

IN THE FAMILY COURT OF LOGAN COUNTY, WEST VIRGINIA

IN RE: THE MARRIAGE OF:
RALPH BURTON,

Petitioner/Respondent,

vs.

CIVIL ACTION NO. 01-D-223-P

BONNIE SUE BURTON,

Respondent/Petitioner.

ORDER

On January 11, 2007, came the Petitioner/Respondent, Ralph Burton, by Counsel, Rebecca E. Mick, and came the Respondent/Petitioner, Bonnie Sue Burton, by Counsel, Anne E. Shaffer, pursuant to the Petitioner/Respondent's Motion to Dismiss the Petition for Appeal from Final Order of Divorce filed by Respondent/Petitioner, Bonnie Sue Burton.

After reviewing the pleadings filed herein and hearing arguments of counsel, the Court did, and hereby does, **FIND** and **ORDER** as follows:

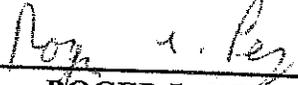
1. A final divorce order was entered in the above-styled case on August 27, 2004.
2. The Respondent/Petitioner, Bonnie Sue Burton, made an oral motion for modification of the final divorce order on August 27, 2004.
3. A hearing was conducted on the Motion for Modification on November 30, 2004, in the Family Court of Logan County.
4. An Order was entered on the Motion for Modification on February 23, 2005.
5. The Respondent/Petitioner, Bonnie Sue Burton, filed a Petition for Appeal of the Final Order on March 25, 2005

6. There was no activity in the Petition for Appeal from the date it was filed, March 25, 2005, until November 14, 2006, the date that the Petitioner/Respondent, Ralph Burton, filed his Motion to Dismiss.
7. An oral motion to stay the Family Court's Final Order was made in the Family Court of Logan County on August 11, 2005, which the Court granted pending disposition of appeal but for which no Order has been entered.
8. West Virginia Code 51-2A-10(b) provides that "[t]he family court must enter an order ruling on the motion [for reconsideration] within thirty days of the date of the filing of the motion."
9. The language of West Virginia Code 51-2A-10(b) is unambiguous and mandatory.
10. "The thirty day window for ruling on a motion for reconsideration is mandatory because a "Motion for Reconsideration does not toll the time for appeal." " Ray v. Ray, 216 W.Va. 11, 15 n. 16, 602 S.E.2d 454, 458 n. 16 (2004) *citing* Rowan v. McKnight, 184 W.Va. 763, 764 n. 2, 403 S.E.2d 780, 781 n.2 (1991).
11. A Petition for Appeal must be filed within thirty (30) days following entry of the final order of the family court. West Virginia Code 51-2A-11(a). Alternatively, a Petition for Appeal must be filed within thirty (30) days of the filing of the Motion for Reconsideration because a Motion for Reconsideration does not toll the time period for filing an appeal.
12. In the instant matter, in order for the Petition for Appeal to have been timely perfected, it would have had to have been filed on or before September 26, 2004, or within thirty (30) days of the motion for reconsideration.
13. The Petition for Appeal in the above-styled case was not filed until March 25,

2005, or seven (7) months following entry of the Final Order and the Respondent/Petitioner's Motion for Reconsideration.

14. West Virginia Code 51-2A-13 provides that a Circuit Court may dismiss a petition for appeal of a final order of a family court for failure to properly perfect the appeal.
15. The Respondent/Petitioner's Petition for Appeal was not timely filed and, therefore, not properly perfected.
16. The Petitioner/Respondent's Motion to Dismiss is **GRANTED**. The Petition for Appeal is **DISMISSED** and the above styled case shall be stricken from the docket of this Court.

Entered this 22nd day of February, 2007.



ROGER L. PERRY
Circuit Court Judge

Prepared and Presented by:



Rebecca E. Mick, #5548

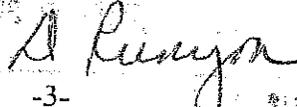
Counsel for Petitioner

Pyles, Haviland, Turner & Smith, LLP

P.O. Box 596

Logan, West Virginia 25601

304-752-6000

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IN THE FAMILY COURT OF LOGAN COUNTY, WEST VIRGINIA

In re the marriage of:

RALPH BURTON, Petitioner, and
BONNIE SUE BURTON, Respondent.

