**FILED**
**May 26, 2022**
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

# STATE OF WEST VIRGINIA
# SUPREME COURT OF APPEALS

**S. M.,**
**Respondent Below, Petitioner**

**vs) No. 20-0483** (Kanawha County 18-D-1427)

**D. C. S.,**
**Petitioner Below, Respondent**

## MEMORANDUM DECISION

Petitioner S.M.,[1] by counsel Erica N. Lord, appeals the Circuit Court of Kanawha County's May 20, 2020, order denying his appeal from a December 17, 2019, order of the Family Court of Kanawha County awarding rehabilitative alimony to respondent; granting respondent sole decision-making authority for the parties' daughter, N.M.; devaluing the parties' marital home; and finding that petitioner had not met his burden in establishing that educational assistance benefits were no longer available to him. Respondent D.C.S., by counsel Mark A. Swartz, filed a response in support of the circuit court's order and a supplemental appendix.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, 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 affirming the order of the circuit court is appropriate under Rule 21 of the Rules of Appellate Procedure.

The parties were married in North Carolina in 2002, and two children were born during the marriage, a daughter N.M. (born in 2011), and a son E.M. (born in 2003). The parties separated on July 10, 2018, when respondent and N.M. left Saudi Arabia, where the parties lived pursuant to petitioner's employment, and returned to Charleston, West Virginia, where the parties owned a

[1] Consistent with our long-standing practice in cases with sensitive facts, we use initials where necessary to protect the identities of those involved in this case. *See In re K.H.*, 235 W. Va. 254, 773 S.E.2d 20 (2015); *In re Jeffrey R.L.*, 190 W. Va. 24, 435 S.E.2d 162 (1993); *State v. Edward Charles L.*, 183 W. Va. 641, 398 S.E.2d 123 (1990).

home.[2] Ultimately, the parties sought a divorce upon the grounds of irreconcilable differences. On December 31, 2018, the parties entered into an agreed temporary order wherein petitioner paid combined alimony/spousal support and child support to respondent in the amount of $5,500 per month ($3,300 in alimony and $2,200 in child support).[3] On September 9, 2019, a final hearing commenced before the Family Court of Kanawha County, and was concluded on a second day, November 14, 2019. During the final hearing, the family court heard evidence, testimony, and oral argument.

The parties have a substantial marital estate valued at $1,594,730 and have enjoyed a very comfortable standard of living, including "subsidized housing, frequent international travel and vacations, in home help, [and] private schools for the children." During the parties' marriage, petitioner was employed full-time and generated an average annual income (in 2016-2018) of $308,619.41. Conversely, pursuant to the parties' preference, since the birth of their first child in May of 2003, respondent has been a stay-at-home parent. Respondent last worked outside of the home in 2003 on a part-time basis for an investment group, making $8 an hour.[4]

Following the parties' separation, respondent expressed a desire to return to college to receive additional training in psychology. The programs in which respondent has considered enrolling require six to nine months of work in the mental health field as an application pre-requisite. Once enrolled, respondent avers that the training program will take about three years to complete, with two and one-half years of classes and then 800 hours of practical counseling field work. As part of the divorce proceedings, respondent requested rehabilitative alimony for the period of time she anticipates it will take her to complete her required pre-admission work, to complete her degree, and to find employment.

The final order of the Family Court of Kanawha County was entered on December 17, 2019. In this order, the court found that the parties were entitled to a full, complete, and absolute divorce upon the ground of irreconcilable differences. The court approved respondent's monthly budget of $8,271 (adjusting for income tax). Respondent testified that the amount agreed to in the parties' 2018 agreed temporary order for child support and rehabilitative alimony was insufficient. Ultimately, the family court determined that respondent required spousal support of $6,700 per month to balance her reasonable monthly budget. Additionally, the court awarded respondent $1,575.45 in child support per month. Respondent was noted as the primary residential/custodial parent for her daughter with sole decision-making authority for all major decisions. Petitioner was

[2] When respondent and N.M. returned to West Virginia in 2018, E.M. was attending a boarding school in the United States.

[3] Per the terms of the Agreed Order, the $2,200 monthly child support payments were for N.M. only. The parties agreed that "[n]either party shall be required to pay child support to the other for [E.M.] at this time."

[4] Prior to her work at the investment group, respondent worked for her father as an executive assistant. Prior to working for her father, she worked in public relations at the West Virginia Division of Tourism, earning $32,000 annually. Prior to her work at the Division of Tourism, respondent worked as the manager for a wine merchant earning $28,000 per year.

noted as the primary custodial parent for the parties' son, with sole decision-making authority for all major decisions.

The parties could not agree as to the fair market value of their former marital residence, for which they paid $235,000 in 2002. Petitioner estimated the value of the residence at $250,000. However, respondent, considering the declining market and assessed value of the residence, estimated the present value of the residence to be $177,900. The family court found that "the most credible and persuasive evidence" was the undisputed fact that home values around the marital residence had generally declined. Accordingly, the court determined the value of the marital residence to be $177,900. The court noted that petitioner had ample time to obtain rebuttal valuation evidence as to his alleged value of the home in advance of the parties' final hearing but "chose not to offer an appraisal or other evidence of value."

The parties' daughter attends public school and has resided with respondent in West Virginia since 2018. However, the parties' son attends a boarding school for which the costs were paid by petitioner's employer, as part of petitioner's compensation package. Respondent agreed that petitioner should retain primary custody of E.M., so that the petitioner's employer's educational assistance program would be available to the son and cover the costs of his boarding school. During the underlying proceedings, petitioner claimed that the education assistance benefit was no longer available to him; however, the family court found that petitioner's "claim was contradicted by the relevant portions of the petitioner's employer's manual, disclosed by petitioner."[5]

On January 17, 2020, petitioner appealed the family court's December 17, 2019, final order to the Circuit Court of Kanawha County. On appeal to the circuit court, petitioner asserted that the family court erred in (1) finding that respondent had a need for rehabilitative alimony in the amount and duration awarded by the court; (2) approving respondent's budget without having proof of expenses; (3) granting petitioner sole-decision making authority for the daughter.; (4) established the value of the marital residence at $177,900; and (5) finding that respondent had not met his burden of providing that education assistance benefits are no longer available to him.

By order entered May 20, 2020, the circuit court affirmed the family court's order. It is from the circuit court's order that petitioner now appeals.

We have found that

> "[i]n 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

[5] During the final hearing, respondent introduced evidence (petitioner's employer's human resources manual) that the educational assistance benefits are available to divorced children under circumstances, including a situation where respondent had legal custody of a child. Respondent testified that when she agreed to assign primary custodial responsibility for E.M., to his father in the agreed temporary order, she understood that petitioner and/or his employer "would be paying for [E.M.'s] tuition and fees going forward."

> 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." Syllabus point 2, *Lucas v. Lucas*, 215 W.Va. 1, 592 S.E.2d 646 (2003).

Syl. Pt. 1, *Campbell v. Smith*, 216 W. Va. 583, 609 S.E.2d 844 (2004).

On appeal, petitioner asserts five assignments of error, which are identical to the assignments of error he argued before the circuit court. First, petitioner contends that the circuit court erred in affirming the family court's award of rehabilitative alimony to petitioner. This Court has long held that "[q]uestions relating to [spousal support] . . . are within the sound discretion of the court and its action with respect to such matters will not be disturbed on appeal unless it clearly appears that such discretion has been abused." Syl., *Nichols v. Nichols*, 160 W.Va. 514, 236 S.E.2d 36 (1977).

Petitioner argues that respondent, who has no disabilities, is not entitled to rehabilitative alimony because she has not attempted to seek employment since her return to West Virginia in July of 2018. Conversely, respondent argues, and we concur, that the family court's award of rehabilitative alimony was proper and supported by substantial evidence. As noted by the circuit court in its May 20, 2020, order, respondent was a stay-at-home parent during the marriage, while petitioner's income exceeded $300,000, and included bonuses and differentials associated with working in Saudi Arabia. The family court's final order makes comprehensive and specific findings regarding respondent's earning capacity, employment history, age, educational qualifications, standard of living while married, and plans for future education. Thus, based on our review of record, we find no abuse of discretion in the award of rehabilitative alimony to respondent.

In his second assignment of error, petitioner argues that the circuit court erred in affirming the family court's approval of respondent's budget without respondent submitting any proof of her expenses. However, petitioner fails to cite to the record regarding when he made any requests for documentation supporting respondent's budget expenditures or raised the issue before the family court. Rule10(c)(7) of the West Virginia Rules of Appellate Procedure requires that

> [t]he brief must contain an argument exhibiting clearly the points of fact and law presented, the standard of review applicable, and citing the authorities relied on . . . The argument *must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal*. The Court may disregard errors that are not adequately supported by specific references to the record on appeal.

(Emphasis added). Additionally, in an Administrative Order entered December 10, 2012, Re: Filings That Do Not Comply With the Rules of Appellate Procedure, the Court noted that "[b]riefs that lack citation of authority [or] fail to structure an argument applying applicable law" are not in compliance with this Court's rules. Further, "[b]riefs with arguments that do not contain a citation to legal authority to support the argument presented and do not 'contain appropriate and specific

citations to the . . . record on appeal . . .' as required by rule 10(c)(7)" are not in compliance with this Court's rules. Here, petitioner's brief is inadequate as it fails to comply with the administrative order and the West Virginia Rules of Appellate Procedure, and thus, we decline to address this assignment of error on appeal. However, we note that both the family court and circuit court found in their final orders that the issue regarding supporting documentation for respondent's budget was not made during the discovery process (only referenced in the cross-examination of the respondent during the final hearing) and respondent did not counter the respondent's budget submission or "offer competing figures for the same." Accordingly, respondent's testimony regarding her budget was "essentially undisputed" and was the only evidence on which the family court could base its findings.

Next, petitioner contends that the court erred in granting petitioner sole decision-making authority for parties' daughter. Again, petitioner fails to cite to the record regarding objections he made to awarding petitioner sole decision-making authority for N.M. Petitioner's argument in this regard consists of a single paragraph and makes no reference to points of law or the record. Accordingly, as petitioner's brief fails to comply with Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure we decline to address his argument on appeal.

In his fourth assignment of error, petitioner argues that the circuit court erred in affirming the family court's valuation of the marital residence at $177,900. Again, as petitioner makes no citation to the record and references no points of law required by Rule 10(c)(7) of the West Virginia Rules of Procedure, we decline to address his argument on appeal. However, we note that the family and circuit courts made specific findings in their respective final orders that, despite having ample time to do so, petitioner offered no appraisal or other evidence of his alleged value of the marital residence. Thus, the circuit court's affirmation of the family court's valuation of the marital residence is not error and is fully supported by the record.

Lastly, in his final assignment of error, petitioner argues that the circuit court erred in affirming the family court's determination that petitioner did not meet his burden of proof in establishing that educational assistance benefits are no longer available to him through his employer. Once again, petitioner fails to comply with Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure and fails to provide any citation to the record or legal authority with respect to this issue. Thus, we decline to address this issue on appeal. However, we note that the family court and circuit court found in their final orders that petitioner had ample opportunity to provide documentation to support his argument but failed to do so.

For the foregoing reasons, we affirm the circuit court's May 20, 2020, order affirming the family court and refusing petitioner's appeal.

Affirmed.

**ISSUED:** May 26, 2022

**CONCURRED IN BY:**

Chief Justice John A. Hutchison
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice William R. Wooton

**NOT PARTICIPATING:**

Justice C. Haley Bunn