

Starcher, J., concurring:

FILED

July 9, 2001

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

July 11, 2001

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I write separately to emphasize a point made by the majority's opinion. In the instant case, the family law master and circuit court found that the appellant's monthly income was \$12,746.00 per month, and based the appellee's alimony on this figure. This Court gives deference to the findings of fact made by a family law master because he or she heard the evidence directly, and was best positioned to consider the bias and credibility of the witnesses. *See* Syllabus Point 1, *Burnside v. Burnside*, 194 W.Va. 263, 460 S.E.2d 264 (1995).

On appeal, the appellant claims that \$6,746.00 of his monthly income goes to retire debt in a partnership. The family law master heard evidence of the value of that partnership, and gave it a price tag of \$200,000.00. Because the partnership was marital property, the appellee was awarded \$100,000.00 as her share of its value.

In looking at the record, this Court cannot determine where, or whether, the partnership's debt figured into the family law master's findings. We cannot determine whether the \$200,000.00 value of the partnership accounted for the debt, such that the appellant is putting \$6,746.00 a month toward increasing his own personal wealth, or whether some portion of that expenditure should be attributed to the appellee. We also cannot determine whether those partnership debts could be qualified as "frivolous," *i.e.*, expenses incurred by the appellant solely as a tool to reduce the amount he would be required to pay the appellee. The family law master's findings are further unclear about whether any of the expenses were

incurred after the date of the partnership's valuation, and therefore should not be applied to reduce the appellant's salary.

The Court's opinion should not be construed as a rejection of the family law master's reasoning. The appellee is clearly entitled to her marital share of the appellant's partnership, and is entitled to alimony. The record just leaves questions as to the value of that partnership asset, and alimony based upon the appellant's income. Accordingly, on remand, the family law master should endeavor to reexamine the evidence presented, and make a clear record of how the partnership's debts impact upon the value of the partnership and upon the appellant's monthly income. Any recalculation of the appellant's income, and thereby the amount of permanent alimony, should only take into account the partnership debt that existed on its date of valuation, and which was not previously accounted for by the family law master.

With that said, I respectfully concur in the majority's opinion.