

No. 22128 -- Sylvia Hickman (Formerly Earnest)  
v. Merle O. Earnest

Neely, J., dissenting:

I dissent because the decision recommended by the Family Law Master, and overturned by the Circuit Court, was based solely on Mr. Earnest's earning capacity. The record reflects that Mr. Earnest did everything possible to save this marriage and that he is not guilty of any wrongdoing. Furthermore, the Family Law Master found that Ms. Hickman was at fault for the divorce; thus, it follows that Ms. Hickman wrongly accused her former husband of adultery and cruelty.

When alimony is sought in the context of a voluntary separation divorce, the court may consider substantial inequitable conduct on the part of the party seeking alimony and may infer that such conduct caused the dissolution. Peremba v. Peremba, 172 W. Va. 288, 304 S.E.2d 880, 881 (1983). When a party's conduct causes the dissolution of the marriage it is permissible for a court to refuse that party alimony. This, no doubt, is what the Circuit Court did here. This Court has held that "questions relating to alimony and to the maintenance and custody of the children 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." Nichols v. Nichols, 160 W. Va. 514, 236 S.E.2d 36 (1977). After a careful evaluation of the record I cannot say that the trial court clearly abused its discretion in denying Ms. Hickman's request for alimony.