

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

**Melissa Sue Ennis (formerly Steele),  
Petitioner**

vs) **No. 11-0702** (Kanawha County 99-D-165)

**Andrew Blair Cox, Respondent**

**FILED**

**March 9, 2012**

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

**MEMORANDUM DECISION**

Petitioner Melissa Ennis appeals the circuit court's March 21, 2011, "Final Order." The circuit court affirmed the family court's order that granted Respondent Andrew Cox's motion for reconsideration of a parenting plan and denied Ms. Ennis's motion for attorney's fees. Ms. Ennis appears by counsel James M. Pierson. Mr. Cox appears pro se.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The parties are parents of a son who was born in 1998. In 2000, the family court incorporated an agreed parenting plan into an order of the court. Ms. Ennis was named the residential parent, while Mr. Cox was given Schedule A visitation. In 2010, Mr. Cox petitioned the family court to modify the parenting plan and allow him additional parenting time. Initially, the family court found that Mr. Cox had not met the burden of proof to support a modification. However, upon a motion for reconsideration, the family court determined that the parenting plan should be modified. In light of the child's increase in age and development, the child's interests and preferences, and Mr. Cox's work schedule, the family court modified the parenting plan to give Mr. Cox additional time with the child.

In addition, each party asked the family court to sanction the other party. Ms. Ennis alleged that Mr. Cox made factual misrepresentations to the court, while Mr. Cox alleged that Ms. Ennis did not comply with the existing parenting plan. The family court rejected these arguments and ultimately denied Ms. Ennis's motion for an award of attorney's fees. Finally, Ms. Ennis successfully moved to increase her child support award.

The circuit court refused Ms. Ennis's petition for appeal and she now appeals to this Court. The following standard of review applies:

In reviewing a final order entered by a circuit 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*.

Syl., *Carr v. Hancock*, 216 W.Va. 474, 607 S.E.2d 803 (2004). Moreover, in family law cases, an award of attorney's fees rests within the sound discretion of the family court and should not be disturbed on appeal absent an abuse of discretion. Syl. Pt. 4, *Banker v. Banker*, 196 W.Va. 535, 474 S.E.2d 465 (1996).

Upon a review of the record and the parties' arguments, we find no clear error or abuse of discretion. The family court heard the evidence and is in the best position to make factual determinations as to what parenting terms are in the child's best interests, and to determine whether a fee award is warranted. Accordingly, we affirm.

Affirmed.

**ISSUED:** March 9, 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