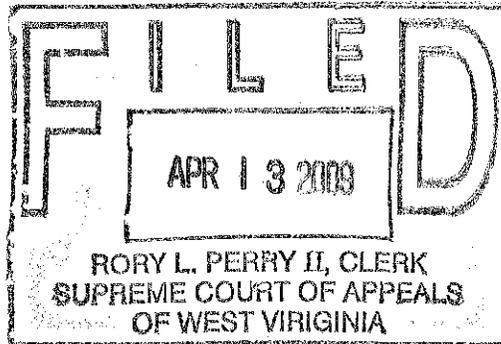


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ALLEN V. ALLEN



SHELIA D. ALLEN
now known as SHELIA
D. ELIAS,

Plaintiff, (respondent)

VS.

CIVIL ACTION NO. 97-D-24
JUDGE DAVID W. NIBERT
CIRCUIT COURT OF ROANE COUNTY

MICHAEL L. ALLEN

Defendant (petitioner)

FROM THE CIRCUIT COURT OF ROANE COUNTY, WEST VIRGINIA

RESPONSE TO PETITION FOR APPEAL

April 10, 2009

Shelia D. Elias
646 Elias Road
Rt 2, Box 71
Letart, WV 25253

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

NATURE OF PROCEEDINGS

Shelia D. Elias, plaintiff (respondent) pro se, responds to the appeal filed by Michael L. Allen, defendant (petitioner), pro se, which granted her child support retroactively back to August 2006 and calculated new child support based on Mr. Allen's income to date of hearing October 31, 2006. Mr. Allen is also asking for sanctions against Ms. Sears, my attorney at the time, for obtaining tax return information from the West Virginia State Tax Department. The initial petition for review was considered by Circuit Judge David Nibert, who was asked to respond to the errors assigned below. Judge Nibert entered an order on March 13, 2008. The questions for review before Judge Nibert were as follows:

- 1). *The Family Court lacked jurisdiction to hear the Petition to Modify Child Support.*
- 2). *The Family Court erred by not averaging the father's self-employment income but instead based the child support obligation on the father's self-employment income for the current year's (year to date 2006) earnings only.*
- 3). *The Family court erred when it set the number of overnights for the child support calculation based on the number of overnights in the year 2006 only.*
- 4). *Medical expenses were not considered at the October 31, 2006 hearing and a review of the hearing recordings will support this argument. However, in spite of the Family Court's failure to consider medical expenses and the failure to allow the father to be heard on the matter, the Court entered an order dividing non-covered medical expenses between the parties using the same percentage from the child support formula.*

5). *The Family Court erred when it found that Rule 55 of the West Virginia Supreme Court of Appeals Rules of Practice and Procedure for Family Courts had been rescinded prior to the father filing for sanction. The Court erred by denying the father's motion for sanctions against Ms. Sears. The Court erred by hearing the father's petition for sanctions without the matter being noticed to the parties and not properly before the Court for hearing.*

Judge Nibert's Order, dated March 12, 2008, and entered on March 13, 2008, addresses all of the above questions. He affirming in part (#2 & #5) and reversed in part (#4 & part of #1) the Final Order of the Family Court entered March 9, 2007.

Mr. Allen claims that the Family Law Master was out of her *jurisdictional right* when she ruled on my Motion for Modification of Child Support filed February 28, 2006, because of a prior Modification which was on appeal and pending in the West Virginia Supreme Court of Appeals. What Mr. Allen failed to disclose his appeals is that these modifications were for two (2) completely different circumstances and two (2) completely different time frames being considered. The first (1s) was to go **RETROACTIVE BACK TO 2000** and the second (2nd) was for **CURRENT SUPPORT FROM FEBRUARY 2006 FORWARD.**

STATEMENT OF FACTS

Mr. Allen vowed to me in 1997, at the beginning of this divorce, that any money I received for child support, I would pay out in attorney fees. That is exactly what has happened. For that reason, I am pro se for this appeal. I have paid my attorney right at \$30,000 dollars and am unable to pay anymore. I am tired of the constant conflict that Mr. Allen persists on having. I would love nothing more than to go on with my life, with my family, and not wonder what Mr. Allen will find next to harass me and/or the courts over.

