

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

June 6, 2025

**PAMELA POFF,
Respondent Below, Petitioner**

ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

v.) No. 24-ICA-439 (Fam. Ct. Nicholas Cnty. Case No. FC-34-2021-D-65)

**ARTHUR POFF,
Petitioner Below, Respondent**

MEMORANDUM DECISION

Petitioner Pamela Poff (“Wife”) appeals the Family Court of Nicholas County’s October 7, 2024, Remand Order on Equitable Distribution that found the former marital residence to be marital property and subject to equitable distribution. Respondent Arthur Poff (“Husband”) filed a response in support of the family court’s order.¹ Wife 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 no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the family court’s order is appropriate under Rule 21 of the Rules of Appellate Procedure.

This is the second appeal concerning the classification of the marital home for the purposes of equitable distribution in the underlying divorce action.² Because our previous decision contained detailed factual recitations, we only need to briefly discuss the facts of the case in this decision.

Husband and Wife were married for twenty-nine years and divorced by Bifurcated Divorce Order entered on March 22, 2022. During the marriage, the parties built a home in Summersville, and a deed was placed in both parties’ names with rights of survivorship.

¹ Wife is represented by Jared S. Frame, Esq. Husband is represented by Christine B. Stump, Esq.

² See *Arthur R. Poff v. Pamela A. Poff*, No. 23-ICA-165, 2024 WL 1092519 (W. Va. Ct. App. March 13, 2024) (memorandum decision).

According to testimony, Husband became severely ill in 2020 and believed he would not survive. He hired an attorney to draft a quitclaim deed to convey his interest in the marital home to Wife in case something happened to him. On July 1, 2020, Husband executed the quitclaim deed and recorded it on the same day. Approximately nine months later, Husband filed for divorce.

On December 22, 2022, and January 26, 2023, the family court held final hearings on whether the home should be classified as marital property or Wife's separate property. Husband testified that he was of sound mind when he (1) employed counsel to prepare the quitclaim deed; (2) executed the deed; and (3) personally delivered the deed to be recorded. However, he further testified that he did not intend for the conveyance to be a "gift" to Wife. Rather, he wanted Wife to solely own the home to prevent his children from a previous marriage from obtaining an interest in it. He also testified that Wife pressured him to execute the quitclaim deed. Conversely, Wife testified that they had never discussed a quitclaim deed, but Husband told her that he wanted to make sure she solely owned the home so she and their daughter would inherit it. His children from his first marriage had never lived in the home and he wanted to be sure that they would have no inherit interest in it.

By final order entered on March 29, 2023, the family court found the current value of the home to be between \$500,000 and \$600,000 and that the quitclaim deed was intended as a gift from Husband to Wife. Thus, the family court found that the home was Wife's separate property and not subject to equitable distribution. Husband appealed that decision to this Court. After hearing oral argument, we reversed the family court's order and remanded the matter for the family court to enter an order containing detailed findings of fact and conclusions of law regarding, among other things, Wife's burden of proof and Husband's intent, as they pertained to the home being a gift from Husband to Wife. *See Poff*, 2024 WL 1092519 at *4 and *6.

The family court conducted a remand hearing on June 25, 2024, and by order entered October 7, 2024, the family court reversed its prior ruling and held that the former marital home was marital property subject to equitable distribution. The court found that although the conveyance of the property from Husband to Wife was a gift, Husband did not have the necessary intent to overcome Wife's burden of proving Husband intended to gift her the home. It is from this order that Wife now 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, Wife argues two assignments of error. She first asserts that the family court abused its discretion by finding that she failed to meet her burden of proving that Husband intended the transfer of the home to be a gift. In support of her argument, she contends that the court erred by classifying the home as marital property after finding that the home was a gift from Husband to Wife. We disagree.

As we previously held, “[f]or purposes of marital distribution, the spouse claiming that property has been gifted to him or her by the other spouse during their marriage has the burden of proving a valid gift.” *Poff*, 2024 WL 1092519 at *3. Additionally, West Virginia Code § 48-29-202 (2001) states that “in the case of an action . . . wherein the court is required to determine what property of the parties constitutes marital property and equitably divide the same . . . a gift between spouses must be affirmatively proved.” However, there must be an intention on the part of the donor to make a gift. *See Brewer v. Brewer*, 175 W. Va. 750, 751-52, 338 S.E.2d 229, 231 (1985).

Here, the family court defined the word “gift” and subsequently explained that while “[t]he quitclaim deed . . . satisfies that much of the definition. . . there exists no testimony or other evidence to suggest that [Husband] intended the quitclaim deed or the property interest it represented as a gift.” The court also noted that Wife never testified that Husband “ever said to her that the quitclaim was a gift,” and that the word “gift” was never discussed in relation to the home until after the divorce was filed. After reviewing the record, we are unable to conclude that the family court clearly erred or abused its discretion by finding that Wife failed to meet her burden of proof on this issue.

As her second assignment of error, Wife argues that the family court erred by failing to follow this Court’s directives on remand. In support of her argument, she contends that the family court’s remand order lacks the necessary analysis as to why the court reversed its previous order, which deprives her of the ability to adequately argue her case. We disagree.

In our previous decision, we instructed the family court to first analyze whether Husband intended to gift his interest in the home to Wife. We then stated that after providing an analysis, if the court concluded that Husband intended the home as a gift to Wife, the court was then to determine whether the property was converted back into marital property due to transmutation. This Court’s prior ruling explained that on remand, the

family court was required to make the prerequisite determination of whether Husband intended his transfer to Wife be a gift.

In the present case, while we agree with Wife that our previous decision cited a collection of cases addressing the issues of gifts during the marriage and the classification of the same, the family court was not required to provide additional explanations or findings once it analyzed and concluded that Husband did not intend to give his interest in the home to Wife. For these reasons, we cannot conclude that there is clear error or an abuse of discretion in the family court's ruling.

Accordingly, we affirm the family court's October 7, 2024, Remand Order on Equitable Distribution.

Affirmed.

ISSUED: June 6, 2025

CONCURRED IN BY:

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