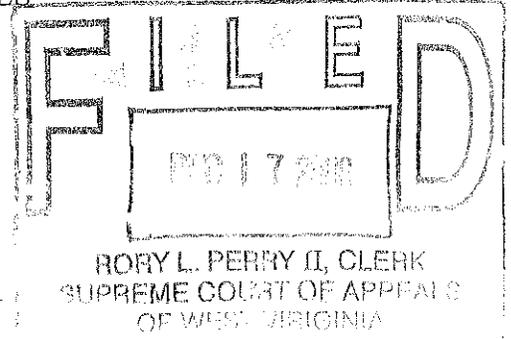


IN THE SUPREME COURT OF APPEALS
OF
WEST VIRGINIA

CHARLESTON, WEST VIRGINIA



SHARRON K. CHENAULT,
Petitioner-Appellee,

Supreme Court Case No. 34160
Cabell County Civil Action No. 94-D-863
Judge Alfred E. Ferguson

THOMAS D. CHENAULT,
Respondent-Appellant.

BRIEF OF THE APPELLEE

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WEST VIRGINIA CODE

Section 51-2A-15(b)8

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STATEMENT OF THE CASE

The “Brief of the Appellant” cites two (2) errors on appeal. One error addressed the possibility of a misinterpretation of an order that is otherwise clear on its face; the other error seeks to create confusion where there is clarity. The “Second Amended Qualified Domestic Relations Order” is reflective of the rulings of the underlying divorce decree; Ms. Chenault was awarded one-half (1/2) of Mr. Chenault’s retirement benefits from his two (2) employers. The final divorce decree provides no limiting language.

In his first assignment of error, Mr. Chenault seeks to limit Ms. Chenault’s benefit, arguing that she should not receive any monies housed in an “annuity.” No annuity was ever disclosed as part of the divorce proceedings; rather, the retirement benefits were identified generically as Mr. Chenault’s benefits. If there is an annuity to be addressed, it was never disclosed and, therefore, not addressed as a separate investment to which he was given sole ownership.

In his second assignment of error, Mr. Chenault proposes the possibility that a clerical error could be made creates fertile ground for throwing out the entire “Second Amended Qualified Domestic Relations Order.” The order clearly provides accurate dates to which the order applies. Any discussion of survivorship goes only to what would happen to Ms. Chenault’s share of the retirement should she predecease the full distribution. Mr. Chenault argues that Ms. Chenault was about to get more money than she was entitled to, however, he does not articulate how he has calculated the benefits to which he believes she is entitled or provided the same to the Family Court, which would have been appropriate during his repeated Rule 22(B) Objection filings.

The history of this case reveals multiple filings to prevent distribution of benefits to Ms. Chenault, with little substance provided in the way of describing the precise problems in the objected to orders. Since the first qualified domestic relations order to its latest incarnation, little has changed substantively, rather, small, largely clerical changes have been made. Mr. Chenault has had multiple opportunities to provide alternate language for the orders or to articulate particular problems with these orders. That has never been done. Mr. Chenault continues his multiple pursuits, based on the possibilities of Ms. Chenault receiving a benefit to which she is entitled, appearing only for the reason of ensuring a delay in her receiving benefits to which she is most certainly entitled.

Now, for the first time in this case, in the "Brief of the Appellant," Mr. Chenault has approached discussing what particular language he takes issue with in the various submitted qualified domestic relations orders in this matter. This argument was not clearly presented in either the Rule 22(B) objections filed by Mr. Chenault in Family Court or the appeals and injunction filed in Circuit Court.

In the underlying appeal to the Circuit Court of Cabell County, West Virginia, Mr. Chenault asserted one (1) ground for appeal: that "the Order will allow the Petitioner to receive a benefit to which she isn't entitled." See "Petition for Appeal" filed June 29, 2007. In keeping with this original filing, Mr. Chenault again raised the same singular ground for appeal in his "Petition for Appeal." Now, in the "Brief of the Appellant," Mr. Chenault moves to two (2) arguments, one being that Ms. Chenault will receive a type of benefit not contemplated by the original divorce decree, which is in keeping with his earlier arguments, the other being that she will receive payments for benefits accrued outside of the timeframe of the marital estate.

As was addressed in the “Response to ‘Petition for Appeal,’” in seeking the relief of this Court, Mr. Chenault has not accurately described the timeframe of the entry of orders in the Family Court of Cabell County, West Virginia. A closer examination of the relevant orders in the underlying matter reveals that the Family Court had substantial facts to support its decision to enter the “Second Amended Qualified Domestic Relations Order.” Moreover, because Ms. Chenault has still not received payment under the “Second Amended Qualified Domestic Relations Order,” he raises issues, which in part, are not yet ripe for appeal.

STATEMENT OF PERTINENT FACTS

Following a bifurcated divorce, Ms. Chenault was awarded “one-half of [Mr. Chenault’s] Civil Service pension and one-half of his Army Reserve pension which shall be subject to Qualified Domestic Relations Orders.” *See* “Order” entered January 15, 1998 at page 8, paragraph 14. Upon finally learning of Mr. Chenault’s decision to retire, Ms. Chenault began to process of obtaining a qualified domestic relations order.

The “Qualified Domestic Relations Order” was filed under a Rule 22(b) Notice and entered on June 1, 2006 without objection. Pursuant to directives from Mr. Chenault’s plan administrator, alterations were made to the original “Qualified Domestic Relations Order” and an “Amended Qualified Domestic Relations Order” was submitted for entry under a Rule 22(b) Notice on January 11, 2007. Mr. Chenault filed “Respondent’s Objection to Amended Qualified Domestic Relations Order” and the Family Court heard argument on the same on March 1, 2007.

At the March 1, 2007 hearing, the Family Court accepted the “Amended Qualified Domestic Relations Order” as drafted, despite Mr. Chenault’s stated concern that Ms. Chenault may receive a financial benefit to which she was not entitled¹. In his pleadings and in his presentation to the Family Court, Mr. Chenault failed to address any specific concerns regarding the language of the “Amended Qualified Domestic Relations Order,” or seek specific, alternative language, rather he simply indicated a “concern” that Ms. Chenault could get a benefit for which she was entitled. *See* “Respondent’s Objection to Amended Qualified Domestic Relations Order.”

¹ “Respondent’s Objections to Amended Qualified Domestic Relations Order” vaguely stated “that the proposed Order, as re-drafted, will still allow the Petitioner to receive a financial benefit to which she is not entitled, specifically, the period of years worked by the Respondent past his 20 years of service with the federal government.”

The Family Court found that the "Amended Qualified Domestic Relations Order" was clear as to the time frame for the benefit to be divided between the parties; it did not confer any benefit not previously afforded to Ms. Chenault; that Mr. Chenault's concern that Ms. Chenault may receive survivorship benefits was not valid, as the "Amended Qualified Domestic Relations Order" addressed only the distribution of any benefits due to Ms. Chenault; and that it was appropriate for the "Amended Qualified Domestic Relations Order" to be entered as drafted. At the time of the March 1, 2007 hearing, the Family Court made no finding or order that any changes were necessary to the "Amended Qualified Domestic Relations Order," rather it found that it was proper as drafted and would be entered.

Because additional copies of the "Amended Qualified Domestic Relations Order" were needed for filing with the Circuit Clerk, undersigned counsel indicated she would provide the appropriate number of copies to the Court following the hearing. The appropriate number of copies of the unaltered "Amended Qualified Domestic Relations Order" was provided to the Family Court the next day and it was entered on March 2, 2007². Counsel for Mr. Chenault later submitted a proposed "Order" regarding the March 1, 2007 hearing under a "Rule 22(b) Notice." The March 29, 2007 "Order" prepared by Mr. Smith was entered over the filed objections by undersigned counsel. **Mr. Chenault has relied on this extraneous "Order," though a "Second Amended Qualified Domestic Relations Order" has since been entered.**

² Mr. Chenault filed an appeal with this Circuit Court of Cabell County West Virginia regarding the "Amended Qualified Domestic Relations Order". Although Ms. Chenault was not served with the appeal and, consequently, was unable to respond to the same, the Circuit Court of Cabell County, West Virginia entered an Order March 28, 2007 denying the petition.

The "Amended Qualified Domestic Relations Order" was submitted to Mr. Chenault's plan administrator and, because the date of separation was designated by a month and year, once again an alteration was necessary. A "Second Amended Qualified Domestic Relations Order" was submitted for entry with the Family Court under a "Rule 22(b) Notice." As noted in the cover letter for the same, the only change between the "Amended Qualified Domestic Relations Order" and the "Second Amended Qualified Domestic Relations Order" was the addition of the number "1" to signify the parties' date of separation was October 1, 1994 as opposed to October 1994.

Mr. Chenault filed "Respondent's Objection to the Second Amended Qualified Domestic Relations Order," once again only indicating a vague concerns and failing to meet the specificity necessary for a different result. See "Respondent's Objection to Second Amended Qualified Domestic Relations Order" and Rule 22(B) of the West Virginia *Rules of Practice and Procedure for Family Court*. On June 28, 2007 a hearing was held to address Mr. Chenault's objections. At Mr. Chenault's request, the Court made two (2) minor modifications to the proposed "Second Amended Qualified Domestic Relations Order," whereby the word "annuity" was changed to the more inclusive term "benefit" in two (2) paragraphs of the "Second Amended Qualified Domestic Relations Order."

Since the time of his June 29, 2007 appeal to the Circuit Court of Cabell County, West Virginia, Mr. Chenault filed an "Amended Petition for Emergency Injunction" on the identical issues raised in the instant appeal seeking to eliminate the word "annuity." In her response, Ms. Chenault questioned the limitation, given the broad language in the divorce decree.

At the February 11, 2008 hearing on the "Amended Petition for Emergency Injunction," the Court sought an explanation of Mr. Chenault's use of the term "annuity." The explanation given involved the necessary change in investment type at the time of payment. In the end, Mr. Chenault asserted that his desire was for Ms. Chenault to receive the appropriate benefits.

Ultimately, the Circuit Court did not enter an emergency injunction, citing the conditions of an emergency injunction and noting the absence of a representative from the Office of Personnel Management. Rather, the Circuit Court directed that the counsel for the parties should draft a letter to the plan administrator to ensure that the benefit to Ms. Chenault was being properly calculated³.

The parties are still awaiting re-calculation of the benefits. Counsel signed a joint letter to Mildred West regarding the prior calculation and forwarded the same via facsimile on March 4, 2008. Ms. Chenault does not seek to be awarded benefits Mr. Chenault earned as separate property. All of the proposed qualified domestic relations orders, including the current "Second Amended Qualified Domestic Relations Order," provide very clear timeframes as to which benefits are to be distributed to Ms. Chenault. See March 4, 2008 letter to Office of Personal Management, a copy of which is attached at Exhibit C of the "Response to 'Petition for Appeal.'"

³ It should be noted that counsel for Ms. Chenault advised the Court of communications Ms. Chenault had with the plan administrator regarding the initial calculated benefit; Ms. Chenault questioned the initial calculation, was told that it was to be changed, and, through counsel, advised Mr. Chenault and his counsel of the same on record.

STANDARD OF REVIEW

The Circuit Court of Cabell County, West Virginia refused to consider Mr. Chenault's "Petition for Appeal." Accordingly, the appropriate standard of review is provided by *Carr v. Hancock*, 216 W.Va. 474, 607 S.E.2d 803 (2004) is applicable.

More specifically, the *Carr* Court found as follows:

This Court's standard of review for an appeal from a circuit court that reviewed a family court's final order, or refused to consider a petition for appeal to review a family court's final order, is the same. In reviewing a final order entered by a circuit court judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law *de novo*.

Id. citing, W.Va. Code, 51-2A-15(b) (2001).

This Court has found "[u]nder the clearly erroneous standard, if the findings of fact and the inferences drawn by a family law master are supported by substantial evidence, such findings and inferences may not be overturned even if a circuit court may be inclined to make different findings or draw contrary inferences." Syl. Pt. 3, *Stephen L.H. v. Sherry L.H.*, 195 W.Va. 384, 465 S.E.2d 841 (1995). Because the findings of fact by Judge Anderson "are supported by substantial evidence in the record," it was appropriate for Judge Ferguson to decline to disturb Judge Anderson's findings of facts and conclusions of law and, further, Ms. Chenault respectfully submits that it would be an error for this Court to overturn Judge Anderson, as Judge Anderson neither committed clear error in his findings of fact nor abused his discretion in the application of law to facts. *Stephen L.H. v. Sherry L.H.*, 195 W.Va. 384, 397, 465 S.E.2d 841, 852 (1995). Finally, Mr. Chenault failed to provide clear objections for consideration by the lower Courts. See Rule 22(B) of the *Rules of Practice and Procedure for Family Courts*.

ARGUMENT

- A. The Circuit Court committed no error or abuse of discretion in refusing Mr. Chenault's appeal, as there are substantial facts in the record to support Judge Anderson's entry the "Second Amended Qualified Domestic Relations Order," even in light of the March 29, 2007 "Order."**

In his first assignment of error, Mr. Chenault argues the "Second Qualified Domestic Relations Order" provides Ms. Chenault the opportunity to receive benefits to which she is not entitled, namely, a spousal survivorship benefit and an annuity. In defining the benefits awarded to Ms. Chenault, the "Second Amended Qualified Domestic Relations Order" clearly states as follows:

Pursuant to the equitable distribution as ordered by the Court in the Final Decree of divorce, the Court hereby ORDERS that the Alternate Payee be awarded Fifty Per Cent (50%) of the Participant's pension plan acquired as of October, 1994. The Alternate Payee shall be eligible to receive payment of the benefit awarded under this Order on the earliest date benefits could be paid to the Participant under the terms of the Plan. IT IS FURTHER ORDERED that from the benefits which would otherwise be payable to the Participant under The Plan. The Plan shall pay to the Alternate Payee, and the Alternate Payee shall receive directly from The Plan, an amount equal to Fifty Per Cent (50%) of those assets held in Participant's plan from November 1972 to October 1994, together with interest thereon included therein. The Participant shall receive the remaining assets held in his plan, together with any interest thereon included therein.

See "Second Amended Qualified Domestic Relations Order" at Page 4, Paragraph N.

There is no indication Ms. Chenault is to receive either an annuity or survivorship benefits⁴.

⁴The "Second Amended Qualifications Order" originally contained the word "annuity" in paragraphs J. and K. on page 3 of the Order. Pursuant to Mr. Chenault's objections, the word "annuity" was changed to "benefits". In response to prior arguments regarding any survivorship language, the Court indicated such language went only to the handling of Ms. Chenault's payments, should she predecease full payment of her interest to her.

1. The "Second Qualified Domestic Relations Order" does not award Ms. Chenault a spousal survivorship benefit.

A plain reading of the "Second Amended Qualified Domestic Relations Order" demonstrates that survivorship is discussed only in terms of what would happen to the benefits allotted to Ms. Chenault in the event that she predeceases the distribution of the same. Though a discussion was had in Court regarding Ms. Chenault's recollection that she was in fact awarded such a benefit at the final hearing in the parties' divorce action, the Court indicated that the award was not included in the final divorce decree and, therefore, could not be included in the subsequent qualified domestic relations orders⁵.

2. The "Second Qualified Domestic Relations Order" does not award Ms. Chenault any benefit not contemplated by the divorce decree.

On January 15, 1998 an "Order" was entered reflecting the June 13, 1996 rulings in the parties' divorce. That "Order," which refers to Ms. Chenault as plaintiff and Mr. Chenault as defendant, provides as follows:

The parties' pensions consist of the plaintiff's pension with the West Virginia Consolidated Public Retirement Board and the defendant's pensions are his Civil Service pension and his Army Reserve pension. Said pensions shall be subject to Qualified Domestic Relations Orders of Fifty Per Cent (50%) each.

See "Order" entered January 15, 1998 at Paragraph 8. This "Order" makes no reference to an annuity being separately held and awarded solely to Mr. Chenault. No annuity was disclosed and no annuity was separately discussed. Rather, the parties' retirement benefits have been generically described as whole assets to which each is entitled to one-half (1/2).

⁵The "Second Amended Domestic Relations Order" has only been forwarded to the Office of Personnel Management for distribution of Mr. Chenault's Civil Service pension. Mr. Chenault did sign a Survivor Benefit Plan Election Certificate for his Army Reserve Pension. *See* "Sharron K. Chenault's Motion to Dismiss and Answer to Petitioner's 'Amended Petition for Injunction'" at Exhibit B.

The "Second Amended Qualified Domestic Relations Order" is clear on its face, providing Ms. Chenault one-half (1/2) of the benefits accrued from the date of the parties' marriage to the date of the parties' separation. Mr. Chenault attempts to confuse the clarity of the January 15, 1998 "Order" and the "Second Amended Qualified Domestic Relations Order," relying heavily on a March 29, 2007 "Order."⁶ The only difference between the "Amended Qualified Domestic Relations Order" and the "Second Amended Domestic Relations Order" is the addition of the number "1" for the day of separation and, as requested by Mr. Chenault" a change to the word "benefit" in place of the word "annuity" in two (2) paragraphs.

It is apparent that in signing the March 29, 2007 "Order" the Family Court did not effect any substantive changes to the "Amended Qualified Domestic Relations Order," rather, these changes were little more than an administrative matter. Because the "Second Amended Qualified Domestic Relations Order" was since entered, over his objections and with citations to the March 29, 2007 "Order," whatever application Mr. Chenault hoped to gain from his March 29, 2007 "Order" was clearly not interpreted by the Family Court as being controlling in moving forward with the matter.

⁶ To put the March 29, 2007 "Order" in its proper place in this analysis, it should be noted that this "Order" was presented after the Family Court heard Mr. Chenault's objections to the "Amended Qualified Domestic Relations Order" and found that the "Amended Qualified Domestic Relations Order" was clear as to the time frame for the benefit to be divided between the parties; it did not confer any benefit not previously afforded to Ms. Chenault; that the Respondent's concern that she may receive survivorship benefits was not grounded, as the "Amended Qualified Domestic Relations Order" addressed only the distribution of any benefits due to Ms. Chenault; and that it was appropriate for the "Amended Qualified Domestic Relations Order" to be entered as drafted.

The "Second Amended Qualified Domestic Relations Order" is clear on its face as to what benefits Ms. Chenault is to receive. The "Second Amended Qualified Domestic Relations Order" only provides Ms. Chenault the benefits she was awarded under the parties final divorce order. In an attempt to limit Ms. Chenault's benefits, Mr. Chenault submitted the March 29, 2007 "Order." The Family Court considered Mr. Chenault's arguments as to the application of the March 29, 2007 "Order" as part of its hearing on the "Respondent's Objection to Second Amended Qualified Domestic Relations Order" and determined that the "Second Amended Qualified Domestic Relations Order," save for two (2) minor changes, which provided more inclusive language, was appropriate. Those two (2) minor changes were what Mr. Chenault and his counsel identified as the problematic portions of the proposed order.

In entering the "Second Amended Qualified Domestic Relations Order," Judge Anderson neither committed clear error with respect to findings of fact nor abused his discretion in his application of law to the facts and Judge Ferguson properly upheld this decision on appeal to Circuit Court. *Carr v. Hancock*, 216 W.Va. 474, 607 S.E.2d 803 (2004). Because the findings of fact by Judge Anderson "are supported by substantial evidence in the record," his findings were not clearly erroneous, were properly upheld by Judge Ferguson and, Ms. Chenault respectfully submits, it would be an error for this Court to reverse Judge Ferguson, particularly given Mr. Chenault's failure to articulate his objections with the particularity necessary for the lower Courts to fully consider. *Stephen L.H. v. Sherry L.H.*, 195 W.Va. 384, 397, 465 S.E.2d 841, 852 (1995) and Rule 22(B) of the *Rules of Practice and Procedure for Family Courts*.

B. The Circuit Court committed no error or abuse of discretion in refusing Mr. Chenault's appeal, as there are substantial facts in the record to support Judge Anderson's entry the "Second Amended Qualified Domestic Relations Order," as a plain reading of said "Second Amended Qualified Domestic Relations Order" reveals no language granting Ms. Chenault one-half of Mr. Chenault's post-separation monies.

Mr. Chenault has attempted to create question in the "Second Amended Qualified Domestic Relations Order" where question need not exist. The "Second Amended Qualified Domestic Relations Order" clearly indicates the dates upon which the administrator should rely as follows:

Plan benefits awarded to the participant and the alternate payee under this Order will be determined based upon the following information:

GENERAL:

- | | | |
|-----|---------------------|------------------|
| (1) | Date of Marriage: | November 6, 1972 |
| (2) | Date of Separation: | October 1, 1994 |
| (3) | Date of Divorce: | March 25, 1996 |

See "Second Amended Qualified Domestic Relations Order" at Paragraph G. The order goes on to indicate that "[t]he benefits that accrued under the plan **from the date of marriage to the date of separation are marital property** and are subject to the marital property laws of the State of West Virginia." See *Id.* at Paragraph H (*emphasis supplied*). should be changed. Mr. Chenault would have this Court find error in the lower Court rulings simply because of a human error at the Office of Personnel Management.

Relying on one (1) letter from OPM, Mr. Chenault sought an injunction in this matter, seeking a stay in any distribution of funds to Ms. Chenault. That action is still live. Judge Pancake directed counsel to draft a letter to OPM outlining the precise dates from which benefits should be calculated. Accordingly, it would seem Mr. Chenault's whole second point of error is not in fact ripe for the this Court.

Furthermore, Mr. Chenault has not provided documentation indicating when he accrued the benefits he is currently receiving. It would seem, based on his repeated attempts to cut Ms. Chenault out of receiving any “annuity” that he has more than one investment and/ or retirement account. He has failed to provide any documentation that the current gross benefit he receives is based on any earnings outside of the time of the parties’ marriage. Accordingly, labeling the Circuit Court and Family Court decisions as erroneous is simply not supported by the facts in this case.

