IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 1997 Term

No. 24028

LARRY K. WILLIAMS,
Plaintiff Below, Appellee,

v.

STELLA LYNN (WILLIAMS) MILES,
Defendant Below, Appellant.

Appeal from the Circuit Court of Webster County
Honorable Danny O. Cline, Judge
Civil Action No. 88-D-17

AFFIRMED

Submitted: September 16, 1997
Filed: December 15, 1997

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Attorney for Appellant

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Attorney for Appellee

The opinion of the Court was delivered PER CURIAM.

CHIEF JUSTICE WORKMAN dissents and reserves the right to file a dissenting opinion.

SYLLABUS BY THE COURT

1. "In reviewing challenges to findings made by a family law master 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 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." Syl. Pt. 1, *Burnside v. Burnside*, 194 W.Va. 263, 460 S.E.2d 264 (1995).

2. "A family law master lacks jurisdiction to hear a petition for modification of an order when the modification proceeding does not involve child custody, child visitation, child support or spousal support. W.Va.Code, 48A-4-1(i)(4) [1986]." Syl. Pt. 1, *Segal v. Beard*, 181 W.Va. 92, 380 S.E.2d 444 (1989).

3. "A circuit court lacks jurisdiction under W.Va.Code,

48-2-15(e) [1986] to modify a divorce decree when the modification proceeding does not involve alimony, child support or child custody." Syl. Pt. 2, *Segal v. Beard*, 181 W.Va. 92, 380 S.E.2d 444 (1989).

Per Curiam:[1]

This appeal arises from an order of the Circuit Court of Webster County denying the claim of Stella Lynn Williams, the appellant/defendant, that she receive one-half of accrued overtime pay that was not previously made part of the final divorce decree. The appellant alleges it was error for the circuit court to rule that the family law master lacked jurisdiction to hear the claim. The appeal also asserts that the Court erred in its ruling that she failed to establish grounds necessary to alter the final divorce order. We affirm.

I.

[1]We point out that a per curiam opinion is not legal precedent. *See Lieving v. Hadley*, 188 W.Va. 197, 201 n.4, 423 S.E.2d 600, 604 n 4. (1992) ("*Per curiam* opinions ... are used to decide only the specific case before the Court; everything in a *per curiam* opinion beyond the syllabus point is merely obiter dicta.... Other courts, such as many of the United States Circuit Courts of Appeals, have gone to non-published (not-to-be-cited) opinions to deal with similar cases. We do not have such a specific practice, but instead use published *per curiam* opinions. However, if rules of law or accepted ways of doing things are to be changed, then this Court will do so in a signed opinion, not a *per curiam* opinion.").

On December 13, 1989, a final divorce decree was entered dissolving the marriage of Stella Lynn Williams to Larry K. Williams, appellee/plaintiff. Part of the final decree incorporated a settlement agreement. Approximately 5 years after the divorce was finalized, Mr. Williams received an award of $19,749.93 from a civil action involving overtime pay for state troopers. The overtime pay was earned during the marriage. In February 1995, Stella Lynn Williams filed a petition to require an accounting for one-half of the overtime pay Mr. Williams received. Stella Lynn Williams' petition stated that the overtime award was not disclosed during the parties' divorce and therefore the final order must be vacated due to the mistake. The family law master recommended the overtime award be defined as marital property and subject to equitable distribution. The circuit court rejected the recommendation. In doing so, the circuit court ruled that under the applicable law in place at the time of the divorce, W.Va. Code § 48A-4-1(i)(4) (1986),[2] the family law master lacked jurisdiction to hear the claim. The circuit court also ruled that Stella Lynn Williams failed to satisfy the requirements for altering the final divorce decree. Stella Lynn Williams contends that both rulings were in error.

II.

[2]Now found at W.Va. Code § 48A-4-6(a)(5) (1996).

The standard of review for the matter sub judice is set out in Syl. Pt. 1, *Burnside v. Burnside*, 194 W.Va. 263, 460 S.E.2d 264 (1995). *See also* Syl. Pt. 2, *Hillberry v. Hillberry*, 195 W.Va. 600, 466 S.E.2d 451 (1995). We agree with the circuit court's ruling. The circuit court ruled that W.Va. Code § 48A-4-1(i)(4) (1986) permitted the family law master to consider only petitions for changing child custody, child visitation, child support or spousal support.[3] *See* Syl. Pt. 1, *Segal v. Beard*, 181 W.Va. 92, 380 S.E.2d 444 (1989). We agree with the circuit court that the appellant failed to satisfy the general requirements for challenging a final judgment. *See Segal*, 181 W.Va. at 97-98, 380 S.E.2d at 449-450. Additionally, we find that the circuit court lacked jurisdiction to hear the claim. *See* Syl. Pt.2, *Segal*.

Affirmed.

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[3]During the hearing before Judge Cline in February, 1996, counsel for both parties acknowledged that both Stella Lynn Williams and Larry K. Williams *knew* that the overtime pay case was pending; both parties *knew* that Larry K. Williams had originally "opted out" of the case. (Emphasis added). It was some 5 years after the final decree was entered that the state troopers' case became a "class action" and Larry K. Williams automatically became a member of the class. Only then, did Larry K. Williams become eligible for and received the overtime payment.

Both parties were fully aware of the state troopers overtime case at the time of the final divorce and settlement agreement. Ms. Williams should have made her claim at that time. Therefore, there was no mistake within the meaning of the statute and no grounds for modification pursuant to *Segal*. Nor do the facts of this case bring it within the reach of W.Va. Code § 48-2-33(f)(2); which allows a petition where a party has "deliberately" or "negligently" failed to disclose assets.