

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**Kevin C. Hawkins,
Petitioner Below, Petitioner**

v.) No. 24-57 (ICA No. 22-ICA-140)

**Randy J. Hawkins,
Respondent Below, Respondent**

MEMORANDUM DECISION

Petitioner Kevin C. Hawkins appeals the November 1, 2023, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”), affirming the order of the Circuit Court of Upshur County entered on August 31, 2022.¹ *See Hawkins v. Hawkins*, No. 22-ICA-140, 2023 WL 7201389, at *2-3 (W. Va. Ct. App. Nov. 1, 2023) (memorandum decision). The circuit court’s order partitioned the real property inherited by the parties from their father and, for equity purposes, ordered Respondent Randy J. Hawkins to remit an owelty payment to the petitioner. The petitioner argues that the circuit court erred by partitioning the real property unequally and that the ICA erred in affirming that decision. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision affirming the ICA’s memorandum decision is appropriate. *See W. Va. R. App. P. 21(c)*.

The petitioner and the respondent are brothers who inherited from their father parcels of real property that were used as a family farm. At some point after their father’s death, the relationship of the parties began to deteriorate. The respondent initiated this case to partition the jointly owned real property, consisting of approximately one hundred sixty-nine acres that is grouped into certain tracts. After a bench trial on January 25, 2022, the circuit court entered an order that partitioned the real property in the manner proposed by the special commissioner. Thereafter, the petitioner filed a motion for a new trial and brief in support in which he asserted that the values for the two houses located on two of the tracts of real property had been transposed by the special commissioner in his written proposal and in his testimony at trial, which was then relied upon by the parties and the circuit court in issuing its ruling causing a difference in value of the real property as partitioned, to the benefit of the respondent. The petitioner asserted that an owelty payment to equalize the distribution was necessary or that the real property needed to be reallocated for equitable distribution purposes. The respondent agreed that the values of the two houses had been transposed but disagreed with the petitioner regarding the sum of money needed to equalize the total distribution to each party.

¹ Petitioner Kevin C. Hawkins is represented by counsel Scott Curnutte. Respondent Randy J. Hawkins is represented by counsel Jefferson Triplett.

On August 2, 2022, the circuit court held a hearing on the petitioner’s motion. At the hearing, the special commissioner testified as to the complexity and expense involved in attempting to adjust the dividing line on a particular tract of real property to equalize the allocation between the parties. By order entered August 19, 2022, the court denied the motion and solicited proposals from the parties as to how to rectify the financial imbalance. By order entered August 31, 2022, the court reaffirmed its prior partition of the real property and, for equitable distribution purposes, ordered the respondent to pay the petitioner an owelty payment. In its order, the circuit court acknowledged the poor relationship of the parties and indicated that this was a factor considered in its ruling, with the goal to insulate the parties to avoid future conflict. The petitioner appealed to the ICA, which affirmed the circuit court’s August 31, 2022, order.

When reviewing the appeal of a bench trial before a circuit court, we apply the following standard of review:

In reviewing challenges to the findings and conclusions of the circuit court made after a bench trial, a two-pronged deferential standard of review is applied. The final order and the ultimate disposition are reviewed under an abuse of discretion standard, and the circuit court’s underlying factual findings are reviewed under a clearly erroneous standard. Questions of law are subject to a *de novo* review.

Syl. Pt. 1, *Public Citizen, Inc. v. First Nat’l Bank in Fairmont*, 198 W. Va. 329, 480 S.E.2d 538 (1996).² We have further held:

To justify setting aside an allotment made in a partition suit by commissioners and confirmed by the trial court, it must be shown that the allotment has been made on wrong principles, or by a clear and decided preponderance of the evidence that a grossly unequal allotment has been made.

Syl. Pt. 2, *Feamster v. Feamster*, 123 W. Va. 353, 15 S.E.2d 159 (1941).

Here, having reviewed the record on appeal and considered the ICA’s memorandum decision, we find no error in the ICA’s analysis. *See Hawkins*, 2023 WL 7201389, at *2. We agree that, in these circumstances, the circuit court did not abuse its discretion in allocating the real property in a manner that attempted to insulate the parties while also attempting to equally allocate the overall value to be received by each party. While the allocation of the real property by the circuit court was not equal in terms of numbers of acreage received by each party, given the

² This Court has consistently reviewed appeals of ICA decisions involving circuit court orders by considering the circuit court order under relevant and well-settled standards of review. *See, e.g.*, Syl. Pt. 3, *Christopher P. v. Amanda C.*, 250 W. Va. 53, 902 S.E.2d 185 (2024) (reviewing appeal of a final order of a family court); Syl. Pt. 1, *Folse v. Rollyson*, 251 W. Va. 566, 915 S.E.2d 344 (2025) (reviewing appeal of circuit court order involving a motion to dismiss); Syl. Pt. 1, *Moorhead v. W. Va. Army Nat’l Guard*, 251 W. Va. 600, 915 S.E.2d 378 (2025) (reviewing appeal of a circuit court order involving summary judgment).

adjustment ordered through the owelty payment, the ruling of the circuit court was not made on wrong principles, and the allotment was not grossly unequal. Accordingly, we affirm.

Affirmed.

ISSUED: November 25, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice C. Haley Bunn
Justice Charles S. Trump IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison