In the
Court of Appeals of Virginia
At Richmond

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Record No. 0267-13-4

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JULIE ANN BORDEN HUGHES
v.
Troy Alexander Hughes

Julie Ann Borden Hughes,
Appellant

Appeal From a Final Order from a Bench Trial
In The Circuit Court for Prince William County
Civil Case Number Law CL - 900 1970

_____

BRIEF OF APPELLANT

_____

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STATEMENT OF THE NATURE OF THE CASE

1) Is this Court of Appeals' 1994 precedent now bad law?

2) Should this Court of Appeals update its own precedent of Mosley v. Mosley, 19 Va. App. 192, 197, 450 S.E.2d 161, 164 (1994) to reflect the 2005 amendment by the U.S. Congress of the U.S. Bankruptcy Code?

3) Appellee Troy Hughes highlights this as the key (remaining) issue in Troy Hughes' "Defendant's Response Plaintiff's Motion for Reconsideration" filed on July 10, 2012, a copy of which is attached to this Brief: Appellee averred by counsel: **"In sum, the Court followed valid Federal Bankruptcy and Virginia law in the equitable distribution award with respect to Defendant's prior bankruptcy filing and discharge."** *Id.; App. @ 200*

4) On July 27, 2012, the Prince William County Circuit entered an order of Equitable Distribution between Julie Ann Borden Hughes, Appellant and Plaintiff below and Troy Alexander Hughes, Appellee and Defendant below.

5) Appellant appeals from that Equitable Distribution. *App @ 91.*

6) Most of the case concerned the debts run up by the Ex-Husband for the couple's marital businesses, still owed by the Ex-Wife after the Ex-Husband's bankruptcy. The Ex-Husband was awarded the very lucrative business but dumped the responsibility for the debts upon the Ex-Wife, who no longer had the business with which to pay them.

7) The debts were owed jointly by Julie Hughes and Troy Hughes. *APP @ 70, 206, 209, 215, 220, 226, 227, and 229;* Trans. 1/19/11 @ 168:17-20;

242:1 – 243:8; 172:19 – 173:3.

8) On October 14, 2010, the Prince William County Circuit Court entered a decree of divorce between Julie Hughes and Troy Hughes, which also established child visitation and child support requirements. *App @ 61.*

9) The proceedings had been bifurcated due to Troy Hughes' Petition for bankruptcy protection under Chapter 7 of the United States Bankruptcy Code which Troy Hughes filed on July 27, 2010, Case 10-1625-RGM in the United States Bankruptcy Court for the Eastern District of Virginia. *App. @ 205; 231.*

10) The trial Court had stayed all issues concerning the Parties' property and debts during the Chapter 7 bankruptcy case. *App. @ 59.*

11) The bankruptcy was not filed until after this case was underway.

12) Only after the close of the evidence after the trial was over, in his closing argument, Appellee Troy Hughes, by counsel, argued that the trial Court lacked jurisdiction under Federal law to order Troy Hughes to shoulder the debts because Troy Hughes had discharged his liability for the debts to Wells Fargo under the mortgages, directly applying the Virginia case of Mosley v. Mosley, 19 Va. App. 192, 197, 450 S.E.2d 161, 164 (1994). *App. @ 168. [Note that the very lengthy and unrelated exhibits to Appellee's Closing are in the record but not reproduced in the Appendix as being unrelated to the issues on appeal.]*

13) Closing arguments were ordered to be filed in writing.

14) The closing arguments were exchanged simultaneously.

15) The closing arguments are in the Appendix, Appellant's at *App. @*

127 and Appellee's at *App. @ 168.*

16) Nowhere and never prior to the Closing arguments did either the Parties or the trial Court raise the question of the legal effect of bankruptcy on the Equitable Distribution, either in terms of the authority of the Court to order Troy Hughes to reimburse Julie Hughes for Troy Hughes' equitable share of marital debts or in terms of whether the trial Court should implicitly require Julie Hughes to file for bankruptcy also.

17) **The issue was litigated exclusively through the written Closing Arguments and Appellant Julie Hughes' Motion for Reconsideration**.

18) Appellant Julie Hughes, by counsel, argued that the United States Congress modified Federal Bankruptcy law in 2005 such that Troy Hughes' bankruptcy had no effect on Troy Hughes' liability on the debts to his spouse Julie Hughes, citing the Federal Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005. *App. @183.*

19) But the trial Court by Judge. Hamblen noted in announcing its Equitable Distribution of assets and debts that Julie Hughes had not filed for bankruptcy as Troy Hughes had done. *App. @ 78 (bottom) – 79 (top).*

20) The only evidence and discussion about Julie Hughes filing for bankruptcy protection was in testimony (in the Appendix)(by Mr. Bird, the Appellee's vocational expert. Trial. Trans.1/19/2011; *App. @ 455-461.* Mr. Bird testified – misunderstanding a question about Troy Hughes' bankruptcy – that Julie Hughes would be materially harmed in her career prospects if she had to

file for bankruptcy, especially in using her prior work experience with a security clearance.

21) That is, the trial Court commented that Julie Hughes could achieve an Equitable Distribution by discharging the debts in bankruptcy, instead of the trial Court actually engaging in an Equitable Distribution of debts and assets.

22) On July 14, 2009, Julie Hughes filed a Petition for Separate Maintenance alleging abandonment by Troy Hughes March 1, 2009. *App @ 1.*

23) On August 3, 2009, Appellee Troy Hughes filed a Cross-Complaint for divorce from Julie Hughes and for Equitable Distribution. *App @ 10.*

24) On October 28, 2009, the Prince William Court held a *Pendente Lite* hearing, *App. @ 34,* to consider spousal support and child support, resulting in an order on February 19, 2010. *App. @ 48.*

25) The Equitable Distribution trial commenced on January 19, 2011.

26) The trial Court, by Judge Hamblen, and the parties sought to schedule two additional days of trial, recognizing that the case had been scheduled for an inadequate one day of trial although several witnesses and two expert witnesses were scheduled.

27) The Honorable Judge William D. Hamblen was diagnosed with cancer and the additional days of trial scheduled did not occur as scheduled.

28) The Appellant moved the trial Court to start the trial from scratch, because a new judge would have to hear the case, but the trial Court denied Appellant's motion.

29) The rescheduled days of trial were again postponed by the Court.

30) However, because at least the first two issues (assignments of error) never arose until after the close of the evidence, the Appellant contends that the prior proceedings do not in any way illuminate the questions presented by the assignments of error and would be irrelevant, unduly burdensome and expensive. The Appellant is financially unable to do more than has been done here in this appeal.

31) It should be noted that Troy Hughes, *pro se* at the time, emailed Appellant's counsel that he wanted additional documents in the appendix. Appellant's counsel responded by providing Troy Hughes with a template pleading to file his own Appellee's designation of additional documents. However, to the best of Appellant's knowledge, Troy Hughes chose not to file a designation of any additional documents.

