

**IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA**

**LEWIS E. MCINTYRE,  
Respondent Below, Petitioner**

**vs.) No. 23-ICA-110** (Fam. Ct. Berkeley Cnty. No. FC-02-2022-D-624)

**JUDITH E. MCINTYRE,  
Petitioner Below, Respondent**

**FILED**

**November 1, 2023**

EDYTHE NASH GAISER, CLERK  
INTERMEDIATE COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Lewis E. McIntyre appeals the Family Court of Berkeley County's February 28, 2023, order which ordered him to pay the Respondent Judith E. McIntyre the sum of \$58,194.50 for her share of equitable distribution.<sup>1</sup> Ms. McIntyre filed a response in favor of the family court's decision. Mr. McIntyre filed a reply.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2022). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the family court's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

The parties were married on October 8, 2005, in the State of Washington. They eventually relocated to Berkeley County, West Virginia, and remained there until their separation in March of 2022. The marital home is the subject of this appeal. It was built on property that was originally owned by Mr. McIntyre, but Ms. McIntyre's name was added to the property in order to obtain a mortgage. Ms. McIntyre, who previously owned a home in the State of Washington, used proceeds from the sale of her home to invest in the parties' marital home in West Virginia.

Prior to the final divorce hearing, the marital home was appraised at \$370,000. The parties agreed that the mortgage payoff was \$255,571, leaving an equity balance of \$114,429. The final divorce hearing was held on February 7, 2023. During the hearing, Mr. McIntyre's attorney argued that Mr. McIntyre should be credited for the parcel of land the marital home was built upon because it was his separate property prior to the marriage. The

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<sup>1</sup> Mr. McIntyre is self-represented. Ms. McIntyre is represented by Christopher D. Janelle, Esq.

family court disagreed and informed Mr. McIntyre that he had two options: (1) sell the home and split the proceeds evenly; or (2) buy out Ms. McIntyre's one-half share. Mr. McIntyre, after weighing his options, ultimately decided to buy out Ms. McIntyre's half. The family court ruled that Mr. McIntyre would refinance the home within sixty days, remove Ms. McIntyre's name from the deed and mortgage, and pay her the sum of \$58,194.50 for her share of equitable distribution. It is from the February 28, 2023, order that Mr. McIntyre now appeals.

For these matters, our standard of review is as follows:

“In reviewing . . . 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. Pt., [in part,] *Carr v. Hancock*, 216 W. Va. 474, 607 S.E.2d 803 (2004).

*Amanda C. v. Christopher P.*, \_\_\_ W. Va. \_\_\_, \_\_\_, 887 S.E.2d 255, 258 (Ct. App. Nov. 18, 2022); accord W. Va. Code § 51-2A-14(c) (2005) (specifying standards for appellate court review of family court order).

Mr. McIntyre raises two assignments of error on appeal, which we will address in turn. As his first assignment of error, Mr. McIntyre asserts that the family court erred in three different ways regarding how it calculated the marital home's equity. He first asserts that the family court should have considered the cost of selling the property, which would have resulted in a ten percent reduction in the equity value. However, this assertion is moot because Mr. McIntyre decided not to sell the marital home. Next, Mr. McIntyre asserts that the family court should have considered the cost of maintenance and upkeep of the marital home from the date of separation to the date of the final hearing. This argument has no merit because he resided in the home during the separation and benefitted from its upkeep. See *Crea v. Crea*, 222 W. Va. 388, 664 S.E.2d 729 (2008) (holding no abuse of discretion when husband did not receive credit for monthly upkeep of the home because he enjoyed benefits of the home). Lastly, in this assignment of error, Mr. McIntyre asserts that he should have received credit for the parcel of land upon which the marital home was built because it was his separate property prior to the marriage. He maintains that he added Ms. McIntyre's name to the deed under duress, solely to obtain the mortgage. We disagree. First, upon review of the family court hearing, Mr. McIntyre did not raise the issue of duress below. Second, the Supreme Court of Appeals of West Virginia has consistently held as follows:

Where, during the course of the marriage, one spouse transfers title to his or her separate property into the joint names of both spouses, a presumption that the transferring spouse intended to make a gift of the property to the marital

estate is consistent with the principles underlying our equitable distribution statute.

Syl. Pt. 4, *Whiting v. Whiting*, 183 W. Va. 451, 396 S.E.2d 413 (1990). Accordingly, we hold that the family court properly calculated the equity of the marital home.

As his second assignment of error, Mr. McIntyre asserts that his decision-making was rushed and that his attorney was not permitted to present his case. As a result, Mr. McIntyre maintains that he was denied due process. Upon review of the family court hearing, we disagree with Mr. McIntyre. “The fundamental requirement of procedural due process in a civil proceeding is ‘the opportunity to be heard at a meaningful time and in a meaningful manner.’” *In re J.S.*, 233 W. Va. 394, 402, 758 S.E.2d 747, 755 (2014). Based on the record, Mr. McIntyre’s attorney was permitted to present his case and Mr. McIntyre was permitted, not only to speak, but to weigh his options and ask multiple questions prior to making the decision to buy out Ms. McIntyre’s share of the marital home. The family court provided Mr. McIntyre ample time to weigh the decision, ask questions, and consult his attorney before ultimately deciding to buy out Ms. McIntyre’s half of the marital home.

Accordingly, we affirm the family court’s February 28, 2023, order.

Affirmed.

**ISSUED:** November 1, 2023

**CONCURRED IN BY:**

Chief Judge Daniel W. Greear  
Judge Thomas E. Scarr  
Judge Charles O. Lorensen