IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
September 30, 2025
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

GREGORY KEPLINGER,
Respondent Below, Petitioner

v.) No. 25-ICA-81 (Fam. Ct. Grant Cnty. Case No. FC-12-2010-D-90)

CHERI MOLTER,
Petitioner Below, Respondent

MEMORANDUM DECISION

Petitioner Gregory Keplinger ("Husband") appeals the Family Court of Grant County's January 31, 2025, final order directing that the parties' former marital home be sold and the proceeds split evenly pursuant to the directives from their 2010 divorce order. Respondent Cheri Molter ("Wife") responded in support of the family court's decision.[1] Husband 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.

The parties were divorced by order entered on October 28, 2010. Prior to the divorce, they entered into a property settlement agreement on September 20, 2010, which disposed of household contents and vehicles but not the marital home. The family court found that the property settlement agreement was fair and reasonable, and incorporated it into the final divorce order. Regarding the marital home, the final order stated as follows:

> The parties own a house and lot they acquired through the Grant County Habitat, and there is debt owed against it in the amount of $40,000, with a payment of $286.26 per month. [. . .] [Wife] has exclusive possession and use of the marital home and currently makes the payment, and it is agreed that she should continue to have possession of the house. However, should [Wife] ever vacate the premises, [Husband] has the election to move into the house and he would then be responsible for the debt. It is agreed that at such time as the parties are able to sell the house, [Wife] would have the first

[1] Husband is represented by G. Kevin Judy II, Esq. Wife is represented by James O. Heishman, Esq.

> option to purchase it at fair market value from [Husband], and if she elects not to exercise the option, [Husband] shall have an election to purchase the house at fair market value from [Wife]. If neither party wants the house, they would list it, sell it and split the net proceeds fifty/fifty (50/50).

Some months after the entry of the final divorce order, Wife filed a notice of relocation, wherein she sought to relocate to Fayetteville, North Carolina with the parties' minor child. Over Husband's objection, the court entered an "Amended Final Order" granting the relocation on June 13, 2011, and amended the terms of the final divorce order as to the marital home as follows:

> [T]he parties own a house and lot they acquired through the Grant County Habitat, and there is debt owed against it in the amount of $40,000, with a payment of $286.26 per month. [. . .] [Wife] has had exclusive possession and use of the marital home and currently makes the payment. [Wife] will vacate the house on June 17, 2011, and she was granted an option to purchase the property and she notified [Husband] in Court that she will not exercise the option to purchase, and [Husband] shall have the option to purchase the property at such time as it can be purchased without penalty from the Grant County Habitat for Humanity. The option to purchase is at fair market value, less the amount owed to Habitat for Humanity, and [Wife] would be entitled to one-half of the equity. If [Husband] elects not to purchase the property, then it is agreed that the parties will sell the house and lot by listing it with a realtor and split the net equity.

Wife vacated the marital home as ordered, and neither party exercised their purchase option.

After Wife's relocation, Husband resided in the home and made all associated payments. No legal action was taken until September 12, 2024, when Wife filed a motion to enforce and/or for finding of contempt, seeking her equitable share of the marital home. Wife stated in her motion that she had sought resolution from Husband, but he failed to respond. She also asserted that she had remained on the debt the entire time and had to make multiple payments on the home when Husband failed to do the same. Husband filed an answer stating that both parties failed to act on the buy-out option, and that Wife had only made one payment in fourteen years, which was made shortly before Wife filed her recent motion. Husband also stated in his answer that selling the home would require an accounting, as he paid down the mortgage by $21,627.55. Husband requested that he be reimbursed for the $21,627.55 if the home was sold.

A hearing was held on December 18, 2024. During that hearing, the parties agreed to sell the home, and the parties agreed that there was no need to proceed with Wife's

petition for contempt. The parties further agreed to accept any offer within $3,000 of the listing price. Their agreement was reflected in an order entered on December 30, 2024.

On January 3, 2025, Husband filed a motion to dismiss and vacate the December 30, 2024, order based on lack of subject matter jurisdiction, alleging that it had turned into a partition case and no longer involved the principles of equitable distribution, pursuant to *Deleseleuc v. Walker*, No. 23-ICA-411, 2024 WL 4041375 (W. Va. Ct. App. Sept. 4, 2024) (memorandum decision) (finding in a partition action that a co-owned marital home being sold several years after the divorce "was no longer marital property and equitable distribution principles did not apply."). Husband further argued in the motion that a finding of contempt was improper because Wife was also guilty of the same behavior, and he was given no opportunity to purge the contempt.

A status hearing was held on January 14, 2025. During the hearing, the parties presented their respective arguments as to whether the property should be addressed under the principles of equitable distribution or partition, and Husband moved for a stay pending appeal. By order entered on January 31, 2025, the family court denied Husband's motion to dismiss, denied Husband's motion to offset his payments made on the mortgage, ordered the property sold with the equity split evenly, and granted his motion for stay in the event of an appeal. It is from the January 31, 2025, order that Husband now appeals.

For these matters, 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).

Husband raises two assignments of error on appeal. First, he asserts that the family court erred in maintaining jurisdiction over this case because it should have proceeded as a partition action in circuit court pursuant to *Deleseleuc v. Walker*. We disagree. In *Deleseleuc*, the property in dispute was purposely excluded from equitable distribution, the wife filed a partition action in circuit court, and the circuit court erroneously applied domestic relations law. However, in the case at bar, the home was considered a marital asset from the beginning and throughout the parties' divorce proceedings. This case is further distinguished from *Deleseleuc* in that Wife initiated her proceedings in family court by filing a motion to enforce the amended final divorce order. Additionally, West Virginia Code § 51-2A-2(a)(15) (2018) states that the family court "shall exercise jurisdiction over

[. . .] all proceedings for property distribution brought under § 48-7-1 [. . .] of this code." Therefore, we find no error and affirm the family court on this issue.

In his second assignment of error, Husband contends that the family court erred in denying him an offset against the proceeds from the sale of the home for the mortgage payments he made reducing the mortgage, increasing the net equity, and paying expenses associated with the home for the thirteen years following the entry of the amended final order while he resided in the home. In support of his argument, he relies on *Conrad v. Conrad*, 216 W. Va. 696, 702, 612 S.E.2d 772, 778 (2005), which states, "[r]ecoupment of payment of marital debt by one party prior to the ultimate division of marital property has often been permitted upon a final equitable distribution order." However, Husband's application of *Conrad* is misguided, as the husband in *Conrad* was entitled to the recoupment of the payments he made between separation and divorce while he did not reside in the marital home. Here, Husband seeks recoupment of payments he made while he lived in the marital home years after entry of the final order granting the parties' divorce and ordering equitable distribution, as well as the entry of the amended final order, both of which dictate the terms of the parties' purchase option and sale of the marital home. The amended final order entered June 13, 2011, remains in full force and effect and it controls. Further, neither the final order nor the amended final order addresses potential offsets or recoupment of payments, nor do the orders include any deadlines. Therefore, we find no error and affirm the family court on this issue.

Accordingly, we affirm the family court's January 31, 2025, final order.

Affirmed.

ISSUED: September 30, 2025

CONCURRED IN BY:

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