

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Fall 2026 Term

FILED

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

No. 26-ICA-35

KELLI MALLORY,
Petitioner Below, Petitioner

v.

KEVIN MALLORY,
Respondent Below, Respondent

Appeal from the Family Court of Cabell County
Honorable Sarah E. Dixon, Judge
Case No. FC-06-2025-D-48

REVERSED and REMANDED

Submitted: September 30, 2026
Filed: October 20, 2026

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CHIEF JUDGE GREER delivered the Opinion of the Court.

JUDGE WHITE concurs and reserves the right to file a separate opinion.

GREEAR, Chief Judge:

Petitioner Kelli Mallory (“Wife”) appeals the Family Court of Cabell County’s December 30, 2025, order addressing equitable distribution of a home that Wife acquired prior to her marriage to Respondent Kevin Mallory (“Husband”). In that order, the family court concluded that the home, in which the parties resided during their marriage, was marital property subject to equitable distribution, reasoning that both parties contributed financially to the home and intended to add Husband to the deed.

On appeal, Wife contends that the family court erred by ordering equitable distribution of her separate property. Upon review of the record, the applicable law, and the parties’ oral and written arguments, we find that the family court abused its discretion by classifying the home as marital property subject to equitable distribution and awarding Husband one-half of the home’s equity. Accordingly, we reverse the December 30, 2025, order and remand this case for further proceedings.

I. FACTUAL AND PROCEDURAL HISTORY

The parties began dating in May 2017. At that time, Wife was divorcing her former spouse and, pursuant to a court order in that proceeding, was required to list her former marital home for sale. She continued to live in the former marital home, where Husband began residing in August or September 2017. In February 2018, Wife purchased a home located at 314 Highland Drive in Huntington, West Virginia. The mortgage on the Highland Drive property was in Wife’s name and cosigned by her father. The parties moved

into the Highland Drive home together and later married on October 31, 2020, in Cabell County, West Virginia. The parties last lived together as husband and wife on January 24, 2025. Wife filed for divorce on February 11, 2025.

The family court held a temporary hearing on March 31, 2025.¹ During the hearing, the parties agreed to the division of their marital assets and debts, except for the Highland Drive property. As to that property, both parties testified that the home was purchased before their marriage; that Wife's name alone was on the deed; that the mortgage loan was in both Wife and her father's names; that both parties financially contributed toward the home; that Wife and Husband made improvements to the home after the purchase while residing there; and that they disagreed as to the value of the home and how any equity in the home should be divided. By temporary order entered that same day, the family court directed the parties to obtain an appraisal of the Highland Drive property and set the matter for a final hearing.²

After retaining counsel, Wife moved for reconsideration of the family court's appraisal order. Specifically, Wife argued that the home was her separate property because she purchased it before the marriage and, therefore, no appraisal was needed. The family

¹ Both parties were self-represented at this initial hearing.

² The family court later entered a second temporary order rescheduling the final hearing for August 21, 2025, and granting Wife temporary, exclusive use and possession of the Highland Drive property.

court denied Wife's motion. The court noted that property acquired before marriage may, under certain circumstances, be treated as marital property for purposes of equitable distribution. The court further noted that whether the Highland Drive property was marital or separate property had yet to be determined and that, if the court ultimately found it to be marital property, an appraisal would be necessary to determine its value.

The family court held the final hearing on August 21, 2025. Before entering the final order on equitable distribution, the court entered a bifurcated order granting the parties a divorce. The court entered the final order on equitable distribution on December 30, 2025, incorporating findings from the March 31, 2025, and August 21, 2025, hearings. During those hearings, the family court received extensive testimony on ownership of the property and its purchase; the parties' financial contributions and improvements made to the home before and during the marriage; the appraisal and tax valuation; changes in the mortgage principal balance; current equity; and whether Wife bought the home in contemplation of marriage.

In its final order on equitable distribution, the family court found that Wife purchased the Highland Drive home prior to the parties' marriage but relied on *Hinerman v. Hinerman*, 194 W. Va. 256, 460 S.E.2d 71 (1995) (per curiam) as establishing a "narrow exception to the general rule that premarital property remains separate." After weighing the evidence and applying the *Hinerman* factors, the court found that the parties intended to add Husband to the deed and mortgage once his income stabilized and Wife's credit

improved; that they had an agreement regarding the mortgage and utility payments; and that each contributed financially to the home until Husband became unable to do so due to his health issues. Based on those findings, and upon concluding that the parties' intent was the controlling consideration, the family court determined that the home was marital property subject to equitable distribution and ordered that the equity in the home be divided equally between Wife and Husband. The court did not set terms for possession, refinancing, or sale, instead directing the parties to reach agreement on those terms. It is from this order that Wife now appeals.

II. STANDARD OF REVIEW

In appeals from family court proceedings, our standard of review is as follows:

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) (specifying standards for appellate court review of family court orders). An appellate court may reverse for abuse of discretion if “a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed but the [lower] court makes a serious

mistake in weighing them.” *Gentry v. Mangum*, 195 W. Va. 512, 520 n.6, 466 S.E.2d 171, 179 n.6 (1995). With these standards in mind, we turn to the issues raised on appeal.

III. DISCUSSION

On appeal, Wife argues that the family court erred in classifying the Highland Drive property as marital property subject to equitable distribution. Wife asserts that *Hinerman* does not create an exception to the statutory definition of separate property. According to Wife, because it is undisputed that she acquired the home before the marriage, the family court should have applied the statutory definition of separate property and awarded Husband in equitable distribution only the value attributable to his marital contributions to the reduction of the home’s mortgage principal.³ Wife further argues that, because *Hinerman* was decided per curiam, its holding has no precedential value and is limited to the particular facts of that case. Although we have no authority to overturn or disregard *Hinerman* and decline to address the precedential effect of its holding, we agree with Wife that the family court misapplied that decision and abused its discretion by classifying the Highland Drive home as marital property subject to equitable distribution.

The Supreme Court of Appeals of West Virginia (“SCAWV”) has held that equitable distribution is a three-step process. *See* Syl. Pt. 1, *Whiting v. Whiting*, 183 W. Va. 451, 396 S.E.2d 413 (1990). “The first step is to classify the parties’ property as marital or

³ Contending that *Hinerman* misapplied the definition of separate and marital property, Wife urges that *Hinerman* be overturned.

nonmarital. The second step is to value the marital assets. The third step is to divide the marital estate between the parties in accordance with the principles contained in [West Virginia Code § 48-7-103].” *Id.* For purposes of equitable distribution, “marital property” is defined in West Virginia Code § 48-1-233 (2001), in relevant part, as “[a]ll property and earnings acquired by either spouse during a marriage, . . . regardless of the form of ownership, . . . except that marital property does not include separate property”⁴ In turn, West Virginia Code § 48-1-237(1) (2001) defines “separate property” as including “[p]roperty acquired by a person before marriage[.]”⁵ “Whether a particular unit of property

⁴ The full statutory definition of “marital property” under West Virginia Code § 48-1-233 provides:

(1) All property and earnings acquired by either spouse during a marriage, including every valuable right and interest, corporeal or incorporeal, tangible or intangible, real or personal, regardless of the form of ownership, whether legal or beneficial, whether individually held, held in trust by a third party, or whether held by the parties to the marriage in some form of co-ownership such as joint tenancy or tenancy in common, joint tenancy with the right of survivorship, or any other form of shared ownership recognized in other jurisdictions without this state, except that marital property does not include separate property as defined in section 1-238 [sic]; and

(2) The amount of any increase in value in the separate property of either of the parties to a marriage, which increase results from: (A) an expenditure of funds which are marital property, including an expenditure of such funds which reduces indebtedness against separate property, extinguishes liens, or otherwise increases the net value of separate property; or (B) work performed by either or both of the parties during the marriage.

⁵ “Separate property” is defined in full under West Virginia Code § 48-1-237 as:

is marital or separate property is primarily a question of law.” *Whiting*, 183 W. Va. at 454-55, 396 S.E.2d at 416-17 (citations omitted).

Here, it is undisputed that Wife acquired the Highland Drive property in February 2018, that she has remained the sole name on the deed since the purchase, that she and her father are named on the mortgage loan, and that the parties did not marry until October 31, 2020. Applying the plain language of West Virginia Code § 48-1-237(1) and the three-step process set forth in *Whiting*, the home is Wife’s separate property. Although *Hinerman* recognized a rare exception to the statutory classification of separate property, we find that the family court abused its discretion by invoking that exception under these circumstances to classify the home as marital property.

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- (1) Property acquired by a person before marriage;
 - (2) Property acquired by a person during marriage in exchange for separate property which was acquired before the marriage;
 - (3) Property acquired by a person during marriage, but excluded from treatment as marital property by a valid agreement of the parties entered into before or during the marriage;
 - (4) Property acquired by a party during marriage by gift, bequest, devise, descent or distribution;
 - (5) Property acquired by a party during a marriage but after the separation of the parties and before ordering an annulment, divorce or separate maintenance; or
 - (6) Any increase in the value of separate property as defined in subdivision (1), (2), (3), (4) or (5) of this section which is due to inflation or to a change in market value resulting from conditions outside the control of the parties.

Hinerman involved a “rather unique set of circumstances” surrounding the acquisition of premarital property and “stands somewhat alone on the landscape of marital property law.” *Chafin v. Chafin*, 202 W. Va. 616, 628, 505 S.E.2d 679, 691 (1998) (per curiam). There, the SCAWV reversed a determination that a home titled solely in the husband’s name and acquired shortly before marriage was his separate property, holding instead that it was marital property subject to equitable distribution. *Hinerman*, 194 W. Va. at 260, 460 S.E.2d at 75. Drawing on *LaRue v. LaRue*, 172 W. Va. 158, 304 S.E.2d 312 (1983), the Court reiterated that a spouse who makes a “material economic contribution” toward property titled in the other spouse’s name may claim an equitable interest in such property. *Id.* In reaching that conclusion, the Court stressed the distinctive facts before it. The parties had searched for the property together. The husband purchased and was deeded the property in 1968 in contemplation of the marriage that occurred less than 60 days later. He paid the down payment, but all subsequent installments were made from the parties’ joint checking account. Although the wife was never added to the deed, the husband testified that he intended to add her but neglected to do so across 20 years of marriage. And the wife’s unrefuted testimony explained that her name was initially omitted from the deed due to concerns about her single status at the time of purchase and later because of the home’s potential exposure to claims arising from her dancing school. *Id.* Based on those facts, the Court found that the home was marital property. *Id.*

The family court’s findings in the instant appeal establish circumstances materially different from those in *Hinerman* and do not warrant departing from the

statutory rule that property acquired before marriage is separate property. The court found that the parties shopped for the home together; that they eventually had plans to marry; and that despite the significant time frame between Wife's purchase of the home and the marriage, both parties intended to add Husband to the deed and mortgage once his income stabilized and Wife's credit improved. Critically, however, the court did not find, and the record does not reflect, that Wife purchased the property in contemplation of marriage to Husband or that the parties married soon thereafter. Nor is there evidence that the circumstances underlying any expectation that Husband would be added to the deed ever materialized. The family court's findings thus lack the compelling circumstances that made *Hinerman* exceptional.

The family court's order recounts Husband's testimony that "we had plans to get married . . . we shopped for the house together. We picked it out together. The whole idea was to get married." The court observed that Wife nodded her head in agreement and did not dispute Husband's testimony. But this evidence went only to the parties' eventual intent to marry. Wife's subsequent testimony clarified that those plans did not exist at the time she purchased the property. She testified that, when she bought the home, the parties had not yet discussed marriage and that she had no intention of ever remarrying. Though Husband described plans to marry, he never testified about when the parties became engaged or first formed those plans. Further, the court failed to set forth in the order a date on which the parties became engaged or contemplated marriage prior to the purchase of the home.

Moreover, Wife testified that a prior divorce decree required her to list her former home for sale and that she purchased the Highland Drive property to secure a safe residence for herself and two children. The parties expected Husband to move into the home only because they were already living together. Taken together, this evidence establishes that, at the time of purchase, the parties merely intended to maintain the status quo, not that Wife purchased the property in contemplation of marriage to Husband.

Even more significant, unlike in *Hinerman*, the parties did not marry “soon after” Wife purchased the property. They married on October 30, 2020 – more than two and one-half years after Wife purchased the property in February 2018.

The family court also found that both parties intended to add Husband to the deed and mortgage once his income stabilized and Wife’s credit improved. But, as the court observed, nothing in the record shows that either condition ever came to fruition. Husband himself confirmed that no timeframe existed for adding him to the deed, and for approximately seven years, he refused to assume any debt for the property in order to protect his good credit history. At most, the evidence reflects a vague, conditional hope that Husband would become a co-debtor and owner if his income stabilized and Wife’s credit improved. These facts are distinguishable from *Hinerman*, where the husband testified of his intent at the time of purchase to add the wife to the deed but failed to do so during their 20-year marriage.

In sum, the family court's findings establish only that the parties jointly selected the property that Wife purchased before the marriage and contemplated a conditional change in ownership. They do not establish the distinctive circumstances that set *Hinerman* apart and justified treating separate property acquired before marriage as marital property in that case.

We find that this case is more analogous to *Chafin v. Chafin*, 202 W. Va. 616, 505 S.E.2d 679 (1998) (per curiam) and *Shawn H. v. Elise H.*, No. 24-ICA-95, 2024 WL 4052868 (W. Va. Ct. App. Sept. 4, 2024) (memorandum decision). In *Chafin*, the SCAWV declined to extend *Hinerman* and reversed the lower court's classification of the disputed property as marital, instead finding it was the husband's separate property. 202 W. Va. at 628-29, 505 S.E.2d at 691-92. The Court's ruling rested primarily on the fact that the husband purchased the home one and one-half years before the marriage and the record showed no evidence of purchase in contemplation of marriage, apart from the application for insurance on the property that indicated the parties were to be married. *Id.* at 628, 505 S.E.2d at 691. The Court found those facts to "lack the compelling circumstances which, in *Hinerman*, resulted in the conclusion that the residence was marital property." *Id.* at 629, 505 S.E.2d at 692.

Similarly, in *Shawn H.*, the wife argued that the home purchased by and titled solely to the husband was purchased in contemplation of marriage and should be classified

as a marital asset rather than a premarital asset belonging to the husband. 2024 WL 4052868 at *1. Although the parties shopped for the home together and were cohabitating at the time of the purchase, this Court held that because “the parties did not marry for approximately twenty-two months and Husband gave no indication that he ever planned to add Wife’s name to the home, . . . the family court did not abuse its discretion in rejecting Wife’s *Hinerman* argument.”⁶ *Id.* at *4.

As in *Chafin* and *Shawn H.*, because Wife acquired the Highland Drive property before the marriage, and there is no evidence that she purchased the property in contemplation of marriage to Husband which occurred soon thereafter or that she had a present intent at the time of purchase to add Husband to the deed, we find that the circumstances necessary to depart from the statutory definition of separate property are not present. Thus, the family court abused its discretion by extending *Hinerman* to classify the home as marital property. Accordingly, we reverse the family court’s classification of the property as marital property and hold that the Highland Drive home is Wife’s separate property. We remand this matter for the family court to determine the marital interest resulting from the parties’ financial contributions toward the reduction of the mortgage principal during the marriage and to equitably distribute that interest in accordance with West Virginia Code § 48-7-103.

⁶ We note that the approximate 32-month time period between Wife purchasing the home and the parties’ marriage here is longer than the gaps rejected in both *Chafin* (18 months) and *Shawn H.* (22 months).

IV. CONCLUSION

For the foregoing reasons, we reverse the family court's December 30, 2025, order and remand this matter for further proceedings.

Reversed and Remanded.