

FILED

December 6, 2002

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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Davis, C.J., concurring, in part, and dissenting, in part:

In this appeal, the majority opinion affirmed the trial court's ruling awarding the parties' marital home to Mr. Drennen. As to this issue, I concur in the majority's ruling. However, the majority opinion reversed both the trial court's ruling denying alimony and the trial court's ruling on attorney's fees and credits given to Mr. Drennen in the equitable distribution of marital property. As to the majority's rulings on the latter three issues, I dissent.

In my review of the full record in this case, I found no evidence showing that the circuit court abused its discretion in resolving the issues concerning equitable distribution of marital property, alimony and attorney's fees. Moreover, there was no evidentiary showing that the circuit court's factual findings were clearly erroneous. In the absence of such evidence, this Court is precluded from disturbing the circuit court's ruling. See Syl. pt. 1, in part, *Burnside v. Burnside*, 194 W. Va. 263, 460 S.E.2d 264 (1995) (“[A] final equitable distribution order is reviewed under an abuse of discretion standard; the underlying factual findings are reviewed under a clearly erroneous standard[.]”).

I must, therefore, dissent from the majority's decision to reverse the circuit court's well-reasoned and factually supported rulings on the issues of alimony, equitable distribution of marital property and attorney's fees. I am authorized to state that Justice Maynard joins me in this separate opinion.