

Supreme Court Case No. 34263

IN THE SUPREME COURT OF WEST VIRGINIA

WRIGHT VS. WHITE

**In Re the Marriage of:
DEBORAH K. WRIGHT,
Petitioner, Appellee herein,**

And

**Civil Action No. 06-D-209
Family Court Judge Larry Whited
Circuit Court Judge David W. Nibert**

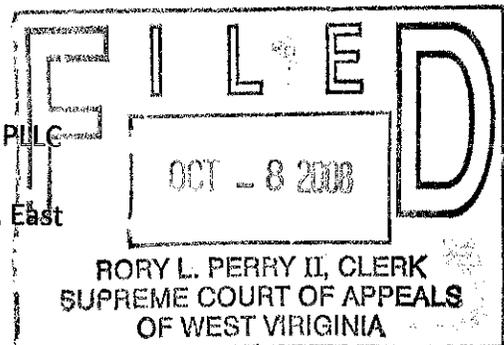
**MARK A. WHITE,
Respondent, Appellant herein.**

FROM THE CIRCUIT COURT OF ROANE COUNTY, WEST VIRGINIA

Memorandum of Law In Support of Petition for Appeal

October 8, 2008

Lyne Ranson
Lyne Ranson Law Offices, PLLC
WV State Bar No. 3018
1528 Kanawha Boulevard, East
Charleston, WV 25311
(304) 344-2121



TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA:

NATURE OF PROCEEDINGS AND RULINGS IN TRIBUNAL BELOW
AND STATEMENT OF FACTS

Petitioner, Deborah K. Wright (hereafter Ms. Wright) filed her Petition for Divorce on November 27, 2006 on several grounds including living separate and apart for more than 12 months. The parties were married on November 17, 2000 in Kanawha County, West Virginia and last cohabitated as husband and wife on or about March 11, 2005. No children were born as a result of the marriage.

Respondent, Mark White (hereafter Mark) was served the Petition for Divorce by certified mail on the 30th day of November, 2006 in the state of Arizona where he had moved to accept a job in the spring of 2005. Pursuant to Rule 12(a) of the Rules of Civil Procedure Mark had 30 days to file his answer to the Petition for Divorce. Thirty days from the date he was served was December 30, 2006, which was a Saturday, January 1, 2007 was a Monday, New Years Day and a holiday. Therefore, Mark's Answer to the Petition for Divorce was not even due until Tuesday, January 2, 2007, at the earliest.

Ms. Wright filed her financial statement on November 27, 2006 along with a motion for temporary relief showing the date of the scheduled hearing to be January 19, 2007 at 10:00 a.m.

There was no notice given that this would be a final hearing equitably distributing the parties' property or setting alimony. Mark's Answer was due on January 2, 2007 and just 10 days after that he moved the Court to continue the temporary hearing because he was laid off from his job, and did not have funds to travel from Arizona to appear in person for the temporary hearing, nor to retain an attorney to represent him at that point. Counsel for Ms. Wright filed an Objection to Mark's motion to continue the temporary hearing. The court denied his motion

to continue and the temporary hearing proceeded on January 19, 2007. Because the court denied Mark's motion to continue the hearing, he was left with no choice but to be present during such hearing by telephone and without counsel. The court granted the default motion and refused to allow Mark to speak or present evidence during the hearing.

Following what was noticed by Ms. Wright's counsel as the temporary hearing, a Final Order was entered the same day on January 19, 2007 without a notice of submission of Order being filed pursuant to family court Rule 22(b) allowing Mark 5 days to object to the entry of the Final Order. On January 26, 2007, an Amended Final Order *Nunc Pro Tunc* was entered by the Court once again without a notice of submission of Order to Mark pursuant to Rule 22(b) of the Rules of Practice and Procedure of Family Court.

