No. 32865 - *Edson R. Arneault v. Margaret Beth Arneault*

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Benjamin, J., concurring:

It has been said that "[m]otherhood is not a part time job." *Brown v. Brown*, 925 So. 2d 662, 666 (La. Ct. App. 2006). Yet that is precisely the sentiment the dissenters have expressed in discounting the contributions Ms. Arneault made to the parties' marriage of 35 years– contributions which freed Mr. Arneault of his obligations to home and family and allowed him to make his weekly travels to West Virginia to develop MTR into the successful institution it is today. Because the majority properly considers Ms. Arneault's role in maintaining the marital residence and raising the parties' children during Mr. Arneault's extensive absences and awards her equitable distribution of one-half of the marital estate in recognition of her substantial contributions to the parties' marriage, I respectfully concur with the majority's opinion in this case.

A. Equitable Distribution

The dissenters first take issue with the majority's decision to equitably distribute the parties' marital estate and to accomplish this end by awarding each party one-half thereof. Succinctly stated, my dissenting colleagues appear to believe that because Ms. Arneault did not join her husband in his weekly travels to West Virginia and did not work

outside the home, and because her *only* contribution to the 35 year marriage was to single-handedly raise the parties' two children and to maintain the parties' marital home during Mr. Arneault's routine absences, theirs was not an equal partnership, and, thus, Ms. Arneault is not entitled to one-half of the marital estate, but rather should receive a more meager percentage of the parties' assets. *See, e.g.*, Dissenting opinion of J. Starcher, at p. 14. This line of reasoning, so dismissive of a woman who in marriage served as the wife of a successful executive, and as the at-home mother to their children and as the spouse who maintained the parties' marital home, is, frankly, archaic. It is also completely contrary to the established law of equitable distribution in this State.

W. Va. Code § 48-7-103 (2001) instructs a court how to accomplish the equitable distribution of a marital estate when there is no agreement providing for such a division of the parties' property:

> In the absence of a valid agreement, the court shall presume that all marital property is to be divided equally between the parties, but may alter this distribution, without regard to any attribution of fault to either party which may be alleged or proved in the course of the action, after a consideration of the following:
>
> (1) The extent to which each party has contributed to the acquisition, preservation and maintenance, or increase in value of marital property by monetary contributions, including, but not limited to:
>
> (A) Employment income and other earnings; and
>
> (B) Funds which are separate property.

(2) The extent to which each party has contributed to the acquisition, preservation and maintenance or increase in value of marital property by nonmonetary contributions, including, but not limited to:

(A) Homemaker services;

(B) Child care services;

(C) Labor performed without compensation, or for less than adequate compensation, in a family business or other business entity in which one or both of the parties has an interest;

(D) Labor performed in the actual maintenance or improvement of tangible marital property; and

(E) Labor performed in the management or investment of assets which are marital property.

(3) The extent to which each party expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party, including, but not limited to:

(A) Direct or indirect contributions by either party to the education or training of the other party which has increased the income-earning ability of such other party; and

(B) Foregoing by either party of employment or other income-earning activity through an understanding of the parties or at the insistence of the other party.

(4) The extent to which each party, during the marriage, may have conducted himself or herself so as to dissipate or depreciate the value of the marital property of the parties: Provided, That except for a consideration of the economic consequences of conduct as provided for in this subdivision, fault or marital misconduct shall not be considered by the court in determining the proper distribution of marital property.

W. Va. Code § 48-7-103. In performing such an evaluation, a court is directed to consider (1) the spouses' monetary contributions; (2) the spouses' nonmonetary contributions; (3) the efforts of the spouses to increase their own, or their partner's, income-earning potential; and (4) the spouses' depletion of marital assets. *Id. See also* Syl. pt. 1, *Somerville v. Somerville*, 179 W. Va. 386, 369 S.E.2d 459 (1988) (interpreting and applying plain language of statute before current recodification). Pursuant to the express language of W. Va. Code § 48-7-103, no greater or lesser weight is accorded to monetary versus nonmonetary contributions to the marital estate. Thus, a court should give the same consideration to unpaid homemaker and child care services performed within the home as it does to income-earning work done outside the home.

The directives of this standard to accord equal weight to nonmonetary homemaker and child care services have also been recognized in our cases applying this statute. Primary among these decisions is *Mayhew v. Mayhew*, 197 W. Va. 290, 475 S.E.2d 382 (1996), *overruled on other grounds by Mayhew v. Mayhew*, 205 W. Va. 490, 519 S.E.2d 188 (1999), wherein we specifically held, in Syllabus point 7, that,

> [u]nder equitable distribution, the contributions of time and effort to the married life of the couple–at home and in the workplace–are valued equally regardless of whether the parties' respective earnings have been equal. Equitable distribution contemplates that parties make their respective contributions to the married life of the parties in that expectation.

This Court similarly concluded in the cases of *Raley v. Raley*, 190 W. Va. 197, 437 S.E.2d

770 (1993) (per curiam), and *Wood v. Wood*, 184 W. Va. 744, 403 S.E.2d 761 (1991) (per curiam), that homemaker and child care services, albeit noneconomic, constitute significant and substantial contributions to a marital estate to be considered in determining the equitable distribution of the parties' assets. *See Raley v. Raley*, 190 W. Va. at 199-200, 437 S.E.2d at 772-73 (concluding that "general contributions, rather than economic contributions [a]re to be the basis for [the] distribution" of a marital estate); *Wood v. Wood*, 184 W. Va. at 755, 403 S.E.2d at 772 (finding that, as compared with husband's monetary contributions to marital estate resulting from his employment earnings, wife's "non-monetary . . . contribution[s] in child care and homemaker services" were "equally substantial").

Nevertheless, the dissenters conveniently overlook the plain statutory language of W. Va. Code § 48-7-103 and ignore this Court's established precedent applying this standard to equitably distribute marital estates and, instead, decide that more weight should be given to Mr. Arneault's work performed outside the home because he earned such a vast income and amassed the majority of the economic wealth that now forms the parties' marital estate. In doing so, my dissenting colleagues correspondingly have devalued Ms. Arneault's substantial unpaid in-home employment, which unquestionably afforded Mr. Arneault the luxury to pursue his own professional aspirations, because her homemaker and child care services did not earn her a paycheck. *See* Dissenting opinion of J. Starcher, at p. 14 (suggesting that because Ms. Arneault "failed to introduce any evidence that she performed all the typical duties of a wife, parent, and homemaker *and still demonstrate that she made*

an actual economic contribution to the marital estate," she should receive less than one-half of the marital estate (emphasis added)). This reasoning simply is not supported by the law of this State. It also demeans the difficult choice which families must often make between a parent staying home with the children or a parent pursuing a career. Because the majority opinion understands and correctly applies the legal standard for equitably distributing marital property, I concur in their decision.

B. In Kind Distribution of Marital Stock Holdings

Another point raised by one of my dissenting colleagues concerns the majority's decision to award Ms. Arneault her one-half share of the parties' stock holdings in kind as stock rather than to grant her the monetary equivalent thereof. The majority concludes that only an award of the actual stock, itself, would satisfy Ms. Arneault's entitlement to one-half of the marital estate because the parties did not possess assets sufficient to award her the monetary equivalent thereof. By contrast, however, the dissenter predicts doomsday will occur when Ms. Arneault receives her distribution of MTR stock because public confidence in the value of MTR stock will decline and force scores of MTR employees into joblessness. *See* Dissenting opinion of J. Maynard, at p. 4. Not only is this supposition mere speculation, but this line of reasoning also fails to consider that it is not in Ms. Arneault's best interests to jeopardize the value of MTR stock insofar as her assets similarly would be substantially devalued.

In any event, however, the well-reasoned majority opinion thoroughly explains that Ms. Arneault should receive her portion of the stock in kind, rather than property in lieu thereof, because the marital estate does not possess any other property to distribute to her. Accordingly, I will not further belabor this point other than to reiterate that, under the facts of this case, an award of stock in kind is the only means by which to achieve an *equitable* distribution of the parties' marital estate because a purported distribution of equivalent property is a legal fiction which could not approach the value of assets to which Ms. Arneault is entitled.

C. Clarification

Lastly, I would be remiss if I did not clarify a final misapprehension of the majority opinion expressed by one of the dissenters in his separate dissenting opinion. In chastising the majority for basing their decision on "superficial and speculative rhetoric," the following passage is purportedly quoted from the majority's opinion:

> **Mrs.** Arneault earned a professional license and a graduate degree after the marriage commenced. It is *very conceivable* that this accumulation of knowledge, after the commencement of the marriage, *led to the development of* ***Mr.*** *Arneault's innate abilities.*

Dissenting opinion of J. Starcher, at p. 17 (italicized emphasis in original; bold emphasis added). The dissent analyzes this passage by expressing that "the only possible response [to this line of reasoning] is amazed speechlessness." *Id.*, at pp. 17-18.

I, too, would have expressed "amazed speechlessness" had this been an accurate recitation of the majority opinion in this case. It is not. A considered reading of the majority's opinion demonstrates that the majority were discussing *Mr.* Arneault's acquisition of his advanced degree after the parties' marriage and the resultant benefit to *Mr.* Arneault's career resulting therefrom. To more accurately quote from the majority's opinion in this regard,

> **Mr.** Arneault earned a professional license and a graduate degree after the marriage commenced. It is very conceivable that this accumulation of knowledge, after the commencement of the marriage, led to the development of **Mr.** Arneault's innate abilities.

Majority opinion, at p. 15 (emphasis added). The passage speaks for itself.

D. Conclusion

It has been said that "[w]e honor motherhood with glowing sentimentality, but we don't rate it highly on the scale of creative occupations." Leontine Young, Introduction to *Life Among the Giants* (1965). Truer words could not be spoken of the view expressed by the dissenters. In dissenting from the majority opinion in this case, I fear my colleagues perpetuate the disdain to which mothers who do not work outside the home are all too often subjected. Rather than dismissing such nonmonetary contributions as being insignificant or less important than those occupations which receive a paycheck, however, the West Virginia Legislature and this Court both have acknowledged that a parent's work inside the home *is* a substantial contribution to the marital estate which a husband and wife have amassed. In

fact, such nonmonetary contributions are highly valued and appreciated both for children and as supporting and fostering an environment that permits the work-outside-the-home spouse to do so. *See* W. Va. Code § 48-7-103; Syl. pt. 7, *Mayhew v. Mayhew*, 197 W. Va. 290, 475 S.E.2d 382. Such a result is indeed equitable, particularly in light of the never-ending demands faced by the mother (or father) who works inside the home:

> No ordinary work done by a man is either as hard or as responsible as the work of a woman who is bringing up a family of small children; for upon her time and strength demands are made not only every hour of the day but often every hour of the night. She may have to get up night after night to take care of a sick child, and yet must by day continue to do all her household duties as well . . . .

Theodore Roosevelt, On American Motherhood, Speech before the National Congress of Mothers (Mar. 13, 1905). Because the majority correctly addresses and resolves the issues in this case, I respectfully concur with the opinion of the Court.