For that reason, I am asking the Honorable Court to stop Mr. Allen from his constant harassment of their time and mine. Otherwise, Mr. Allen will continue to Appeal every Order that is put in front of him for the next four (4) years, which is when my youngest child reaches the age of eighteen (18) years. I feel that Mr. Allen is keeping this case so tied up in the court system that by the time the children turn 18 and graduate, the courts are not going to be able to figure out what he should be or should have been paying for child support. My oldest child will graduate May 30, 2009, and I still do not have a Final Order some twelve (12) years later from the date of filing for a divorce. Point well taken!

If Mr. Allen would put as much time and energy into a job as he does in trying to beat the system out of paying child support for his children, he would be very successful in any profession that he chooses. The case began:

1). Our final divorce hearing was held on December 5, 1997, at which time Mr. Allen and I gave testimony and agreement verbally on a Parenting Agreement, Separation Agreement and Irrevocable Trust Agreement, which would be typed for signature. However, before Mr. Allen would signed the paper eight (8) months later on August 23, 1998, he took me back to court July 14, 1998, in front of the Honorable Joseph McFarland, where Judge McFarland ordered that we were to exchange ***complete tax return including W-2's. - ADDENDUM TO PARENTING AGREEMENT, filed 8/7/98, on page # 2.***

2). I remarried on June 10, 1999, to my current husband. Shortly after my marriage, in August 1999, Mr. Allen filed a Modification of Custody with the court system. He changed the language of the Parenting Agreement by omitting words and by doing this, on August 11, 2000, Special Family Law Master, Jonathan Summer's, ordered my children stripped from my custody

and placed in the hands of Mr. Allen. It took me two (2) year and the West Virginia Supreme Court of Appeals under Case No. 30523, to get my children back. The children were returned home to me September 28, 2002. After the children came home, Mr. Allen began his constant appeals of all Orders, regardless of who wrote it, the Family Law Master, or the Circuit Judge.

3). On May 31, 2001, Mr. Allen was dismissed from his position at the Traders Bank, where he was Executive Vice-President, Chief Operating Officer. ***(Based on past years income, Mr. Allen would have received approximately \$40,000 in income during that five (5) month period and then he received a severance package of an undisclosed amount. See Exhibit #1 – Mr. Allen’s 2001 W-2.*** Mr. Allen told me of his dismissal from his position during a weekend exchange of the children for visitation with Mr. Allen at the local Exxon Station in Spencer. I asked Mr. Allen what he was going to do now and his response was ***“I am just going to take it easy for a while, take a break and continue working on my house”***. Mr. Allen admitted to me that his intentions was not to work at a job, but just stay home and remodel his house, but then filed a Motion for Modification for Child Support because of ***HARDSHIP!!!*** Mr. Allen made his own choice not to work or even look for work but then played on the courts for sympathy.

4). I believe one of the contributing factors in Mr. Allen dismissal was the way he conducted business at work. There is a bankruptcy case where U. S. Bankruptcy Court Judge Ronald Person found ***“the conduct of Traders Bank in the transaction to be “unconscionable” and the courts find “his (Mr. Allen) testimony in the regard not to be credible.” See Exhibit # 2 – Article – BANK COMMITTED FRAUD, JUDGE RULES.*** The Traders Bank/Mr. Allen defrauded a woman (Mrs. Kollar) with a 10th grade education by enticing her to purchase property that was

appraised for \$1.2 million but only valued at \$500,000 if sold at an auction, causing Mrs. Kollar down the road to file Bankruptcy.

5). The children were ordered, to be returned to me in August 2002, by the Supreme Court in Case No. 30523. A hearing on September 27, 2002, regarding a transition plan for the children and implementation of a new visitation schedule took place with the Order being filed in October. A final hearing was also scheduled for October 23, 2002, to set current child support and to discuss the Motion for Modification of Child Support which Mr. Allen filed December 11, 2001, but did not serve upon myself until June 2002. In this Motion for Modification of Child Support filed by Mr. Allen on December 11, 2001, he **CLAIMED *HARDSHIP***, while at the same time having income in the amount of \$152,567.29 during the same year. ***See Exhibits #1 – 1b – Mr. Allen’s 2001 W-2 and (PART OF) his 2001 tax return.***

6). Mr. Allen’s Financial Statement dated September 13, 2002, had ***only part of a 2001 tax return and W-2 attached*** showing that he in fact made on his 2001 W-2 the amount of **\$140,474.50**, unemployment in the amount of **\$7,774**, in interest and dividends **\$4,178.79**, and **\$140** in tax refund totaling **\$152,567.29**. How can a person **CLAIM HARDSHIP**, before the year is up on December 11, 2001, and receive **\$152,567.29** in the same year? I believe Mr. Allen completely and fraudulently mislead the court system regarding his income and by filing this Modification for Child Support in the first place.

7). During the hearing of October 23, 2002, on Mr. Allen’s Motion for Modification of Child Support, Mr. Allen testified that he had no income during the months of July, August, & September forward but did testify that he received ***“feel sorry for me money for making a few phone calls”***, in the amount of at least \$3,000 dollars. Where is Mr. Allen’s tax return to show

what money he did make from January – June, 2002? The Family Law Master, Delores Nibert, ruled based on Mr. Allen's word without any supporting documentation and proof of taxes, that Mr. Allen overpaid his child support in the amount of \$990.47 (to include months July, August, and September and that I underpaid my support to Mr. Allen during the same period of time by \$197.82) and ordered myself to reimburse Mr. Allen the sum of \$1,188.29 and **lowered** the obligation amount that Mr. Allen is to pay to **\$100.48** a month for two (2) children. Therefore, Mr. Allen's obligation was offset for one (1) year until October 1, 2003, when I received my first (1st) child support check in the amount of **\$17.47**.

8). Mr. Allen has yet to this day supplied me with a copy of his **complete tax return with schedules and W-2's for the years of 2002, which is in Contempt of Court.**

9). During this time, Mr. Allen was doing major remodeling on his home, swimming pool area and retaining wall behind his house. This information came by way of my children. **See Exhibits #'s 3, 4 & 5 dated October 5, 2000, in the amount of \$17,500 for a retaining wall; March 20, 2001 in the amount of \$100,000 for addition on home; and May 10, 2004, in the amount of \$2,000 for a fence (which went around the pool.)**

10). There was a hearing on May 7, 2003, for child support and Mr. Allen's constantly, deliberately not supplying his tax returns to myself so that a **current and correct** child support obligation could be calculated. The Family Law Master took all information upon advisement and prepared an order January 21, 2005, some twenty (20) months later, saying in fact, Mr. Allen was not supplying tax information with all Schedules, 1099 forms and W-2's like he was court ordered to do and ruled that we needed to go back to 2000 and recalculate child support **RETROACTIVELY** for all years. Mr. Allen appealed this Order to the Circuit Judge Nibert on the

fact that the Family Law Master did not prepare an Order within the thirty (30) days required to prepare such order. Circuit Judge Nibert did the exact same thing that the Family Law Master did. Circuit Judge Nibert took ten (10) months to rule on the appeal, preparing an order on, November 18, 2005, while at the same time overturned the Family Law Master Order saying that she was out of her jurisdictional rights to hear this case due to going over the thirty (30) day. The only difference between the two (2) **Orders/Actions of the two (2) Judges** is on page #4, second to last paragraph in the Order entered **November 18, 2005**, Circuit Judge Nibert ordered ***“that good cause exist for the courts decision to have exceeded the 60 day framework set by statue for deciding Family Court Appeals”***. See #9 of Mr. Allen’s **Designation of Records**. Mr. Allen took advantage of the busy docket of the Family Court system for one (1) reason only: **TO GET OUT OF PAYING CHILD SUPPORT FOR HIS CHILDREN**. The delays in the two (2) Orders of the lower courts cost my children approximately **\$60,000** dollars in back child support. I appealed the Circuit Judges decision, (the 1st Modification of Child Support), which overturned the Family Law Masters decision to go back to 2000 and recalculate all years to current to the West Virginia Supreme Court of Appeals on February 6, 2006 under Case No. 060550, but was refused said petition for appeal on June 28, 2006.

