STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
June 23, 2011
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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

CHRISTI MARIE BECK-SAMMS,
Plaintiff below, Appellant

v.) No. 35759 (Kanawha County No. 09-C-1083)

GREGORY ALLEN SAMMS; and
CHADRICK R. PORTER,
Defendants below, Appellees

MEMORANDUM DECISION

This case is before the Court upon an appeal of Christi Marie Beck-Samms from the March 9, 2010, final order of the Circuit Court of Kanawha County, West Virginia, granting the Appellee's, Gregory Allen Samms's, motion to dismiss the action pursuant to West Virginia Rule of Civil Procedure 12(b) for failure to state a claim. The circuit court determined that the Appellant's tort claim for fraud should be dismissed because the time period for appeal of the family court's final order had passed; because the one-year statute of limitations to file a motion under West Virginia Rule of Civil Procedure 60(b) based upon fraud had expired; and, because the Appellant's claims were barred by the doctrines of res judicata and collateral estoppel. Pursuant to Rule 1(d) of the West Virginia Revised Rules of Appellate Procedure, the Court is of the opinion that this matter is appropriate for consideration under the revised rules. Having carefully reviewed the record, the Appellant's brief and argument,[1] the applicable precedent, and the relevant standard of review, the Court concludes that the trial court did not err in dismissing the action. The Court further finds that this case presents no new or significant questions of law. Thus, the Court disposes of the case through a memorandum decision as contemplated under Rule 21 of the West Virginia Revised Rules of Appellate Procedure.

[1]The Appellee failed to respond to the Appellant's petition for appeal and failed to submit an appellate brief in accordance with the Court's briefing schedule. The Appellee also did not take part in oral argument before this Court.

On June 11, 2009, the Appellant instituted an action against the Appellee, who is her former husband, and against Chadrick R. Porter, the attorney who represented both the Appellee and the Appellant in their divorce.[2] The Appellant's complaint contained separate counts for fraud, civil conspiracy and legal malpractice.[3] According to the allegations in the complaint, the Appellant and the Appellee were formerly husband and wife, with four children born during the marriage. The Defendant Porter and his wife lived next door to the Appellant and the Appellee. In addition to being friends, the Appellant alleged that both couples were also business partners. In 2006, the Defendant Porter's wife and the Appellant formed a limited liability company called Sweetpeas, LLC.[4] The company was formed for the purposes of operating a retail children's clothing store.

In 2007, the Appellant and the Appellee began experiencing marital problems. The Appellant alleged that "on or about June 14, 2007, Defendants [the Appellee and Defendant Porter] met outside the presence of [the Appellant] to discuss the Samms' impending divorce." The Appellant alleges it was during this meeting that the Defendant Porter "personally prepared, or directed the preparation of" documents that were subsequently filed in the Appellant's and the Appellee's divorce including the petition for divorce, an answer, a property settlement agreement and an agreed final order, findings of fact, and conclusions of law. According to the allegations in the Complaint, the documents were prepared in a manner to suggest that the Appellant and the Appellee prepared the documents and "Defendant Porter [did not] indicate that he was the true draftsman of the documents."

The Appellant further alleges that after this initial meeting, she met with the Appellee and the Defendant Porter to go over the documents. The Appellant alleged that

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[2]The Appellant states in her brief that on June 17, 2009, she filed an Amended Complaint. A close review of the record submitted to the Court, however, reveals that no Amended Complaint was filed in the case.

[3]The legal malpractice claim against the Defendant Porter remains pending in the circuit court and this decision does not impact that claim.

[4]There are no allegations that either the Appellee or the Defendant Porter were part of Sweetpeas, LLC. A review of the property settlement agreement that was attached as an exhibit to the Appellee's memorandum in support of his motion to dismiss, however, indicates that the Appellee was a personal guarantor on a loan for the business and the Appellant was to refinance that debt into solely her own name within six-months from the final divorce order or release the Appellee from the debt.

during this meeting, the Defendant Porter represented to her that "the documents that he had prepared, directly or indirectly, contained the following material terms[,]" including: that until the marital home was sold, the Appellee would pay all "ordinary" household expenses; that the Appellant would receive the 2006 Yukon Denali automobile and that the Appellee would make the car payments on the vehicle; that when the home was sold, the parties would divide the profits or losses equally; that after the house was sold, in consideration of the Appellant's waiver of alimony, the Appellee would pay her $4,000 a month in child support, which amount exceeded what the Appellant would receive under the child support guidelines; that the Appellee would retain all of his interest in his 401K; and, that the Appellant would receive her 50 percent interest in Sweetpeas, LLC, but only after a note upon which the Appellee was obligor was paid or refinanced.

The Appellant alleges that she questioned the Appellee and the Defendant Porter about the documents and some of the terms. In response to her questioning, the Appellant avers that the Defendant Porter gave her legal advice, including advising her that the documents constituted a "good deal" for her and that her waiver of alimony would inure to her benefit, because the child support payments would not be taxed as income. The Appellant avers that the Appellee also told her to take the "good deal." Moreover, the Appellant states that the Appellee "led [her] to believe that he intended to fully carry out the obligations assumed by him in the divorce documents. . . ."

Based upon the advice and assurances of the Appellee and the Defendant Porter, the Appellant signed the divorce petition and property settlement on June 14, 2007. According to the allegations in the Complaint, in the presence of the Appellant and the Appellee, the Defendant Porter forged his mother's name, Peggy Porter, as a notary public on the verification for the petition and the property settlement. There was no financial disclosure made by the Appellee at the time the documents were signed. The Appellant alleged that the Defendant Porter accompanied her to the Kanawha County Circuit Clerk's Office where the documents were filed.

The Appellant alleges that on July 30, 2007, the Defendant Porter prepared a financial statement for the Appellant, but not for the Appellee. She avers that there were several errors in the statement, including the failure to provide information regarding the Appellant's alimony claim. The Defendant Porter instructed the Appellant to sign the document, then forged his mother's name as the notary.

A final hearing was held in the divorce action on August 1, 2007. On August 16, 2007, the family court entered the agreed final order of divorce. The Appellant alleges that "[s]ubsequent to the entry of the Final Order, Defendant Samms began defaulting on his financial obligations to the Appellant." According to the allegations in the Complaint, in

April 2008, the Appellant was forced to file a contempt motion against the Appellee. In response to that motion, the Appellee filed a motion to modify his child support obligations. The Appellee's child support obligation was reduced by the family court after a hearing on May 8, 2008. Thereafter, the Appellee filed for bankruptcy.

The Appellant also alleges that within a month of the entry of the final divorce order, the Appellant and the Defendant Porter's wife began having difficulties working together in their business. In November of 2007, the Appellant was threatened with legal action by the Defendant Porter's wife if the Appellant did not surrender her business interest to the Defendant Porter's wife. The Appellant alleges that because she did not have the financial resources to defend herself in a lawsuit, in December of 2007, she ceded her interests in Sweetpeas, LLC, to the Defendant Porter's wife.

The Appellant filed a lawsuit against the Appellee and the Defendant Porter on June 11, 2009, alleging the tort of fraud and civil conspiracy against the Appellee and the Defendant Porter in relation to the property settlement agreement in the divorce action, as well as a legal malpractice claim against the Defendant Porter. The Appellant alleged in her Complaint that

> [a]s a consequence of the actions of Defendants, subsequent to the entry of the Final Order, Plaintiff:
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> a. has lost her home, which succumbed to foreclosure;
> b. lost her vehicle after Defendant Samms stopped making the payments thereon;
> c. lost her business;
> d. lost any interest in Defendant Samms' 401-K; and
> e. has not received a penny of alimony, which could have and would have been awarded but for the actions of Defendants.

In response to the Complaint, the Appellee filed a motion to dismiss pursuant to West Virginia Rule of Civil Procedure 12(b)(6), arguing that the matters had already been litigated in the family court and were barred by the doctrines of res judicata and collateral estoppel. The Appellee further argued that the time for the Appellant to have sought relief under the family court order either by appeal or under Rule 60(b) of the West Virginia Rules of Civil Procedure also had expired and, therefore, her action was time-barred. The circuit court granted the Appellee's motion, dismissing the fraud and civil conspiracy counts as they relate to the Appellee, but the legal malpractice claim against the Defendant Porter remains pending.

