

**FILED**

**December 15, 1999**

**DEBORAH L. McHENRY, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

No. 25977 -- Deborah N. Hicks v. Kenneth P. Hicks

**RELEASED**

**December 17, 1999**

**DEBORAH L. McHENRY, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

Maynard, Justice, concurring in part and dissenting in part:

I agree with the majority that the circuit court did not abuse its discretion in affirming the Family Law Master's refusal to consider the income of the appellee's new spouse in the child support calculation. Therefore, I concur with that portion of the opinion. However, I disagree with the majority that the rental value of the appellee's home should be factored into the child support formula as in kind payments to be included in the appellant's gross income.

The child support obligation in this case is \$1,304.85 per month. The appellee pays \$704.85 per month in child support, and he has agreed to allow his son and the appellant to live in the marital home incident to child support. The fair rental value of the home is stipulated at \$600 per month. The Family Law Master and the circuit court looked at this situation and realized that, minus the agreement as to the home, the appellant would be entitled to \$1,304.85 per month in child support, but would also have to bear rental or housing costs which, in a comparable home, would amount to at least \$600 per month. Therefore, the decision of the Family Law Master to deduct the rental value of the home from the total child support obligation essentially places the appellant in the same position she would be in if the home were not an issue. The appellant gets the benefit of the home, and the appellee gets the benefit of the reduced child support obligation.

It seems to me that the Family Law Master's solution conforms with the dictates of common sense and fairness. The majority, on the other hand, unduly complicates the issue to reach a less equitable solution. Accordingly, I dissent to the majority's reversal of the circuit court on the issue of how to treat the rental value of the appellee's home.

I am authorized to state that Justice McGraw joins me in this dissent.