Mark retained counsel on or about February 16, 2007. Counsel for Mark filed a Motion for Reconsideration of the Final Order on February 16, 2007 with the family court. Counsel for Ms. Wright filed her objections to the Motion for Reconsideration on or about February 21, 2007. The Family Court entered an Order Denying Mark's Motion for Reconsideration on March 2, 2007. Mark filed a Petition for Appeal to the Circuit Court of Roane County on or about March 30, 2007. The Circuit Clerk entered an Order Refusing the Petition for Appeal on October 4, 2007. It is from the Final Order entered on January 26, 2007, the Order denying Reconsideration on March 2, 2007 and the Circuit Court Order Denying the Petition for Appeal entered on October 4, 2007 from which Mark appeals.

ASSIGNMENTS OF ERROR

The Circuit Court entered an Order on October 4, 2007 denying Respondent's Petition for Appeal of the Final Order *Nunc Pro Tunc* entered on January 26, 2007. The Circuit Court erred

by not reversing, nor remanding the Family Court's Order decision for the reasons as set forth below:

1. The Family Court abused its discretion and erred by giving notice that a temporary hearing would be held on January 19, 2007, when in fact, it was a final hearing that was held.
2. The Family Court erred by granting an untimely motion for default judgment of divorce when the motion was filed the same day as the hearing and did not provide sufficient notice to Mark.
3. The Family Court erred by finding in the Final Order that Mark did not appear in this case when in fact, he did appear by telephone for the hearing.
4. The Family Court abused its discretion and erred by refusing to grant a continuance of the Temporary Hearing for good cause shown when Mark was unable to be present at the hearing or hire counsel to represent his interests.
5. The Family Court abused its discretion by entering a Final Order without the required Rule 22(b) notice allowing Mark 5 days to object to the final order before it was entered.
6. The Family Court abused its discretion and erred in holding a Final Hearing before this case was ripe for hearing when Mark had not even had a chance to file a financial disclosure statement and no discovery was conducted in the case.
7. The Family Court erred by requiring Mark to pay Ms. Wright's attorney fees in the amount of \$1,722.50 for her costs in this action, without proof of such costs being incurred as reasonable and necessary and specific findings regarding the Banker

- factors and West Virginia Code Sections 48-1-305 and 48-5-611.
8. That the Family Court erred and abused its discretion by awarding Ms. Wright rehabilitative spousal support for five years considering the parties' short marriage of 6 years, her age and the fact that she did not even present evidence of a rehabilitative plan.
 9. That the Family Court erred and abused its discretion by finding that Ms. Wright loaned Mark \$30,000 when there was wasn't any written documentation or promissory note presented evidencing there was ever a loan made.
 10. The Family Court erred and abused its discretion by finding that Ms. Wright paid \$4,000 (approximately one-half) toward the purchase of an ATV and that it was intended as a loan to Mark when there wasn't any documentation or promissory note presented showing that this was in fact a loan as opposed to a gift.
 11. The Family Court erred and abused its discretion by not awarding Mark his personal property and his sole and separate property.

DISCUSSION AND AUTHORITIES

1. The Family Court abused its discretion and erred by giving notice that a temporary hearing would be held on January 19, 2007, when in fact, it was a final hearing that was held.

On November 27, 2006, Ms. Wright filed a *Motion for Temporary Relief*, which noticed the Hearing for January 19, 2007. Since the Notice of Hearing was incorporated in the Motion for Temporary Relief, the hearing was in fact scheduled as a Temporary Hearing. At the time the Temporary hearing date was set, Mark had not even been served with the Divorce Petition.

When Mark learned that a Temporary Hearing had been set, he filed a Motion to Continue such hearing on January 12, 2007 because he had lost his job, was unable to retain an attorney and was currently residing in Arizona. The Court denied Mark's request and proceeded with a temporary hearing which was turned into a final hearing. The hearing was not noticed as a final hearing wherein final equitable distribution, support and attorney fee issues would be determined. In fact, this hearing was set as a temporary hearing.

The temporary motion filed requested that Ms. Wright receive:

1. temporary alimony;
2. maintain health insurance ...as an incident of temporary alimony;
3. sole temporary possession of her personal items;
4. sole temporary use and possession of her vehicle;
5. attorney fees and costs; and
6. such other temporary relief as the court deems proper and just.

There was no request for final relief.

Ms. Wright argues that she was entitled to a divorce by default in that Mark did not respond to the Petition for Divorce. Mark is not an attorney; he did not have legal advice as to what the consequences were for not filing his Answer. Furthermore, based on the Circuit Court docket sheet, Ms. Wright filed a Motion to Default Judgment and Affidavit to Support Default Judgment on January 19, 2007, the date of the hearing.

Pursuant to Rule 6 of the West Virginia Rules of Civil Procedure, Commencement of Action, a motion must be filed 9 days before the time set for the hearing if served by mail and 7 days before the time set for the hearing, if served by hand delivery or by fax. Mark did not

receive proper notice of the Motion to Default Judgment and Affidavit to Support Default Judgment. This did not even give Mark an opportunity to respond to such motion before the hearing. It is clear that this matter is truly a miscarriage of justice that needs to be rectified by this Court.

- 2. The Family Court erred by granting an untimely motion for default judgment of divorce when the motion was filed the same day as the hearing and did not provide sufficient notice to Mark, who was acting pro se.**

Ms. Wright filed a motion for default judgment of divorce on January 19, 2007. This was the same day as the hearing and did not provide sufficient notice of 7 days to Mark as required by Rule 6 of the Rules of Civil Procedure. This was because Mark did not file an official answer, but appeared in Court prepared to answer that day.

This Court has contended that "a party should not be denied adjudication of his claim for a mere technical violation of a rule because, to do so, would be contrary to the interests of justice." Guido v Guido, No. 33599 January 2008 Term, (referring to Bias v. Workers' Compensation Commissioner, 181 W. Va. 188, 381 S.E.2d 743 (1989)). This Court has also "recognized that a pro se litigant's other rights under the law should not be abridged simply because he or she is unfamiliar with legal procedures. To that end, we have advised that 'the trial court must 'strive to insure that no person's cause or defense is defeated solely by reason of their unfamiliarity with procedural or evidentiary rules.'" Cottrill v. Cottrill, 631 S.E.2d 609 (2006) (citing Bego v Bego, citing Blair v. Maynard, 174 W. Va. 247, 252-253, 324 S.E.2d 391, 395-396).

In fact, West Virginia Code 48-5-402(d) states that "(a) petition shall not be taken for

confessed and whether the respondent answers or not, the case shall be tried and heard independently of the admissions of either party in the pleadings or otherwise. No judgment order shall be granted on the uncorroborated testimony of the parties or either of them, except for a proceeding in which the grounds for divorce are irreconcilable differences." The West Virginia Rules of Civil Procedure also requires the case to be tried "whether the defendant answers or not." Rule 81(a)(2).

Mark was prepared to answer and defend on the date of the hearing. Bego vs Bego states that "(w)hen, however, the defendant appears at the hearing prepared to address the merits of the complaint, it is violative of the purpose of the statute to allow the plaintiff's evidence to go unchallenged." 177 W. Va. 74, 350 S.E.2d 701 (1986). Bego also states that "prohibiting the appellant from participating in the proceedings in this action was an unreasonably harsh measure" when appellant failed to file an answer.

Furthermore, not giving Mark notice nor permitting Mark to prepare for the possibility of a default judgment is more than a technical violation, especially since Ms. Wright was represented by counsel. "It is well accepted that courts look with disfavor on judgments obtained by default." Bego (citing Intercity Realty Co. v. Gibson, 154 W. Va 369, 376, 175 S.E.2d 452, 456 (1970)). "The law strongly favors providing a defendant with an opportunity to make a defense to an action against him." Bego (citing Graley v. Graley, 174 W. Va. 396, 327 S.E.2d 158, 160 (1985)) Therefore, it was improper for the family court to grant such motion.