Civil Action No. 01-D-223
Family Court Judge Codispoti

FINAL ORDER OF DIVORCE

On the 22nd of October, 2003, the Petitioner appeared in person and by his counsel, Shawn D. Bayliss, and the Respondent appeared in person and by her counsel, M. Timothy Koontz, for a final hearing in this divorce action. This action was instituted by the filing of a verified petition on or about April 19, 2001. Respondent filed her response thereto on or about May 9, 2001. This action having regularly matured, the Family Court Judge proceeded to take the sworn testimony of the parties, the testimony of their witnesses, and the evidence presented and admitted. After hearing argument of counsel and after mature consideration and deliberation by the Court, the Court makes the following findings of facts and conclusions of law:

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ALVIS PORTER
CLERK
FAMILY COURT
LOGAN COUNTY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That this court has jurisdiction and venue over the parties and over this marriage and that this divorce is properly before the Court;
2. That the parties were duly and lawfully married on or about May 28, 1985;
3. That the parties last lived together as husband and wife on or about March 3, 2001;

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4. That no children were born of the marriage and none are expected;

5. That irreconcilable differences have arisen between the marriage such as to render the marriage irretrievably broken and irreconcilable differences have been pled and admitted;

6. That the Respondent pleaded and put on evidence of other grounds, that being of extreme mental and physical cruelty, but the Court finds that those grounds were not fully proven;

7. That the Court has considered the earning capacity of the parties, the length of the marriage and other proper considerations pursuant to W. Va. Code 48-8-105, and finds that the Respondent is entitled to an award of rehabilitative alimony in the amount of \$350.00 per month for a period of five (5) years beginning January 1, 2003, that being the date of the Petitioner's motion to terminate temporary alimony. The court also considered that neither party is capable of working and that it is unrefuted that the Petitioner managed the parties money during the marriage. The Court finds that the five year period of rehabilitative alimony is necessary to allow the Respondent to learn to manage her money and become independent;

8. That the stock held by the Petitioner which is directly traceable to the break up of the Bell company into the "baby Bell" companies is his sole and separate property and, further, that any increase in the value of that stock shall also be his sole and separate property as such was the property of the Petitioner prior to the marriage, the Petitioner undertook all of the management and decision making with respect to that stock during the marriage, and the Respondent did not participate in the investment or

management of such stock. Further, the Petitioner never placed such stock into the name of the Respondent;

9. Any stocks acquired during the marriage is found by this Court to be marital property and shall be subject to equitable division as set forth in the next paragraph;

10. That because the parties are unable to agree to a division of the marital estate, the Court finds that all marital assets should be sold and the proceeds divided equally;

11. That the Respondent has prayed for an award of attorneys fees and the Court finds that an award of attorneys fees in the amount of \$1,000.00 is proper and necessary;

ORDER

Therefore, it is **ORDERED, ADJUDGED, and DECREED** that:

1. The marriage heretofore celebrated by and between the parties be, and the same hereby is, forever dissolved;

2. The Petitioner shall pay unto the Respondent the sum of Three Hundred Fifty Dollars (\$350.00) in rehabilitative alimony for a term of 60 months beginning January 1, 2003 and continuing through December 1, 2007;

3. The marital assets of the parties are to be sold and the proceeds divided equally between the parties;

4. The Petitioner shall pay unto the Respondent's counsel, M. Timothy Koontz, the sum of One Thousand Dollars (\$1,000.00) in attorneys fees;

5. The Petitioner is hereby enjoined from molesting, harassing or interfering with the Respondent now and at any time in the future;

6. The Respondent is hereby enjoined from molesting, harassing or interfering with the Petitioner now and at any time in the future;

7. The findings of fact and conclusions of law set forth above are incorporated into this ORDER by reference; and

8. The clerk is directed to serve certified copies of this Order upon counsel of record for the parties.

The objections of the parties to any adverse rulings are duly noted and preserved.

NOTICE

Pursuant to W. Va. Family Court Rule 22(c), you are hereby notified as follows:

1. This is a Final Order.
2. Any party may file a motion to reconsider of the Final Order as provided in W.Va Code §51-2A-10.
3. Any party aggrieved by this Final Order may take an appeal either to the Circuit Court or directly to the West Virginia Supreme Court of Appeals.
4. A petition for appeal to the Circuit Court may be filed by either party within thirty (30) days after entry of this Final Order.
5. In order to appeal directly to the Supreme Court of Appeals, both parties must file, within fourteen (14) days after entry of this Final Order, a joint notice of intent to appeal and waiver of right to appeal to circuit court.

ENTERED THIS THE 27th DAY OF August, 2004.

Kelley M. Codispoti
Family Court Judge Kelley M. Codispoti

Prepared by:

M. Timothy Koontz

M. Timothy Koontz, WV Bar No. 8608
186 East Second Avenue
P.O. Box 2180
Williamson, West Virginia 25661
Counsel for Respondent

Served via facsimile upon the following counsel on the 11th day of March, 2004:
Shawn D. Bayliss
Bayliss Law Offices
P.O. Box 1054
Hurricane, WV 25526

NOTICE: You have 5 days within which to object to the entry of this order

FILED IN CIVIL ORDER BOOK 232
PAGE 537
DATE 8-27-04

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ALVIS PORTER
CIRCUIT CLERK
LOGAN COUNTY