32) Meanwhile, in the *Pendente Lite* Order of February 19, 2010, the trial Court by Judge O'Brien ordered that Troy Hughes pay for Julie Hughes' health insurance as spousal support. *App. @ 52-53.*

33) Troy Hughes abruptly stopped paying Julie Hughes' health insurance premiums on his own decision. *Id.*

34) The trial Court approved a rule to show cause. *App @ 115, 124.*

35) However, Judge Hamblen simply ignored the Order of Judge O'Brien and failed to enforce the *Pendente Lite* Order. *App. @ 70*

ASSIGNMENTS OF ERROR

1) Virginia's Judiciary has not yet updated its precedents to account for Congress' changes to the law in the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") of 2005. The trial Court erroneously applied obsolete Virginia precedent, to the effect that the trial Court had no legal power to apportion debts among the divorcing spouses previously owed jointly during the marriage but discharged by one spouse with regard to third-party creditors in bankruptcy protection. Prior to Congress changing Federal law in 2005, Virginia decided in Mosley v. Mosley, 19 Va. App. 192, 197, 450 S.E.2d 161, 164 (1994),, that Virginia divorce courts could not apportion debts between husband and wife after liability to third-party creditors was discharged in bankruptcy. The Courts of Virginia have not yet had the occasion to recognize Congress' amendments to Federal bankruptcy law in 2005 in BAPCPA.

This issue was preserved for appeal in the oral argument on June 26, 2012, *App. @ 88, in the* Motion for Reconsideration, *App @ 183,* and in objections attached to the final Equitable Distribution Order. *App. @ 104.* As shown in the June 26, 2012, Transcript, *App. 88,* Appellant's counsel argued this to Judge Hamblen, who then specifically directed that the topic be addressed in a Motion for Reconsideration, if Appellant wished to have it considered. The Motion for Reconsideration was filed about three weeks before the trial Court entered the final order.

2) The trial Court impermissibly decided that the Appellant Ex-Wife should also file for bankruptcy protection in order to discharge debts owed jointly with the Appellee Ex-Husband but previously discharged by the Ex-Husband.

Rather than engaging in an actual Equitable Distribution of the marital debts, the trial Court simply decided that the Ex-Wife could also discharge those marital debts by filing for bankruptcy in the same manner as the Ex-Husband had done.

Assuming that the Ex-Wife should file for bankruptcy protection is not a valid basis for the trial Court to effect an Equitable Distribution.

Thus, the Appellant seeks a purely-legal ruling that this is an impermissible factor to be considered, and that the trial Court must reconsider the evidence on remand without assuming that the Ex-Wife ought to file for bankruptcy discharge of the debts.

This issue was preserved for appeal in the Motion for Reconsideration, *App @ 183,* and in objections attached to the final Equitable Distribution Order. *App. @ 104.* The Motion for Reconsideration was filed about three weeks before the trial Court entered the final order.

3) The trial court abused its discretion by failing to enforce the *Pendente Lite* order. Judge O'Brien ordered the Appellee Ex-Husband to pay the Appellant Ex-Wife's health insurance premiums and out-of-pocket medical

expenses. Judge Hamblen merely ignored, repeatedly, the decision of Judge O'Brien in the Pendente Lite proceeding. Note that although the Appellant Ex-Wife repeatedly urged Judge Hamblen to enforce the Pendente Lite Order, nothing in the record illuminates this topic. The trial court never announced any decision or gave any rationale, but refused to entertain the issue.

This issue was preserved for appeal in the Appellant's Closing Brief. *App. 91* and Motion for Reconsideration *App @ 127.*

STATEMENT OF THE FACTS

1) The parties were married on April 27, 2002, in Arlington, Virginia, and resided in the Appellant's condominium in Falls Church, Virginia in Fairfax County, owned by her prior to marriage. *App. @ 132:6-7* Shortly after, they moved to Manassas Park, Virginia in Prince William County and resided there.

2) The parties were separated on March 1, 2009, when Appellee Troy Hughes left the Manassas Park marital home and their young daughter, Hannah. *App. @ 132:8-9;* Trans. 1/19/11 @ 133:9-14; 134:10-11.

3) The parties were legally divorced on October 8, 2010, by decree of the Prince William County Circuit Court. *App. @ 131:12-16.*

4) During the marriage, Julie Hughes and Troy Hughes started two businesses, Junk B Gone and Economy Thrift Tire. App. @ 73-74; *150:16-15; 186:18-23.*

5) The Prince William County Circuit Court explicitly awarded the business, Junk B Gone, to Troy Hughes in the Equitable Distribution by its July 27, 2012, Order. *App. @ 91*

6) The Court noted that Economy Thrift Tire was sold. App. @ 73-74. Trans. 1/19/11 @ 229:15 – 230:2; 230:16 – 231:5; 231:9 – 233:17.

7) The Court's order explicitly awarding the business to Troy Hughes indicates that Junk B Gone was previously a marital asset, funded by marital assets with the participationof both spouses in the business. *Id.*

8) Julie Hughes had asked the trial Court to award the business to her, including for the express purpose of keeping the debts together with the business and allowing the business to pay off its own debts. *App. @ 127.*

9) The trial Court did not give any reason or explanation for awarding the business to Troy Hughes. *App. @ 70.*

10) Instead, the Prince William Circuit Court made the Appellant, Julie Hughes, solely responsible for the debts of that same Junk B Gone business. *App. @ 91;* Trans. 1/19/11 @ *168:17 – 169:1*; 170:15-17.

11) The source of funds available to repay the debts is the Junk B Gone business. So the person with the ability to repay those debts (Troy Hughes) was not ordered to pay them by the Prince William County Circuit Court but the person without the ability to repay those debts (Julie Hughes) was left with the burden of repaying those debts borrowed against the house.

12) After leaving his wife and child, Troy Hughes effectively locked Julie

Hughes arbitrarily out of further involvement in Junk B Gone, by control of incoming customer calls. Trans. 1/19/11 @ 192:14 – 193:23; 231:9 – 232:13.

13) As a result, Troy Hughes cut off Julie Hughes from her source of income with which to be able to repay the debts of the business for which she was left solely responsible by the trial Court. *Id.*

14) The marital home was awarded to Julie Hughes by the trial Court, although carrying hundreds of thousands of dollars of mortgage debt in excess of its fair market value, and in imminent danger of foreclosure. *App. @ 70.*

15) During their marriage, Julie Hughes and Troy Hughes created the Junk B Gone business by --

a) borrowing $129,148.09 against their marital home at 9314 East Carondelet, Manassas, Virginia (with interest of $45,500 accruing at 6% as of July 27, 2012). (This borrowing for the businesses occurred in multiple steps with several refinancing transactions.) *App. @ 209, 215, 220, 226,* Trans. 1/19/11 @ 166:17 – 168:11; 168:5-6; 168:7-9; 169:2 – 170:13; 169:2 - 170:14.

b) borrowing $70,286.30 from Julie Hughes' condominium owned as separate property before the marriage (with $36,516.49 interest accruing at 6% as of July 27, 2012).

c) investing an additional $53,859.94from the sale of Julie Hughes' premarital condominium owned as her separate property. Trans. 1/19/11 @ 150:4-15; 150:1-15; 152:2 – 153:4.

16) This is only the money that could be clearly traced going into the cash business. However, the businesses were funded from Troy Hughes' repeated refinancing of the premarital condominium and later marital home in Manassas Park, which added a total of $413,493.03 of debt to the house.

17) The debt borrowed against the marital home for business purposes was, as shown in the record:

	Business Debt Borrowed	**Premarital Money Used from Julie**
2002	$27,979.17	$16,426.36 + interest
2003	$100,000.00	$92,610.53 +interest
2004	$80,834.08	$80,834.08 + interest
	$100,000.00	$100,000.00 (+20 months of interest)
2006	$27,118.84	$27,118.84
2007	$48,251.61	

DEBT BORROWED for business and added to the house:
$413,493.03

18) However, the trial Court left Julie Hughes solely responsible for the debts of Junk B Gone in the form of $129,148.09 plus interest of $45,500 at 6% still owed on the mortgages on the marital home.

