

Starcher, Justice, concurring:

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OF WEST VIRGINIA

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I concur with the majority opinion, but I write separately to clarify how family courts should address the issue of life insurance policies bought by divorced parents to protect their dependent children, and to clarify whether and how premiums for those policies should be allocated to reduce a child support obligation.

The majority opinion makes it clear that family law masters were, under the old statutory scheme, empowered to require a parent to maintain a life insurance policy to protect his or her children. Under the new statutory scheme, family courts have the same remedy at their disposal. In devising a child support order, family courts can consider the income-earning abilities of the parties, the costs of educating minor children, and the general standard of living of the parents and children during the marriage. *See W.Va. Code*, 48-6-301 [2001]. Family courts must consider those “factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable grant of . . . child support[.]” *W.Va. Code*, 48-6-301(b)(20) [2001].

When considering whether a parent should be required to maintain life insurance for a dependent child, family courts must consider that “children have a right to share in their natural parents’ level of living,” and that the child support ordered must be “related, to the extent practicable, to the standard of living that children would enjoy if they were living in a

household with both parents present.” *W.Va. Code*, 48-13-102 [2001]. “[A] family . . . court should examine what a reasonable, similarly-situated parent would have done had the family remained intact or, in cases involving a nonmarital birth, what the parent would have done had a household been formed.” *Porter v. Bego*, 200 W.Va. 168, 176, 488 S.E.2d 443, 451 (1997).

In other words, family courts have flexibility to craft remedies that reflect the pre- and post-divorce circumstances of the parties, so that the final child support order ensures that the children can share in both parents’ standard of living. If a parent – particularly a parent of means – would have provided life insurance to protect his or her child’s standard of living and future opportunities in the event of the parent’s death while the parties were married, then the parent may be required to provide a similar level of life insurance after the dissolution of the marriage.

The big question not fully addressed in the majority opinion is, should the parent who is required or permitted to purchase life insurance receive a dollar-for-dollar deduction from his or her share of the child support obligation for any life insurance premiums paid? The majority opinion leaves this question open, and remanded the instant case back to the family court to craft a remedy and make findings. I believe the majority should have given the family court some guidance.

I can conceive of numerous situations where a parent should receive little or no deduction from a child support obligation for life insurance premiums. For instance, there is the hypothetical, absurd, and yet very real possibility that a parent would buy a life insurance

policy with premiums equal to or greater than the current child support obligation. Similarly, a parent could choose to buy life insurance without consulting the other parent, without being required to do so by the family court, or without any real need (such that the policy benefits are so high in relation to current income that the policy is merely a gamble to enrich the beneficiaries, not replace lost income). In these situations, it would be unfair to markedly reduce the current child support obligation to pay the life insurance premiums.

Furthermore, if the parent purchases a “whole life” insurance policy, or some other similar insurance product, that actually accrues value that the parent can borrow against or recover in the future, then the parent should not receive a dollar-for-dollar reduction in the current child support obligation for the premiums paid. It would be patently unfair for a parent to pay premiums on a whole life policy to avoid paying current child support, and then after the child turns 18, cash in the policy, thereby financially benefitting from this action. In such situations, the minor child does receive some inchoate current benefit by receiving the protection of the insurance policy, a benefit that a family court can consider in calculating child support. But the child should not be deprived of a substantial measure of current child support so that the parent can receive a future windfall when the policy is cashed in or borrowed against years down the road.

In its final child support award, a family court may craft a child support award that will accommodate “the needs of the child or children or the circumstances of the parent or parents.” *W.Va. Code*, 48-13-702 [2001]. This means a family court may, in its discretion,

require a parent to purchase a life insurance policy, and may credit all, some or none of the premiums against the parent's child support obligation.

I otherwise respectfully concur with the majority opinion.