

**FILED**

**December 6, 2002**

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

**RELEASED**

**December 9, 2002**

RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
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Maynard, Justice, dissenting:

I respectfully dissent from the majority opinion because it is obvious the majority considered only one factor in reversing the order of the circuit court, the income of Dr. Josimovich, and ignored the remaining factors that are enumerated in W.Va. Code § 48-2-16 (1999).

The majority states that “[t]he earning abilities of the parties . . . are quite disparate[,]” but then refuses to consider the earning ability of Ms. Howes. The majority ignores the fact that Ms. Howes graduated with two degrees, a B.S. in nursing and a B.S. in Health Care Administration. The Human Resources Employment Specialist at the local hospital testified that job openings exist in the immediate area that Ms. Howes is qualified to fill. Her minimum wage would be \$14.00 per hour if she chose to go to work. The majority ignores the fact that Dr. Josimovich put his education on hold so Ms. Howes could complete her education first. The majority ignores the fact that the financial history of the parties is debt-ridden, and they declared bankruptcy in 1999. Both parties were responsible for accumulating the remaining debt, and both should be responsible for retiring the debt.

The majority ignores the figures used in Ms. Howes' financial disclosures. In her first disclosure, she listed monthly expenses of \$5,608.86. Ms. Howes amended the disclosure on March 14, 2001, showing that her monthly expenses increased to \$6,680.63. Six days later, on March 20, 2001, she filed a second revised disclosure, maintaining that her monthly expenses had escalated to \$12,112.22. If Ms. Howes wishes to further her education so that she might increase her earning ability to support her lifestyle, I would not be averse to awarding rehabilitative alimony. However, I believe permanent alimony should not be awarded when Ms. Howes is a young, healthy, educated woman with job opportunities imminently available. The factors enumerated in W.Va. Code § 48-2-16 (1999) dictate against awarding permanent alimony under the circumstances of this case.

As justification for refusing to attribute income to Ms. Howes, the majority states, "As the spouse of a medical doctor earning more than \$14,000.00 per month, a reasonable, similarly-situated spouse would likely have remained in the home and devoted her time to the care of the children." Quite frankly, I believe many working women will be offended by the majority's "reasonable, similarly-situated spouse" standard. If this opinion had been written in 1945, the standard used by the majority would probably be right on track. However, this is 2002, nearly 2003, and the fact is that millions of American women married to professional men, doctors, lawyers, corporate presidents, etc., want and choose to use their talents, skills, and education in the workplace. The fact that a woman has children no longer dictates that she remain in the home devoting her time to the care of the children. Many

women believe that their children receive superior care due to the fact that they work outside the home.

Rather than seeking employment, Ms. Howes sought to bolster her stay-at-home position by pulling the younger child out of school on a half-day basis for home schooling while Natalie was attending first grade in public school. I cannot tell if this plan was ever implemented or how long it may have lasted. The fact is that both girls are school age, ten and eight, and the evidence indicates that both perform well in public school. Moreover, Ms. Howes would have this Court believe that her four-day hospitalization for “partner relational problem” fourteen months after the marital separation prohibits her from working. The evidence does not indicate as much. Therefore, I do not believe the circuit court abused its discretion by attributing monthly income to Ms. Howes.

If Ms. Howes is to receive \$2,900.00 for alimony in addition to child support from her ex-husband every month, then surely she can afford to pay one-half of her attorney’s fees. But no, here again the majority places the full responsibility on Dr. Josimovich. Lastly, in her petition for appeal to this Court, Ms. Howes does not request a recalculation of child support. Nonetheless, in its plethora of relief, with no explanation whatsoever, the majority opinion orders a recalculation.

I do not believe the circuit court erred in the relief that it granted to Ms. Howes in the final divorce order. Therefore, I would affirm the order of the Circuit Court of Randolph County which was entered on August 29, 2001.