11). On February 28, 2006, I then filed with the Family Courts the (2nd Modification of Child Support). I began working on February 6 2008 and I am required by law to notify the courts along with Mr. Allen and the Child Advocate’s Office of a change in my income. Because of Mr. Allen’s recent Appeals of the lower court’s, it’s been almost another three (3) years and I still do not have a Final Order.

12. Not only has Mr. Allen tried to get out of paying child support, current or arrearages, he has taken upon himself to stop paying his percentage of non-covered medical, dental, and optical expenses for the children since June 2006. Even if he believes the lower courts are wrong, it is the courts place to change the order (not to pay) not Mr. Allen.

13). The Family Law Master did not err in her Order of the medical expenses that Circuit Judge Nibert overturned. She was continuing with what has taken place in this case for nine (9) years prior.

Ground One: MODIFICATION OF CHILD SUPPORT

a). On March 24, 2009, at 6:00 p.m. the Prime News Channel 202 on Dish Network reported the *average cost of raising a child* in the United States to age 17 was now \$202,024, which comes out to be approximately \$990 per month or \$247.50 per week per child. What I believe Mr. Allen wants to accomplish with this Appeal is taking that amount of child support obligation back to just *\$50.24 per month per child*, which is not even reasonable.

b). I do not believe that Circuit Judge Nibert's ruling, even though it changed the original Final Order, for calculation of child support by a few months, is completely wrong. The first appeal was based on new findings of the past and to go *RETROACTIVE* (W-2's from 2000-2004) whereas the second appeal was based on information pertaining to the *FUTURE* (a change in income). I am required to notify Mr. Allen, the Child Advocate's Office and the courts of the change in my income because of child support. I went back to work on February 6, 2006. This case was not heard until October 31, 2006 at which time the Family Law Master ruled that child support was to be recalculated and made retroactively back to the month after service

upon Mr. Allen who claims that he received notice on March 3, 2006, setting the new obligation to \$630.49.

c). Both of the children participate in sports. My son is in football, wrestling and baseball while my daughter does basketball and softball. My husband is employed in Ravenswood 22 miles from home in one direction and I am employed in Point Pleasant 12 ½ miles from home in the other direction. This requires us to have a third car for Phillip to get to and from his after school practices and games. I believe our expenses far exceed Mr. Allen's who works primarily out of his house and deducts over \$9,900 in auto expenses, and \$1,209.92 in telephone/internet expenses (which he has had both long before he became self-employed) from his lucrative income bringing it down to almost poverty level. Mr. Allen uses the same vehicle to drive to *the children sporting events and also to pick them up each Friday for visitation*. Should all of these expenses really be deducted or just part of them?

d). Circuit Judge Nibert's Order said that the Family Law Master could only go back to the date that the West Virginia Supreme Court of Appeals ruled which was July 2006.

e). Mr. Allen inform myself, the Child Advocate and the Family Law Master at a hearing on June 16, 2008, that he in fact had Appealed the Circuit Judge's Order that day. The Family Law Master ordered the collection of back child support be collected but not distributed until the appeal was heard. I believe that the Family Law Master was correct in her findings and Order regarding *RETROACTIVE CHILD SUPPORT*. I believe that the Circuit Judge's Order on this subject was correct regarding the *DATE* the collection of *back child support* should begin. Therefore, Mr. Allen's petition for appeal in this matter should be dismissed.

Ground Two: CALCULATION OF CHILD SUPPORT

a). Mr. Allen is claiming that the Family Law Master and Circuit Judge erred in the calculation of child support. What Mr. Allen is not acknowledging to the courts is that he agreed to this method of calculation and time frame of calculation. A discussion took place regarding averaging the three years together or just taking the so-called self-employment and the decision was made to use just the self-employment. *See DVD that was submitted to the Honorable Court at Minute Marker 41.58 or 1:35:27 actual time of day) of the hearing of October 31, 2006.*

b). Mr. Allen *accepted year to date income with the option to Modify each year that his income would be different.* Instead of Mr. Allen just going by the Order and filing for Modification the next year, based on a change in income, Mr. Allen instead chooses to **APPEAL** the Family Law Master's Order and the Circuit Judge's Order.

c). Mr. Allen testified at the hearing on October 23, 2006, that during the time between 2003-2005 he was employed by AXA Financial and that he became self-employed in February 2005. *See DVD at Minute Marker 32:30 of the hearing of October 31, 2006.* However, attached to Mr. Allen's Additional Financial Disclosure is a pay stub dated 10/20/2006 for Pay Begin Date 10/15/2006 and Pay End Date of 10/21/2005 shows Mr. Allen's Employee ID **P08929**, Agent Code **088314**, Job Title - **Sales Force Associate** and **Current YTD Gross of \$53,504.89.** If Mr. Allen is self-employed, why would he have a pay stub from AXA Financial stating that he is receiving a pay check that is being directly deposited into Account No: **XXXXXX7704?** *See Exhibit # 6 – Pay Stub.*

d). After speaking with a Certified Public Account in Point Pleasant, this individual suggested that Mr. Allen may be a Statutory Employee, which after checking the 2005 W-2 proved the Accountant correct. He informed me that Mr. Allen could be self-employed but he is also employed by AXA Financial.

e). West Virginia Code 48-13-102 state that children have a right to share in their natural parents' level of living. The financial contributions of both parents in relationship to income (WV Code 48-13-103) are to be considered when calculating child support. Since the father refused to disclose all of his income from 2006, when it clearly increased more than the 15% required by law, and additionally, since he filed a modification petition December 12, 2001, lowering support, this should be considered by the court. Rule 23 of the Rules of Practice and Procedure for Family Law states, *"Except for good cause shown, orders granting relief in the form of spousal or child support shall made such relief retroactive to the date of service of this motion for relief."* In this case, there is good cause to make the calculation retroactive to include calculation of August 2006, since the father failed to disclose his total income in direct contravention of a court to do so and I began a new job as of February 6, 2006.

f). It appears that Mr. Allen wants **ONLY** the self-employment counted as child support and not all of his income. But who could really tell since I do not have a completed copy of his taxes. There are **NO 1099 forms, NO 8283 form, and I have TWO (2) BACKS of the same Schedule C form. See Exhibits #7 - 7h - 2006 W-2's and part of the 2006 tax return.**

g). I received Mr. Allen's 2006 tax return approximately April 25, 2007. Until Mr. Allen Appealed the Final Order of the Family Law Master, did I notice that the **2006 W-2's were missing from the return.** I had made multiple attempt to get a copy of Mr. Allen's 2006 W-2's

with no prevail until April 3, 2009. I have made at least two phone calls prior to hand delivering at least two (2) letters dated February 1, 2009 and March 15, 2009, (letters can be produced if needed) asking for such and all that Mr. Allen says is ***"I have reorganized my files and I am unable to locate them at this time"***. Based on personal knowledge of Mr. Allen and his record keeping skills (13 years of marriage) I believe that Mr. Allen was deliberately not giving me the 2006 W-2's. He mailed me the tax return the same day he filed the Appeal. I believe that Mr. Allen did not tell the truth about his income at the hearing, which could possible change the amount of child support to be more than is ordered now. After receiving his 2006 W-2, that appears to be the case. ***See Exhibit #8 - Breakdown of Income & Expenses presented October 31, 2006 and Information I added to the form from the 2006 tax return (In YELLOW).***

h). Since his Appeal to the West Virginia Supreme Court of Appeals, I have taken the tax returns that I have received from Mr. Allen, from 2004-2007, to an attorney, to a self-employed individual, and to a Certified Public Account and all of them have said that I do not have a completed 2006 or 2007 tax return. The Certified Public Accountant said that the taxes do not match up to the expenses filed on the 2007 tax return. ***See Exhibits #9-9h- 2007 W-2 and tax returns.*** By me not having a complete copy of his taxes, Mr. Allen is in Contempt of Court.

i). I did not believe the Family Law Master nor the Circuit Judge's rulings are incorrect in the calculation of child support. However, can child support be calculated correctly if one does not have a complete copy to present to the courts?

j). Mr. Allen has chosen to come to court pro se since August 2002, when the children were returned to me. And since that time, he has appealed every Order that has been presented. By Mr. Allen appearing pro se, he has chosen to use the ***IGNORNACE OF THE LAW***

as his defense to constantly harass myself and the court system. He agrees in court one thing and then after leaving the hearing, talks to someone who tells him he should have done things differently and the next thing you know, Mr. Allen has APPEALED AGAIN. I also believe that through his employment with AXA and his circle of friends, Mr. Allen has access to all the free legal advice he needs to continue with his goal of paying minimal in child support. Due to Mr. Allen's lack of counseling and ignorance of the law he has drug this case out for over eleven (11) years.

k). As you can see at *Exhibit #10 – Breakdown of Income and Child Support paid*, Mr. Allen's child support obligation is just a little over 8 % of his total income from 1997 – 2007. You can also see that Mr. Allen's income and child support payment seem to start dropping off at an extremely fast pace from 2001 on!!! This is the time period that Mr. Allen had a W-2 in the amount of **\$140,474.50** with a total of income of **\$152,567.29** and had building permit totaling at **least \$119,500**. Mr. Allen is a very educated individual with a four (4) year degree in Business. He has several prestigious titles including but not limited to being a: Certified Public Account, Investment Banker, Financial Consultant, Sales Force Associates for AXA Financial and has been in the past appointed as Executor of an Estate for Elsie Daugherty but was removed by a new will in 2005. He was Executive Vice-President and Chief Operating Officer for several years before being dismissed from this position at the Traders Bank in Spencer. It makes no sense how a man with this many titles cannot find a job that will take him above poverty level, unless his intentions is to have such a low income **ON PAPER** that he cannot afford more than the minimum amount of support for his children. Based on what Mr. Allen's **CLAIMS ON**

PAPER, his family would qualify for assistance from the state in all areas. **See Exhibit #11 - Chart from the Child Advocate's Office with income qualifications for assistance.**

l). What does not make sense with Mr. Allen and his claim to low income would be his home which he lives in. Mr. Allen has on file in the County Clerk's Office of Roane County, a Deed of Trust in DB247/PG 195 taken out on October 27, 2003, in the amount of \$171,000 for twenty (20) years to be paid in full on November 1, 2023, at an interest rate of 4.750 %, making a minimum monthly payment of approximately \$1,105.00. However, on Mr. Allen's 2006 tax return, he claim to have a paid a total of \$7,440.35 in mortgage interest which would makes Mr. Allen paying an additional amount of approximately \$5,825.52 towards the principal of his home. This would make Mr. Allen paying close to \$1,590.00 a month on his mortgage in the year 2006. If Mr. Allen is so strapped for cash and cannot afford to pay sufficient child support, how does he afford the home that he lives in with his other family?

m). Another thing that does not add up when you reference Mr. Allen and his low income status in the same sentence is that on July 2, 2008, just sixteen (16) days after the hearing of June 16, 2008, where the Family Law Master put a hold on distributing the arrearages owed by Mr. Allen, he purchased a brand new 2008 Cadillac CTS. This information came by way of my children. The NADA book values this car at over \$35,500. Based on information that was given to me, this car supposedly belongs to his wife only. However, with his wife losing her job the month prior to purchasing this car, who is paying the **payments** and **insurance** on the car? Mr. Allen!!! After checking with an insurance company, the insurance alone would be somewhere in the range of **\$1,200** per year. Based on Mr. Allen claim to low income, how is this possible?

n). I believe that the only reason Mr. Allen is Appealing this Order (since he agreed to it at the hearing) is to try and get the child support obligation lowered back to the \$100.48 a month for two (2) children and be reimbursed for the amount of child support collected over the base amount of \$1,205.76 for the years of 2006 current and have the arrearages of \$4,669.11 (February 2009) statement be removed from the records.

