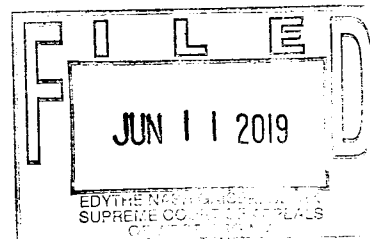


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IN THE SUPREME COURT OF APPEALS WEST VIRGINIA

DOCKET NO. 19-0058

**CONFIDENTIAL CASE
CONTAINS CONFIDENTIAL MATERIALS**

W. SHANE H.,

Petitioner Below, Respondent

**Appeal from final order
of Circuit Court of
Kanawha County (12-D-
714)**

vs.

HEATHER H.,

Respondent Below, Petitioner.

PETITIONER'S REPLY BRIEF

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ARGUMENT

THE RESULT IN THE CIRCUIT COURT SHOCKS THE JUDICIAL CONSCIENCE

This Court, in both criminal cases and civil cases, has recognized that when an outcome in the circuit court "shocks the conscience of the Court," it cannot be permitted to stand. See for example: *State v. Ross*, 184 W.Va. 579, 402 S.E.2d 248 (1990) and *Rife v. Rife*, 169 W.Va. 660, 289 S.E.2d 220 (1982).

[T]here are two tests to determine whether a sentence is so disproportionate that it violates our constitutional provision. The first is a subjective test and asks whether the sentence for a particular crime shocks the conscience of the Court and society. If the sentence is so offensive that it cannot pass this test, then inquiry need proceed no further. *State v. Ross*, 402 S.E.2d at 550.

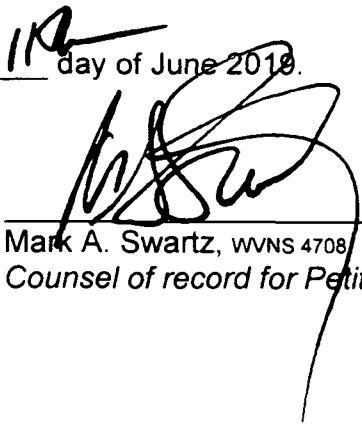
Is the outcome in the circuit court shocking? Is an award of zero alimony in this case a result that shocks the judicial conscience? We think so. As indicated in *State v. Ross*, the first test is a subjective test. To put the subjective test in a contemporary context, is the appropriate text message reply, upon learning the result "OMG?"

This is an absolutely shocking result and should not be allowed to stand.

CONCLUSION

The Circuit Court's Order should be reversed regarding alimony and student loan repayment.

Dated at Charleston, West Virginia, this 11th day of June 2010.


Mark A. Swartz, WVNS 4708
Counsel of record for Petitioner