

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Kimberly D. Debrosky, formerly Walt,
Respondent Below, Petitioner**

vs.) No. 11-0322 (Marshall County 96-D-356)

**John C. Walt, Petitioner Below,
Respondent**

FILED

June 8, 2012

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Kimberly D. Debrosky appeals the circuit court's January 4, 2011, order refusing her appeal from the family court's order awarding Respondent John C. Walt a decretal judgment in the amount of \$3,272.55, plus post-judgment interest, for petitioner's failure to timely pay her proportionate share of their children's medical bills. After carefully reviewing the record provided, the briefs of the parties, and taking into consideration the relevant standard of review, the Court determines that the circuit court committed error in affirming the family court's order. The Court further finds that this case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the West Virginia Revised Rules of Appellate Procedure.

Respondent filed a petition for contempt with respect to petitioner's failure to timely pay her proportionate share of their children's medical bills. The family court found that before filing his contempt petition, respondent sent petitioner a demand letter in November 2009 and that she did not make any payments in response. A hearing was held, where petitioner stated that she had not been furnished copies of the medical bills. The family court continued the matter so that respondent could send petitioner a one inch stack of bills for her to review. The family court found that respondent missed the deadline the court had imposed for sending petitioner copies of the medical bills, but also found that "the same did not materially impact the mother's available time to prepare." The family court noted that it had also required petitioner to forward copies of any receipts showing payments by her and that she made no attempt to produce any receipts.

When petitioner and respondent appeared again after the matter had been continued, the family court found that respondent had persuaded the court by a preponderance of the evidence that "his presented summary does accurately represent the funds he has in fact advanced for the mother's proportionate one-half share (in the principal amount of \$3,272.55) of medical expenses under the prior Order and is entitled to reimbursement for such sum." Accordingly, the family court awarded respondent a decretal judgment in the amount of \$3,272.55 plus post-judgment interest until it is paid.

When petitioner appealed to the circuit court, as her Ground Eight, petitioner asserted that respondent wanted her to pay \$205.53 for a medical bill that already been reduced by a payment of \$155.53 by the relevant insurer. In responding to petitioner's Ground Eight, respondent admitted in his response in the circuit court that there "was [a] mistake on my part" and that the "new [grand] total owed is \$3,194.79." Petitioner also argued that respondent's petition contempt should have been dismissed because he failed to meet the family court's deadline for him to send petitioner copies of the children's medical bills. On January 4, 2011, the circuit court refused petitioner's appeal in an one page order without addressing any of the merits. Petitioner appealed to this Court on February 2, 2011. Respondent filed his response in this Court on March 14, 2011.

The circuit court refused petitioner's appeal from a family court order which found against her on whether she was prejudiced by respondent's missing the deadline for sending her copies of the children's medical bills and on whether respondent was entitled to a decretal judgment in the amount of \$3,272.55, plus post-judgment interest, for her proportionate share of the medical bills. The applicable standard of review is as follows:

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*.

Syllabus, *Carr v. Hancock*, 216 W.Va. 474, 607 S.E.2d 803 (2004). On the first issue, the family court found that while respondent missed the deadline for sending petitioner copies of the medical bills, "the same did not materially impact the mother's available time to prepare." In addition, to his responses filed both in the circuit court and in this Court, respondent attached an email and a delivery record from the United States Postal Service showing that a notice of certified mail was left for petitioner on July 29, 2010, and that she did not sign for the certified mail until August 4, 2010. Therefore, the family court did not clearly err in finding that petitioner was not prejudiced by respondent's missing the deadline for sending her copies of the medical bills.

On the second issue, the family court found that "[respondent's] presented summary does accurately represent the funds he has in fact advanced for the mother's proportionate one-half share (in the principal amount of \$3,272.55) of medical expenses under the prior Order and is entitled to reimbursement for such sum." Petitioner argues that in his response in the circuit court, respondent admitted that \$3,272.55 was the incorrect amount. In her appeal in the circuit court, petitioner had asserted, as her Ground Eight, that respondent wanted her to pay \$205.53 for a medical bill that already been reduced by a payment of \$155.53 by the relevant insurer. In responding to petitioner's

Ground Eight, respondent admitted that there “was [a] mistake on my part” and that the “new [grand] total owed is \$3,194.79.” Given respondent’s admission, the family court abused its discretion in entering a decretal judgment in his favor in the amount of \$3,272.55 when it should have been in the amount of \$3,194.79. Therefore, the family court’s finding, that petitioner was not prejudiced by respondent’s missing the deadline for sending her copies of the medical bills, is affirmed, but the family court’s decretal judgment in the amount of \$3,272.55 is reversed. The case is remanded to the family court for the entry of a new decretal judgment in the correct amount of \$3,194.79 plus post-judgment interest from the date of that order.

Affirmed in Part, Reversed in Part, and Remanded with Directions.

ISSUED: June 8, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh