

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 1998 Term

No. 24433

**MARY LEANETTE WILLIAMS,
Plaintiff Below, Appellant,**

v.

**STEPHEN JAMES WILLIAMS,
Defendant Below, Appellee.**

**Appeal from the Circuit Court of Randolph County
Honorable John L. Henning, Judge
Civil Action No. 93-C-409**

REVERSED AND REMANDED

**Submitted: January 20, 1998
Filed: February 25, 1998**

**James F. Cain
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Attorney for Appellant**

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Attorney for Appellee**

The Opinion of the Court was delivered PER CURIAM.

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. “‘An order directing a division of marital property in any way other than equally must make specific reference to factors enumerated in Sec. 48-2-32(c), and the facts in the record that support application of those factors.’ Syllabus Point 3, *Somerville v. Somerville*, 179 W.Va. 386, 369 S.E.2d 459 (1988).” Syl. Pt. 6, *Wood v. Wood*, 184 W.Va. 744, 403 S.E.2d 761 (1991).

3. “Since property settlement agreements, when properly executed, are legal and binding, this Court will not set aside such agreements on allegations of duress and undue influence absent clear and convincing proof of such claims.” Syl. Pt. 2, *Warner v. Warner*, 183 W.Va. 90, 394 S.E.2d 74 (1990).

Per Curiam:¹

This appeal was brought by Mary Leanette Williams, plaintiff/appellant, assigning as error an order by the Circuit Court of Randolph County requiring her to relinquish title to property held jointly with her former spouse, Stephen James Williams, defendant/appellee.²

I.

This case stems from a divorce granted to the parties on December 13, 1993. The divorce was granted on the grounds of irreconcilable differences. Neither party was represented by legal counsel during the divorce proceeding. The divorce decree incorporated a “settlement agreement” prepared and executed by the parties. The specific language at issue in this appeal relates to the parties’ jointly held real estate. The settlement agreement which consisted of only three (3) paragraphs stated:

SETTLEMENT AGREEMENT

Complete custody of the children Oliver Jay Williams and Amy Darlene Williams will be in the care of their mother, Mary Leanette Williams, with their father Stephen James Williams [having] visitation of every other week-end and for one month during the summer vacation from school.

¹We 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).

²All other assignments of error by Ms. Williams are without merit.

Mary Leanette Williams will have control of the home and property to live in with the children as long as she wants or needs the home and property. If she moves to another location the home and property goes back to Stephen James Williams.

Stephen James Williams will pay child support to Mary Leanette Williams in the sum of _____ monthly for the two children. When each child turns 18 years old the child support will stop.

Stephen James Williams

Mary Leanette Williams

(Notary)

At some point in 1995, Ms. Williams moved from the home. Mr. Williams subsequently filed a motion requesting that Ms. Williams be required to execute a deed conveying her undivided one-half (1/2) interest in the real estate to him. The lower courts found that by the terms of the settlement agreement, Ms. Williams had to execute a deed conveying her interest in the home to Mr. Williams. This appeal followed that determination.

II.

The standard of review of this case involves the three pronged analysis set

out in syllabus point 1 of *Burnside v. Burnside*, 194 W.Va. 263, 460 S.E.2d 264 (1995). In this Court's examination of the settlement agreement between the parties, we cannot discern any language in the agreement which requires Ms. Williams, upon vacating the residence, to transfer to Mr. Williams her interest in the family home and property.³ A settlement agreement entered into by the parties is binding. *See* Syl. Pt. 2, *Warner v. Warner*, 183 W.Va. 90, 394 S.E.2d 74 (1990). The wording of the settlement agreement only permits Mr. Williams to regain possession of the home and property, in the event Ms. Williams moves from the residence. The circuit court's order, in effect, permits Mr. Williams to modify the language of the settlement agreement. This was error. The circuit court's order also permits, without factual or legal justification, an unequal distribution of marital property. This, too, was error. *See* Syl. Pt. 6, *Wood v. Wood*, 184 W.Va. 744, 403 S.E.2d 761 (1991). The circuit court's order, entered October 17, 1996, requiring Ms. Williams to relinquish her one-half interest in the family home and property to Mr. Williams, is reversed.⁴

Reversed and Remanded.

³During the July 3, 1996, hearing, Ms. Williams testified that she understood that if, and/or when, she vacated the former marital domicile, Mr. Williams would have the immediate right to occupy the home. Ms. Williams testified that she never intended, by execution of the settlement agreement to convey her one-half (1/2) interest in said real estate to Mr. Williams.

⁴In the event Mr. Williams chooses to vacate the residence and the parties decide to sell, lease or rent the home, they are each entitled to one-half (1/2) of the proceeds therefrom.