

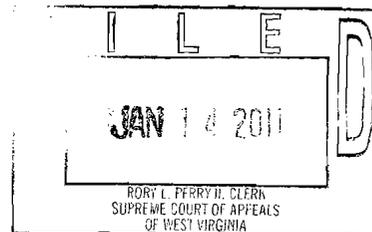
**IN THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

---

**CHARLESTON**

---

**SUPREME COURT DOCKET NO.  
101605**



**IN RE:**

**CHARLES W. LEE,**

**Petitioner,**

**v.**

**CIVIL ACTION NO. 09-D-137**

**PATRICIA E. LEE,**

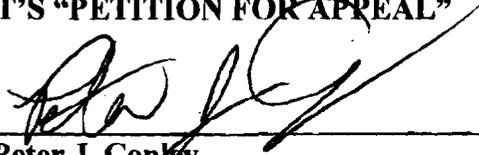
**Respondent.**

---

**From the Circuit Court of  
Upshur County, West Virginia  
CIVIL ACTION NO.  
09-D-137**

---

**RESPONSE OF PETITIONER, CHARLES W. LEE, TO  
RESPONDENT'S "PETITION FOR APPEAL"**



---

**Peter J. Conley  
Counsel for Charles W. Lee  
WV State Bar ID #798  
Siegrist & White, PLLC  
P.O. Drawer 2550  
Clarksburg, West Virginia 26302-2550  
(304) 624-6391**

**IN THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

---

**CHARLESTON**

---

**SUPREME COURT DOCKET NO.  
101605**

**IN RE:**

**CHARLES W. LEE,**

**Petitioner,**

**v.**

**CIVIL ACTION NO. 09-D-137**

**PATRICIA E. LEE,**

**Respondent.**

---

**From the Circuit Court of  
Upshur County, West Virginia  
CIVIL ACTION NO.  
09-D-137**

---

**RESPONSE OF CHARLES W. LEE, TO PATRICIA E. LEE'S  
"PETITION FOR APPEAL"**

---

**To the Honorable Justices of the Supreme  
Court of Appeals of West Virginia**

Comes now Peter J. Conley, counsel for Charles W. Lee, and responds to Petitioner's Petition for Appeal.

**KIND OF PROCEEDING AND  
NATURE OF THE RULING IN THE CIRCUIT COURT**

This is an appeal of an order entered by the Circuit Court of Upshur County in a divorce case. The Circuit Court entered an Order on October 15, 2010 which affirmed an Order of the Family Court of Upshur County, West Virginia entered on July 2, 2010.

**STATEMENT OF THE CASE**

1. The parties were married on July 28, 2007 and separated on June 12, 2009.
2. The Respondent below, Patricia E. Lee, brought scant assets into the marriage.

The Petitioner below, Charles W. Lee, owned several parcels of real estate, but was also burdened with a substantial amount of debt.

3. Prior to the marriage, the parties entered into a "prenuptial agreement." Ms. Lee contends that she was "bullied" into signing this agreement, and that it was not favorable to her. Nevertheless, she requested that the agreement be enforced. Ms. Lee also contended that Mr. Lee was the "drafter" of the agreement and that it should be construed against him. Mr. Lee, on the other hand, contended that the agreement had been discussed for several months – even before Ms. Lee was presented with an engagement ring. He also contended, and the Family Court found, that the agreement was entered into "after a minimum of 17 hours of negotiations between the parties. It underwent three drafts, with Respondent writing notations on two of the drafts concerning changes and additions that she desired be made which said changes were

made by Petitioner. Petitioner primary drafted and typed the agreement.” The negotiations occurred over a seven-day period.

4. The central issue in this case concerns Paragraph “10” of the agreement. which states:

“In the event that there is a separation of the parties, the following will occur regarding spousal support:

- a. In the event of separation, Charles will provide Patti housing at no cost at Route 9, Box 368, Buckhannon until she decides to move or until she enters into another relationship. The provision of housing will include basic and “nationwide” phone service for the same period of time.
- b. Patti will be provided one of the family vehicles in the event of separation or divorce. She will be responsible for maintaining it and its continued operation.”

5. The prenuptial agreement was, after discussion by the parties, downloaded from the internet and customized by Mr. Lee.

6. Neither party consulted with counsel during the drafting or negotiating of the prenuptial agreement.

7. Clearly, the prenuptial agreement, though typed in whole by Mr. Lee, was drafted with input from the parties.

8. Mr. Lee testified that “another relationship” meant, according to the agreement of the parties, “a romantic involvement or just a traditional sense of being with another partner.” Mr. Lee also stated that “another relationship” meant the same thing in Paragraph “10” of the agreement as it did in Paragraph “19,” which states: “There will be no secret relationships.”

9. The Family Court found that: Respondent did “enter into another relationship” as contemplated in the agreement. Specifically, the Respondent entered into such relationships

with Rodney Stalnaker, Jim Walker, and J. Shelly, all three of whom have spent overnights in the property situate at RR 9, Box 36B, Buckhannon subsequent to the separation of the parties, and also subsequent to the entry of the Temporary Order herein which specifically prohibited the Respondent from having male visitors in the home.

10. The Family Court's findings are supported by evidence that: Respondent engaged in sexual relations with two of the men; she spent extended periods of time with Rodney Stalnaker at his residence and frequently visited him in Pruntytown Correctional Center; she engaged in sexual relations with J. Shelly at the last marital home.

11. The Respondent herself has admitted to violating the terms of the Temporary Order by allowing male partners to come into the home.

12. The Family Court also found that, even if the prenuptial agreement were disregarded entirely, Ms. Lee would owe Mr. Lee \$1,198.44 as an equitable distribution equalizing payment (see Decree of Divorce, Finding of Fact No. "21").

13. The Family Court applied the factors set forth in W. Va. Code § 48-6-301(b) and concluded that the Respondent was not entitled to spousal support.

14. The Family Court found that had the prenuptial agreement been disregarded, Ms. Lee would not have been entitled to an award of spousal support based upon application of factors set forth in W. Va. Code § 48-6-301(b).

15. The Family Court also took into consideration the fact that Ms. Lee had exclusive use and possession of the last marital home from the date of the separation of the parties in June, 2009 up to the date of the final hearing in May, 2010. Indeed, Ms. Lee continued exclusive use and possession of the home until October, 2010.

## ARGUMENT

Ms. Lee makes several erroneous assertions throughout her "Petition for Appeal":

1. Ms. Lee repeatedly contends that she was "bullied" into signing the agreement.

Though she made this same argument before the Family Court, it was rejected;

2. Ms. Lee claims that the agreement was unfair. The Family Court partially adopted this theory in finding that "the agreement appears on its face to be unfair toward Respondent" (Decree of Divorce Finding No. 10). However, Ms. Lee herself requests that the agreement be enforced. Essentially, it is the method by which the Court enforced the agreement that Ms. Lee appeals.

3. Mr. Lee argued in the lower court that Ms. Lee is not entitled to the housing benefit provided in the prenuptial agreement because she had entered into "another relationship" by becoming romantically involved with at least two men, with whom she had sexual relations. Ms. Lee, on the other hand, argued (and continues to argue) that the concept of "*de facto*" marriage should apply to determine whether she has entered into "another relationship." However, this term is not applicable, in that W. Va. Code § 48-5-707(a)(1) merely uses that term in allowing Court's discretion to reduce or terminate a spousal support award if the receiving party enters into a *de facto* marriage. There was no evidence produced, even indirectly, that could lead any reasonable mind to conclude that "another relationship" is synonymous with "*de facto* marriage." The Circuit Court addressed this issue in its Order denying Ms. Lee's appeal. The Circuit Court applied the proper definition of "another relationship" in the context of this matter, and it should not be reversed.

4. With respect to Ms. Lee's argument that Mr. Lee was the drafter of the agreement and that it should be accordingly construed against him, the Circuit Court noted:

“In case of doubt, the construction of a written instrument is to be taken most strongly against the party preparing it.’ Henson v. Lamb, 120 W. Va. 552, 199 S. E. 459 (1938). However, the aforementioned rule generally applies only after the finder of fact has tried and failed to ascertain the parties’ intent in an ambiguous agreement. See Klapp v. United Ins. Group Agency, 663 N. W. 2d 447 (Mich. 2003); Unit Vending Corp. v. Lacas, 1990 A. 2d 298 (Pa. 1963); Burns Mfg. Co. v. Boehm, 356 A. 2d 763 (Pa. 1976); E.I. du Pont de Nemours and Co. v. Shell Oil Co., 498 A. 2d 1108 (Del. 1985).”

“Respondent argues that the Family Court abused its discretion by interpreting the term “another relationship” in a manner contrary to its plain grammatical meaning. Specifically, she argues that “another” grammatically ensures that there is a previous or existing relationship to which “another relationship” must be compared, and that relationship was a live-in relationship of several years culminating in an engagement and marriage. However, “another relationship,” as previously noted, is ambiguous. If one looks solely to the language, “another relationship” could be, in a narrow sense, one more romantic or passionate attachment of the same kind, or it could refer to some other “relationship” in a broader sense of the word.”

“Extrinsic evidence may be used to aid in the construction of a contract if the matter in controversy is not clearly expressed in the contract, and in such case the intention of the parties is always important and the court may consider parol evidence in connection therewith as to conditions and objects relative to the matters involved.”

Berkeley Co. Pub. Svc. Dist. v. Vitro Corp. of America, 152 W. Va. 252, 267, 162 S.E. 2d 189, 200 (1968).

“In this case, where the terms of the prenuptial agreement are ambiguous and the trial court’s resolution is based on extrinsic evidence regarding intent, the trial court’s findings are entitled to deference. **‘[I]t is for a trial court to determine whether the terms of an integrated agreement are unambiguous and, if so, to construe the contract according to its plain meaning.’** [Emphasis added] Fraternal Order of Police, Lodge Number 69 v. City of Fairmont, 196 W. Va. 97, 100, 468 S.E. 2d 712, 715 (1996). ‘However, when a trial court’s answers rest not upon plain meaning but on differential findings by a trier of fact, derived from extrinsic evidence as to the parties’ intent with regard to an uncertain contractual provision, appellate review proceeds under the ‘clearly erroneous’ standard.’ Id. In this case, the Family Court’s decision rests heavily on extrinsic evidence as to intent. The Family Court apparently found Petitioner’s representations as to the parties’ intent more credible than those of the Respondent. The Family Court

was in the best position to weigh evidence and evaluate credibility of witnesses. The Family Court's findings regarding the parties' intent were not clearly erroneous. The Family Court's finding that the Respondent entered into "another relationship" does not constitute abuse of discretion."

"Respondent argues that the Family Court's finding that she had sexual relations with H. Shelly and Rodney Stalnaker after the parties' separation is clearly erroneous and unsupported by the facts. Those findings are supported by the testimony of Chris Cutright. Although Respondent denied Cutright's assertions and suggested that his character was questionable, the Family Court, as fact-finder, is in the best position to evaluate credibility of witnesses. The Family Court's findings that Respondent had sexual relations with J. Shelly and Rodney Stalnaker are not clearly erroneous."

Simply stated, the Family Court, as the trier of fact, found Mr. Lee's evidence to be more credible than Ms. Lee's.

Likewise, the Circuit Court properly addressed the issue of "equitable estoppel" and "detrimental reliance." The Circuit Court properly noted that "the burden of proof is upon the party asserting estoppel and must be made to appear affirmatively by clear, precise and unequivocal evidence." Brown v. Crozer Coal & Land Co., 144 W. Va. 296 (1959). It should be noted that Ms. Lee did not rely on any representation of Mr. Lee to her detriment. Furthermore, Ms. Lee actually gained more from the enforcement of the prenuptial agreement than she would have if the agreement were disregarded (she was awarded a vehicle as required by the agreement) notwithstanding the fact that the marital estate had a negative value.

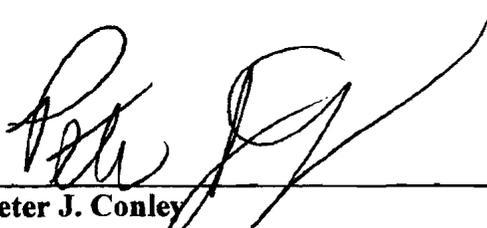
## CONCLUSION

Ms. Lee's arguments are best summarized as a claim that one particular paragraph of this prenuptial agreement should be misconstrued in order to allow her to gain something to which she would not have been entitled. Her arguments that she was "bullied" into signing this agreement are, in addition to being inaccurate, irrelevant. She is asking that the agreement be enforced. Unfortunately, she is unhappy with the manner in which it was enforced.

Ms. Lee, by signing the prenuptial agreement, lost no property. In fact, she gained a vehicle. She lost no spousal support, because the Family Court found that she was not entitled to spousal support even had the agreement been disregarded. The evidence produced at the trial indicated that she contributed very little to the marital estate during the brief marriage, while Mr. Lee provided housing for her, her daughter, and even, on occasion, her ex-husband (the father of Ms. Lee's daughter).

It is respectfully submitted that neither the Family Court nor the Circuit Court committed error in the rulings in this matter, nor did the Family Court abuse its discretion in making the findings to which Ms. Lee appeals.

**RESPECTFULLY SUBMITTED,  
PETER J. CONLEY,  
COUNSEL FOR CHARLES W. LEE.**



---

**Peter J. Conley  
Counsel for Charles W. Lee  
WV State Bar ID #798  
Siegrist & White, PLLC  
P.O. Drawer 2550  
Clarksburg, West Virginia 26302-2550  
(304) 624-6391**

**CERTIFICATE OF SERVICE**

I, Peter J. Conley, counsel for Charles W. Lee, hereby certify that on the 13<sup>th</sup> day of January, 2011, served the foregoing **“RESPONSE OF CHARLES W. LEE, TO PATRICIA E. LEE’S ‘PETITION FOR APPEAL’”** upon the following, via U. S. Mail, postage prepaid, upon the following:

**J. Burton Hunter, III  
One West Main Street  
Buckhannon, WV 26201-9435**



**Peter J. Conley  
Counsel for Charles W. Lee**