The Appellant argues that the circuit court erred: 1) in failing to recognize that the Appellant was asserting a cause of action for the independent tort of fraud; 2) in failing to apply the proper standard of review to the Appellee's Motion to Dismiss; and 3) in ruling that the Appellant's claims are barred by the doctrines of res judicata and collateral estoppel. The Court reviews a circuit court's denial of a motion to dismiss a complaint under a de novo standard. *See* Syl. Pt. 4, *Ewing v. Board of Educ.*, 202 W. Va. 228, 503 S.E.2d 541 (1998) ("When a party, as part of an appeal from a final judgment, assigns as error a circuit court's denial of a motion to dismiss, the circuit court's disposition of the motion to dismiss will be reviewed *de novo*."). Moreover, this Court has consistently held that

> "[t]he trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Syl., *Flowers v. City of Morgantown*, [166] W. Va. [92], 272 S.E.2d 663 (1980).

Syl. Pt 2, *Sticklen v. Kittle*, 168 W. Va. 147, 287 S.E.2d 148 (1981).[5]

The first issue is whether the circuit court erred in failing to recognize that the

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[5]The Appellant argues that the circuit court failed to apply the proper standard of review relating to a motion to dismiss filed pursuant to West Virginia Rule of Civil Procedure 12(b). A review of the Order Granting Defendant Samms' Motion to Dismiss demonstrates that the circuit court only reviewed the Appellant's complaint under West Virginia Rule of Civil Procedure 60(b) and West Virginia Rule of Civil Procedure 28, setting forth the time for appeal of a final order from the family court. The Appellant is correct that the circuit court did not review the sufficiency of the Appellant's complaint under the guidelines established by the Court to be used in conjunction with motions filed under West Virginia Rule of Civil Procedure 12(b); however, "[t]his Court may, on appeal, affirm the judgment of the lower court when it appears that such judgment is correct on any legal ground disclosed by the record, regardless of the ground, reason or theory assigned by the lower court as the basis for its judgment." Syl. Pt. 3, *Barnett v. Wolfolk*, 149 W. Va. 246, 140 S.E.2d 466 (1965); *see also Cumberland Chevrolet Oldsmobile Cadillac, Inc. v. Gen. Motors Corp.*, 187 W. Va. 535, 538 n.4, 420 S.E.2d 295, 298 n. 4 (1992) (stating that "even if the reasoning of a trial court is in error . . . we are not bound by a trial court's erroneous reasoning").

As set forth in this memorandum decision, *supra*, the Court upholds the dismissal of the Appellant's action by the circuit court for reasons that are different than those relied upon by the circuit court.

Appellant was asserting a cause of action for the independent tort of fraud. The Appellant argues that the circuit court, in dismissing her complaint against the Appellee, found that her claim for the tort of fraud was time-barred under the one-year time limit set forth in West Virginia Rule of Civil Procedure 60(b).[6] Likewise, the circuit court found that the Appellant's time for filing an appeal of the family court's final order had expired.[7] The

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[6]West Virginia Rule of Civil Procedure 60(b) provides, in relevant part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party . . . . The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

Similarly, Rule 25 of the West Virginia Rules of Practice and Procedure for Family Court provides for a motion to reconsider a family court order "as provided in W. Va. Code, § 51-2A-10." West Virginia Code § 51-2A-10 (2008) provides:

> (a) Any party may file a motion for reconsideration of a temporary or final order of the family court for the following reasons: (1) Mistake, inadvertence, surprise, excusable neglect or unavoidable cause; (2) newly discovered evidence which by due diligence could not have been available at the time the matter was submitted to the court for decision; (3) **fraud, misrepresentation or other misconduct of an adverse party**; (4) clerical or other technical deficiencies contained in the order; or (5) any other reason justifying relief from the operation of the order.
>
> (b) A motion for reconsideration must be filed with the clerk of the circuit court within a reasonable time and for reasons set forth in subdivisions (1), (2) or (3), subsection (a) of this section, not more than one year after the order was entered and served on the other party in accordance with rule 5 of the Rules of Civil Procedure. The family court must enter an order ruling on the motion within thirty days of the filing of the motion.

Id. (Emphasis added).

[7]West Virginia Rule of Practice and Procedure for Family Court 28(a) provides that (continued...)