o). Mr. Allen would rather pay for luxurious items than pay his required and reasonable amount of child support for his children.

p). In West Virginia Code 48-1-205(b) income can be attributed to the obligor if an obligor (1) voluntarily leaves employment or voluntarily alters his or her pattern of employment so as to be unemployed, underemployed or employed below full earning capacity. Mr. Allen in my opinion is deliberately not working to his capabilities to help raise these children. How could he be when he spend as much time as he does on Appeals in this case. Therefore, I am asking the Honorable Court to audit Mr. Allen's taxes for the past three (3) years, and set child support accordingly and stop Mr. Allen from trying to get out of his responsibility to his children.

GROUND THREE: Sanctions against Ms. Sears

1). During to the appeal phase of February 6, 2006, on June 29, 2005, my attorney by subpoenas requested that the record keeper for the State Tax Department appear in court July 18, 2005, to discuss the finding from 2000-2004 tax information and including 2005 if any. It was our belief that Mr. Allen was not being honest regarding his finances or he would have voluntarily **GIVEN ALL OF THIS TAX INFORMATION** to me. The State Tax Department sent documentation to Ms. Sears and it was agreed on at the hearing of October 31, 2006, these

records were to be sent back to the State Tax Department and those that were placed in the court file be stricken. *See DVD at Minute Marker 8:00 of the hearing of October 31, 2006.* Mr. Allen's 3rd Ground of Argument in this Appeal is he wants Sanctions brought against my attorney, at that time, Ms. Sears, for obtaining tax returns that should have been provided in the first place, however claiming that she obtained confidential records. Rule 6(d) of the West Virginia Supreme Court of Appeals Rules of Practice and Procedure does not state that records from the State Tax Department are confidential record and therefore the 3rd Ground of argument of Mr. Allen's to file sanction against Ms. Sears should be dismissed.

Ground Four: MEDICAL EXPENSES

a). The Family Law Master did not err on her order of the medical expenses that Circuit Judge Nibert overturned. The subject was never tabled to be discussed at that hearing. The Family Law Master asked if there were any other issues before the court and Mr. Allen listed two areas #1 – Objection to mother filing additional financials and #2 – Sanction against Ms. Sears. Medical Expenses were not mentioned. *See DVD at Minute Marker 5:45 of the hearing of October 31, 2006.* We have from the beginning agreed to split all non-covered expenses based on the percentages used in the Child Support Formula. (**#1 Separation Agreement dated 5/4/98 page 2; #2 Parenting Agreement dated 8/4/98 page 6; #3 Final Order dated 12/21/2000 page 40 paragraph 7; #4 Order dated 11/6/02 page 3 paragraph 6 and #5 Order dated 3/9/07 page 4 paragraph 2 (Order being Appealed).**)

b). Only until the appeal of the March 9, 2007 Order, have I ever been ordered to pay the first (1st) \$250 for each child. The Circuit Judge's failure to allow the mother to be heard on this matter and overturned the same has again put more of the responsibility on raising these

children on the mother and less on the father. I have paid all non-covered expenses since June of 2006 totaling over \$2,000. Mr. Allen is complaining the child support obligation was calculated wrong making his obligation set to high and he wants the Modification of Child Support stricken from the docket lowering his obligation back to \$100.48 per month for two (2) children. Both parents should be responsible for supporting their children not just one. Therefore, Circuit Judge's Order should be overturned taking the medical expenses back to the original Order of the Courts, splitting non-covered expenses.

c). Because of the delays in the lower courts, in preparing the appropriate orders in a timely manner, these delays not only postponed my case for almost three years on two separate occasions, it also caused undue stress on myself and family, costing myself right at \$30,000 dollars in attorney fees, but mainly it cost my children over \$60,000 in child support. How do I come up with that figure? Mr. Allen's W-2's for 2001 tax year plus unemployment, dividends and interest is \$152,567.29; 2003 tax year were \$78,071.22; 2004 tax year \$47,711.41 and 2005 tax year \$56,293.56 (-) 27,721.46 in EXPENSES ?? for a total of \$306,922.02 and during this time Mr. Allen paid only \$9,956.66 in total for two (2) children for child support. This total does not include income for 2002 tax year. However, Mr. Allen testified that he did have income up to July 2002. I have not received a copy of that return.

During the hearing of October 31, 2006, my attorney presented to the court that Mr. Allen grossly underpaid his child support. Upon being questioned multiple times by the Family Law Master as to whether that fact was true, all that Mr. Allen would say was *"Your honor, I paid what I was told to pay"*. See DVD at Minute Marker 28.15 or 1:22:19 (actual time of day) the hearing of October 31, 2006.

I do not believe the law intended for a man to buy one of the finest homes in Spencer, completely remodel it with over \$119,500, between 2000-2004, buy and drive the one of finest most prestigious car made in the United State and pay his children less than he would if he was employee at Wal-Mart as a Greeter.

Mr. Allen has used every little mistake the Family Law Master Delores Nibert has made not to aid in raising his children including falsely telling the courts that he was in *Hardship* when filing for Motion for Modification of Child Support, December 11, 2001, all the while receiving \$152,567.29 in the same year causing me to have to pay him back the sum of \$1,188.29 when I was not even working.

PRAYER FOR RELIEF

I believe the exhibits #2, #8 & #10 and the tax forms 2001, 2006 & 2007 that I have presented to this Honorable Court proves beyond any doubt that Mr. Allen is not only capable but has in the past intentionally used fraudulent tactics and right out lies, to deceive the courts for personal gain, and to reduce his child support far below what his true income indicates he should be paying. Therefore, I am asking the Honorable Court to audit Mr. Allen actual Internal Revenue Service tax reports for the past three (3) years based on the fact that Mr. Allen has not supplied complete tax returns with all supporting documents and W-2's and is not complying with the court orders. The plaintiff do not believe that the records Mr. Allen is filing with the Internal Revenue Service are the same records that he is showing the courts or myself and order him to return to compliance with the State Regulations of Child Support and to calculation and set child support accordingly retroactively back to the date in question, August 2006. Should the courts be unable to audit Mr. Allen's records, the plaintiff pleads that the

court will **ATTRIBUTE INCOME** to Mr. Allen equivalent to what Mr. Allen is capable of making should he spend more time working and less time trying to find ways out of paying child support and set child support accordingly. The plaintiff prays that the court order Mr. Allen to supply a true copy of his 2006 and 2007 taxes with **all schedules, 1099 forms and W-2's and all other taxes in the future or else be held in Contempt of Court with penalties.**

The plaintiff pleads with the Honorable Court to make Mr. Allen pay his **COMPLETE MONTHLY OBLIGATION** regardless of whether the full amount is collected by the Child Advocates Office or whether Mr. Allen has to send the difference by way of Coupon which the Child Advocate's Office has already mailed him along with all non-covered expenses due from Mr. Allen immediately.

Lastly, the plaintiff asks the Honorable court can prepare an order based on Mr. Allen's true tax reports in the hope that the plaintiff can go on with her life without having to deal with Mr. Allen in future courts.

Shelia Allen Elias



Respectfully submitted:

Shelia D. Elias
Known as Shelia D. Allen
646 Elias Road
Letart, WV 25253
(304) 882-3613

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SHELIA D. ALLEN
Now know as **SHELIA D. ELIAS**
(Plaintiff/Respondent),

Vs.

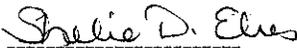
CIVIL ACTION NO. 97-D-24

MICHAEL L. ALLEN
(Defendant/Petitioner),

Certificate of Service

The undersigned, pro se respondent, hereby certifies that on this date, April 10, 2009, I have mailed a true copy of the respondent Brief of the petitioner Appeal to the West Virginia Supreme Court at his last known address:

Michael L. Allen
122 Dodd Drive
Spencer, WV 25276



Shelia D. Elias
Pro se respondent
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Rt. 2, Box 71
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(304) 882-3613

EXHIBITS

ON

FILE IN THE

CLERK'S OFFICE