19) During their marriage, Julie Hughes and Troy Hughes also created Economy Thrift Tire by using assets rolled over from Junk B Gone and by borrowing $14,510.61 against their marital home at 9314 East Carondelet, Manassas, Virginia. *App. 220:1-14; 397.* Trans. 1/19/11 @ 220:1-14; 225:1-19; 226:7-11; 234:14-23; 228:9 – 229:9.

20) **Thus total debt of $129,148.09 plus interest of $45,500 at 6%plus $14,510.61 – a grand total of $189,158.70 –** borrowed for the

businesses is included in the mortgage debts still owing on the house at 9314 East Carondelet Drive, Manassas,VA. Interest has grown since July 27, 2012.

21) Julie Hughes would lose the only asset awarded to her by the trial Court, the marital house at 9314 East Carondelet Drive, Manassas, Virginia.

22) Although not in the record, in terms of the ripeness of relief, Wells Fargo has recently denied Julie Hughes' loan modification request on the grounds that Wells Fargo would have to give up too much money to modify the loan. Therefore, it would have real-world consequences if Troy Hughes were ordered to pay the $189,158.70 of the mortgage debt attributable to the business he now owns alone. If Julie Hughes' share of the mortgage debt were reduced by $189,158.70, she would be able to save the house with a loan modification of the remaining mortgage amount.

23) However, Troy Hughes discharged his liability to Wells Fargo on the two mortgages in his Petition for bankruptcy protection under Chapter 7 of the United States Bankruptcy Code on July 27, 2010, being Case # 10-1625-RGM in the United States Bankruptcy Court for the Eastern District of Virginia.

24) This left Julie Hughes solely responsible for these debts.

25) Meanwhile, the trial Court noted that Julie Hughes had not elected to file for Chapter 7 bankruptcy herself. *App. @ 78 (bottom) – 79 (top).*

26) But this comment was about the Court's only effort at addressing the debts of the marriage in the Equitable Distribution. Other than noting that Julie Hughes had not elected to file for bankruptcy, the complete absence of any

other discussion or action dealing with the debts of the marriage is striking.

27) The trial Court noticeably did not deal with the many debts of the marriage and noticeably did not equitably distribute the various marital debts.

28) Given the lack of any other grounds identified by the Court or discussion of all the various debts, it appears that the trial Court attempted to effect an Equitable Distribution by assuming that Julie Hughes could always engage in “self help” equitable distribution by filing for bankruptcy protection.

I. ARGUMENT: Standard of Review for Assignments of Error 1 and 2

1. An appellant has the burden of establishing that reversible error was committed. *See* Lutes v. Alexander, 14 Va. App. 1075, 1077, 421 S.E.2d 857, 859 (1992).

2. Under Rule 5A:20(e), a brief must specify, "[w]ith respect to each assignment of error, the standard of review and the argument - including principles of law and the authorities . . . ."

3. With regard to Assignments of Error 1 and 2, when reviewing a question of law, the Court of Appeals reviews the construction, interpretation and application of law *de novo*, as cited by this Court in Muse Constr. Grp., Inc. v. Commonwealth of Va. Bd. for Contractors , *733 S.E.2d 690,* 61 Va. App. 125 (Va. App., 2012):

> " The interpretation of Rule 2A:4(a) and other relevant statutory language is a question of law that we review de novo. See Conyers v. Martial Arts World of Richmond, Inc., 273 Va. 96, 104, 639 S.E.2d 174, 178 (2007) (noting that issues of statutory

> interpretation are pure questions of law subject to de novo review). In construing the language of rules and statutes, "we must give effect to the [drafters'] intention[s] as expressed by the language used unless a literal interpretation of the language would result in a manifest absurdity." Id. Indeed, "'[t]he primary objective of statutory construction is to ascertain and give effect to legislative intent.'" Conger v. Barrett, 280 Va. 627, 630, 702 S.E.2d 117, 118 (2010) (quoting Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983))."

4. Furthermore, where the United States Congress changed the law in 2005, the change in the law must be construed to mean something rather than nothing. Congress clearly intended to change the legal result which was previously embodied in Mosley v. Mosley, 19 Va. App. 192, 197, 450 S.E.2d 161, 164 (1994),

> **"An amendment to a statute should always be construed to mean something, rather than nothing. "**

Southern Ry. Co. v. U.S. Cas. Co., 136 Va. 475, 118 SE 266 (1923).

5. Here, the dominant issue is whether this Court of Appeals needs to update its own precedent to reflect the amendment by the U.S. Congress of the U.S. Bankruptcy Code in 2005, as bad law made obsolete by the U.S. Congress.

6. Under the first and second assignments of error, Appellant contests only applicable law and does ***not*** contest any findings of facts, rulings of admissibility of evidence, or interpretation of facts.

7. In an Equitable Distribution proceeding in divorce, as counsel views the law and precedents, Virginia law offers few standards or rules concerning the distribution of property, assets, and liabilities among divorcing spouses. The judge sitting in Chancery has wide discretion to make distributions among the

parties according to the judge's view of what is just.

8. Yet Virginia statutory law does impose upon the judge the duty of actually considering the identified factors and actually engaging in an equitable distribution of property, assets, and liabilities, among the divorcing parties.

9. Here, the Appellant contents that the trial Court failed to follow Virginia statutory law, particularly Va. Code § 20-107.1 through § 20-107.3.

10. The trial Court openly refused to follow statutory law on the grounds that U.S. Bankruptcy law prohibited the Court from and deprived the Court of jurisdiction to order Troy Hughes to reimburse Julie Hughes for Troy Hughes' share of the debts originally owed by them jointly under Mosley v. Mosley.

11. The Appellant argues that this is a purely legal error because Mosley v. Mosley, is no longer good law after the Congressional amendment.

12. The trial Court openly did not follow statutory law by expecting Julie Hughes to engage in "do it yourself" equitable distribution by filing for her own Chapter 7 bankruptcy petition as a companion to Troy Hughes' bankruptcy.

13. The Appellant argues that this is an error purely of law because ordering or assuming a "self help" equitable distribution through bankruptcy is not of the statutory factors the trial Court is required to follow.

14. The Appellant argues that this is an error purely of law because the trial Court did not actually engage in any equitable distribution at all, but essentially delegated the task of equitable distribution to Julie Hughes to carry out a "self help" equitable distribution by filing for her own bankruptcy.

15. Accordingly, the questions on appeal are purely questions of law.

II. **ARGUMENT: COURT DID NOT LOSE JURISDICTION BY BANKRUPTCY**

16. The issue in question is refreshingly and overwhelmingly simple, although of momentous importance to many divorcing couples.

A) MOSLEY v. MOSLEY OVERTURNED BY U.S. CONGRESS

17. Troy Hughes cited in his closing argument Mosley v. Mosley, 19 Va. App. 192, 197, 450 S.E.2d 161, 164 (1994), for the proposition that the Court may not recreate debt upon Troy Hughes through an equitable distribution that a spouse had discharged in bankruptcy. *See also,* Carter v. Carter, 18 Va.App. 787, 788-89, 447 S.E.2d 522, 523 (1994).

18. The trial Court adopted this argument, and offered no other basis for the trial Court's decision. On any other basis, the result would otherwise be a shocking and scandalous injustice to Julie Hughes by the Court which could not in any sense constitute an "Equitable Distribution" or an application of the statute.

19. But left with nowhere else to go, Judge William D. Hamblen was left implicitly directing that Julie Hughes undertake her own Chapter 7 bankruptcy as the only apparent means of achieving equity.

20. Judge Hamblen agreed that under U.S. Bankruptcy laws, the Prince William County Circuit Court has no jurisdiction to order Troy Hughes to pay his share of debts owed jointly by both Julie Hughes and Troy Hughes.

21. Under *current* Federal law, Troy Hughes' bankruptcy does not relieve Troy Hughes of his responsibility toward Julie Huges for debts for which both spouses were legally responsible jointly before Troy's bankruptcy.

22. Under *current* Federal law, Troy Hughes' bankruptcy does not deprive the trial Court of jurisdiction to order Troy Hughes to shoulder his share of responsibility for debts which both spouses owed jointly.

23. The Federal bankruptcy Courts have recognized the change. See, *e.g.* In re Tommy N. Douglas, 369 B.R. 462 (E.D. Ark, June 5, 2007); In re Deborah Lynn Schweitzer, 370 B.R. 145 (S.D. Ohio, June 4, 2007); In Re Scott Messenger, 331 B.R. 733 (N.D. Ohio, July 8, 2005).

24. However, this Court has not yet had the opportunity – an occasion now afforded by this appeal at bar – to revisit its own 1994 precedent in light of Congress' 2005 modification of U.S. Bankruptcy law.

25. Judge Hamblen in the Prince William County Circuit Court reasonably relied upon this Court of Appeals to update its own precedent and trusted in this Court to modify its prior precedents to reflect the law's changes.

26. In 2005, Congress significantly changed federal law governing bankruptcy discharge of marital debts in a property settlement or equitable distribution in the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") in 2005.

27. Congress' change explicitly expanded the exception from dischargability from covering alimony or maintenance to now exempting from

discharge "***ANY*** debt" owed between spouses. *Compare with* Mosley v. Moseley, at page 164, stating the **pre-2005** law: "under 11 U.S.C. § 523(a)(5) of the federal bankruptcy code, an individual debtor may not discharge debts "to a spouse ... for alimony to, maintenance for, or support of such spouse ..."

28. Thus, prior to 2005, only alimony or maintenance were exempt from discharge. After 2005, ***ANY*** debt among spouses is now exempt from discharge.

29. Ordinarily, Federal Bankruptcy law would prohibit any action or attempt to cause a "bankrupt" (debtor receiving bankruptcy protection) to pay a debt discharged by the U.S. Bankruptcy Court. 11 USC § 524(a).

30. Of course, Federal Bankruptcy law pre-empts all authority and actions of the State courts of the Commonwealth. *Id.*

31. However, Federal Bankruptcy law includes within itself exceptions to discharge, meaning that certain debts are not discharged and continue to be collectible and enforceable. See 11 USC § 523 - Exceptions to discharge, which is reproduced below (not quoted in full here to enhance clarity).

32. After the 2005 BAPCPA amendments, a spouse seeking bankruptcy protection of a debt owed jointly with a spouse may no longer hand that debt as a parting gift to his spouse.

33. Congress through BAPCPA modified 11 U.S.C. § 523(a)(15) "Exceptions to Discharge." So that the law now reads in 11 U.S.C. § 523(a) --

> **(a)A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor**

from any debt—

*** * ***

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;

34. The paragraph referred to in 11 U.S.C. § 523(a)(15) is another exception to dischargeability, holding that debts are not dischargeable:

(5) for a domestic support obligation;

35. In fact, Troy Hughes did not even list Julie Hughes as one of his creditors in his Chapter 7 bankruptcy nor seek to discharge any debts to Julie Hughes in his bankruptcy. *App. @ 231*

36. Troy Hughes did not even request to have his debts to Julie discharged in the Bankruptcy Court. *App. @ 231.*

37. While the purpose of the bankruptcy laws is to provide a fresh start, bankruptcy is not a vehicle to ruin the life of an ex-spouse with a parting 'gift.' The bankruptcy laws are to assist the debtor, not as a malicious weapon to be used against a divorcing spouse.

38. Quite simply, ***bankruptcy is a shield, not a sword.*** A husband may seek protection from creditors, not cause the ruination of his ex-wife after an

acrimonious divorce by leaving her responsible for his own debts. Bankruptcy protection is meant to discharge debts – not to shift them from one person to another in a divorce.

B) ***DEFENDANT MISTAKEN -- 2005 CONGRESIONAL AMENDMENTS NOT LIMITED TO FINAL DECREES***

39. Three objections or distinctions were raised by the Appellee Troy Hughes, by counsel, at the trial Court level, in **Defendant's Response to Plaintiff's Motion for Reconsideration**. *See*, Response, attached. *App. @ 200*

40. However, these miss the point.

41. The question is whether the trial Court was ***prohibited*** from issuing a decree apportioning the debt among the parties by Federal Bankruptcy law.

42. Troy Hughes filed for divorce in his Cross-Complaint and requested an Equitable Distribution. *App. @ 10.*

43. Then, while Troy Hughes' own request for an Equitable Distribution was pending in the Virginia trial Court, Troy Hughes filed for bankruptcy.

44. Thus, Troy Hughes now seeks to use Mosley v. Mosley to ***PREVENT*** the trial Court from issuing a decree apportioning debts by arguing that only final decrees are exempt from discharge under 11 U.S.C. § 523(a)(15).

45. In fact, the Equitable Distribution case was already pending.

46. The trial Court does indeed have jurisdiction to order Troy Hughes to pay his fair share of the debts jointly owed with Julie Hughes.

47. The Appellee places at issue three questions about Congress' 2005

amendments:

a) So far in Court precedents applying the 2005 Congressional amendments, we have only seen courts applying the amendments to "post divorce debt" owing "pursuant to either a separation agreement or final decree by [a] Court." *See,* Response, top of page 2, attached.

b) In this case, the debt discharged by Troy Hughes in the present case was debt owed to a third-party creditor. *Id.*

c) No separation agreement had been entered into nor decree issued by the Court. *Id.*

48. These are distinctions without a difference.

49. First, the fact that precedents of only certain types have by chance happened to have been litigated is not determinative of anything.

50. The law now reads in 11 U.S.C. § 523(a) that

> "(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from ***ANY*** debt—
>
> *[EMPHASIS ADDED]*
>
> * * *
>
> (15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;

51. Thus, the distinctions attempted are irrelevant.

52. ***ANY*** debt is exempted from discharge, regardless of whether it has been reduced to a final decree or not at the time of the bankruptcy discharge.

53. However, the question at hand is whether Judge Hamblen of the Prince William County Circuit Court was *DEPRIVED of JURISDICTION* to be able to enter an order or decree apportioning the debt between the parties.

54. Clearly, the Prince William County Circuit Court is not prevented from **issuing** an **"other order of a court of record"** issued **"in the course of a divorce"** thus establishing a debt **"incurred by the debtor"** which is exempt from discharge in bankruptcy under 11 U.S.C. § 523(a)

55. This Court should remand the case to the trial Court to follow the law and apportion the parties' debts among them in spite of Troy Hughes' discharge in bankruptcy.

III. ARGUMENT: DIRECTING "SELF HELP" BANKRUPTCY NOT A VALID FACTOR TO CONSIDER IN EQUITABLE DISTRIBUTION

56. The factors that a Court may consider in undertaking an equitable distribution are set forth in Va. Code § 20-107.1, § 20-107.2, and § 20-107.3.

57. None of the factors identified and none of the procedures prescribed allow a trial Court to either assume that a spouse must file a petition for Chapter 7 bankruptcy protection in order to achieve a "self help" equitable distribution by the discharge of debts otherwise jointly owed by the other spouse or to direct implicitly or explicitly that a divorcing spouse must file for bankruptcy protection to achieve equity in an equitable distribution.

58. A trial Court is given wide discretion and wide latitude to achieve an equitable distribution in accordance with the statutory factors.

59. Yet the trial Court must actually in fact undertake the process spelled out in Va. Code § 20-107.1 through .3.

60. Under the statutory scheme, the Court must actually, in fact, apportion or assign the debts of the marriage among the spouses.

61. Regardless of whether the task was done right or wrong under the findings of facts or discretion of the Judge, here the task was simply not done.

62. Assuming or directing that a spouse file for bankruptcy to discharge debts instead of apportioning those debts equitably among the divorcing spouses is an abdication of the statutory command, even under the wide discretion that the statute affords to the trial Court.

IV. **ARGUMENT: STANDARD OF REVIEW FOR ASSIGNMENT OF ERROR 3**

63. For Assignment of Error 3, the Court of Appeals will review the trial Court's Equitable Distribution order on an abuse of discretion standard.

64. The trial Court will receive broad deference in fashioning an Equitable Distribution decree based on what is equitable under the facts.

65. The Court of Appeals will reverse the trial Court's order under Assignment of Error 3 if the trial Court abused its discretion.

66. Here, the Appellant asserts that (a) the trial Court by Judge Hamblen offered absolutely no explanation or rationale whatsoever for its failure to enforce the *Pendente Lite* Order, while in contrast (b) the same trial Court by

already ruled by Judges O'Brien and Potter the exact opposite result, and Judges O'Brien and Potter did provide a rationale for their decisions.

67. Appellant argues that where Judges O'Brien and Judge Potter offered a reasoned, well-supported decision and issued an Order of the Prince William County Circuit Court, Judge Hamblen's simply ignoring the *Pendente Lite* Order without any explanation, reason, or rationale is an abuse of discretion.

V. **ARGUMENT: FAILURE TO ENFORCE *PENDENTE LITE* ORDER**

68. The trial Court offered no reason or explanation for arbitrarily and capriciously failing to enforce the *Pendent Lite* order of Judge O'Brien.

69. The Prince William County Circuit Court, by Judge O'Brien, ruled in the *Pendente Lite* Order that Troy Hughes must pay health insurance premiums for Julie Hughes as part of the monthly spousal support. *App. @ 52-53.*

70. On April 27, 2012, Judge Potter explicitly ordered Troy Hughes to reimburse Julie Hughes for the health insurance premiums, scheduling a contempt of court proceeding for June 5, 2012 before Judge Hamblen.

71. Troy Hughes did not comply and did not pay.

72. The Court's determination of spousal support includes all forms of assistance, not merely the payment of money by check to the former spouse.

73. Where the trial Court made a determination that the health insurance premiums should be paid, by Judge O'Brien but then the same Court by Judge Hamblen refused to enforce it, the reversal is an abuse of discretion.

74. Because Judge Hamblen gave no explanation or rationale, and the same Court had already reached a decision, the failure to enforce the *Pendente Lite* Order is wholly arbitrary and capricious and an abuse of discretion.

75. Appellant might argue that a decision without a reason is an abuse of discretion. But here, Judge O'Brien made a reasoned decision for the Court and offered her analysis, but Judge Hamblen offered no reason or explanation for completely ignoring Judge O'Brien's Order.

76. Under those circumstances, Judge O'Brien's well-grounded decision must stand, not Judge Hamblen's unexplained failure to enforce it.

77. On October 28, 2009, the Prince William Court held a *Pendente Lite* hearing, *App. @ 34,* resulting in an order on February 19, 2010. *App. @ 48.*

78. Troy Hughes, unlitaterally stopped paying. *App. @ 115*

79. Julie Hughes moved for a Rule to Show Cause. *App. @ 115*

80. Troy Hughes failed to pay the premiums. *App. @ 224.*

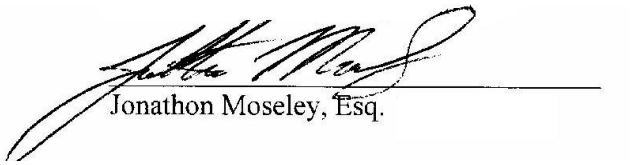
81. The Court issued a Rule to Show Cause. *App. @ 124 and 126*

82. In the Equitable Distribution Order, the trial Court denied the Show Cause in terms of not finding Troy Hughes in contempt of Court.

83. However, Judge Hamblen completely ignored the money due from Troy Hughes to Julie Hughes under the *Pendente Lite* Order, without comment, analysis, or explanation. *App. @ 70.*

REQUEST FOR ORAL ARGUMENT

Appellant Julie Ann Borden Hughes, by counsel, requests oral argument.



CONCLUSION

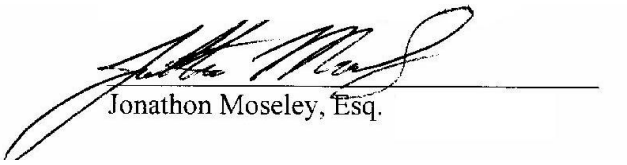
WHEREFORE, Julie Ann Borden Hughes, Appellant and Plaintiff below hereby respectfully asks the Court, by counsel, to reverse the holding of the trial court below and enter judgment in her favor and/or remand the case for a new trial or revised verdict on the existing evidence, on the grounds that:

a) The Court of Appeals must reverse its own prior precedent of Mosley v. Mosley and order the trial Court to engage in an actual equitable distribution of the debts of the spouses.

b) The trial Court may not consider either the expectation, assumption, or directive that a spouse go through bankruptcy as a means of achieving an equitable distribution of the debts of divorcing spouses,

c) The trial Court must enforce its own *Pendente Lite* Order where no reason, rationale, or explanation was given by the trial Court for reversing its own prior *Pendente Lite* Order, thereby requiring Troy Hughes to pay the health insurance premiums of Julie Hughes still left unpaid.

RESPECTFULLY SUBMITTED,
JULIE ANN BORDEN HUGHES
By Counsel



Jonathon Moseley, Esq.
(Va. Bar # 41058)
c/o 9314 East Carondelet Drive
Manassas, Virginia 20111
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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies as follows:

1. To the best of counsel's count, this Brief consists of 6, 199 words, including headings and citations to the record and Appendix.

2. The name and current mailing address of Petitioner - Appellant is:

   Julie Ann Borden Hughes
   9314 East Carondelet Avenue
   Manassas Park, Virginia 20111

2. The name(s), address, and telephone number of counsel for Petitioner - Appellant are:

   Jonathon Moseley, Esq. (Va. Bar # 41058)
   c/o 9314 East Carondelet Avenue
   Manassas Park, Virginia 20111
   Telephone: (703) 656-1230
   Fax: (703) 783-0449

3. The name and address of Plaintiff - Appellee is:

   Mr. Troy Alexander Hughes
   14057 Winding Ridge Lane
   Centreville, Virginia 20121

4. The names, addresses, and telephone numbers of counsel for Respondent - Appellee is currently:

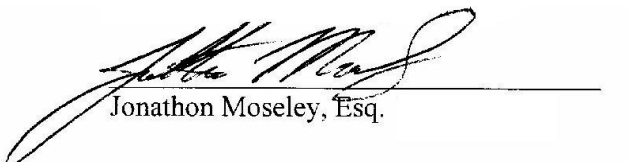
   Mr. Troy Hughes has been *Pro Se* since August 2012.

5. Seven (7) copies of the foregoing Brief on Appeal were filed by courier with the Clerk of the Court of Appeals of Virginia on March 25, 2013.