Appellant argues that she is not appealing the family court's final order and her action for fraud was not brought under Rule 60(b) of the West Virginia Rules of Civil Procedure. In making this argument, however, the Appellant relies upon the language of West Virginia Rule of Civil Procedure 60(b), which provides: "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding . . . ."

A review of the Appellant's complaint reveals that she is attacking the validity of the final divorce order with allegations of fraudulent events that culminated in that order being entered. Succinctly stated, the Appellant avers that she was fraudulently led to give up certain rights with promises of a "good deal" for her, as well as the Appellee's fraudulent promises to comply with the terms of their agreement. The problem with the Appellant's pursuit of an independent action under the language of West Virginia Rule of Civil Procedure 60(b) to seek redress for the alleged fraud is gleaned from a review of this Court's decision in *N.C. v. W.R.C.*, 173 W. Va. 434, 317 S.E.2d 793 (1984). In *N.C.*, an ex-husband appealed the circuit court's dismissal of his petition seeking various relief from his second divorce from his ex-wife. The parties had been married, divorced upon the ground of irreconcilable differences, remarried when they found out the ex-wife was pregnant, and divorced a second time after the child was born. *Id*. at 435, 317 S.E.2d at 794. During the second divorce proceeding between the parties, the ex-husband did not employ counsel, nor did he answer the complaint. He did appear at the final hearing, but he never contested the paternity of the child. The circuit court granted the parties a divorce and ordered that the ex-wife was to have custody of the child and the ex-husband was to pay alimony and child support. *Id*.

More than eight months after the second divorce, the ex-husband filed a petition for relief from his second divorce because "'said divorce was obtained by fraud and deceit and upon the fraudulent testimony of the plaintiff [ex-wife].'" *Id*. at 435-36, 317 S.E.2d at 795. The ex-husband sought relief from paying any child support because he claimed that at the

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[7](...continued)

> [a] party aggrieved by a final order of a family court may file a petition for appeal to the circuit court no later than thirty days after the family court final order was entered in the circuit clerk's office. If a motion for reconsideration has been filed within the time period to file an appeal, the time period for filing an appeal is suspended during the pendency of the motion for reconsideration.

Id.

time of his second marriage, his ex-wife was pregnant with another man's child. *Id.* at 436, 317 S.E.2d at 795.

Without any responsive pleadings, the circuit court dismissed the ex-husband's petition and he appealed. *Id.* In a motion to dismiss the appeal, the ex-wife argued before the Court that the ex-husband's petition filed below was really a motion for relief from a final judgment, order, or proceeding pursuant to Rule 60(b) of the West Virginia Rules of Civil Procedure. 173 W. Va. at 436, 317 S.E.2d at 795. The ex-wife further argued that because the ex-husband had not filed the Rule 60(b) motion within the then-proscribed time limitation of eight months from the date of the final order, the circuit court was without jurisdiction to rule on the motion. 173 W. Va. at 436, 317 S.E.2d at 795. In contrast, the ex-husband argued that his petition filed in the circuit court was not filed pursuant to West Virginia Rule of Civil Procedure 60(b), but was filed as an independent action. *Id.*

In addressing the parties' arguments, the Court recognized that "in addition to a motion for relief from a final judgment, order or proceeding pursuant to the reasons set forth in *W. Va. R .Civ. P.* 60(b)(1) through (5), the rule specifically provides that a party may obtain relief from a final judgment, order or proceeding through an independent action." 173 W. Va. at 437, 317 S.E.2d at 796. The Court further stated that

> [t]he definition of an independent action, as contemplated by *W. Va. R. Civ. P.* 60(b), is an equitable action that does not relitigate the issues of the final judgment, order or proceeding from which relief is sought and is one that is limited to special circumstances. *See Greater Boston Television Corp. v. Federal Communications Commission*, 463 F.2d 268 (D. C. Cir.1971), *cert. denied*, 406 U.S. 950, 92 S.Ct. 2042, 32 L.Ed.2d 338 (1972); *Winfield Associates, Inc. v. Stonecipher*, [429 F.2d 1087 (10th Cir. 1970)] *supra*; *Smith v. Fitzsimmons*, 264 F.Supp. 728 (S.D.N.Y.1967), *aff'd*, 394 F.2d 381 (2d Cir.), *cert. denied*, 393 U.S. 939, 89 S.Ct. 300, 21 L.Ed.2d 276 (1968); *Johnson v. St. Paul Insurance Companies*, 305 N.W.2d 571 (Minn.1981); *Anderson v. State Department of Highways*, [584 P.2d 537 (Alaska 1978)] *supra*.

