

STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS

MYLA MAYES (BUSH), Respondent Below,  
Appellant

vs.) No. 35675 (Cabell County 08-D-0255)

BRIAN MAYES, Petitioner Below,  
Appellee

**FILED**  
**May 2, 2011**  
released at 3:00 p.m.  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

MEMORANDUM DECISION

This is an appeal by Myla Mayes (now Bush and hereinafter “appellant”), from a final order of the Circuit Court of Cabell County in a divorce case between her and Brian Mayes (hereinafter “appellee”). The appellant appeals the final order of the Circuit Court of Cabell County entered January 4, 2010, denying an appeal from the Family Court of Cabell County’s order of October 26, 2009, on the issue of equitable distribution of certain marital assets, specifically the business known as JTM Masonry, LLC, and the value of the partially completed marital home located in Mason County. After carefully reviewing the record provided, the briefs of the parties, the arguments of counsel and taking into consideration the relevant standards of review, the Court determines that the lower court committed error in affirming the family court order. The Court further finds that this case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the West Virginia Revised Rules of Appellate Procedure.

The parties were married to each other on February 6, 2005, in Mason County. They cohabited for a number of years prior to their marriage. During the course of their relationship, they had three children; to-wit: Jacob, born August 29, 1995; Brianna, born October 15, 2006; and Isabella, born August 23, 2007. The appellant and appellee separated on September 1, 2007, while living in Mason County.

After their separation, the appellee moved to Cabell County. On March 17, 2008, the appellant filed a divorce complaint in Cabell County Family Court, alleging that irreconcilable differences had arisen in her marriage.<sup>1</sup> The appellee answered, and a final

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<sup>1</sup>The appellant also alleged the fault-based ground for divorce of cruel and inhuman  
(continued...)

decree of divorce was entered on October 21, 2008. Rulings on the equitable distribution of the parties' marital estate were held in abeyance in this same order. The family court on its own motion bifurcated the divorce from the marital property distribution and requested briefs from the parties in support of their various positions. The family court made certain findings, however, in this order regarding the masonry business operated by the appellee. The family court held that "[t]estimony was presented that the masonry business of the Petitioner was built up prior to the marriage of the parties." The family court's order also including a finding that the appellee had testified that the assets of his business consisted of two mixers, a trowel and a trailer to haul equipment. The order found that "[n]o other testimony was presented as to the value of the business; however, the outcome as to whether said business is considered marital will be addressed at the future hearing."

Also at issue in terms of equitable distribution was the value of a partially completed home that the family court determined was marital property.<sup>2</sup> Each party provided the family court with an appraisal of the subject property. The appraisal submitted by the appellee husband indicated that the partially completed home had a value of \$45,000.00. The appraisal submitted by the appellant wife showed the home had a value of \$85,000.00.

In a three-page order entitled "Final Order on Equitable Distribution," entered October 26, 2009, the family court made the following findings regarding the value of the business and the marital home:

1. The partially built home is valued at \$45,000.
2. The business value is \$1,760.00.

The October 26, 2009, order of the family court contains no additional findings regarding how those values were determined.

The appellant wife filed an appeal of this order to the Circuit Court of Cabell County. By order entered January 4, 2010, the circuit court summarily affirmed the rulings and order of the family court. The appellant requested an opportunity to be heard on the appeal, but the circuit court found that the "Petition for Appeal and the record in this matter are sufficient to determine this appeal." The circuit court also found that the family court

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<sup>1</sup>(...continued)  
treatment in the event the her husband disagreed that irreconcilable differences had arisen.

<sup>2</sup>The classification of the home as marital property is not the subject of this appeal. At issue is the value of the home.

judge reviewed the record, and after due consideration of the issues raised, issued his decision. Furthermore, the circuit court stated that “the Judge reviewed all of the evidence and his findings of fact were not clearly erroneous, arbitrary, nor capricious, nor an abuse of his judicial discretion.” For these reasons, the circuit court affirmed the family court order of October 26, 2009. The appellant wife’s appeal is now before this Court.

We review this case pursuant to a well-established standard of review, as established in the Syllabus of *Hancock v. Carr*, 216 W. Va. 474, 607 S.E.2d 803 (2004):

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*.

As a part of this Court’s appellate purview, we are sensitive to our appellate standard that requires due deference to the lower court’s findings of facts and conclusions of law. We have traditionally deferred to the tribunal hearing the evidence and its conclusions. In this case, however, we have very little in the record to review regarding both the family court order and the circuit court order. There is no indication whatsoever as to the reasoning, logic, thought processes or other way of understanding why the family court held the value of the marital business to be \$1,760.00 and the value of the partially completed marital home to be \$45,000.00. The summary affirmation by the circuit court likewise leaves this Court without the needed information to correctly review the order. “This Court has found, in various contexts, that meaningful appellate review of the decision of a lower court sitting without a jury may occur only when specific findings of fact and conclusions of law are contained in the appellate record.” *Louden v. West Virginia Division of Environmental Protection*, 209 W. Va. 689, 694, 551 S.E.2d 25, 30 (2001)(citations omitted). Without findings of fact and conclusions of law, it is necessary to remand the matter to the lower court to state, or at a minimum, amplify its findings so that meaningful appellate review may occur. See, e.g., *Mitchell v. Mitchell*, 205 W. Va. 203, 517 S.E.2d 300 (1999), and *Mullins v. Mullins*, 226 W. Va. 656, 704 S.E.2d 656 (2010).

Because of the lack of findings of fact and conclusions of law in both the family court’s and circuit court’s orders, we are unable to adequately review the ultimate rulings regarding the distribution of the masonry business operated by the appellee, as well as the determination regarding the value of the incomplete marital home. This matter must therefore be remanded to the family court for findings of fact and conclusions of law on the value of the appellee’s masonry business and the value of the marital home.

For the reasons set forth above, the final order of the Circuit Court of Cabell County entered on October 26, 2009, is reversed, and this case is remanded to the Circuit Court of Cabell County with directions to remand the case to the Family Court of Cabell County for further proceedings consistent with this opinion.

Reversed and remanded.

ISSUED: May 2, 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