6. Seven (7) copies of the Appendix were filed by courier with the Clerk of the Court of Appeals of Virginia on March 25, 2013.

7. One (1) true copy of the foregoing Brief on Appeal and the Appendix was hand-delivered on March 25, 2013 to:

Mr. Troy Alexander Hughes
14057 Winding Ridge Lane
Centreville, Virginia 20121



Jonathon Moseley, Esq.

11 USC § 523 - Exceptions to discharge

(a)A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1)for a tax or a customs duty—

(A)of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B)with respect to which a return, or equivalent report or notice, if required—

(i)was not filed or given; or

(ii)was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C)with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2)for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A)false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B)use of a statement in writing—

(i)that is materially false;

(ii)respecting the debtor's or an insider's financial condition;

(iii)on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv)that the debtor caused to be made or published with intent to deceive; or

(C)

(i)for purposes of subparagraph (A)—

(I)consumer debts owed to a single creditor and aggregating more than $500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable;

and

(II)cash advances aggregating more than $750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii)for purposes of this subparagraph—

(I)the terms “consumer”, “credit”, and “open end credit plan” have the same meanings as in section 103 of the Truth in Lending Act; and

(II)the term “luxury goods or services” does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;

(3)neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A)if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B)if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

(4)for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5)for a domestic support obligation;

(6)for willful and malicious injury by the debtor to another entity or to the property of another entity;

(7)to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

(A)relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B)imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

(8)unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

(A)

(i)an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

(ii)an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

(B)any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

(9)for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

(10)that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;

(11)provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;

(12)for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;

(13)for any payment of an order of restitution issued under title 18, United

States Code;

(14)incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

(14A)incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);

(14B)incurred to pay fines or penalties imposed under Federal election law;

(15)to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;

(16)for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17)for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) ofsection 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law);

(18)owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

(A)a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

(B)a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or

(19)that—

(A)is for—

(i)the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

(ii)common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

(B)results, before, on, or after the date on which the petition was filed, from—

(i)any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii)any settlement agreement entered into by the debtor; or

(iii)any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

For purposes of this subsection, the term “return” means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

(b)Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A [1] of the Higher Education Act of 1965, or under section 733(g) [1] of the Public Health Service Act in a prior case concerning the debtor under this title, or under the

Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c)

(1)Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(2)Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d)If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e)Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

11 USC § 524(a) – Effects of discharge

a)A discharge in a case under this title—

(1)voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2)operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3)operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

V I R G I N I A:

IN THE COURT OF APPEALS OF VIRGINIA

JULIE ANN HUGHES	)	
	)	
Appellant (Plaintiff below)	)	RECORD No. 0267-13-4
	)	
v.	)	
	)	Appeal from Prince William County
TROY ALEXANDER HUGHES	)	Circuit Court, Case No. CL9001970
	)	
Appellee (Defendant below)	)	
_____	)	

APPELLANT'S DESIGNATION AND ASSIGNMENTS OF ERROR

Pursuant to Rule 5A:25(d) of the Rules of the Supreme Court of Virginia, the Appellant, Julie Ann Hughes, by counsel, submits the following Designation of the Contents to the Appendix.

Appellant chooses to identify the Assignments of Error first, so that the limited selection of documents from the record will be understandable:

1. ASSIGNMENTS OF ERROR – As of Right

(A) Virginia's Judiciary has not yet updated its precedents to account for Congress' changes to the law in the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") of 2005. The trial Court erroneously applied obsolete Virginia precedent, to the effect that the trial Court had no legal power to apportion debts among the divorcing spouses previously owed jointly during the marriage but discharged by one spouse with regard to third-party creditors in bankruptcy protection. Prior to Congress changing Federal law in 2005, Virginia decided in *Mosley v. Mosley*, 19 Va. App. 192, 197, 450 S.E.2d 161, 164 (1994),, that Virginia divorce courts could not apportion debts between husband and wife after liability to third-party creditors was discharged in bankruptcy. The Courts of Virginia have not yet had the occasion to recognize Congress' amendments to Federal bankruptcy law in 2005 in BAPCPA.

Note: This issue erupted for the first time only after all hearings were concluded. The first time this issue arose was in the Defendant's written Closing Argument. Judge Hamblen ordered closing arguments in writing. Nothing in the prior record ever mentioned or touched on this. This was addressed only in written Closing Arguments and the Motion for Reconsideration.

The trial court offered very little explanation of his reasons for his decisions. Thus, the very minimalistic comments offered by Judge Hamblen and the context in which they are offered take on very great impact because there are no other explanations.

This issue was preserved for appeal in the Motion for Reconsideration and in objections attached to the final Equitable Distribution Order. As shown in the June 26, 2012, Transcript, Appellant's counsel argued this to Judge Hamblen, who then specifically directed that the topic be addressed in a Motion for Reconsideration. The Motion for Reconsideration was filed about three weeks before the trial Court entered the final order.

(B) The trial Court impermissibly decided that the Appellant Ex-Wife should also file for bankruptcy protection in order to discharge debts owed jointly with the Appellee Ex-Husband but previously discharged by the Ex-Husband.

Rather than engaging in an actual Equitable Distribution of the marital debts, the trial Court simply decided that the Ex-Wife could also discharge those marital debts by filing for bankruptcy in the same manner as the Ex-Husband had done.

Assuming that the Ex-Wife should file for bankruptcy protection is not a valid basis for the trial Court to effect an Equitable Distribution.

In fact the Ex-Wife could not do so without losing the marital home which the trial Court awarded her. Also, it is against her personal morality and religious views and against the public policy of the Commonwealth to force an ex-spouse to leave creditors unpaid, bearing the injury, rather than ordering that creditors be actually paid according to the responsibility divided among the ex-spouses.

The majority of the case in controversy concerned the debts run up by the Ex-Husband for the couple's marital businesses, still owed by the Ex-Wife after the Ex-Hsuband's bankruptcy. The Ex-Husband was awarded the very lucrative business but dumped the responsibility for the debts upon the Ex-Wife, without the business to pay them.

Thus, the Appellant seeks a purely-legal ruling that this is an impermissible factor to be considered, and that the trial Court must reconsider the evidence on remand without assuming that the Ex-Wife ought to file for bankruptcy discharge of the debts.

Note: The total lack of any other explanation for the trial Court's decision places a strong emphasis on the limited explanation the trial Court did offer: "The Plaintiff remains in debt on the marital residence both the purchase money, deed of trust, and the HELOC. The defendant did rid himself of these debts by bankruptcy, an option the plaintiff elected not to pursue." Transcript, June 26, 2012, Page 9-10

This issue was preserved for appeal in the Motion for Reconsideration and in objections

attached to the final Equitable Distribution Order. The Motion for Reconsideration was filed about three weeks before the trial Court entered the final order.

(C) The trial court abused its discretion by failing to enforce the *Pendente Lite* order. Judge O'Brien ordered the Appellee Ex-Husband to pay the Appellant Ex-Wife's health insurance premiums and out-of-pocket medical expenses. Judge Hamblen merely ignored, repeatedly, the decision of Judge O'Brien in the Pendente Lite proceeding. Note that although the Appellant Ex-Wife repeatedly urged Judge Hamblen to enforce the Pendente Lite Order, nothing in the record illuminates this topic. The trial court never announced any decision or gave any rationale, but refused to entertain the issue.

The final Equitable Distribution Order does mention that the Appellee Ex-Husband will not be found in contempt on Appellant's rule to show cause. But the money owed by the Ex-Husband was never addressed by the trial Court, despite Appellant's efforts requesting enforcement.

