

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

**TAMRA PROTAN,
Respondent Below, Appellant**

vs.) No. 101328 (Kanawha County 06-D-165)

**HASSAN M. GHANNAM,
Petitioner Below, Appellee**

FILED

April 1, 2011

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

MEMORANDUM DECISION

Appellant Tamra Protan appeals the May 10, 2010 order of the Circuit Court of Kanawha County that reversed a decision by the family court establishing child and medical support for the parties' three children in the parties' divorce proceeding.

Upon consideration of the parties' briefs and the record below, the Court is of the opinion that the decisional process would not be significantly aided by oral argument and that a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The parties, Hassan M. Ghannam, petitioner below and appellee herein, and Tamra Protan, respondent below and appellant herein, were married in 2000 and divorced by a bifurcated divorce decree entered in 2008. The parties have three minor children who reside with Ms. Protan.

The only issue in this case concerns the amount of child support and medical support to be provided by Mr. Ghannam. In the proceedings before the family court with regard to this issue, Mr. Ghannam represented that he has no income whatsoever. Specifically, he denied any salary, wages, commission, bonuses, or income from any source, and listed his income as being zero. After the taking of evidence, the family court found that this is an appropriate case in which to attribute income to Mr. Ghannam pursuant to W. Va. Code § 48-1-205 (2008).¹ The family court found from the evidence that Mr. Ghannam works for his father or the family-owned corporation in real estate including showing real estate,

¹W. Va. Code 48-1-205(a) defines "attributed income" as "income not actually earned by a parent but which may be attributed to the parent because he or she is unemployed, is not working full time or is working below full earning capacity or has nonperforming or under performing assets."

supervising crews working on or at real estate owned by his father or the family corporation, and negotiating with prospective renters of commercial property. The family court additionally found that Mr. Ghannam's income has taken the form of "loans" which Mr. Ghannam is not required to repay. Moreover, the family court found that Mr. Ghannam has transferred valuable assets to his parents.

Specifically, the family court order cites evidence of loans to Mr. Ghannam from his father or the family corporation amounting to at least \$260,000.00; payments made to third parties by Mr. Ghannam's father or the family corporation for vacations, use of credit cards, food, housing, vehicle, and clothing; Mr. Ghannam's voluntary separation from ownership of a car wash business showing sales of \$145,000.00 annually or \$12,000.00 per month; and Bureau of Labor Statistics data showing income estimates for real estate management work, such as that performed by Mr. Ghannam, of \$87,000.00 annually or \$7,200.00 per month.

Based on this evidence, the family court found income attributable to Mr. Ghannam in the monthly amount of \$19,000.00. From this figure, the family court ordered child support in the amount of \$2,890.46 per month to be paid by Mr. Ghannam and ordered Mr. Ghannam to provide medical support in the form of insurance covering each of the three children. Any uncovered costs or deductibles for medical services is to be divided 87% from Mr. Ghannam and 13% from Ms. Protan.

By order of May 10, 2010, the Circuit Court of Kanawha County reversed the family court order and remanded the case to the family court for the taking of further evidence on the calculation of attributable income. The circuit court found that the evidence of record does not support the amount of income attributed to Mr. Ghannam. Specifically, the circuit court reasoned that Mr. Ghannam does not hold any advanced degrees and he suffers from attention deficit disorder and dyslexia which have prevented him from obtaining his real estate license. Also, the circuit court found that Mr. Ghannam currently resides with his parents, for whom he does odd jobs in exchange for room and board. Finally, the circuit court found that Mr. Ghannam's previous payment of \$461.02 per month in child support indicates a monthly income of between \$2,000.00 and \$2,050.00.

This Court finds that the circuit court exceeded its standard of review in reversing the family court's order. According to W. Va. Code § 51-2A-14(c) (2005), "[t]he circuit court shall review the findings of fact made by the family court judge under the clearly erroneous standard and shall review the application of law to the facts under an abuse of discretion standard." This Court explained in Syllabus Point 2 of *Rosen v. Rosen*, 222 W. Va. 402, 664 S.E.2d 743 (2008) that "[u]nder the clearly erroneous standard, if the findings of fact and the inferences drawn by a family [court] are supported by substantial evidence, such findings and inferences may not be overturned even if a circuit court may be inclined to make

different findings or draw contrary inferences.’ Syllabus Point 3, *Stephen L.H. v. Sherry L.H.*, 195 W. Va. 384, 465 S.E.2d 841 (1995).” In the instant case, the findings of fact and inferences drawn by the family court were supported by substantial evidence. In reversing the family court, the circuit court impermissibly substituted its judgment for that of the family court. For this reason we reverse the circuit court’s order, and we remand for reinstatement of the family court’s order with regard to the setting of child and medical support.

As a final issue, Ms. Protan opines that Mr. Ghannam should be ordered to pay attorney’s fees and costs inasmuch as Mr. Ghannam’s contentions below were vexatious, wanton or for oppressive purposes. This Court has held that “[p]ursuant to W. Va. Code § 48-5-611(c) (2001), a party in a divorce proceeding may be awarded reasonable attorney’s fees and costs that were incurred unnecessarily because the opposing party acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” Syllabus Point 8, *Whiteside v. Whiteside*, 222 W. Va. 177, 663 S.E.2d 631 (2008). Upon reviewing these factors, we conclude that Ms. Protan should be awarded attorney’s fees and costs.

Having found that the circuit court’s May 10, 2010 order is in error, the Court reverses the circuit court’s order and remands for reinstatement of the family court’s February 22, 2010 order with regard to the setting of child and medical support. We further reverse the denial of attorney’s fees and costs to Ms. Protan, and we order the award of attorney’s fees and costs on remand.

Reversed and remanded.

ISSUED: April 1, 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