

FILED

December 16, 2005

Starcher, J., concurring:

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

I write separately to praise my colleagues for their politeness and restraint in setting out the facts in this case. I, personally, am appalled by the facts. I think the majority should have taken the family court judge and the appellee's lawyer to task for tipping the scales of justice so unevenly against the appellant.

The appellant in this case had a reading disability that left her with a seventh-grade reading comprehension level. She worked as a caregiver making \$650.00 a month, while her appellee husband worked as a coal mine supervisor earning \$7,000.00 a month.

The appellee hired a lawyer and worked out all the details of pursuing a divorce from the appellant. There's nothing ethically wrong with that. The problems started when the appellee dragged his wife into his lawyer's office, and kept her there for an undetermined amount of time to complete all of the paperwork for the divorce, from beginning to end. The appellant never had a lawyer, and never had time to think about her options. The majority suggests the lawyer "did the right thing" by telling the appellant she could get a lawyer; he did, but then he ignored that advice and had his secretary assist the appellant in filling out various forms.

The record indicates that the appellee's divorce petition was filed at 1:49 p.m., the same day both the appellant and appellee were in the appellee's lawyer's office. The

summons issued by the circuit clerk indicated the appellant had twenty days to answer, yet she filed her *pro se* answer ten minutes later at 1:59 p.m.

The appellee, and the appellee's lawyer, would have us believe that after the divorce was filed, they engaged in fair, impartial discussions with the appellant concerning the disposition of the parties' marital property. Yet, at 2:45 p.m. the same day, the appellee and his lawyer appeared before the family court judge and got the judge to enter the lopsided final divorce decree that is the basis for this appeal. As best I can tell, the appellee never offered to say, and the judge never bothered to ask, where the appellant was while the "hearing" – if you want to call it that – occurred; the appellant was sitting outside in the appellee's vehicle. Sixty-three minutes after the appellant filed her answer, and sixteen minutes after the "hearing" before the family court judge, a property settlement agreement, a joint financial statement, and a joint parenting plan signed by the appellee and the appellant were all filed with the circuit clerk. All of these documents were notarized by the appellee's lawyer's secretary.

The paperwork that was filed in this case – and which presumably was presented to and read by the family court judge – should have triggered alarm bells in the judge's mind. By all appearances, the parties are in disparate bargaining positions. So when the party in a vastly superior bargaining position showed up in the courtroom, with a lawyer, and wanted an instant divorce from his unrepresented wife, and wanted the judge to sign off on a settlement agreement that gave the wife next to nothing that she was entitled to under

the law, the judge should have slowed the case down. When the judge saw that the appellant had agreed to give the appellee \$112,000.00 in marital property, but had agreed to keep for herself only a \$2,200.00 car that was subject to a lien of the same amount, the judge should have – at a minimum – asked “Where is the appellant?” and “Why did she agree to this?”

I recognize that many family court judges have a daunting caseload. But permitting lawyers to engage in oppressive behavior is not an acceptable means of docket control. Cramming a case with lopsided results through the court system in record time is also not an acceptable means of docket control. The family court judge should have smelled what the appellee and the appellee’s lawyer were dishing out before signing off on the parties’ settlement agreement, and should have taken affirmative steps to ensure that some semblance of fairness and due process was involved with the proceedings.

Otherwise, I concur with the majority’s decision.