

NO.: 32901

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

In Re:

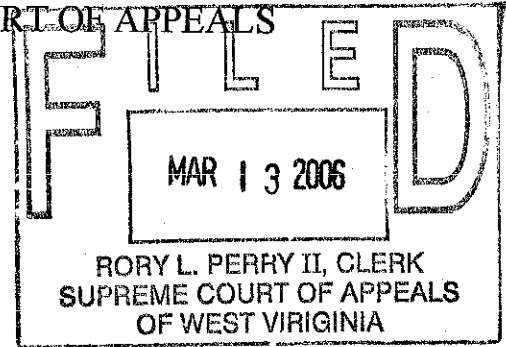
MARY ROSE,

Petitioner Below, Appellee,

v.

BILLY WAYNE DUNLAP,

Respondent Below, Appellant.



FROM THE CIRCUIT COURT OF RANDOLPH COUNTY, WEST
VIRGINIA
CASE 97-D-29

BRIEF OF APPELLEE, MARY ROSE

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More than twenty (20) minutes after the scheduled start of the hearing, the Family Court Judge called the case and proceeded to a hearing. At the time of the hearing, and in the absence of the Appellant, Counsel for Appellee submitted to the Court the proposed parenting plans exchanged by the parties prior to that day. The Family Court Judge adopted her own plan that compromised each of the submissions. If Appellants parenting plan had not been presented, the Court could have simply adopted the plan submitted by Appellee.

The Family Court Judge was fully aware of the facts of this case, as was the Circuit Court Judge who conducted a hearing to review the same. The Appellant did not arrive at 2:10 p.m. as stated in Appellant's brief. Appellant was more than twenty minutes late for the hearing and the Court waited as long as scheduling permitted. Appellee and her counsel departed the courthouse after 2:30 p.m. and Appellant had not yet appeared. Appellant made no direct contact with the Family Court Judge's office on the day of the hearing. He instead called Appellee's counsel office, who in turn informed the court on his behalf as courtesy to the *pro se* Appellant. These facts are established in the August 23, 2004, order.

Appellant also seeks to blame part of this delay in hearing this case upon Appellee changing counsel, when it is upon Appellant's motion to disqualify her prior counsel that the matter was substantially delayed.

Appellant cites health and financial hardship on attempting to move the location of exchange of the child but fails to disclose that despite his Pennsylvania residence, he commutes regularly to a Washington D.C. office for work. That was the reason for Appellee's proposal to exchange the child in Washington D.C.

Appellant had adequate opportunity to be heard by the Circuit Court of Randolph County, West Virginia, and even participated (with his wife) in drafting a schedule for visitation actually incorporated in the Order of the Court.

Appellant simply insists that the entire burden of visitation transportation be borne by Appellee and will never be satisfied unless a court makes it so.

STANDARD OF REVIEW

This Court has clearly stated the standard of review for an appeal of matters such as these. The Court has held that “[i]n reviewing challenges to findings made by a family law master also adopted by a circuit court, a three-pronged standard of review is applied. Under these circumstances, a final equitable distribution order is reviewed under an abuse of discretion standard; the underlying factual findings are reviewed under a clearly erroneous standard; and questions of law and statutory interpretations are subject to a *de novo* review.” *Syl. Pt. 1, Burnside v. Burnside*, 194 W.Va. 263, 460 S.E.2d 264 (1995).

“A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety.” *Syl. Pt. 1, in part, In re Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

Since the Appellant has only argued that the lower courts erred in their findings of facts, the standard of review to be used is the clearly erroneous standard as defined above.

ARGUMENT AND DISCUSSION OF LAW

It should first be noted that Appellant argues court errors in orders that were made for the past eight years, some of which were appealed to the circuit court shortly after entry, and therefore, are not appealed in a timely manner. However, the Appellee will address the issues as presented in Appellant's brief.

I. THE COURT'S DECISIONS REGARDING CHILD SUPPORT AND VISITATION WERE NOT CLEARLY ERRONEOUS

Appellant first argues that the court erred by lowering Appellee's child support obligation in light of the costs incurred in the visitation exchange of the child. Appellant argues that for the one weekend per month that he is required to meet Appellee to exchange the child, he incurs \$338.16 in costs, and the child support he receives from Appellee is only \$131.00 a month, requiring him to incur out-of-pocket expenses. Appellant argues that the court should either require the Appellee to pay child support equal to the travel expense incurred or move the exchange point to his residence so that he incurs no cost or time for the exchange of the child.

