

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

In re: the Marriage/Children of

**Dale Joseph Gillespie, Defendant
Below, Petitioner**

v.) No. 101237 (Marion Co. 92-C-278)

**Donetta Lynn Gillespie, Plaintiff Below,
Respondent**

FILED

April 18, 2011

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

MEMORANDUM DECISION

Petitioner Dale Joseph Gillespie appeals the circuit court's May 25, 2010, order affirming the family court's January 6, 2010, order denying his "Amended Petition for Modification" of a previously-ordered spousal support award. Respondent Donetta L. Gillespie has filed a response brief.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

After approximately fourteen years of marriage, the parties were divorced by final order of July 27, 1992. Petitioner was ordered to pay spousal support of \$ 350.00 per month to respondent. An "Order Correcting Error" entered on October 8, 1997, clarified that the alimony would terminate upon the death of either party or upon the remarriage of respondent. On March 23, 2009, petitioner filed his "Amended Petition for Modification" seeking to terminate the spousal support award because he retired and his income was significantly reduced. He also asserted that respondent was engaged in a *de facto* marriage as provided for in West Virginia Code § 48-5-707.

After an evidentiary hearing, the family court denied petitioner's request to terminate this permanent alimony. Petitioner's reduced income after retirement still exceeded the income of respondent, and the family court found that respondent needed the continued support. The family court rejected petitioner's argument that respondent was engaged in a *de facto* marriage. The family court found that respondent and the man she referred to as her fiancé resided together, but had not co-mingled their accounts or bills and did not jointly own property, among other indicia of a *de facto* marriage. Respondent appealed to the circuit court, which found no error and affirmed.

The following standard of review applies to our review:

In reviewing a final order entered by a circuit court judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law *de novo*.

Syl., *Carr v. Hancock*, 216 W.Va. 474, 607 S.E.2d 803 (2004).

Petitioner argues that the family court erred in concluding that his stated expenses were excessive given his current level of income, erred in finding that respondent had a continued need to receive alimony, erred by failing to find that petitioner's ability to pay had been significantly reduced, and erred in finding that respondent did not have a *de facto* marriage which would permit termination of spousal support. However, upon a review of the record and the parties' arguments, we find that the family court considered the parties' respective incomes, situations, and arguments, and did not commit clear error or an abuse of discretion. Accordingly, we affirm.

Affirmed.

ISSUED: April 18, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh