STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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November 6, 2026
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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Shawn H.,
Petitioner Below, Petitioner

v.) **No. 24-673** (ICA No. 24-ICA-95)

Elise H.,
Respondent Below, Respondent

MEMORANDUM DECISION

The petitioner, Shawn H., appeals the memorandum decision of the Intermediate Court of Appeals ("ICA") partially affirming and partially remanding the Family Court of Preston County's February 7, 2024, final divorce order.[1] *See Shawn H. v. Elise H.*, No. 24-ICA-95, 2024 WL 4052868 (W. Va. Ct. App. Sept. 4, 2024) (memorandum decision). On appeal, the petitioner challenges the ICA's decision, arguing that the ICA erred in affirming the family court's decision to award the respondent an equitable share of the passive appreciation in the value of the parties' marital home ("the home") after the family court classified the home as the petitioner's separate property. We agree with the petitioner.

This Court has carefully considered the briefs and oral arguments of the parties, the submitted appendix record, and the pertinent legal authorities. Upon review, we determine that both lower courts erred in concluding that the respondent could be awarded an equitable share of the passive appreciation in the value of the petitioner's separate property. We therefore reverse the ICA's decision, reverse the family court's order to the extent that it awarded the respondent an equitable share of the passive appreciation in the value of the home, and remand the case to the family court with directions to enter an order consistent with this decision.[2] Because this matter

[1] The petitioner appears by counsel John R. Angotti and Chad C. Groome. The respondent appears by counsel Amber Urtso Sellaro. Additionally, we use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

[2] Additionally, the respondent has filed a motion to dismiss the petitioner's appeal which we now deny. In support of her motion, the respondent contends that the petitioner's appeal to this Court is interlocutory because the ICA remanded the case to the family court for further proceedings. The respondent cites to *Paxton v. Crabtree*, wherein this Court held that "[o]rdinarily, a judgment of reversal rendered by an intermediate appellate court which remands a cause for further proceedings in conformity with the opinion of the court is not final and, therefore, not appealable to a higher appellate court, so long as judicial action in the lower court is required." Syl. Pt. 2, 184 W. Va. 237, 400 S.E.2d 245 (1990). However, *Paxton* predated the Legislature's creation of the ICA and involved a litigant's appeal of a family court decision to a circuit court. As such, *Paxton* is not controlling precedent in the matter before us. In creating the ICA, the Legislature provided that a party may "petition [this Court] for appeal of a final order or judgment

does not involve a substantial question of law, a memorandum decision is appropriate pursuant to the "limited circumstances" requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

The relevant facts underlying this appeal are undisputed. On October 19, 2017, when the parties were residing together but not yet married, the petitioner purchased a home for the price of $120,000. The petitioner made a $6,000 down payment to purchase the home and secured a mortgage loan, in his name only, to cover the remaining $114,000 of the purchase price. After cohabitating in the home for a period of twenty-two months, the parties married on September 28, 2019. The parties resided in the home until they later separated, on May 10, 2023. The final divorce hearing was held on February 6, 2024.

During the final divorce hearing, the respondent argued that the home was purchased in anticipation of marriage and, therefore, the home should be classified as marital property subject to equitable distribution between the parties. In response, the petitioner argued that the home was not purchased in anticipation of marriage, that the home should be classified as his separate property, and that the respondent was only entitled to an equitable distribution in the amount of one half of the reduction in principal on the mortgage loan due to the mortgage payments the parties made using marital funds during their marriage. The family court entered a final divorce order on February 7, 2024, finding, in relevant part, that: (1) the respondent did not have an interest in the home during the twenty-two months of the parties' cohabitation prior to marriage, thereby treating the home as the petitioner's separate property;[3] (2) the respondent did have an interest in the equity the parties acquired in the home during the forty-four months of their marriage due to the parties' mortgage payments made with marital funds; (3) the parties agreed that the marital home was presently worth $211,000; and, (4) at the time the parties separated, the payoff amount on the mortgage loan was $101,897.