This issue was preserved for appeal in the Motion for Reconsideration and in objections attached to the final Equitable Distribution Order. The Motion for Reconsideration was filed about three weeks before the trial Court entered the final order.

2. BASIC INITIAL PLEADINGS

a) Complaint for Separate Maintenance, with Affidavit of Plaintiff, July 14, 2009, pages 1-10

b) Answer and Cross-Complaint for Divorce, August 3, 2009, pages 16-27

c) Notice and Motion for Pendente Lite Relief, July 17, 2009, pages 11-13

d) Notice and Motion for Pendente Lite Relief, April 28, 2010, pages 160-161

e) Defendant's Response to Plaintiff's Motion to Enforce Pendente Lite Order and for Rule to Show Cause and/or Contempt Regarding Health Insurance, April 25, 2012

f) Notice of Bankruptcy Case Filing and Motion for Continuance, July 30, 2010, pages 177-178

g) Rule to Show Cause, July 23, 2012, pages 646-647

3. JUDGMENT APPEALED FROM, AND ANY MEMORANDUM OR OPINION RELATING THERETO

Note: The case was bifurcated due to Ex-Husband's bankruptcy. Therefore, there are separate orders for divorce and equitable distribution.

a) Final Decree of Divorce, October 14, 2010, pages 184-192

b) Order for Equitable Distribution and Support, July 27, 2012, pages 666-690

c) Transcript, June 26, 2012, Judge Hamblen's verbal announcement of decision on Equitable Distribution, pages 1-22

d) Pendente Lite Order, February 10, 2010, pages 29-33

e) Transcript, Pendente Lite hearing, October 28, 2009,

f) Order for Continuance (bankruptcy), August 13, 2010, pages 179-180

4. TESTIMONY AND OTHER INCIDENTS OF THE CASE GERMANE TO THE ASSIGNMENTS OF ERROR

a) Transcript, January 19, 2011, 307 pages

Note: This is offered only for the opening arguments. This is the only time when opening arguments might illuminate the present issues for the Court. But because the issues on appeal were never part of the actual proceeding at any time prior to the Closing Arguments, the record does not otherwise offer anything to illuminate further these topics.

b) Plaintiff's Written Closing Brief with exhibits, June 18, 2012, pages 385-432

c) Defendant's Written Closing Brief with exhibits, June 19, 2012, pages 433-579

d) Motion for Reconsideration, July 3, 2012, pages 567 - 601

e) Response to Motion for Reconsideration, July 10, 2012 pages 623-625

h) Plaintiff's Motion to Enforce Pendente Lite Order, March 23, 2012

i) Order, on Plaintiff's Motion to Enforce Pendente Lite Order, April 27, 2012

j) Praecipe Scheduling Hearing for April 6, 2012

k) Praecipe for July 30, 2010 hearing

l) Notice of Appeal, August 17, 2012, pages, 706-709

m) Order Denying Motions, March 16, 2012, pages 333-333

n) Order Re: Motion to Enforce Pendente Lite Order, April 27, 2012, pages 377-376

o) Praecipe, July 25, 2012, pages 649-648

p) Praecipe Scheduling Hearing, August 7, 2012, pages 691-691

5. EXHIBITS NECESSARY FOR AND UNDERSTANDING OF THE CASE THAT CAN BE REASONABLY REPRODUCED

a) Trial Exhibit, Plaintiff's #5, Chart of Mortgage Loans October 28, 2009

b) Trial Exhibit, Plaintiff's #7, Money from Troy Chart, October 28, 2009

c) Trial Exhibit, Defendant's H, Outstanding Debt, October 28, 2009

d) Plaintiff's Exhibit #2, January 19, 2011

e) Plaintiff's Exhibit #3, January 19, 2011

f) Plaintiff's Exhibit #5, January 19, 2011

g) Plaintiff's Exhibit #7, January 19, 2011

h) Plaintiff's Exhibit #13, January 19, 2011

i) Plaintiff's Exhibit #14, January 19, 2011

j) Plaintiff's Exhibit #2, January 19, 2011

k) Plaintiff's Exhibit #28, June 5, 2012

l) Plaintiff's Exhibit #29, June 5, 2012

m) Plaintiff's Exhibit #30, June 5, 2012

n) Plaintiff's Exhibit #31, June 5, 2012

o) Plaintiff's Exhibit #32, June 5, 2012

p) Plaintiff's Exhibit #33, June 5, 2012

q) Plaintiff's Exhibit #34, June 5, 2012

r) Defendant's Exhibit #8, June 6, 2012

s) Defendant's Exhibit #27, June 6, 2012

t) Defendant's Exhibit #28, June 6, 2012

u) Defendant's Exhibit #29, June 6, 2012

v) Defendant's Exhibit #30, June 6, 2012

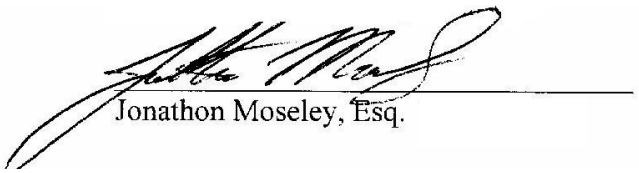
w) Defendant's Exhibit #34, June 6, 2012

x) Defendant's Exhibit #38, June 6, 2012

y) Plaintiff's Exhibit of Health Insurance Premiums

z) Transcript Worksheet, Pendente Lite Hearing, October 28, 2009

RESPECTFULLY SUBMITTED,
JULIE HUGHES, *By Counsel*

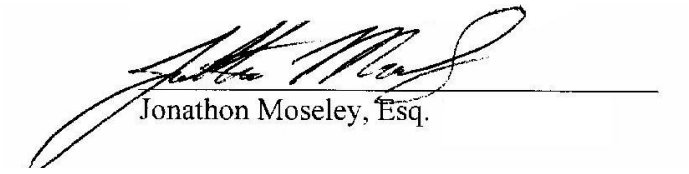


Jonathon Moseley, Esq. VSB #41058
c/o Julie Ann Hughes
9314 East Carondelet Drive
Manassas, Virginia 20111
(703) 656-1230 Fax: (703) 783-0449

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Designation of Record was emailed, hand-delivered, and mailed by first-class U.S. mail, postage prepaid, to the Appellee on February 26, 2013, as set forth below:

Mr. Troy Alexander Hughes
14057 Winding Ridge Lane
Centreville, Virginia 20121



Jonathon Moseley, Esq.