The Court's decision was not clearly erroneous because the decisions were based on the evidence presented to the court. The May 30, 2000, order states that the decisions made in that order are based upon the arguments of counsel at the hearing and the financial information presented as evidence to the court. The Court required Appellee to

pay \$196.25 per month in child support to the Appellant based on the financial information supplied.

The Appellee then filed a Petition for Modification of the child support, in which the court held a hearing on August 18, 2003, where the parties again presented financial evidence. Based on the child support guidelines for the monthly gross income reported, the court then lowered Appellee's obligation to \$131.00 per month. Since the calculation of support was based on financial information provided and the court followed the child support guidelines, the modification of support was not clearly erroneous.¹ Moreover, Randolph County Family Court is the proper venue for a modification of child support, not this Court.

Since the child support modification was not clearly erroneous, the next issue is that of the location of the exchange of the child. Appellant argues that a prior family court order stated that the exchange should be made in the state in which the child resides, which is now Pennsylvania. However, he requests that the exchange not only be made in Pennsylvania, which is the state of the exchange at the current time, but should be his residence in Pennsylvania. He supports this argument by stating that the cost incurred is too high and it is too much of a health detriment for him to drive to the meeting location since he is a disabled veteran. However, Appellant failed to inform the court that the drive to the drop-off point is shorter than the drive he frequently makes to his office located in Washington, D.C.

Appellant's "disability" does not keep him from sustaining employment or driving longer distances, evidenced by his frequent trips to Washington, D.C. for

¹ Appellant did not appeal the Family Court's August 27, 2004, order modifying the child support.

employment, yet he cites this “disability” as a reason to have the location moved to his residence so that he bears no responsibility, financial or otherwise, in the exchange of his daughter with the Appellee who is also incurring costs in this exchange.

The January 5, 1998, order entered by the Circuit Court of Randolph County, incorporates the agreement concerning custody, visitation, child support and other obligations. That order ratified the October 2, 1997, agreement entered into by BOTH parties concerning visitation. Appellant entered into that agreement voluntarily and did not object to the court ratifying that agreement². Nowhere in that order does the court state that all exchanges of the minor child must be made in the state where the child resides. The agreement may have included that statement, but the court order is completely devoid of that language.

The 1998 agreement is important here because Appellant made the agreement at that time to the visitation and exchange of the child, in which he now complains. Then, after appeal of the family court’s decision that the proper location for exchange be Washington, D.C.³, Appellant again entered into an agreement where he agreed that the “transfer of the child for visitation shall occur at a point halfway between the two homes as determined by the use of Map Quest.” *Order Adopting Revised Agreed Parenting Plan*, ¶ 9 (entered December 21, 2004). It is clear that the Appellant agreed to the exchange point that he now alleges the court erred in adopting because of the undue

² Even though the agreement was not attached to the order, it can be assumed that the visitation exchange point was West Virginia, since the Appellant now complains that he incurred costs at that time to visit his daughter so it should be only fair that the Appellee drive to him now.

³ The Family Court reviewed parenting plans submitted by both parties and decided the exchange point based on both submissions and did not adopt either parenting plan as a whole.

burden on him. Since the court was merely adopting the agreement signed by the parties, its decision to do so cannot be clearly erroneous.

Appellant argues that the exchange point is a financial burden to him but fails to take the income differences into consideration between he and the Appellee. Based on the court records, it is clear that Appellant earns more money than Appellee. The exchange point is a financial burden for the Appellee, but she is satisfied with accepting that burden to visit with her daughter. Appellant will not be satisfied until Appellee is ordered to travel the whole distance to Appellant's house for exchange of the child, where he has no burden or responsibility. Moreover, Appellant fails to consider that requiring Appellee to travel the whole distance would significantly shorten the visitation time not spent traveling between Appellee and her daughter.

II. APPELLANT IS NOT ENTITLED TO REIMBURSEMENT FOR CHILD SUPPORT

Appellant argues that his child support obligation terminated in October 1999 and Appellee's support obligation did not begin until May 2000, and that decision was in error since it was inconsistent. Appellant argues that the Appellee's obligation should have commenced on the date of his termination. The court's decision was not clearly erroneous because it was based on the time the matter was placed before the court and the financial obligation presented at that time.

Appellant entered into an agreement, as previously stated, concerning child support among other obligations, which was ratified and adopted by the court in the January 5, 1998, order. Then on June 15, 1999, the Court found that the Appellant, as of February 1, 1999, was in arrearages and that the money BCSE was holding was to be

applied to the arrearages and any remaining money was to be refunded to the Appellant. The Court then found that as of February 28, 1999, Appellant was current on his support. Custody of the minor child did not change hands until October 1, 1999. At least two hearings were held in this matter after custody changed and Appellant never petitioned the court for child support from Appellee. It wasn't until May 10, 2000, that the support issue was brought before the court. The court then ordered Appellee to pay \$196.25 to have commenced on May 1, 2003, and thereby terminated the Appellant's obligation to pay support to Appellee.

Appellant argues that the court erred by ordering the support to commence May 1, 2003, instead of October 1, 1999. What Appellant fails to realize is that until that order was entered, even though he was granted emergency custody in October 1999, he was still under a court order to pay child support to the Appellee. Not until the May 10, 2003, hearing was the obligation terminated and given to the Appellee. At the time of the change of custody, it was unknown how much time would pass before the custody would return to Appellee. Therefore, the court did not take action to modify the support at the time the custody changed. It was not until the court was convinced that custody would not change in the near future, and from motion of the Appellant, did the court take action. Since Appellant was under the obligation to pay from October 1999 until the court order in May 2003 terminating the same, requiring Appellee to pay retroactively would have counter-acted the payment obligation by Appellant. One obligation could not start until the first obligation was terminated.⁴ Since the court was not petitioned for support until the May 10, 2000, hearing, and the obligation for support during that time was still incumbent upon the Appellant, the court's decision to commence the support on May 1,

⁴ Appellant failed to file an appeal to circuit court on this matter, also.

2000, instead of October 1, 1999, was not clearly erroneous based upon the facts presented to the lower court at that time.

It was also not clearly erroneous that the court ordered Appellant to pay the arrearages accumulating from October 1999 to April 2000 because he was under court-ordered obligation to pay. The court did not terminate his obligation to pay until May 10, 2000, leaving him obligated to pay for the prior months regardless of custody. Moreover, the court heard the argument that the Appellee's obligation should be retroactive to October 1999, and the court denied that request based on the evidence presented. Therefore, the May 21, 2003, order requiring arrearages was proper and should be upheld.

Appellant argues that a verbal agreement existed whereas no support money would be due during the three months Appellant had emergency custody and that separate, underlying matter was before another court. Appellant attempts to support this argument by alleging the existence of letters from his attorney, which are not attached as exhibits, which the Appellee has no knowledge. The only documents pertinent to this matter are the court records and orders, which clearly give finding of facts based upon arguments of the parties and evidence presented. Therefore, the court's order should stand as the decisions therein were not clearly erroneous.

Appellant argues that had he been in arrearages, it would have been deducted from the amount BCSE was holding before it refunded the remainder. However, the

court, in a prior order as stated above, found that on February 28, 1999, the Appellant was current in support. These arrearages did not even become due until April 2000.⁵

III. THE ORDER ADOPTING REVISED AGREED PARENTING PLAN WAS PROPERLY ADOPTED BY THE COURT

The Appellant argues that the *Order Adopting Revised Agreed Parenting Plan* was improperly adopted by the circuit court because it allegedly was devoid of the items stated in his brief: telephone contact between the child and Appellee; additional visitation; exchange location; and grandparent visitation. He requests that his version of the agreement be placed in the final order.

The first item Appellant wishes to change or add to the order is telephonic visitation between Appellee and the minor child. Upon reviewing that order, it is clear that in paragraph two, Appellee is granted unlimited telephone access with the child so long as the call is initiated at or before 8:30 p.m. and concluded by 9:00 p.m. Since the order states exactly what the Appellant is arguing, Appellee fails to see why the order was improperly adopted or should be modified on this point.

Appellant's second contention of error is the additional weekend of visitation. He requests the order be modified to add the language that the Appellee is solely responsible for the expense of the visitation and be required to give 48 hours notice to Appellant of the desired visit.