Based on those findings, the family court calculated the equity in the home, to be divided between the parties, to be $63,354. The family court arrived at this amount by subtracting the payoff amount on the mortgage ($101,897) as of May 2023 (the month the parties separated) from the agreed value of the home ($211,000), which resulted in a total equity value of the home in the amount of $109,103. Then, the family court multiplied the total equity value by a fraction representing the total amount of payments the parties made on the mortgage loan using marital funds during marriage ($27,015) over the total amount the petitioner had paid on the loan separately before and after the parties' marriage plus his down payment ($46,523) (or, put another way: $27,015/$46,523 x $109,103 = $63,354). Based on that calculation, the family court ordered the petitioner to pay the respondent $31,054 as her share of the "passive appreciation on the marital portion" of the home.

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of the Intermediate Court of Appeals in accordance with rules promulgated by the [Court]." W. Va. Code § 51-11-10. To date, this Court has accepted all properly filed appeals from the ICA. We therefore deny the respondent's motion and consider the merits of the petitioner's appeal.

[3] *See* W. Va. Code § 48-1-237 (defining separate property to include "[p]roperty acquired by a person before marriage").

In making its calculation, the family court rejected the petitioner's argument that the respondent's equitable share of appreciation in the home's value should be limited to her share of the reduction in principal on the mortgage loan due to the mortgage payments the parties made using marital funds during their marriage. The family court found, in its order, that the petitioner's position "ignore[d] the significant equity acquired during the marriage related to passive appreciation" on the home. The family court further noted, in part, that it was aware of no authority supporting the petitioner's position and found that it "would be unfair to the [respondent] to award all passive appreciation [in the home] to the [petitioner]."

The petitioner appealed the family court's final divorce order to the ICA, raising two assignments of error with the respondent asserting one cross-assignment of error in response. First, the petitioner asserted that the family court erred when it awarded the respondent a share of the passive appreciation in the home's value after classifying the home as the petitioner's separate property. In his second assignment of error, the petitioner asserted that, even assuming for the sake of argument that the court could award the respondent a share of the passive appreciation in the home's value, the family court did not exclude the passive appreciation that occurred prior to the parties' marriage and after the parties' separation in calculating the respondent's share. In its memorandum decision, the ICA expressly "disagreed" with the petitioner's first assignment of error.[4] With respect to the petitioner's second assignment of error, the ICA concluded that the family court's order lacked sufficient findings of fact and conclusions of law to facilitate meaningful appellate review, given that the family court failed to utilize the formula this Court articulated in *Mayhew v. Mayhew* (the "*Mayhew* formula") for calculating the active and passive appreciation of an asset at issue in divorce proceedings. Syl. Pt. 5, 205 W. Va. 490, 519 S.E.2d 188 (1999).[5] Accordingly, the ICA remanded the matter to the family court to "further analyze the evidence in relation to the five *Mayhew* steps." With respect to the respondent's cross-assignment of error asserting that the family court should have classified the home as marital property, the ICA affirmed the family court's determination that the home was the petitioner's separate property.[6] It is from the ICA's memorandum decision that the petitioner now appeals.

On appeal of an ICA decision reviewing a family court's final order, this Court reviews the family court's findings of fact for clear error, the family court's application of the law to the facts

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[4] This Court cannot discern the ICA's reasoning in "affirm[ing] the family court's ruling as to [the petitioner's] first assignment of error" from its memorandum decision. As an explanation for its disagreement with the petitioner's position, the ICA recited the statutory definitions of marital property and separate property. However, as we explain below, the statutory definition of separate property directly supports the petitioner's position. *See* W. Va. Code § 48-1-237.

[5] "Active appreciation" refers to "[a]ny increase in the value of nonmarital property caused by marital contributions" and constitutes marital property, whereas "passive appreciation" refers to "[a]ny increase in the value of nonmarital property caused by nonmarital factors" and constitutes separate property. *Mayhew*, 205 W. Va. at 496, 519 S.E.2d at 194 (internal citation omitted).

[6] On appeal to this Court, the respondent has abandoned her challenge to the family court's finding that the home was the petitioner's separate property. We therefore decline to review the family court's decision in that respect or the ICA's subsequent affirmance of that decision.

for an abuse of discretion, and questions of law de novo. Syl. Pt. 3, *Christopher P. v. Amanda C.*, 250 W. Va. 53, 902 S.E.2d 185 (2024). We consider the petitioner's argument that the ICA erred in affirming the family court's decision to award the respondent an equitable share of the passive appreciation in the value of the home after the family court classified the home as the petitioner's separate property. In her summary response, the respondent argues that the ICA applied the correct statutory standards in reviewing the family court's order. We agree with the petitioner that the both the ICA and family court erred as a matter of law.

