the facts, this Court has held that the family court is entitled to deference:

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). After careful consideration of the parties' arguments, this Court concludes that the family court did not abuse its discretion in its rulings regarding respondent's divorce petition and its consideration and denial of petitioner's motion to have respondent undergo a psychiatric evaluation.

For the foregoing reasons, we affirm the December 7, 2011, order of the Circuit Court of Putnam County denying petitioner's appeal from the September 9, 2011, order the Family Court of Putnam County.

Affirmed.

ISSUED: September 21, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh