

IN THE SUPREME COURT OF CHARLESTON, WEST VIRGINIA CHARLESTON

No. 32901

MARY ROSE,
Appellee

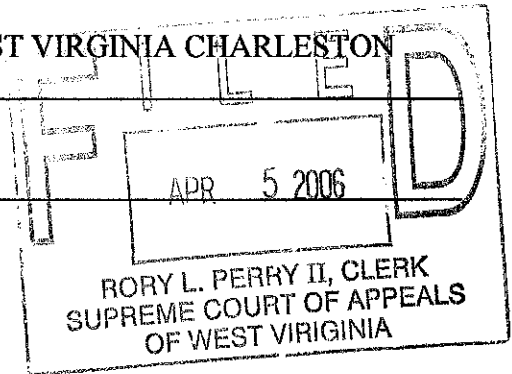
vs.

BILLY WAYNE DUNLAP,
Appellant

APPELLANT REPLY BRIEF

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Friday, March 31, 2006



IN THE SUPREME COURT OF CHARLESTON, WEST VIRGINIA CHARLESTON

MARY ROSE

Appellee

v.

BILLY WAYNE DUNLAP

Appellant

No. 32901

APPELLANT'S REPLY BRIEF

Now comes Appellant, Billy Wayne Dunlap and submits Appellant's Reply Brief pursuant to Rule 10 of the West Virginia Supreme Court of Appeals, Rules of Appellate Procedure.

A. Statement of Facts: Appellant disputes the *exact* facts set forth by Appellee:

A conference call with the Appellant, Appellee counsel's office, and the Family Court, was made to schedule a date and time for a formal hearing. The date of August 16, 2004 at 1:30pm was requested. Appellee's counsel was requested to forward notification to all parties for confirmation. As of that date, Appellant has not received notification of the hearing. As per the schedule provided during the conference call, Appellant proceeded in good faith to attend the hearing. The hearing on August 16, 2004, was scheduled from 1:30pm to 4:00pm in the Family Court of Elkins WV. In consideration of the length of the previous hearings for these issues, Appellant had requested two and one half hours of the court's time.

Appellant and witness arrived at 2:10pm. Upon arrival, Appellant attempted to attend the hearing with Judge Wilfong. The Appellant was met by the bailiff who indicated that the Judge would not speak to Appellant. This delay by the bailiff lasted fifteen minutes in the reception area. It was indicated to Appellant, who has been Counsel Pro Se throughout these proceedings,

by bailiff that *only attorneys* could speak to the Judge, even though Appellant informed the bailiff he was Counsel Pro Se in this case. In addition, since the Court indicated that this would be a formal hearing, unlike the previous conference calls, so that the Appellant and Appellee could present witnesses, it would have behooved the Court and Appellee's counsel to delay the hearing for the forty-five minutes as requested by Appellant via telephone while en-route from Pennsylvania to Elkins WV. The Appellee does not deny that the Court or Appellee's counsel was aware of the late arrival.

The Court has discriminated against Appellant and Counsel Pro Se with regard to gender. Throughout the course of this case, the Courts continued to lose sight that the Appellant is the custodial parent, not the bad guy. The Appellant is a caring and loving father who just wants to protect his daughter, as is a father's duty and right. The Appellant's dealings with the Courts has always resulted in the adopted order submitted without review or input by Counsel ProSe, highest amount of payment and/or inconvenience even though at times the Appellee was making more money than Appellant. This shows total disregard for the minor child's well being. The burden is always being borne by the custodial parent, the Appellant. The Appellant has continued to accommodate all requests from Appellee's several counsels for consideration regarding postponements, continuations, and delays by all parties, including the Family Court Judge's schedule, changes or delays. This bias action against this custodial father has proved not to be in the best interest of the minor child causing financial and emotional hardship.

Appellee's erroneous statement that the reason for the exchange was initiated by the Appellant, but actually was part of the Final Order dated August 16, 2004, by the Family Court that Appellant had no inputs, review or knowledge of that Final Order which stated in item 6 "that the exchange of said child shall take place at the residence of Berdj Kanadjian (the name

and location is unknown to Appellant) or such other place as the parties may agree in the Washington DC area.” Appellant also objected to this order.

Ratified by the Family Court on January 5, 1998, Appellant was under order to carry the total burden of visitation transportation cost to and from Elkins WV to visit minor child. On October 1, 1999, the Circuit Court of Randolph County granted a change of custody to Appellant for inappropriate sexual conduct by Appellee. The Family Court still places the obligation of Appellant to bear half of the cost of visitation transportation, once again discriminating against Appellant.

B. Standard of Review: The Appellee’s standard of review, Burnside v. Burnside, 194 W. Va. 263,460 S.E.2d 264 (1995), is erroneous and does not apply to this case. This standard of review addresses “parties were married and during the course of the marriage, one spouse transfers title to his or her separate property” and “there is no absolute requirement that each item of marital property be distributed on an equal basis; rather, property acquired during the marriage may be distributed in a manner consistent with the statutory policy that reflects fairness and equity.” The Appellant has never been married to the Appellee and has had no equitable distribution statute; therefore, no firm conclusions can be drawn by family court Law Master with the exception of equity being its ultimate goal.

On October 1, 1999, the Circuit Court of Randolph County, Honorable John L. Herring, issued charges against Appellee, Mary Rose, for inappropriate sexual contact of the minor daughter, Serena Rose Dunlap. Testimony included an admission from the Appellee that her daughter had touched her husband’s penis and essentially she saw nothing wrong with that. Appellee also testified concerning her and her husband’s nudist lifestyle. The courts granted a

change of custody and scheduled an expedited hearing before the family Law Master to address the issues of visitation for the Appellee and her obligation to pay child support. W Va. Code , 49-1-3 (a), defines an "abused child whose health or welfare is harmed or threatened by: (1) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home; or (2) Sexual abuse or sexual exploitation; or (3) the sale or attempted sale of a child by a parent, guardian or custodian."

1. The Court's decision on the amount to be paid by the Appellee was erroneous because the decision was finalized without having all information prior to the ruling. The Court's Order regarding visitation exchange of the child and their reverse order of events by the Court impacted the evidence on the hearing because of the missing required financial information on travel and toll costs not presented as evidence to the court by Appellant.

After the court hearing on November 29, 2004, with Judge Henning, a meeting took place with Charlie Phelan, attorney for Appellee, Appellee Mary Rose and Appellant and Attorney Pro Se Billy Dunlap. Appellant never agreed to meeting half way on travel, but only suggested a location for both parties to meet by reviewing Mapquest. Appellant selected Shippensburg Pennsylvania because of the expense of tolls and Appellee would not incur any toll expense. If the location was not acceptable to Appellee, then the location reverts back to the original destination of Washington DC. The Circuit Court has disregarded their own ruling in this matter and failed to document the facts. The Appellee, without the consent of the Appellant, submitted a draft working copy of the parenting plan to the court as evidence, which the court decided was based on those submissions.

2. Child support obligation for Appellee should be effective the same date of October 1, 1999. The courts granted a change of custody and scheduled an expedited hearing before the family Law Master to address the issues of visitation for the Appellee and her obligation to pay child support. Appellee seeks to blame the delay of hearing on Appellant and Appellant never petitioned the Court for child support from Appellee until May 10, 2000. The Appellee submitted several motions to the Court on the custody issue, psychological evaluation and other items which continued to delay this issue of visitation and obligation to pay child support and which the Circuit Court directed the family Law Master to expedite in this matter. The erroneous statement regarding the financial determination and which was stated on the records is that the Appellant earns less income than the Appellee. The Appellee was fully aware that the change of custody was a final order for purposes of appeal stated by the Circuit Court in October 1, 1999. Therefore, the family Law Master should have not taken valuable time and delayed the process to modify the child support at the time custody changed.

3 Appellant attended a meeting held on November 29, 2004, as directed by the Circuit court, to negotiate a revised parenting plan. Appellee's counsel prepared the revised parenting plan, based it on suggestions and not agreed upon terms by Appellant, and without Appellant or Counsel Pro Se reviewing the suggestions of this meeting, presented it to the Court as the final terms of the parenting plan. Thus, Appellee's counsel submitted its own information for the Final Order which was then adopted by the Circuit court. Appellant did object to the language in the order which was modified to support the best interest of Appellee and left out Appellant's requested language and/or items raised in the negotiation.

4. The Court or Appellee has never provided any documentation to Appellant in support of the Appellee's home and family being appropriate for visitation of child by the West

Virginia Child Protective Services. The Appellant is requesting the right to have the West Virginia Child Protection Services supervise and monitor the household with random checks while the minor child is visiting with the non-custodial parent in West Virginia.

5. Appellant still requests that the level of maturity or age of the person who will supervise the child be 21 years of age or older. The Appellant is requesting the right to have the West Virginia Child Protection Services supervise and monitor the household with random checks while the minor child is visiting with the non-custodial parent in West Virginia.

6. Appellee has several babysitters that oversee minor the child while visiting in West Virginia. The Appellant adamantly requests evidence of a police check or state licenses, addresses and phone numbers of these babysitters (initially requested in the November 29, 2004 meeting and agreed to by Appellee) and to provide this information to Appellant before said visitation.

7. Appellee argues that the court failed to respond in writing to Appellant's objection because Appellant was not represented by counsel at the hearing. Appellant has been on record as Counsel Pro Se, but continues to be discriminated against by the court, Appellee and Appellee's counsel regarding this fact.

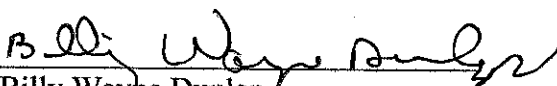
The Circuit Court mailed out the Final Order dated December 21, 2004 without Appellant's inputs, fully aware of Appellant being the Counsel Pro Se. Thus, no opportunity was given to challenge the information in the draft order or to adopt a revised parenting plan. Appellant and Counsel Pro Se received no comments or opinions on why certain items and recommendations could not be considered by the family Law Master. The only effort, in retrospect, was a handwritten one line note by the court simply stating the objection was

considered and denied was once again. It seemed like another attempt to rush to close the case showing a total lack of respect and courtesy for the Appellant's submitted Objection.

8. Appellant provided the family Law Master a detailed summary breakdown and receipts in support of medical expenses and counseling session costs. Also, the Court was provided a written report of the counseling sessions of minor child and all cost data for services rendered directly by the counseling organization. Appellee argues that Appellant presented the medical bills to the court that included the cost of insuring the minor child through his wife's insurance. The court continues to mistake Appellee, Mary Rose, as his wife. Appellant was never married to Appellee. I am now and at the time of the hearing married to Barbara Dunlap of Pennsylvania and medical expenses claimed by Appellant are for the cost of medical insurance provided by Barbara Dunlap, Appellant's wife, which the court finds as a non-reimbursable expense. Appellant wife's medical coverage covers the entire family and should be considered a reimbursable expense for any member of the family. Appellant's wife has always supported the family under affordable insurance for the child and family through her company benefits.

WHEREFORE, Appellant respectfully requests that the Supreme Court of Appeals review and reverse, in part, the recommended changes and incorporate them in the Final Order.

Respectfully submitted,


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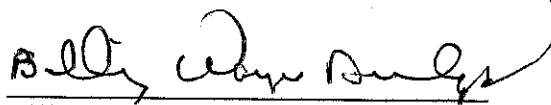
CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April 2006, a copy of the foregoing Appellant

Reply Brief was mailed First Class Mail to the following:

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