

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

**Gregory Allan Zerkel,
Petitioner**

vs) No. 11-0277 (Monongalia County 04-D-28)

**Dana C. Zerkel n/k/a Leech,
Respondent**

FILED

**February 10, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

MEMORANDUM DECISION

Gregory Allan Zerkel appeals the circuit court's order which refused an appeal from a decision of the family court ordering Mr. Zerkel to, *inter alia*, pay certain bills. Petitioner appears by counsel Mark A. Swartz and Allyson H. Griffith. Respondent appears by counsel Raymond H. Yackel.

This Court has considered the parties' briefs and the record on appeal. 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 of Appellate Procedure.

Petitioner Gregory Zerkel and Respondent Dana Leech were divorced in December of 2005. They have four children together. Mr. Zerkel was ordered to pay the children's medical bills that were not covered by insurance, as well as the children's private school tuition. On April 25, 2007, Ms. Leech filed in family court a "Motion for Order to Show Cause" alleging that Mr. Zerkel was not paying these obligations and asking the family court to hold him in contempt. Unfortunately, a hearing was not held on this motion until June 10, 2009, more than two years after the motion was filed.

Mr. Zerkel asserts that he paid all bills presented to him. He asserts that shortly before the June 10, 2009, hearing, Ms. Leech disclosed thousands of dollars worth of unreimbursed medical bills that she had never before provided to him. Ms. Leech admits that she did not send Mr. Zerkel the children's medical bills after April of 2007. She asserts that she stopped sending the bills to avoid what she terms were Mr. Zerkel's "snide" and "abusive" responses, and to permit her lawyer the opportunity to seek relief from the family court on her pending motion.

By order of July 28, 2009, the family court refused to hold Mr. Zerkel in contempt. However, the family court determined that Mr. Zerkel had not paid \$5,246.87 in unreimbursed medical bills dated through April 25, 2007, the date the motion was filed. The family court entered judgment against Mr. Zerkel for \$5,246.87, but allowed him additional time to provide documentation if he had already paid some of these bills.

Consistent with the prior orders obligating Mr. Zerkel to pay the children's unreimbursed medical bills, the family court also required him to pay the bills incurred after April of 2007. The family court determined that these bills totaled \$14,000. The court granted Mr. Zerkel leave until September 1, 2009, to review the bills and pay, or provide proof that he had already paid some or all of the bills. The family court did not enter a judgment with regard to the post-April of 2007 bills, but instructed Ms. Leech that she could seek a rule to show cause if the bills were not paid. The family court also ordered Ms. Leech to, in the future, provide all medical bills and insurance information to Mr. Zerkel.

It was also determined that Mr. Zerkel had paid all of the private school tuition bills, although some payments were reportedly made late. The family court ordered Mr. Zerkel to pay future tuition bills within thirty days of the due date to avoid disagreements.¹

Mr. Zerkel appealed these rulings to circuit court, which refused the petition for appeal by order of January 14, 2011, entered *nunc pro tunc* to November 9, 2009. The circuit court found, *inter alia*, that the family court had not acted in an arbitrary or capricious manner.

Mr. Zerkel now appeals these rulings to this Court. "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*." Syllabus, *Carr v. Hancock*, 216 W.Va. 474, 607 S.E.2d 803 (2004). Upon a review of the record and the parties' arguments, we find no error. Mr. Zerkel was not held in contempt. The family court fashioned a remedy that balanced his obligation to pay these obligations for his children, with the opportunity for him to have additional time to review the bills. Accordingly, we affirm.

Affirmed.

ISSUED: February 10, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Margaret L. Workman

NOT PARTICIPATING:

Justice Brent D. Benjamin
Justice Thomas E. McHugh

¹ The family court's order also addressed other disputes that are not at issue in this appeal.