The order states in paragraph four that Appellee shall be entitled to an additional weekend visit **in the State of Pennsylvania** so long as she gives at least 48 hours notice

⁵ Appellant filed two appeals on this issue. The first appeal was denied for failure to state a claim in which an appeal could be heard. The second appeal was denied for filing the appeal outside of the required time frame.

to Appellant. The emphasis here is on the additional visit being in Pennsylvania, requiring the Appellee to drive to Appellant's residence to pick up and drop off the minor child since the visitation is to be held within that state. The lack of the particular language that Appellee is responsible for all costs incurred in the additional visit does not warrant reversing or modifying the order as it stands. Appellant is not ordered to meet the Appellee halfway for this visit, nor is he burdened in any other way. The order states the basis of the agreement, and since Appellant did not object to the language of the order at the time, it should be upheld.

Appellant next contends that he never agreed to meeting halfway to exchange the child. He argues that he only suggested a location to be decided by reviewing Map Quest. He alleges that the court has unfairly ordered him to choose Shippensburg, PA, as the exchange location, when it should be some other location less financially burdensome for him. He alleges that he also never agreed to the "back-up" destination being Washington, D.C., even though he alleges the court has ordered that destination, and that the appropriate exchange location should be his residence, which the court has repeatedly denied.⁶

Again, it should be noted that Appellant entered into the agreement held on November 29, 2004, freely and voluntarily. The order adopting the agreement evidences the actual factual agreements made at that time. This agreement, similar to a separation agreement in family law, is to be adopted by the court as long as it cannot be found that the agreement was obtained by fraud or duress. *See W.Va. Code §48-6-201* (2005). It is also similar to a civil contract that is to be ratified and adopted by a court where it is clear

⁶ The issue of the exchange location occurring at the Appellant's residence has been argued above and will not be reiterated.

that the agreement is not unconscionable and the terms evidence the parties' intent. Appellant freely entered into this contract and negotiated his terms freely and voluntarily. Appellant was not forced to agree to unconscionable terms, nor was he under any duress to agree to the terms as stated. The agreement was made by both parties and presented to the court as the final agreement between the parties. Therefore, the court adopted the agreement, as it evidenced the negotiated terms and the meeting of the minds of these two people. Therefore, the court really had no other option under the law but to adopt this agreement to bind the parties and the court to the terms thereof.

The order states in paragraph nine that the transfer of the child shall occur at a halfway point between the two homes as determined by MapQuest. The order adopting the agreement, however, does not provide Washington, D.C., as a back-up exchange point.⁷ The court based the location of the exchange point as halfway between the two parties' residences. That decision was based upon the agreement reached between the parties, not the court's own discretion, evidence by the lack of a named location. The court adopted the agreement as provided by the parties, and left the actual destination up to the parties to decide once the MapQuest search was completed and an equal halfway point, that satisfied both parties, could be located. The court adopted the agreement as it was presented, so the court did not err in adopting the agreement. As has been repeatedly stated, Appellant will simply not be satisfied until he has no responsibility in the exchange of the child.

⁷ There was a second order entered December 24, 2004, the same day as the *Order Adopting Revised Agreed Parenting Plan*, that stated that the court adopted the findings of the family court **except** the finding that the exchanges for visitation be at a halfway point instead of Washington, D.C. The order did not adopt four findings from the lower court because the court required the parties to negotiate a new parenting plan, ergo the order adopting the revised parenting plan.

The final contention of modification argued is that of grandparent visitation. Appellant argues that grandparent visitation should occur while each party has responsibility of the child instead of making separate visitation times for the grandparents. This issue was not raised in the negotiation of the revised parenting plan. Appellant has failed to raise this issue in any prior agreement negotiations or court proceeding. If Appellant desires this issue to be negotiated, Appellee is willing to entertain negotiations on the subject. Since this issue has not been previously raised, the court did not err by failing to provide any grandparent visitation in the order. There is no claim of legal error that would warrant overturning this order or remanding back to the lower court to make this provision modification. Therefore, since there again is no error proven, the court order should be affirmed.

IV. APPELLANT'S REQUEST FOR CHILD PROTECTIVE SERVICES SUPERVISION SHOULD BE DENIED

Appellant is attempting to raise allegations of possible child abuse and neglect issues on this appeal. Appellant alleges that he has concerns with Appellee's supervisory capabilities and states unsubstantiated, slanderous allegations against Appellee. While this is not the proper forum for this type of allegation, it should be noted that Child Protective Services (CPS) has inspected the Appellee's home and family life, and has educated her husband concerning the sexual contact incident, and has given reports that the Appellee's home and family are appropriate for visitation by the minor child. If the Appellant fears for the child's safety, then he should report his fears to the proper authorities, which is not this court.

The December 24, 2004, *Order Adopting Revised Agreed Parenting Plan* states that the Appellee's husband is not to be left as the supervising adult or otherwise alone in the presence of the minor child. The Appellant seems to be arguing that the Appellee should be supervised during the duration of every visit with the minor child. Not only is that an absurd request, the finding in the order was based on the agreement made between the parties negotiated by the Appellant, and adopted by the court. The court based its decisions on the agreement presented to it by the parties and the evidence presented to the court, and therefore committed no error. If the Appellant has allegations that were not present at the time of the agreement, those allegations should not be raised on appeal, but should be reported to CPS or other appropriate authority. Since the allegations are unsubstantiated, and this court is the improper forum for these allegations, the request should be denied.

V. THE LOWER COURT DID NOT ERR IN FAILING TO ORDER A PARTICULAR AGE OR LEVEL OF MATURITY OF A BABYSITTER FOR THE CHILD

Appellant next argues that the court erred by failing to state a particular age or level of maturity of any babysitter or supervisor of the child while she is in West Virginia under Appellee's care. It should be noted again that Appellant has failed to raise this issue in any prior agreement negotiations or prior court proceeding, making this appeal the improper forum for this issue.

There is no dispute that neither the family court, nor circuit court, have stated an exact age or maturity level of a supervisor for the minor child regardless of whose care the child is under. This issue was not presented to any court for a ruling. The court has

left that decision in the capable hands of the parent that has responsibility of that child. As stated above, the Appellant is attempting to control every parenting decision of Appellee while the child is in her care. Both parties have been evaluated and found fit for visitation and parenting capabilities. Appellant is not requesting a decision for the supervision of the child while in his care, only while the child is in Appellee's care. This court is not the proper forum for this request so it should be denied. However, if the court deems it appropriate to remand this order for clarification or a determination of age of a supervisor, then that determination should be also be ordered for any supervision while the child is in Appellant's care also.

VI. THE COURT DID NOT ERR BY FAILING TO REQUIRE ANY SUPERVISOR OF THE CHILD BE A LICENSED CARETAKER OR BE APPROVED BY CPS

Appellant is alleging that the court erred by failing to require any supervisor of the child be a licensed childcare worker, be approved by CPS, or have a background check from the West Virginia State Police. As has been argued above, the Appellant has failed to raise this issue in a prior negotiation or court proceeding. And as stated previously, the Appellant, in making another upsurd request, is attempting to control the parental decisions of the Appellee.

There is no state law requiring "babysitters" to be licensed as childcare workers or have police background checks. CPS has already approved Appellee as a proper supervisor for the child. If CPS had any concerns that the child would be in danger if a certain type of person was not supervising, those concerns would have voiced to the court during its investigation and inspection of the parties' households and family members.

There has been no allegation that the minor child has been harmed in any way or has been subjected to inappropriate conduct since the original incident alleged, which has been investigated and handled by the proper authorities.

The court did not commit reversible error by failing to order that any supervision of the child while in Appellee's care be licensed, approved by CPS, or present his or her criminal background from the State Police because this issue was not presented to the court, and it is inherent that the court left that type of parenting decision to the capable parent supervising the child. It is not the practice of the court to make day-to-day parenting decisions for the parties. The order should be upheld as it is written and the Appellant's request should be denied.

VII. THE FAMILY COURT DID NOT DISREGARD PROCEDURE BY FAILING TO FILE WRITTEN RESPONSES TO APPELLANT'S OBJECTIONS TO ITS ORDERS

Appellant next argues that the court erred by "disregarding procedures" when it failed to respond in writing to his objections to the orders entered by the court, specifically the orders entered on May 20, 2003, and September 2, 2004.

On May 20, 2003, the Family Court entered the *Order Granting Judgment and Establishing Permanent Child Support* prepared by the attorney for the Bureau of Child Support Enforcement. That order presents the findings made by the court on the date of the hearing. Since neither party was represented by counsel at that hearing, it was incumbent upon the bureau's attorney to prepare the order. Since this counsel was not present at the hearing, nor was privy to the documents following, it is unclear if the order was presented pursuant to *W.Va. R. Fam. Ct. Rule 22* (2005) since there is no written

objections attached to this appeal or contained in counsel's documentation. That order notes in paragraph sixteen that any objection and exceptions of any party to the findings and rulings is noted and preserved. The order also informs the parties of their rights to appeal the order. And that is exactly what Appellant did.

It is unclear if Appellant objected to any findings made at the hearing, but it is clear that Appellant appealed the final order to the circuit court twice. The first appeal was filed on June 2, 2003, but was denied by Order dated June 19, 2003, for failure to state any grounds for appeal. The second appeal was filed on June 30, 2003, but was denied by Order dated July 18, 2003, for failure to file the appeal within the required time frame. Since Appellant filed an appeal to the final order entered, the family court was not required to enter a written response to Appellant's objections to the order.

The family court entered an order on September 1, 2004, which the Appellant appealed to the circuit court, stating that it had considered the Appellant's objections to the order. Counsel sent a copy, of the proposed order to the Appellant pursuant to *Rule 22 of the West Virginia Family Court Rules, id.* Appellant then filed a written objection to that order on August 27, 2004. The objection filed was mostly regarding his absence from the August 16, 2004, which was the hearing the order codified. The Appellant had filed a prior objection to that hearing taking place in his absence, which was responded to by the court in an order dated August 23, 2004. Therefore, the court did not need to again respond to Appellant's objections concerning his absence from the hearing.

Appellant listed his objections to the proposed order in his August 27, 2004, "Objection" and gave his recommendations for the findings from a hearing he did not attend. The order was based on the evidence presented to the court at the hearing, which

even included some of Appellant's evidence presented by Appellee's counsel, from which the court could make an informed decision. The Court stated in the September 1, 2004, order that it considered the objections made and denied the same. As previously stated, the objection provided the Appellant's recommendation of findings and the court simply denied his recommendations and adopted those of the Appellee, who attended the hearing. The court was not then required to give a formal, descriptive order stating specific reasons why it adopted one position over another. The rule simply states that if objections are received, the court shall enter an order and findings. *Id.* It does not state that the order must address the specific objections or state the reasoning for denying the objections. The court must simply enter an order and findings, which it did on September 1, 2004. The court simply denied the Appellant's objections and signed an order with findings in which the Appellant could then appeal, which he did. That appeal was heard by the circuit court on November 29, 2004. Appellant has been afforded every opportunity to have his objections heard and addressed. Since the court followed the procedure as outlined in the Rules of Practice and Procedure for Family Courts, the court did not commit any reversible error.

Appellant also argues that the court erred by not requiring Appellee to reimburse Appellant for the court-ordered psychological evaluation. The court was not clearly wrong in finding that the evaluation was the financial responsibility of the Appellant and the decision should be upheld.

The circuit court entered an order on August 8, 2000, ordering the Appellant to undergo a psychological evaluation. Appellee had previously undergone a similar evaluation so the court ordered the same for Appellant. That order did not state who was

financially responsible for that evaluation. Further, there was no agreement placed on the record that the Appellee would pay for the evaluation. There is simply no evidence that the agreement of payment was made.

Appellant did not raise the issue of reimbursement for the evaluation until the hearing held May 7, 2003, almost three years after the order requiring the evaluation be done. Appellant was denied reimbursement because Appellee was financially responsible for her own evaluation and because the prior court order did not allocate the financial responsibility of the evaluation, it deemed the cost should be paid by the Appellant. As previously stated, Appellant filed two appeals on that matter, both of which were denied. The time for appeal to this court on that issue has by far expired and is not proper in this appeal. Moreover, since the court addressed the situation, and based its findings on the evidence presented, it was not clearly erroneous in doing so. Therefore, the decision should be upheld.

VIII. THE COURT DID NOT ERR IN FAILING TO ORDER THE APPELLEE TO PAY HALF OF THE CHILD'S MEDICAL EXPENSES

Appellant argues that the court erred in failing to award him half of the child's medical expenses he has allegedly incurred from 1999-2001 and full reimbursement for an alleged counseling session costing \$ 650.00 even though he has failed to provide a bill or receipt for such services. It is unknown when, where, and why this session was conducted. Appellant alleges the session was due to trauma from Appellee's actions, but fails to support that allegation with a report or other evidence of the session and the content thereof. Therefore, the request for reimbursement should be denied.

The medical expenses for the child has been in issue since this proceeding began in 1997. An agreement was entered into by the parties, and later adopted by the court, which ordered Appellant maintain health insurance on the child and divided the other expenses as follows: Appellee was to pay the first \$250 incurred per year and the remainder of medical bills not covered by insurance should be pro-rated with Appellant paying 80% and Appellee paying 20% of the expenses.

Custody of the minor child changed from Appellee to Appellant in October 1999. there was no further court order or agreement pertaining to medical expenses until May 2000, when the court ordered that Appellant pay the first \$250.00 of the medical expenses not covered by insurance and the remainder be pro-rated with the Appellant paying 75% and the Appellee paying 25% of the outstanding bills. It also ordered that Appellant promptly send copies of the medical bills to Appellee. This issue was not addressed again until May 2003.

In May 2003, the court found that neither party had access to insurance for the minor child, so it ordered that should either party have the insurance become available in the future, the child should be enrolled in that insurance plan. It also divided the medical bills as Appellee paying 25% and Appellant paying 75%. Both of Appellant's appeals to this order were denied by the circuit court.

Appellant now argues that in May 2003, he presented the medical bills to the court that included the cost of insuring the minor child through his wife's insurance, when the court had found that neither party had access to affordable insurance for the child. Since the court found that the child was not covered by insurance, it is obvious

that that court made no finding that the cost of insurance was not a “non-reimbursable expense.”

The issue was then addressed in August 2003, at which time the child was being insured under the Appellee’s policy. The court further ordered that the remaining expenses be divided by requiring the Appellee pay 42% of the remaining bills and the Appellant pay 58% of the remaining bills. The court reasoned its decision on the parties’ respective incomes and the facts that Appellee was paying insurance premiums on the child as well as child support. Now Appellant is asking that the court order the Appellee to pay half of the expenses incurred instead of the required ratio ordered by the court three years prior. Since the court based its decision on the evidence presented to the court, the decision was not clearly erroneous. Further, the time for appeal on this issue has expired, as it was ordered August 27, 2003.

CONCLUSION AND RELIEF SOUGHT

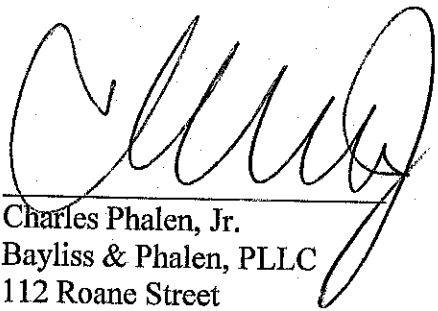
In conclusion, based on the above arguments, Appellee believes that the court based all decision on evidence presented to it at the time and therefore committed no reversible errors. Most of Appellant’s allegations are brought in the improper forum and are raised after appeal expiration.

The Appellant is attempting to control Appelle’s visits with her child and complicate the entire visitation in the process. The court has stated its reasons in proper orders with findings of facts based on testimony and evidence presented, therefore, the court could not have been clearly erroneous in the outcome. The Appellant is dissatisfied with the outcome of most of the decisions simply because his recommendations were not

adopted by the courts. Simple dissatisfaction is not sufficient to overturn almost seven years of rulings by the lower courts regarding this matter. Therefore, the courts orders should be affirmed.

Respectfully submitted,

Mary Rose,
By Counsel

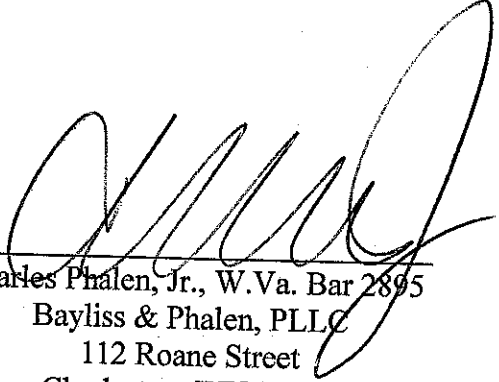


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CERTIFICATE OF SERVICE

I, Charles Phalen, Jr., Counsel for the Appellee, in the above-referenced matter, certify that I have served a true and exact copy of the foregoing **Brief of Appellee Mary Rose** on this the 13th day of March, 2006, via pre-paid first class in the United States Mail to:

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