IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
June 6, 2025
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

JAUN-PIERRE V.,
Respondent Below, Petitioner

v.) No. 24-ICA-390 (Fam. Ct. Kanawha Cnty. Case No. FC-20-2024-D-365)

CHELSEA V.,
Petitioner Below, Respondent

MEMORANDUM DECISION

Petitioner Jaun-Pierre V. ("Father")[1] appeals the Family Court of Kanawha County's September 16, 2024, final divorce order that granted Respondent Chelsea V. ("Mother") primary custody of the parties' children and divided the parties' marital property.[2] Mother filed a response in support of the family court's order. Father did not file a reply.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2024). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds that there is error in the family court's decision but no substantial question of law. For the reasons set forth below, a memorandum decision vacating, in part, affirming, in part, and remanding to the family court for further proceedings is appropriate under Rule 21 of the Rules of Appellate Procedure.

The parties were married in February of 2015 and separated in July of 2023. Two children were born of the marriage and were ages four and nine when the final order on appeal was entered. In 2024, Mother filed a petition for divorce in the Family Court of Kanawha County.

On July 15, 2024, the family court held an initial hearing on the divorce petition where both parties appeared and testified. Upon review of the video recording from the hearing, at that time Father had not filed an answer to Mother's petition or a financial

[1] To protect the confidentiality of the juveniles involved in this case, we refer to the parties' last name by the first initial. *See, e.g.*, W. Va. R. App. P. 40(e); *State v. Edward Charles L.*, 183 W. Va. 641, 645 n.1, 398 S.E.2d 123, 127 n.1 (1990).

[2] Both parties are self-represented.

statement. Mother's financial statement was incomplete. The family court instructed Father to file an answer and a financial statement to allow the court to properly consider property values for the purpose of equitable distribution. The court instructed Mother to complete her financial statement before the final hearing. The parties testified that the marital home was worth approximately $150,000 and that they owed approximately $110,000. Father testified that he wanted sole possession of the home. The parties also testified that they were both unemployed.

Regarding custodial allocation, the parties testified that after their separation, the parties agreed for Father's parenting time to be every weekend, but because Father felt it was "too much" they amended their agreement for Father to have parenting time every other weekend, which had been the arrangement for over a year. Nonetheless, Father requested equal 50-50 custodial allocation of the children. Mother testified that she did not object to Father receiving equal custody. The court asked Father why he had wanted to spend so little time with his children over the past year and he testified so he "could have some time with adults." Relevant to the notice issue raised on appeal, before the hearing concluded, the family court asked the parties if they were at the same addresses as stated in the file, to which both parties answered in the affirmative. The court reminded the parties to complete the mandated parenting education classes and to file completed financial statements. The court entered a temporary order giving Father parenting time every other weekend.

On September 16, 2024, the family court held a final hearing on the divorce petition. Father failed to appear at the hearing and had yet to file an answer or financial statement with the court. Mother filed an updated financial statement. The family court found that Father had been served with the notice of the final hearing and had been present at the initial hearing. Mother testified that she had not spoken to Father and that he had not exercised his parenting time since the end of August. Mother completed her parenting education class and presented her certificate to the court. Mother testified that the home was purchased during the marriage, was valued at approximately $150,000, and she believed that $112,000 was still owed on it. Mother requested that the home be sold, and Father be given sole possession of the home until then. Mother testified that she had lived in the home and had been solely responsible for the payments until February 2024. Further, Mother requested to retain possession of a 2015 vehicle, which had no equity. She testified that Father had multiple credit cards in his name only and that they were used for his business, which did not turn a profit. She also requested primary custody of the children.

By final divorce order entered September 16, 2024, the family court found that Father had not yet completed the court mandated parent education class, awarded Mother primary custody of the parties' children, and granted Father parenting time every other weekend. However, the court conditioned Father's parenting time on his completion of the mandated parent education class and production of the completion certification to Mother. The court also equitably distributed the parties' marital property. Specifically, the court

ordered for the marital home to be immediately placed upon the market for sale and the proceeds to be equitably divided between the parties. Father was awarded sole possession of the home until its sale and was ordered to be solely responsible for the mortgage payments and expenses until the home was sold. The court noted that Mother had possession of the marital home since the parties separated until February 2024 and had been paying all the mortgage payments during her residency and that Father had possession of the home since February 2024; thus, the court found that it was fair and equitable for the parties to equally share the proceeds from the sale of the home. The court also ordered Father to be solely responsible for the credit card debt. It is from this order that Father appeals.

When reviewing the order of a family court, we apply the following standard of review:

> When a final order of a family court is appealed to the Intermediate Court of Appeals of West Virginia, the Intermediate Court of Appeals shall review the findings of fact made by the family court for clear error, and the family court's application of law to the facts for an abuse of discretion. The Intermediate Court of Appeals shall review questions of law de novo.

Syl. Pt. 2, *Christopher P. v. Amanda C.*, 250 W. Va. 53, 902 S.E.2d 185 (2024); *accord* W. Va. Code § 51-2A-14(c) (2005) (specifying standards for appellate court review of family court orders).

On appeal, Father argues four assignments of error, which we will address out of order. First, Father argues that he did not receive notice of the final divorce hearing. Father asserts that he received every pleading, notice, and order throughout the divorce proceeding except the notice of the final hearing. We are unpersuaded by this argument.

Rule 5 of the West Virginia Rules of Civil Procedure provides that service is complete upon mailing it to the person's last known address. The SCAWV has previously held that it is a well-established principle of law that a letter properly addressed, stamped and mailed is presumed to have been duly delivered to the addressee. *See Dunn v. Watson*, 211 W. Va. 418, 421, 566 S.E.2d 305, 308 (2002).

Here, Father offers no evidence to support his contention that he did not receive notice of the final hearing. "An appellant must carry the burden of showing error in the judgment of which he complains. . . . Error will not be presumed, all presumptions being in favor of the correctness of the judgment." Syl. Pt. 7, *State ex rel. Hatcher v. McBride*, 221 W. Va. 760, 656 S.E.2d 789 (2007). Additionally, after a review of the initial hearing, the family court verified that the parties' addresses on file were accurate. Father responded that his address had not changed. Accordingly, we find no error in the family court's decision to proceed with the final hearing after concluding that Father had received sufficient notice.

For his second assignment of error, Father argues that the family court erroneously ordered that he be responsible for the credit card debt accrued during the parties' marriage because it was nearly exclusively used by Mother. We find no merit in this argument. West Virginia Code § 48-7-201 (2001) requires that in a divorce action "all parties shall fully disclose their assets and liabilities" and that such information "shall be updated on the record to the date of the hearing." West Virginia Code § 48-7-206 (2001) provides that "[a]ny failure to timely or accurately disclose financial information" gives the court the discretion to "accept the statement of the other party as accurate." *See also* Rule 13 of W. Va. R. Prac. & Pro. Fam. Ct.

After review, Father not only failed to disclose any debt, but he also failed to file any financial disclosure with the family court, which left Mother's evidence unrebutted. Mother testified that Father exclusively used the credit cards, which were solely in his name. Based on the unrebutted evidence, we conclude that the family court did not err or abuse its discretion by holding Father liable for the entire credit card debt. *See also Brown v. Brown*, No. 11-1705, 2013 WL 149600, at *2 (W. Va. Jan. 14, 2013) (memorandum decision) (Because ex-husband failed to disclose debt, namely credit card cash advance, in the course of the divorce proceedings, there was no error in trial court's decision to hold him liable for it.)

For his third assignment of error, Father argues that the family court erred by equitably dividing the marital home. In support of his argument, he contends that he should have been solely awarded the home because Wife only made the house payments after the parties separated. We disagree.

Except for certain limited categories of property that are considered separate or nonmarital property, West Virginia Code § 48-1-233 (2001) defines marital property as "[a]ll property and earnings acquired by either spouse during a marriage[.]" "In a divorce proceeding, subject to some limitations, all property is considered marital property, which preference is reflected in our case law." *Arneault v. Arneault*, 219 W. Va. 628, 633, 639 S.E.2d 720, 725 (2006). West Virginia Code § 48-7-101 (2001) provides that the family court "shall divide the marital property of the parties equally between the parties."

There being no evidence to the contrary, any payment of the home made solely by either party during the marriage was funded by marital property. Based on Wife's testimony that she had been solely responsible for the house payments after the parties separated, the court gave Father sole possession of the home, required the home to be immediately placed on the market for sale, and required Father to be solely responsible for the payments until it sold. We find no error or abuse of discretion in the family court's determination that this was a fair and equitable division of the marital home.

For his last assignment of error, Father argues that he should have been awarded equal 50-50 custody of the children because the family court made no valid findings to award Wife full custody of the children. We find merit in this argument.

When crafting parenting plans, "[t]here shall be a presumption, rebuttable by a preponderance of the evidence, that equal (50-50) custodial allocation is in the best interest of the child." W. Va. Code § 48-9-102a (2022). A rebuttable presumption is controlling unless or until such presumption is overcome by competent proof to the contrary. *See Boggs v. Settle*, 150 W. Va. 330, 145 S.E.2d 446 (1965) (Establishing a burden for rebutting the prima facie showing). This Court has stated that

> West Virginia Code § 48-9-206(a) [2022] presumes equal (50-50) custodial allocation of parenting time unless otherwise resolved by agreement of the parties. However, the family court may deviate from equal custodial time if the court expressly finds that the arrangement would be harmful to the child or that a provision of West Virginia Code § 48-9-209(f) [2022] necessitates another arrangement.

Jonathon F. v. Rebekah L., 247 W. Va. 562, 564, 883 S.E.2d 290, 292 (Ct. App. 2023).

Based on the record before us, the parties did not have an agreed parenting plan, yet the family court's order made no findings of fact or conclusions of law to support deviating from equal custodial allocation. "[A] deviation from the 50-50 presumption must be sufficiently explained and justified by the family court in its order." *Kane M. v. Miranda M.*, 250 W. Va. 701, 705, 908 S.E.2d 198, 202 (Ct. App. 2024); *see also* W. Va. Code § 48-9-206(d) (2022) (mandating that the family court make specific findings of fact and conclusions of law when there is a deviation from equal (50-50) custodial allocation). Thus, because the family court failed to make sufficient findings of fact and conclusions of law to articulate its basis for deviating from the presumption of equal 50-50 custody, we conclude that the family court erred and abused its discretion in its determination of custodial allocation.

Accordingly, the September 16, 2024, final divorce order of the Family Court of Kanawha County, as it pertains to custodial allocation only, is hereby converted into a temporary order, and the matter is remanded for the court to enter an order with sufficient findings of fact and conclusions of law to support its ruling consistent with this decision.

Affirmed, in part, Vacated, in part, and Remanded.

ISSUED: June 6, 2025

CONCURRED IN BY:

Chief Judge Charles O. Lorensen
Judge Daniel W. Greear
Judge S. Ryan White