

Cleckley, Justice, concurring:

I concur in the decision to remand because it is not clear what criteria was used by the circuit court or the family law master in declaring that the marital home was "separate property." By remanding this case to the circuit court, it should not be inferred that we are suggesting that the family law master or the circuit court was wrong. Rather, we need the lower tribunals to better explain their decision so that we can give that decision proper appellate scrutiny. In explaining the decision upon remand, the family law master and circuit court must understand that they are not permitted to rewrite the statute. It is, therefore, incumbent upon them to use statutory standards and, where appropriate, statutory language. Under the facts of this case, terminology such as "an enormous windfall" is simply not helpful for purposes of appellate review.

The purpose of W. Va. Code, 48-2-32(c) (1985), is to promote equitable resolutions of disputed issues regarding marital assets. While I believe that the enumerations listed in this section are illustrative only and not exhaustive, the listing is indicative

of legislative intent and the range of factors that may be considered by the family law master in making his determination.¹

I believe there is a sound and rational basis for holding that the marital home was not a marital asset and could very well constitute separate property. Subsection (c)(1) states that the family law master may consider "[t]he extent to which each party has contributed to the acquisition, preservation and maintenance, or increase in value of marital property by monetary contributions, including, but not limited to: . . . (B) [f]unds which are separate property." (Emphasis added). If it is equitable to give back to one spouse the benefits of his or her separate property contributions, it seems just as equitable to give back to the spouse the contribution made solely by his or her parent. If this is what is meant by "an enormous windfall," I believe such a finding is neither clearly erroneous nor an abuse of discretion. The point made by the majority opinion is well taken that "neither he [the family law master] nor the circuit court specifically referred to the statutory criteria set forth in W. Va. Code, 48-2-32(c) [1985]

¹The statute reads that "after a consideration of the following" the family law master may decide how to distribute the property. There is no doubt that the starting point is the statute itself.

as a basis for awarding the entire marital residence to Mrs. Pratt."

For the reasons set forth above, I concur with the majority's opinion.