

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

at Charleston

Appeal from the Circuit Court of Cabell County, West Virginia

SHARRON K. CHENAULT,
Petitioner below – Appellee,

vs.

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

THOMAS D. CHENAULT,
Respondent below - Appellant

REPLY BRIEF OF APPELLANT

J. Roger Smith II, Esq. (5837)
Counsel for Appellant
6 Norway Avenue
Huntington, WV 25705-1361
(304) 697-2400

Krista Conway, Esq. (8894)
Counsel for Appellee
635 Seventh Street
Huntington, WV 25701
(304) 529-9300

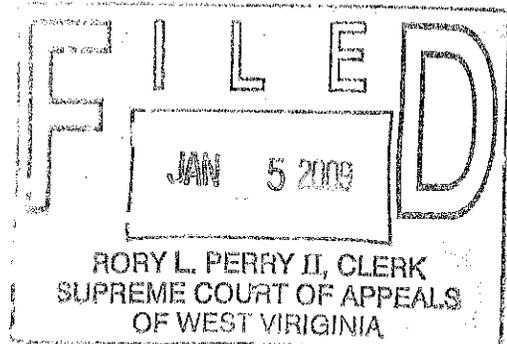


TABLE OF CONTENTS

ARGUMENT..... 1
CONCLUSION..... 3
CERTIFICATE OF SERVICE..... 6

ARGUMENT

Upon reviewing the Brief of Appellee, it would appear that the parties are in agreement that Ms. Chenault is entitled to one-half of the value of Mr. Chenault's retirement contributions accrued from November 6, 1972 to October 1, 1994, however, there are several errors or mis-statements that need to be addressed in this reply brief.

First, on page one of her brief, Appellee incorrectly recites the language in the parties' Final Divorce Decree by stating that Ms. Chenault was awarded one-half of Mr. Chenault's retirement benefits and that said final order provides no limiting language. As stated in Appellant's brief previously filed with the Court, both Mr. and Mrs. Chenault were represented at trial by competent and experienced counsel; Mr. William Beckett (now deceased) for the Appellee and Mr. David Lockwood for the Appellant. As a result of negotiations had between counsel and/or as ruled upon by then Family Law Master, Dee-Ann Burdette, **the Appellee was not awarded any type of annuity or spousal survivor benefit** (Emphasis added, see Page 8, paragraph 14 of the January 15, 1998 final divorce Order), rather, Ms. Chenault was only awarded, and is only entitled to, one-half of the value of Appellant's retirement contributions accrued from November 6, 1972 through October 1, 1994.

Accordingly, Appellant argues that there is "limiting language" in said final order as upon review of the language contained in the "four corners" of said order, Ms. Chenault is not entitled to an annuity or spousal survivor benefit from Mr. Chenault and said "limiting language" that Ms. Chenault is not entitled to an

annuity or spousal survivor benefit was affirmed by Cabell County Family Court Judge Ronald E. Anderson in his March 29, 2007 Order which is part of the record in this case now before the Court. Although Appellee characterizes this order as an extraneous order, it is important to note that this order was never appealed by the Appellee, presumably because it correctly states the ruling of the Court from the March 1, 2007 hearing that the parties' final divorce decree did not provide for the Appellee to receive any type of annuity or survivor benefit from the Appellant's retirement but did provide that the Appellee is entitled to one-half of the accrued value of Appellant's retirement plans from November 1972 through October, 1994, said dates specified in the Second Amended Q.D.R.O. as November 6, 1972 through October 1, 1994.

Second, Appellee incorrectly states on page seven of her brief that Mr. Chenault explained the term annuity to involve the necessary change in investment type at the time of payment and that Mr. Chenault desired that Ms. Chenault receive the appropriate benefits. Mr. Chenault's position at this hearing was the same as it has always been, that pursuant to parties' final divorce decree as recommended by Cabell County Family Law Master Dee-Ann Burdette and entered by Cabell County Circuit Court Judge Dan O'Hanlon on January 15, 1998 and affirmed by Cabell County Family Court Judge Ronald E. Anderson on March 29, 2007, neither of which orders were appealed by the Appellee. Ms. Chenault is entitled to one-half of the accrued value of the retirement contributions made by Mr. Chenault to his retirement plans from November 6,

1972 through October 1, 1994. Nothing more (i.e. an annuity or spousal survivor benefit), nothing less.

Third, the statement on page 9 of Appellee's brief that in the second amended Q.D.R.O. as drafted by Appellee's counsel that "[t]here is no indication that Ms. Chenault is to receive either an annuity or survivorship benefits" is not correct. Were this so, this case would not be before the Court. Appellee was directed by the Court to prepare a Q.D.R.O. consistent with the terms of its March 29, 2007 order and, because of Appellee's failure to follow said order and later to correct the misinterpretation of the language in the Second Amended Q.D.R.O. as requested by Appellant (see facsimile from Krista Conway to J. Roger Smith as contained in the record in this case attached to the Amended Petition for Injunction), Appellant's former employer through its Office of Personnel Management (O.P.M.) interpreted the language contained in the Second Amended Q.D.R.O. to direct and require it to pay an annuity and/or spousal survivor benefit to the Appellee and award her one-half of Mr. Chenault's total U.S. Marshal's retirement, which includes approximately 10 years of post-separation employment from 1994 until his retirement in 2004, which is clearly wrong in light of every Order entered by either the Cabell County Family Court and the Cabell County Circuit Court.

In conclusion, Appellant finds it interesting that Appellee responds in her brief to Appellant's argument that the Second Amended Qualified Domestic Relations Order as entered by the Cabell County Family Court on June 28, 2007 will allow Appellee to receive benefits to which she is not entitled, namely an

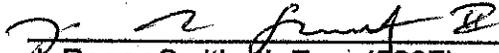
annuity or spousal survivor benefits, by arguing that "[t]here is no indication Ms. Chenault is to receive either an annuity or survivorship benefits." (Appellee Brief Page 9).

Clearly, both Appellant and Appellee are in agreement by this "argument" of Appellee as aforesaid (see also the March 29, 2007 Family Court Order prepared by Appellant's counsel paragraphs G and N of the June 28, 2007 Second Amended Q.D.R.O. prepared by Appellee's counsel) that Ms. Chenault is entitled only to one-half of the value of Appellant's retirement contributions accrued from November 6, 1972 through October 1, 1994, as no order entered in this case, either by the Cabell County Family Court or the Cabell County Circuit Court, awards the Appellee any part of Appellant's CSRS Annuity and/or a Former Spouse Survivor Annuity and certainly does not award Ms. Chenault any portion of Mr. Chenault's post-separation retirement contributions.

WHEREFORE, for the foregoing reasons, and such reasons as previously stated in his initial brief, your Appellant respectfully requests that this Honorable Court enter an Order directing Appellant's former employers to award Appellee only one-half of the accrued value of Appellant's U.S. Marshal's Service and Army reserve retirement contributions from November 6, 1972 through October 1, 1994, and specifically Order that Appellee is not entitled to an annuity or spousal survivor benefit, as neither an annuity nor spousal survivor benefit were ever ordered in this case, and grant the Appellant such other and further relief to which he may be entitled under the facts and circumstances of his case.

Respectfully Submitted,

THOMAS D. CHENAULT,
By Counsel:

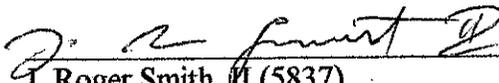


J. Roger Smith, II, Esq. (5837)
LAW OFFICES OF J. ROGER SMITH, II
Counsel for Appellant
6 Norway Avenue
Huntington, WV 25705-1361
(304) 697-2400

CERIFICATE OF SERVICE

The undersigned attorney for the Appellant certifies that he served a true and accurate copy of the foregoing "REPLY BRIEF OF APPELLANT," upon Appellee's attorney, by mailing the same via regular U.S. Mail Service, postage prepaid, this 5th day of January, 2009 addressed as follows:

Krista Conway, Esq.
CONWAY LAW OFFICE
635 Seventh Street
Huntington, WV 25701


J. Roger Smith, II (5837)