The “Second Amended Qualified Domestic Relations Order” contains basically the same language as the original “Qualified Domestic Relations Order.” Though Mr. Chenault has repeatedly impeded the progress of this matter, he has articulated little in the way of what precise language is problematic. Judge Anderson made the changes he actually articulated. *See Id.* at Paragraphs J and K. To now point to the possibility of human error as a reason to change the “Second Amended Qualified Domestic Relations Order” is far too speculative, particularly considering the number of filings and, therefore, opportunities Mr. Chenault has had to change the language of these orders.

Finally, it should be noted that the errors Mr. Chenault fears could possibly occur in calculating benefits might very well be remedied through alternative means, should such issues arise. Given counsels’ directive to work with one another in providing direction to the Office of Personnel Management by virtue of Judge Pancake’s rulings in the injunction, this suggestion that alternative means of resolution exist is not merely speculative and, in fact, highlights the fact that Mr. Chenault’s petition in this matter is not even ripe for appeal.

Applying the appropriate standard of review, substantial evidence was presented for the Family Court to support its decision to enter the "Second Amended Qualified Domestic Relations Order." In entering the proposed "Second Amended Qualified Domestic Relations Order," Judge Anderson neither committed clear error with respect to findings of fact nor abused his discretion in his application of law to the facts. *Carr v. Hancock*, 216 W.Va. 474, 607 S.E.2d 803 (2004). Furthermore, because Judge Anderson had substantial facts upon which to rely, it would be improper to disturb his ruling on appeal and, accordingly, Judge Ferguson properly denied Mr. Chenault relief at the Circuit Court level. *Stephen L.H. v. Sherry L.H.*, 195 W.Va. 384, 397, 465 S.E.2d 841, 852 (1995). The grounds stated in the instant appeal fail to demonstrate cause for this Court to disturb the decision by Judge Anderson to enter the "Second Amended Qualified Domestic Relations Order" and Judge Ferguson's decision to deny an appeal on the same.

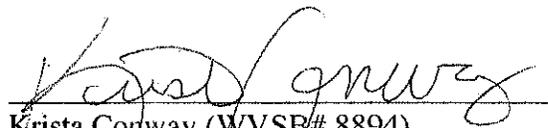
CONCLUSION

The "Second Amended Qualified Domestic Relations Order" is clear on its face. The "Second Amended Qualified Domestic Relations Order" confers upon Ms. Chenault only benefits she was awarded by virtue of the parties final divorce order. This most recent filing is simply another attempt by Mr. Chenault to delay Ms. Chenault's progress in receiving a benefit to which she is entitled. Mr. Chenault has failed to present any documentation that would support his argument that Ms. Chenault was about to receive a payment to which she was not entitled. The two (2) grounds raised by Mr. Chenault speak in possibilities for human error, as one error raised addressed the possibility of a misinterpretation of an order that is otherwise clear on its face and the other error seeks to create confusion where there is clarity.

Judge Anderson neither committed clear error with respect to findings of fact nor abused his discretion in his application of law to the facts when he entered the "Second Amended Qualified Domestic Relations Order" and Judge Ferguson property denied Mr. Chenault's appeal on the same. Accordingly, Sharron K. Chenault respectfully requests that the relief sought by Mr. Chenault be DENIED.

Respectfully submitted this 17th day of December, 2008.

Sharron K. Chenault,
By and through counsel,



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SHARRON K. CHENAULT,
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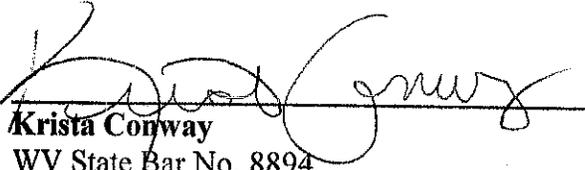
Supreme Court Case No. 34160
Cabell County Civil Action No. 94-D-863
Judge Alfred E. Ferguson

THOMAS D. CHENAULT,
Respondent-Appellant.

CERTIFICATE OF SERVICE

I, Krista Conway, counsel for Sharron K. Chenault, do hereby certify that I have served the foregoing, **BRIEF OF THE APPELLEE** upon counsel for Thomas D. Chenault this **17th Day of December 2008**, by forwarding a true copy thereof via U.S. Mail, postage prepaid to counsel of record as follows:

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