

IN THE INTERMEADIATE COURT OF APPEALS OF WEST VIRGINIA

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ARTHUR P.

PETITIONER,

VS.

Appeal from Final Order of the
Family Court of Nicholas County
(21-D-65) Judge David M. Sanders appointed
by special assignment

PAMELA ANN P.

RESPONDENT

REPLY TO RESPONDENT'S BRIEF

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REPLY TO RESPONDENT'S BRIEF

Comes now the Petitioner, Arthur Poff by and through counsel Christine B. Stump, Stump and Assoc. PLLC, and hereby replies to the Respondent's Response Brief as follows:

The Respondent asserts at page 3 and pages 6-7 of her Response Brief that the Petitioner did not raise the issue of a marital constructive trust in the Family Court, and it is therefore waived. The Respondent further states that the case of *Patterson v Patterson*, 167. W.Va. 1 (1981) was being mentioned for the first time and should therefore be disregarded. This assertion by the Respondent is false. The Family Court Judge asked the parties to each submit to the Court a Memorandum of Law in support of their relative positions. The Respondent's Memorandum is set forth at appendix Volume I pages 60-64. The Petitioner's Memorandum of Law is set forth in Appendix Volume I pages 67-70. The Petitioner's position that the former marital residence was held in constructive trust is clearly set forth in Petitioner's Memorandum of Law. The *Patterson* case is cited, and the elements set forth.

Of importance to this issue is that the Final Order of the Family Court cites no legal authority and makes up a requirement not set forth in West Virginia Code Title 48 *et seq.* or West Virginia case law. The Family Court Judge speculated that that the Petitioner would have had the opportunity to seek the advice of the attorney who prepared the Deed (Appendix Volume I Page 74) however there was no testimony supporting this finding.

The Respondent further asserts that the Family Court applied the relevant statutory law and case law in finding that the Petitioner gifted the marital residence to the Respondent (Respondent's Brief page 3). Contrary to this assertion the Family Court's Order makes no reference to either West Virginia Title 48 or any case law, nor does the Court apply any facts from the hearings to any statutory or case law. Further the Court apparently speculates that because the Petitioner had been a contractor and because the Petitioner would have had the opportunity to seek the advice of the attorney who prepared the deed that those facts supported the finding that the Petitioner gifted the marital residence to the Respondent. The Court's finding is not supported by

facts from the hearings and is nothing more than conjecture. Neither the Petitioner nor the Respondent testified that the Deed from the Petitioner to the Respondent was intended to be a gift to the Respondent.

Wherefore, the Petitioner prays that this Court overrule the Family Court and find that the former marital residence is subject to equitable distribution and remand the matter to the Family Court for further proceedings consistent with that ruling.

RESPECTFULLY SUBMITTED,

/s/ Christine B. Stump
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CERTIFICATE OF SERVICE

I, Christine B. Stump, Attorney at Law do hereby certify that on the **19th day of July, 2023**, I served the forgoing **Document** by e-File to:

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