The West Virginia Code defines "marital property" to include, in relevant part,

> [t]he amount of any increase in value in the separate property of either of the parties to a marriage, which increase results from . . . 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[.]

W. Va. Code § 48-1-233 (emphasis added). However, the West Virginia Code specifically designates, as separate property, "[a]ny increase in the value of separate property . . . *which is due to inflation or to a change in market value resulting from conditions outside the control of the parties*." W. Va. Code § 48-1-237 (emphasis added). Consistent with that statutory definition, this Court has long held that "[p]assive appreciation of separate property of either of the parties to a marriage, or that increase which is due to inflation or to a change in market value resulting from conditions outside the control of the parties, is separate property which is not subject to equitable distribution." Syl. Pt. 1, in part, *Shank v. Shank*, 182 W.Va. 271, 387 S.E.2d 325 (1989) (internal quotations and citations omitted).

In light of that well-established authority, the family court properly awarded the respondent an equitable share of the reduction in principal on the mortgage loan due to the parties' mortgage payments during marriage using "funds which [were] marital property" to reduce "the indebtedness against [the petitioner's] separate property[.]" W. Va. Code § 48-1-233. However, the family court clearly erred in awarding the respondent a share of the home's passive appreciation due to "a change in market value resulting from conditions outside the control of the parties." W. Va. Code § 48-1-237. Accordingly, the ICA should have granted the petitioner's requested relief.

Moreover, had the ICA correctly decided the petitioner's first assignment of error, it would have been unnecessary for the ICA to remand the case for further factual development. In Syllabus Point 5 of *Mayhew*, this Court held that

> [t]he formula for an active or passive appreciation analysis requires a determination of the following five-step test: (1) whether the property, in general, is either separate or marital property; (2) placing a value on the nonmarital property at the commencement of the action; (3) the value of the nonmarital property, before it became subject to the active and passive appreciation analysis; (4) the . . . court['s] calculation of the property's value at the commencement of the action, in relation to its value on the date(s) gifted; and (5) a determination as to what extent

> the increase in the value of the nonmarital property is active appreciation or passive appreciation. The resulting amount due to active appreciation is marital property and subject to equitable distribution.

205 W. Va. 490, 519 S.E.2d 188. While the ICA set forth the correct formula for a family court's analysis of active and passive appreciation in the value of a party's separate property, the facts necessary for the ICA to resolve the issues before it were already fully developed in the appellate record. Critically, the family court's written order classified the home as the petitioner's separate property and the ICA affirmed the family court in that respect. The record contains no evidence of active appreciation in the home's value that would require analysis under the *Mayhew* formula.[7] The only appreciation in the home's value (from its purchase price of $120,000 when it was purchased in 2017, to its agreed value of $211,000 when the parties separated in 2023) was the result of passive appreciation. The reduction in principal on the mortgage loan due to the parties' mortgage payments did not increase the value of the home, although the payments did increase the equity in the home and, therefore, its "net value" for the purposes of equitable distribution. Thus, with respect to the home, the respondent was only entitled to an equitable distribution for her share of the reduction in principal on the mortgage loan due to the mortgage payments the parties made using marital funds. *See* W. Va. Code § 48-1-233.

For the reasons stated above, we reverse the ICA's memorandum decision, partially reverse the family court's final divorce order, and remand the case to the family court with instructions to enter an order awarding the respondent an equitable share of only the reduction in principal on the mortgage loan due to the mortgage payments the parties made using marital property during their marriage.

Reversed and remanded with directions.

ISSUED: November 6, 2026

[7] We note that it is unnecessary to apply the *Mayhew* formula under these particular circumstances, where it is undisputed that the appreciation in the home's net value is entirely due to a finite expenditure of marital funds and where neither party contests the amount of that expenditure. The record makes clear that the amount of equity to be allocated between the parties is simply the difference between: 1) the payoff amount on the mortgage loan on the date of marriage, and 2) the payoff amount on the mortgage loan on the date of the parties' separation.

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan