

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

**James M. Pierson,  
Intervenor Below, Petitioner**

**vs) No. 11-1144** (Fayette County 06-D-201)

**Michelle Lee Richards,  
Petitioner Below, Respondent**

**and**

**Thomas Wayne Richards  
Respondent below, Respondent**

**FILED**

November 16, 2012  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner and intervenor below, Attorney James M. Pierson, by counsel, Mark W. Kelley, appeals the order of the Circuit Court of Fayette County, entered on July 7, 2011, that denied petitioner's appeal of the Family Court of Fayette County's order, entered March 29, 2011. Petitioner had appealed the amount of attorney's fees awarded to him by the family court for services he performed on behalf of Respondent Michelle Lee Richards, in her action for divorce against Respondent Thomas Wayne Richards. Respondent Michelle Richards ("Mrs. Richards") filed her response by counsel, Pat C. Fragale. Respondent Thomas Richards ("Mr. Richards") filed his response by counsel, James W. Keenan.

This Court has considered the parties' briefs and the record on appeal. The facts and the legal arguments are adequately presented 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, we find that a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In April of 2006, Mrs. Richards filed a divorce action, pro se. About three months later, on July 21, 2006, petitioner filed a notice of appearance on behalf of Mrs. Richards. The divorce was contentious and resulted in more than three hundred docket entries from mid-2006 to mid-2009.

On June 18, 2009, Mrs. Richards discharged petitioner as her counsel. A few days later, Mr. Richards filed a Chapter 7 bankruptcy petition. On October 9, 2009, Mrs. Richards filed a Chapter 7 bankruptcy petition. Attached to the petition was an affidavit signed by Mrs. Richards in which she stated that she owed petitioner \$42,286.70 in attorney's fees. The bankruptcy court allowed the divorce to go forward and modified the bankruptcy stay for the limited purpose of

allowing the family court to determine the value of petitioner's services to Mrs. Richards as Mr. Richards was to pay those non-dischargeable fees.

On July 21, 2009, petitioner filed a motion to intervene in the Richards' divorce case for the purpose obtaining an award of attorney's fees. The family court held multiple hearings on petitioner's motion. On March 16, 2011, petitioner filed a copy of his billing statement with the family court that showed he had worked 193.75 hours on the case, that his staff had worked 275 hours on the case, and that his fees and costs for services rendered to Mrs. Richards totaled \$72,253.45. However, petitioner agreed to reduce his bill to \$65,225.25 (\$61,978.87 for fees and \$4,246.38 for costs). By order entered on March 29, 2011, the family court found (1) that petitioner's \$200 per hour fee was reasonable but the number of hours he billed was not; (2) that Mrs. Richards had paid petitioner \$7,305.95; (3) that Mrs. Richards's parents may have paid petitioner an additional \$1,500; (4) that Mr. Richards was to pay petitioner \$5,600 at a rate of \$200 per month until petitioner was paid in full; and (5) that Mrs. Richards owed petitioner no further obligation. Petitioner appealed the family court's ruling to the circuit court.

The circuit court affirmed the family court by order entered on July 7, 2011. The circuit court found that the family court did not clearly err in finding that the number of hours petitioner billed was unreasonable and did not abuse its discretion in awarding petitioner only an additional \$5,600 in attorney's fees. The circuit court's order is the subject of this appeal.

This Court has held that the family court's factual findings and its application of law to the facts is entitled to deference:

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 the family court judge, we review the finding of facts 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).

Petitioner first argues that the family court erred because it failed to determine the value of his attorney's fees, as requested by the bankruptcy court. Petitioner claims that the family court did not value his services because it did state a single, cumulative figure for his services. Petitioner also argues that the family court overstepped its boundaries because the bankruptcy court only asked the family court to determine the value of his services to Mrs. Richards – and not to determine whether petitioner's fees were reasonable, whether the fees had been paid, or whether Mrs. Richards owed petitioner any further obligation. Petitioner also argues that although Mr. Richards' attorney's fees from mid-2006 through mid-2009 totaled only \$17,230.30, it should not be assumed that one spouse's attorney will work the same number of hours as the other spouse's attorney.

Mrs. Richards responds that the family court did determine the value of petitioner's services by setting forth the specific payments that petitioner had received, those he might have received, and those he had yet to receive. Mrs. Richard contends that the family court determined

the reasonableness of petitioner's attorney's fees by applying the factors set forth in Syllabus Point 4 in *Banker v. Banker*, 196 W.Va. 535, 474 S.E.2d 465 (1996), and in Syllabus Point 4 in *Aetna Casualty & Surety Company v. Pitrolo*, 176 W.Va. 190, 342 S.E.2d 156 (1986). Mr. Richards adds that attorney's fees of \$72,000 are "absolutely unspeakable with regard to reasonableness" given the customary fees charged in Fayette County, the awards in similar cases, and the Richards's ability to pay given that their joint net estate was worth about \$42,000 at the time the attorney's fees were ordered.

After review of the appendix record, it is clear that the family court's award of an additional \$5,600 in fees was supported by the evidence. Furthermore, the family court did not abuse its discretion in the manner in which it assessed the reasonableness of petitioner's fees under the factors set forth in *Banker* and *Pitrolo*. Accordingly, under our standard of review, we cannot say that the family court erred.

Petitioner's second assignment of error is that the family court, by awarding only \$5,600 in additional attorney's fees, limited the "reasonableness" of his fees. We disagree. The family court determined the reasonableness of petitioner's fees and then made its award. Although the fees were significantly less than those petitioner requested, the family court did not "limit the reasonableness" of those fees. "In divorce actions, an award of attorney's fees rests initially within the sound discretion of the family law master [now family court judge] and should not be disturbed on appeal absent an abuse of discretion." Syllabus, in part, *Landis v. Landis*, 223 W.Va. 325, 674 S.E.2d 186 (2007) (quoting Syl. Pt. 4, in part, *Banker*). As we see nothing in the record to suggest that the family court abused its discretion, we find no error.

Petitioner's third assignment of error is that the family court's \$5,600 award was not a determination of the value of petitioner's services but merely a restatement of a previous award. Petitioner states that in January of 2007, the family court ordered Mr. Richards to pay petitioner \$200 a month until further order of the court. Mr. Richards made one \$200 payment to petitioner and then stopped. Petitioner now argues that the family court merely counted the number of months between the date Mr. Richards stopped making payments in February of 2007, and the date Mrs. Richards discharged petitioner in July of 2009 (about twenty-eight months), and then multiplied \$200 by twenty-eight months to determine the amount of petitioner's award. We find petitioner's speculative assertion be unsupported by the evidence or the record on appeal.

Petitioner's fourth and last assignment of error is that the circuit court erred as a matter of law in making factual findings on issues that were not raised or contested before the family court. Mrs. Richards responds that the circuit court held a hearing on petitioner's appeal and correctly applied the law in determining that the family court had not abused its discretion. We find that the circuit did not abuse its discretion because the findings of which petitioner complains are merely facts culled from the record below and do not affect the determination of whether the family court "valued" petitioner's services, limited the "reasonableness" of those services, or restated a previous award.

After careful consideration of the parties' arguments and the appendix record, this Court concludes that the family court did not abuse its discretion in its rulings regarding petitioner's fees, nor were those rulings clearly erroneous.

For the foregoing reasons, we affirm the July 7, 2011, order of the Circuit Court of Fayette County denying petitioner's appeal from the March 29, 2011, order of the Family Court of Fayette County.

Affirmed.

**ISSUED:** November 16, 2012

**CONCURRED IN BY:**

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