

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

IN RE THE MARRIAGE OF:

BRENDA DIANNE WARE,

Petitioner,

vs.

Civil Action No. 05-D-351-4  
Judge James A. Matish

DAVID GARY WARE,

Respondent.

**FINAL ORDER**

Presently pending before the Court is a "Petition for Appeal from Family Court Final Order," filed by Respondent David Gary Ware, on January 17, 2008. Also pending before the Court is a "Response to Petition for Appeal and Cross Petition" filed by Petitioner Brenda Diane Ware on February 1, 2008. By Order entered March 05, 2008, the Court accepted the petition and set the matter for hearing on March 17, 2008. The Court entered its "Order Establishing Just Cause for Delay in Entry of Final Order" on March 17, 2008.

This Court conducted a hearing on the matter on the 17<sup>th</sup> day of March, 2008. The Petitioner appeared in person and by her counsel, Delby B. Pool, and the Respondent appeared in person and by his counsel, Douglas A. Cornelius. The Court received arguments from both counsel at that time.

After conducting the aforementioned hearing, receiving arguments from both counsel, reviewing said Petition and Response, and conducting a thorough examination of the record, including the video transcript of the Family Court hearings in this matter, and pertinent legal

authority, this Court concludes that the "Petition for Appeal" should be **DENIED**, and the "Cross Petition" should be **DENIED**, and the Final Order should be **AFFIRMED**.

West Virginia Code § 51-2A-14(a) provides that "[t]he circuit court may refuse to consider the petition for appeal, may affirm or reverse the order, may affirm or reverse the order in part or may remand the case with instructions for further hearing before the family court judge." Additionally, "[t]he circuit court shall review the findings of fact made by the family court judge under the clearly erroneous standard and shall review the application of law to the facts under an abuse of discretion standard." W.Va. Code § 51-2A-14(b).

Petitioner's on appeal, David G. Ware, asserts two grounds for his appeal of the Final Order entered by Family Court Judge Jaymie Godwin Wilfong. First, that the family court erred in valuing a 51% interest in the Pizza Place of Bridgeport, Inc., which she determined to be \$184,747.50, and of which she found that Brenda D. Ware is entitled to one-half of that amount, being \$92,373.75. Second, David G. Ware preserves and repeats his prior held position that the parties Antenuptial Agreement fully protects the 51% interest in Pizza Place of Bridgeport, Inc.

As to the valuation of the 51% interest, this Courts review of the record indicates that Judge Wilfong's valuation was based upon the expert report of Respondent on Appeal, Brenda D. Ware. This Court reviews the Family Court's findings of fact under a clearly erroneous standard. W. Va. Code § 51-2A-14. This Court finds that it was in the Family Court's discretion to adopt the Brenda D. Ware's expert's opinion and that doing so was not clearly erroneous. The Family Court clearly set forth in its findings it reasons for adopting said opinion and rejecting David G. Ware's expert's opinion.

As to the second ground for appeal, this Court previously held in its "Order Granting Petition for Appeal, and Reversing and Remanding Case to Family Court," entered October 10, 2007, that the "Antenuptial Agreement does not control the 51% interest Mr. Ware purchased from John Geraffo." This Court remanded the issue to the Family Court for it to make a determination of the value and disposition of said 51% interest. Therefore, the Court finds it redundant to rehash its prior ruling and Ground 2 of the Petition for appeal is DENIED.

Respondent on appeal, Brenda D. Ware, also asserts two grounds for appeal in her Cross-Petition for Appeal. First, that it was error to deny Brenda D. Ware's request for expert fees. Second, that it was error for the family court to deny Brenda D. Ware's prayer for attorney's fees.

Both of the aforementioned grounds for appeal have been brought before this Court on previous appeals and were likewise remanded to the Family Court for reconsideration in conjunction with the other remanded issues, by this Court's "Order Granting Petition for Appeal and Reversing and Remanding Case to Family Court," entered October 10, 2007.

The Family Court in its "Order on Issues Remanded by Circuit Court October 10, 2007," found that upon reconsideration of the other remanded issues, it was not inclined to change its opinion regarding Petitioner's Attorney's fees. This Court finds that the Family Court did not abuse its discretion in denying Brenda D. Ware's request for expert's costs or attorney's fees and declines to disturb said ruling. Therefore, this Court DENIES Ground Two of the Cross-Claim for Appeal.

Accordingly, based upon the foregoing, it is **ORDERED** that the Petitioner on Appeal, David G. Ware's Petition for Appeal should be and the same is hereby **DENIED**, and that the Respondent on Appeal, Brenda D. Ware's Cross-Petition for Appeal is hereby **DENIED** and

the Family Court's "Order on Issues Remanded by Circuit Court October 10, 2007" should be and the same is hereby **AFFIRMED**.

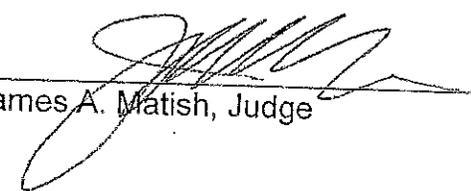
It is, further, **ORDERED** that the Circuit Clerk shall forward certified copies of this Order to the following:

Delby B. Pool, Esquire  
230 Court Street  
Clarksburg, WV 26301

Douglas A. Cornelius, Esquire  
PO Box 4424  
Clarksburg, WV 26302-4424

The Hon. Jaymie Godwin Wilfong, Special Family Court Judge  
Family Court of Harrison County  
Randolph County Courthouse  
7 Randolph Avenue  
Elkins, WV 26241

ENTER: 04/09/2008

  
James A. Matish, Judge