3. The Family Court erred by finding in the Final Order that Mark did not appear in this case when in fact, he did appear by telephone for the hearing.

Mark appeared by telephone at the hearing. The family court found that Mark did not appear at the hearing, when in fact, he did. The circuit court relied upon that finding in refusing the appeal from family court, and it was clearly wrong.

4. The Family Court abused its discretion and erred by refusing to grant a continuance of the Temporary Hearing for good cause shown when Mark was unable to be present at the hearing or hire counsel to represent his interests.

Mark filed a Motion to Continue the Temporary Hearing on January 12, 2007 since he was unemployed and unable to afford to drive or purchase a plane ticket to travel to West Virginia for the hearing. Mark also requested additional time so that he could obtain the funds to hire an attorney. Under the circumstances in that the case was not ripe for a hearing, Mark was not represented by counsel and he timely requested the continuance 7 days before the temporary hearing was scheduled was good cause for the Court to allow a short continuance pursuant to his request.

Ms. Wright's counsel filed an objection to such continuance in part on the basis that such motion for continuance was not verified, no certificate of service was attached, and it was not timely filed. This was ironic given the procedural inadequacies of Ms. Wright filing a motion for a default judgment on the same date as the hearing and entering a final order on the same day since only a temporary hearing had been noticed.

Clearly, Mark's inability to retain legal counsel on such short notice was used against him when the Court proceeded to a Final Hearing without notice that the hearing would be anything other than a temporary hearing. Also, after the family court judge proceeded to a Final hearing

and signed a final order on the same date without any notice given to Mark to review or object to such.

- 5. The Family Court abused its discretion by entering a Final Order without the required Rule 22(b) notice allowing Mark 5 days to object to the final order before it was entered.**

The Family Court held the hearing, which was noticed for a **temporary hearing** on January 19, 2007 as a final hearing and then entered the Final Order on the same date as the hearing without notice to Mark. Notice was not given to Mark that a final order had been submitted to the court for entry as required by Rule 22(b) of the West Virginia Rules of Family Court. Mark had no opportunity to review or even object to the entry of the Final Order as allowed by the Rules. This is a miscarriage of justice and an abuse of discretion by the Family Court. This is discussed more fully above herein.

- 6. The Family Court abused its discretion and erred in holding a Final Hearing before this case was ripe for hearing when Mark had not even had a chance to file a financial disclosure statement and no discovery was conducted by either side in the case.**

The Family Court entered a Final Order on the same date that the Temporary Hearing was scheduled. In fact, the motion for temporary relief that Ms. Wright filed asked that "the parties be granted to engage in discovery of each other's incomes, assets and debts. There was no discovery in this case.

The parties had **not** reached an oral or written agreement in this matter. As noted above, Mark requested a continuance of the Temporary Hearing to obtain counsel. Mark was

not Ordered by the Family Court to file a financial statement pursuant to West Virginia Code Section 48-5-511. Since Mark was pro se', he did not realize nor was he made aware that certain financial disclosures were to be filed.

In fact, the Temporary Hearing was scheduled for only 17 days after Mark's answer was due. Clearly, this case was not ripe for a temporary hearing and certainly not ripe for a final hearing. Had Mark known that this temporary hearing was going to become a final hearing with the finality of distribution, award of support and dissolution of the marriage, he would have been prepared for such.

7. The Family Court erred by requiring Mark to pay Ms. Wright's attorney fees in the amount of \$1,722.50 for her costs in this action, without proof of such costs being incurred as reasonable and necessary and specific findings regarding the Banker factors and West Virginia Code Sections 48-1-305 and 48-5-611.