173 W. Va. at 437, 317 S.E.2d at 796-97. Based on the foregoing reasoning, the Court held in syllabus point three of *N.C.* that

> [i]n order to obtain relief from a final judgment, order or proceeding through an independent action, the independent action must contain the following elements: (1) the final judgment, order or proceeding from which relief is sought must be one that, in equity and good conscience, should not be enforced; (2) the party seeking relief should have a good defense to the cause

> of action upon which the final judgment, order or proceeding is based; (3) there must have been fraud, accident or mistake that prevented the party seeking relief from obtaining the benefit of his defense; (4) there must be absence of fault or negligence on the part of the party seeking relief; and (5) there must be no adequate legal remedy.

Id. at 435, 317 S.E.2d at 794, Syl. Pt. 3.

In *N.C.*, this Court, after concluding that the ex-husband did not file his petition within the time frame provided by West Virginia Rule of Civil Procedure 60(b), analyzed the ex-husband's petition as the filing of an independent action. 173 W. Va. at 438, 317 S.E.2d at 797. The ex-husband had argued before the circuit court that his petition was not time-barred under the provisions of Rule 60(b), because it was "an independent action addressed to the trial court's inherent powers as it maintains continuing jurisdiction over child custody and child support." 173 W. Va. at 436, 317 S.E.2d at 795. The Court, however, found that the ex-husband's independent action did not comport with the prerequisites needed for filing an independent action, stating that "[t]he dilemma in which the appellant now finds himself resulted from his fault or negligence in not raising the issue of paternity through appropriate proceedings prior to the final disposition of his second divorce." *Id*. at 438, 317 S.E.2d at 797.

Thereafter, in *Savas v. Savas*, 181 W. Va. 316, 382 S.E.2d 510 (1989), the wife moved for relief from a final judgment of divorce under West Virginia Rule of Civil Procedure 60(b). The divorce was final on May 7, 1986, and the wife filed her motion on June 2, 1987. 181 W. Va. at 317, 382 S.E.2d at 511. As was the case in *N.C.*, the time period for filing a motion pursuant to West Virginia Rule of Civil Procedure 60(b) was eight months, instead of the one year limitation which exists today.[8] 181 W. Va. at 317, 382 S.E.2d at 511. The wife asserted, in *Savas*, that she had relied on the advice of her husband's attorney, who had prepared all the legal documents, including the property settlement agreement. She contended that she did not understand what her rights were and, specifically, that she had waived her claim to alimony in the property settlement agreement. *Id.* Unlike the instant case, in *Savas* the wife never argued that she was filing an independent action under the provisions of West Virginia Rule of Civil Procedure 60(b).

The Court upheld the then eight-month filing period, unless the fraud alleged was a fraud upon the court. *Id*. at 318-19, 382 S.E.2d at 512-13. In the case of allegations of fraud upon the court, the Court held that "[t]hat portion of Rule 60(b) of the West Virginia

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[8]*See supra* note 6.

Rules of Civil Procedure which enables a court to set aside a judgment for fraud upon the court has no filing time limit." 181 W. Va. at 317, 382 S.E.2d at 511, Syl. Pt. 4. The Court, however, further held that

> [a] claim of fraud upon the court is reserved for only the most egregious conduct on the part of attorneys, court officials, or judges which causes the judicial process to be subverted. It ordinarily does not relate to misrepresentation or fraudulent conduct between the parties themselves.

Id. at Syl. Pt. 5.

Thus, the Court, in *Savas*, upheld the circuit court's denial of the wife's requested Rule 60(b) relief as it was untimely filed and was not the type of fraud that would constitute a fraud upon the Court. *Id*. at 319-20, 382 S.E.2d at 513-14. As the Court explained in rendering its decision:

> At best, Mrs. Savas's claim is that she signed the property agreement without fully understanding its contents, and that she agreed to the divorce and relied upon her husband's attorney. She did not appear at any of the divorce hearings, but did know that the divorce was granted within a few weeks after it occurred. She could offer no viable reason for why she delayed filing the motion until approximately thirteen months after the final decree.

Id. (Footnote omitted).

Subsequently, in *Downing v. Ashley*, 193 W. Va. 77, 454 S.E.2d 371 (1994), the former wife filed an action requesting the circuit court to set aside its 1980 order, which refused to grant full faith and credit to a 1976 order of a Georgia court that found the former husband in contempt for failing to comply with the divorce order. *Id*. at 79, 454 S.E.2d at 373. The circuit court dismissed the action and the former wife appealed. *Id*. at 80, 454 S.E.2d at 374.

On appeal, the former wife argued that the circuit court erred in dismissing the action because the case was properly brought as an independent action under West Virginia Rule of Civil Procedure 60(b). She also argued that "during the previous suit filed before the circuit court, the defendant committed fraud by falsely swearing that he did not receive notice of the contempt hearing held in Georgia in 1976." *Id*.

The Court analyzed the former wife's argument regarding her action being an independent cause of action, by relying upon this Court's decision in *N.C.*, which set forth the

necessary requirements for the independent action under West Virginia Rule of Civil Procedure 60(b). 193 W. Va. at 80, 454 S.E.2d at 374. The Court, in *Downing*, upheld the circuit court's determination that the former wife could not proceed, determining that

> the plaintiff is attempting to relitigate the issues that were brought before the circuit court in 1978. The plaintiff is seeking alimony and child support payments due between 1974 and 1976. No continuing payments are at issue. This matter was previously litigated for two years, and the circuit court rendered its decision.
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> Furthermore, the elements for proceeding with an independent action are not met. The order below is not unconscionable. More importantly, the plaintiff failed to appeal the portions of the 1980 order, which she now raises. This suit cannot be brought in lieu of an appeal to this Court.

Id. at 80-81, 454 S.E.2d at 374-75.

In the instant case, the Appellant argues that she filed the independent action contemplated by West Virginia Rule of Civil Procedure 60(b). In order to prevail under the independent action, however, the Appellant must meet the elements established by the court in *N.C.* 173 W. Va. at 435, 317 S.E.2d at 794, Syl. Pt. 3, in part ("In order to obtain relief from a final judgment, order or proceeding through an independent action, the independent action must contain the following elements: (1) the final judgment, order or proceeding from which relief is sought must be one that, in equity and good conscience, should not be enforced[.]"). The Appellant herein has not alleged, at any time, that the final order entered by the family court granting her divorce was not in good conscience or should not be enforced. Additionally, the Appellant's independent action must contain the absence of fault or negligence on the part of the Appellant. By the Appellant's own allegations, "[s]ubsequent to the entry of the Final Order, Defendant Samms began defaulting on his financial obligations to Plaintiff." The Appellant further averred that she filed a contempt motion against the Appellant within eight months of the final order being entered. Yet, there are no allegations that when the Appellee moved for a reduction of child support in response to the Appellant's contempt motion, the Appellant filed a motion under West Virginia Rule of Civil Procedure 60(b), to seek redress from the family court regarding the Appellee's failure to follow through with the final order concerning the payment of higher child support in lieu of the Appellant waiving her right to alimony. Thus, the Appellant did have time to seek redress during the period permitted by West Virginia Rule of Civil Procedure 60(b). Further, there is no indication from the record that the Appellant appealed the reduction in child support. Likewise, the Appellant asserts that "[w]ithin a month of the entry of the Final Order, Plaintiff and Defendant Porter's wife began having difficulties working together in the Sweetpeas, LLC business." Again, the Appellant sought no redress under the existing final divorce order

regarding her receiving 50 percent of that business. Instead, the Appellant alleges she ceded her interest in the business to the Defendant Porter's wife. Thus, the Appellant's alleged independent cause of action for fraud must fail and the circuit court did not err in dismissing the action.[9]

For the foregoing reasons, we find no error in the circuit court's decision and the decision is hereby affirmed.

Affirmed.

ISSUED: June 23, 2011

CONCURRED IN BY:

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

Justice Brent D. Benjamin, disqualified

[9]Based upon the Court's holding, there is no need to address the issue regarding the application of res judicata and collateral estoppel.