

**State of West Virginia
Supreme Court of Appeals**

In re the Marriage and Children of

**Nicholas E. L. Ault,
Petitioner**

vs.) No. 101207 (Grant County 09-D-47)

**Michele L. Turner (formerly Ault),
Respondent**

FILED

February 11, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Nicholas E. L. Ault appeals the Circuit Court of Grant County's May 5, 2010, order refusing an appeal from the Family Court's final divorce order entered January 27, 2010, and its order denying a motion for reconsideration entered April 20, 2010. Respondent Michele L. Turner has filed a response to the petition for appeal.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, the 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 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.

Mr. Ault asserts that the circuit court erred by affirming the family court, and that the family court erred by denying petitioner a role in making major life decisions for the parties' three minor children, by allowing Ms. Turner to claim the children for tax purposes, and by equally dividing the parties' 2009 tax refunds inasmuch as the parties separated in 2009. This Court's standard of review is 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*.

Syl., *Carr v. Hancock*, 216 W.Va. 474, 607 S.E.2d 803 (2004).

Given that Ms. Turner was named the primary residential parent, Mr. Ault resides out-of-state during the work week, and the allegations in the divorce, this Court concludes that the family court did not err or abuse its discretion when assigning non-emergency decision-making authority for the children to Ms. Turner. Moreover, the family court was aware of the parties' assets and incomes and did not err or abuse its discretion in making the equitable distribution decisions to allow Ms. Turner, who has a smaller annual income, to claim the children for tax purposes or to share equally in the 2009 tax refunds.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: February 11, 2011

CONCURRED IN BY:

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