The Court Ordered Mark to pay Ms. Wright's attorney fees in the amount of \$1,722.50 when sufficient proof of such amount incurred by Ms. Wright was not introduced. Mark does not have sufficient funds to pay such fees since he was unemployed and has no income from any source. Mark could not even obtain an attorney to represent him at the scheduled temporary hearing since he did not have the funds to pay for such. Mark suffers from significant health problems such as high blood pressure, heart problems; he has 3 stints, had heart attacks, has a pacemaker and is borderline diabetic.

The award of attorney's fees and costs in divorce proceedings is authorized by West Virginia Code Sections 48-1-305 and 48-5-611 which allow costs to be awarded to either party as justice requires ...and that the court may compel either party to pay attorney's fees and court costs

reasonably necessary to enable the other party to prosecute or defend the action in the trial court. Bettinger v. Bettinger, 183 W.Va. 528, 396 S.E. 2d 709 (1990). An award of fees and costs rests initially within the sound discretion of the Family Court Judge. Banker v. Banker, 196 W.Va. 535, 474 S.E. 2d 465 (1996) and Chafin v. Chafin, 505 S.E. 2d 679 (1998).

In determining whether to award attorney's fees, the family law master (now family court judge) should consider a wide array of factors, including the party's 1) ability to pay his or her own fee, 2) the beneficial results obtained by the attorney, 3) the parties' respective financial conditions, 4) the effect of the attorney's fees on each party's standard of living, 5) the degree of fault of either party making the divorce action necessary, and 6) the reasonableness of the attorney's fee request. Rogers v. Rogers, 197 W.Va. 365, 475 S.E.2d 457 (1996), Syllabus Point 4, in part Banker v. Banker, 196 W.Va. 535,474 S.E.2d 465 (1996).

Where attorney's fees are sought against a third party, the test of what should be considered a reasonable fee is determined not solely by the fee arrangement between the attorney and the client. The reasonableness of attorney's fees is generally based on broader factors such as: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. Aenta Casualty & Surety Co. v. Pitrolo, 342 S.E.2d 156 (W.Va. 1986), Rice v. Mike Ferrell Ford, Inc., 403 S.E.2d 774 (W.Va. 1991)

APPLICATION OF THE BANKER FACTORS

1. **Ability to Pay:** Mark should not be required to pay Ms. Wright's attorney fees in the amount of \$1,722.50. Mark was unemployed and has no income. Ms. Wright was employed by the Roane County Board of Education. The Court found Ms. Wright's income was \$90.15 per day. That was more income than Mark had.
2. **The Amount Involved and the Results Obtained:** a nominal amount of assets were involved in this matter.
3. **The Skill Required to Perform Legal Services Properly:** This case was not complex. In fact, this case was completed in less than 60 days from the date the Petition for Divorce was filed. The parties had very little marital property and they lived together as husband and wife for approximately 4 ½ years.
4. **The effect that payment of attorney fees would have on each party's standard of living:** The payment of attorney fees by Mark would greatly affect his standard of living since he is unemployed and does not have the funds to pay for his basic living expenses. As stated above, Mark suffers from numerous health conditions such as high blood pressure, heart problems, he has 3 stints, had heart attacks, has a pacemaker and is borderline diabetic.
5. **The "Degree of Fault" by either party in making the divorce action necessary:** The Court found that Mark was at fault for the dissolution of marriage. However, there was no evidence presented that Mark abandoned Ms. Wright physically, emotionally and financially. Mark moved to Arizona in hopes of better employment opportunities. Mark expected that Ms. Wright would move to Arizona and she refused to do so.

6. The Attorney Fees, Expert Fees and Costs in this case are Reasonable: No documentation was presented showing the necessity and reasonableness of the legal fees rendered. A summary affidavit was purported to be attached to the motion, but Mark did not have an opportunity to review such nor object to paying for such fees.

8. That the Family Court erred and abused its discretion by awarding Ms. Wright rehabilitative spousal support for five years considering the parties' short marriage, her age and the fact that she did not even present evidence of a rehabilitative plan.

Pursuant to West Virginia Code §48-8-105, the court may award rehabilitative spousal support for a limited period of time to allow the recipient spouse, through reasonable efforts, to become gainfully employed. When awarding rehabilitative spousal support, the court shall make specific findings of fact to explain the basis for the award, giving due consideration to the factors set forth in Section 48-8-301. An award of rehabilitative spousal support is appropriate when the dependent spouse evidences a potential for self support that could be developed through rehabilitation, training or academic study.

The court found that Ms. Wright's income was \$90.15 per day and found that Mark "told" petitioner and other people that he was earning \$160,000 per year at his current job, which is not correct. However, in fact, at the time of the hearing, Mark was not employed and had no income from any source. There was no credible evidence to support such finding.

There is a great disparity between the parties' incomes. At the time of the Final Hearing, Ms. Wright earned approximately \$23,439 while Mark income was zero since he was unemployed and had health problems. Therefore, Mark did not have the financial ability to pay such spousal support.

Furthermore, a "definite rehabilitation plan" was not filed with the Court by Ms. White. That the Court awarded spousal support for a period of 60 months (5 years), which is approximately the same or more time than the parties actually lived together and husband and wife. Ms. Wright provided no evidence of tuition, costs, or training necessary to allow her to be self-supporting as required for rehabilitative alimony.

In Molnar v. Molnar, 173 W.Va. 200 (1984) and the many cases that follow the court clearly states that three broad inquiries need to be considered in regard to rehabilitative alimony: (1) whether in view of the length of the marriage and the age, health and skills of the dependent spouse, it should be granted. The parties lived together 5 years and Mark's age was 53, Ms. Wright's was 52. Mark had severe health problems, including heart problems requiring him to have a pacemaker, and 3 stints, high blood pressure and borderline diabetes. Regarding skills, both parties had high school educations and minimal skills.

Once these factors are reviewed, it is clear that the court abused its discretion and erred in awarding rehabilitative alimony. Mark was not employed and had no income to pay the spousal support award of \$900 per month.

9. That the Family Court erred and abused its discretion by finding that Ms. Wright loaned Mark \$30,000 when there was wasn't any written documentation or promissory note presented evidencing there was ever a loan made.

The final order entered by the Family Court in paragraph 9(c) finds that Mark obtained loans from Ms. White totaling \$30,000 for various purposes which depleted her retirement savings. That is simply not true. Based upon information and belief, Mark is not

aware of any evidence that Ms. Wright presented to support this allegation and it is simply unfounded. There was no documentation to support this finding.

10. The Family Court erred and abused its discretion by finding that Ms. Wright paid \$4,000 (or approximately one-half) toward the purchase of an ATV and that this contribution was intended as a loan to Mark when there wasn't any documentation or promissory note presented showing that this was in fact a loan as opposed to a gift or purchase of marital property.

The final order entered by the Family Court states that the only marital asset owned by the parties is a 2004 Honda ATV with a fair market value of approximately \$5,500. Based upon belief, Mark was not aware of any documentation presented during the hearing reflecting this value, nor the accuracy of such. The Order simply states that Ms. Wright paid \$4,000 of her separate funds toward the purchase of the ATV, which she claimed was *intended* as a loan to Mark. There was no agreement, no promissory note or other documentation signed by Mark indicating that this \$4,000 was in fact a loan as opposed to a contribution or gift from Ms. Wright.

The Honda ATV is undisputedly marital property and according to the final Order has an approximate value of \$5,500. It has been awarded to Ms. Wright, but Mark is ordered to now pay the balance. There was no credible evidence presented as to where Ms. Wright received the \$4,000 and whether it in fact was separate property. Mark was not allowed to speak to present evidence during the telephone hearing.

11. The Family Court erred and abused its discretion by not awarding Mark his personal property and his sole and separate property.

Pursuant to the Final Order entered by the Court, Mark did not receive his personal property and separate property including his tools, personal items and other items of this nature. These personal property items are Mark's sole and separate property. Therefore, he requests that he receive such as soon as he can return to West Virginia to retrieve these items.

CONCLUSION

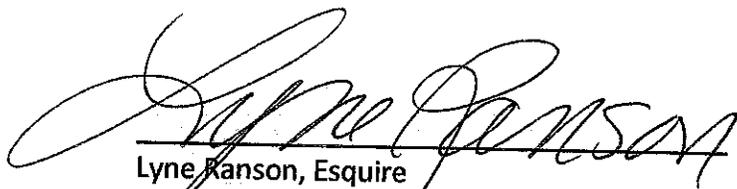
It is clear that the Circuit Court erred by not remanding, nor reversing the Family Court's rulings by awarding rehabilitative spousal support and attorney fees to Ms. Wright. The Circuit Court erred by not remanding, nor reversing the Family Court's ruling that the Ms. Wright loaned Mark \$30,000 without a promissory note and that Ms. Wright paid \$4,000 of her separate funds on the purchase of the ATV, which was intended as a loan to Mark. The Circuit Court erred by not remanding, nor reversing the family court order awarding Mark his sole and separate personal property from the marital home.

Wherefore, Mark prays that this Honorable Court grant his Petition for Appeal of the Circuit Court's Order Denying Respondent's Petition for Appeal of the Amended Final Order *Nunc Pro Tunc* entered on March 2, 2007 and for such relief as follows:

1. That Ms. Wright's award of rehabilitative spousal support be reversed;
2. That the family court order requiring Mark to pay Ms. Wright's attorney fees be reversed;
3. That Mark receive his sole and separate property;
4. That , in the alternative, this matter be remanded to the family court to take specific evidence regarding income, health of the parties, and assets; and

5. For such other relief as deemed appropriate by this Honorable Court.

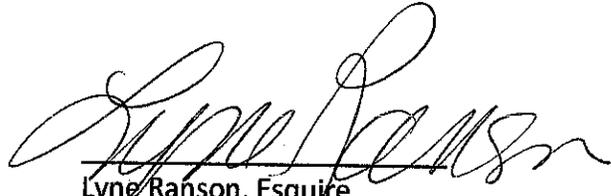
Mark A. White
By Counsel

A handwritten signature in black ink, appearing to read "Lyne Ranson". The signature is written in a cursive style with large, sweeping loops.

Lyne Ranson, Esquire
Lyne Ranson Law Offices, PLLC
WVSB No. 3018
1528 Kanawha Boulevard, East
Charleston, WV 25311
(304) 344-2121

CERTIFICATE OF ATTORNEY

The undersigned counsel for Mark A. White hereby certifies that the facts alleged in the Memorandum of Law In Support of Petition for Appeal are faithfully represented and accurately presented to the best of my ability.

A handwritten signature in black ink, appearing to read 'Lyne Ranson', written over a horizontal line.

Lyne Ranson, Esquire
Lyne Ranson Law Offices, PLLC
WV State Bar No. 3018
1528 Kanawha Boulevard, East
Charleston, WV 25311
(304) 344-2121

CERTIFICATE OF SERVICE

I, Lyne Ranson, counsel for Appellant, Mark A. White, do hereby certify that I have served, or have caused to be served, a true and exact copy of the foregoing **Memorandum of Law In Support of Petition for Appeal** upon:

Deborah K. Wright
134 Char Road
Spencer, WV 25276

by causing the same to be deposited in the US Mail, in an addressed, first-class postage paid envelope;

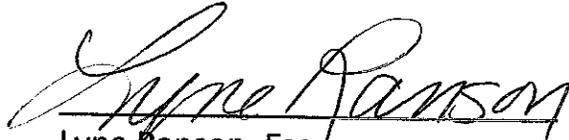
or

hand delivering the same to the above named person or person with his/her office;

or

by fax; at

On October 8, 2008


Lyne Ranson, Esq