V I R G I N I A:

IN THE COURT OF APPEALS OF VIRGINIA

JULIE ANN HUGHES	)	
	)	
Appellant (Plaintiff below)	)	RECORD No. 0267-13-4
	)	
v.	)	
	)	Appeal from Prince William County
TROY ALEXANDER HUGHES	)	Circuit Court, Case No. CL9001970
	)	
Appellee (Defendant below)	)	
	)	

APPELLANT'S MOTION FOR ABBREVIATED DISPOSITION BY REMAND TO TRIAL COURT WITH INSTRUCTIONS

COMES NOW the Appellant, Julie Hughes, by counsel, and hereby moves this Court to resolve this appeal using the abbreviated procedure of **remanding the case with instructions** to the trial Court on the following terms, and for her cause avers as follows:

a) It is very important for this Court of Appeals to clarify for all divorce proceedings throughout the Commonwealth that in 2005 the United States Congress changed the United States Bankruptcy Code specifically to over-turn and change the result declared by this Court of Appeals in Mosley v. Mosley, 19 Va. App. 192, 197, 450 S.E.2d 161, 164 (1994) [1] through the Federal Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005, which modified 11 U.S.C. § 523 (a)(15).

b) Therefore, this Court of Appeals should make the purely legal ruling that Mosley v. Mosley has been overturned by the U.S. Congress and is no longer good law.

c) Then, this Court of Appeals should remand the Equitable Distribution case back to the Prince William County Circuit Court with instructions to reconsider its ruling in light of

this Court of Appeals change to its own precedents.

d) In the interest of judicial economy and considering the burden upon the parties the trial Court could issue a revised Equitable Distribution ruling upon the existing record, the transcripts, and the written Closing Arguments already in the record… as long as the trial Court actually engages in a new analysis of the record under the changes declared to this Court of Appeals' precedents.

e) However, it may be best to leave the question of how any further briefing or hearings are handled to the discretion of the trial Court.

f) Specifically, before Congress changed the law in 2005, only alimony or spousal maintenance were non-dischargeable in bankruptcy.

g) But after the 2005 change in the law by Congress, now ***ANY*** debt owed by one spouse (or former spouse) going through bankruptcy to the other spouse (or former spouse) is non-dischargeable in bankruptcy.

h) Therefore, the core issue of this Court's precedent Mosley v. Mosley has been over-turned by Congress.

i) At the time that this Court of Appeals decided Mosley v. Mosley in 1994, it was deciding the question of allocating debts between divorcing spouses under the pre-2005 United States Bankruptcy Code.

j) As stated by this Court in 1994 in Mosley v. Mosley at 450 S.E.2d page 164, the U.S. Bankruptcy Code at that time in 1994 was that "under 11 U.S.C. § 523(a)(5) of the federal bankruptcy code, an individual debtor may not discharge debts **"to a spouse ...**

---

1 Not that the Congress specifically was directing its attention to Virginia or that particular precedent, but that Congress sought to address the very same issue throughout the United States of America.

for alimony to, maintenance for, or support of such spouse ..."

k) Because only alimony or maintenance was non-dischargeable prior to 2005, this Court ruled that a lump-sum to adjust debt that had been discharged in bankruptcy was prohibited by the United States Bankruptcy Code.

l) Now, however, under the law as modified by the U.S. Congress in 2005, through BAPCPA the law now reads in 11 U.S.C. § 523(a)(15) "Exceptions to Discharge." –

> **(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from ***ANY*** debt—**
>
> *[Emphasis added]*
>
> * * *
>
> **(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;**

m) The paragraph referred to in 11 U.S.C. § 523(a)(15) is another exception to dischargeability, holding that debts are not dischargeable:

> **(5) for a domestic support obligation;**

WHEREFORE, the Appellant moves this honorable Court of Appeals to resolve this appeal on an abbreviated basis by:

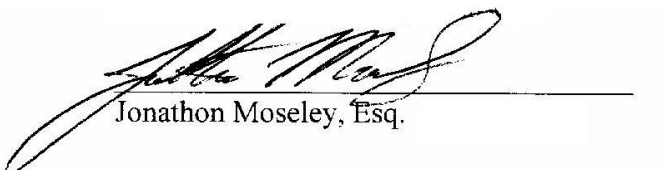
a) Ruling that Mosley v. Mosley is no longer good law in light of the 2005 Federal Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005, by which the United States Congress modified 11 U.S.C. § 523 (a)(15).affecting divorcing spouses where one spouse files for

bankruptcy to discharge certain debts.

b) Remanding the case back to the trial Court with instructions that the Court actually engage in a new analysis of the existing facts and record, including the written Closing Arguments already in the record, and issue a new Equitable Distribution plan and order in light of this change to Virginia precedents governing the proceedings.

c) Of course, the trial Court may wish to invite updated or modified briefs or hear further closing arguments or engage in other proceedings as it may see fit, but need not feel compelled to do so if unduly burdensome.

RESPECTFULLY SUBMITTED,
JULIE HUGHES, *By Counsel*



Jonathon Moseley, Esq.

Jonathon Moseley, Esq. VSB #41058
c/o Julie Ann Hughes
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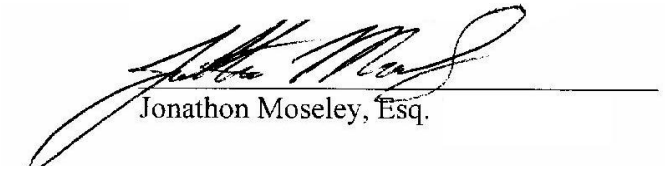
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing APPELLANT'S MOTION FOR ABBREVIATED DISPOSITION BY REMAND TO TRIAL COURT WITH INSTRUCTIONS was mailed, by first-class U.S. mail, postage prepaid, to the Appellee on March 25, 2013, as set forth below:

Mr. Troy Alexander Hughes
14057 Winding Ridge Lane
Centreville, Virginia 20121



Jonathon Moseley, Esq.

JONATHON MOSELEY, ESQ.

July 2, 2017

APPELLATE BRIEFS AND MOTIONS PRACTICE

Let me offer my assistance to law firms, public interest law organizations, or trial counsel by helping with Amicus Curiae briefs or appeals, including drafting appellate briefs, motions, and supporting appellate documents (which vary among jurisdictions and must be done precisely). I write Amicus Curiae briefs for interested organizations.

I have drafted many Amicus Curiae briefs and appellate briefs and motions, including for unusual situations, under Larry Klayman -- founder of Judicial Watch -- when he was at Judicial Watch and at Freedom Watch, writing appellate briefs and replies from strategy and legal research (from scratch) through to final review and submission for signature and filing. In my private practice in Virginia, I won a reversal of a divorce "equitable distribution" in the Court of Appeals of Virginia so rare that the trial court spent years trying to figure out what to do next after the remand. Samples are available.

In my conservative public policy experience, I was also a legal research assistant with the American Center for Law & Justice under James Henderson as an extern from George Mason University School of Law. I attended the Institute for Justice's training for new attorneys and law school students. I also worked with the Institute for Justice at the Center for Choice in Education at the U.S. Department of Education. I did legal work for the Legal Affairs Council. I also performed legal work in support of Delaware U.S. Senate candidate Christine O'Donnell after her campaign.

Surprisingly affordable, even though I have practiced for 20 years after a Finance undergraduate degree and work in the Federal government. I charge $125 per billable hour to law firms rather than my normal $175 per hour rate billed retail to clients. Subcontracting can allow law firms to earn net positive billings after full billing.

For many trial attorneys, it is expedient to focus on areas of their expertise in trial litigation and -- when the need arises to appeal -- subcontract or affiliate with counsel experienced and focused on appellate practice.

Furthermore, appeals courts are much stricter with formatting, legal argument, citations, support from the record, and a variety of other rules than most trial courts.

3823 WAGON WHEEL LANE
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Sanctions for improperly drafted or submitted appeal briefs, appendices, or motions are much more common in appellate courts. An attorney who is familiar with appeals is a far better approach than mixing the occasional appeal with normal litigation trial practice.

Remember that in a particular case, other attorneys who advertise their appellate practice in Virginia or elsewhere may already be on the other side, have another conflict of interest, or be maxed out in their work schedule. Appellate deadlines are unforgiving and brutal. My work has specialized in exclusive focus on the case, intensive work, and shorter-than-usual turn-around times.

Nationwide, I write briefs for the lead attorney's final review, editing, and signature of counsel of record (or the client(s) if the attorney wishes to hand the appeal off entirely). In Virginia, either I can file the brief over my signature as an admitted attorney or draft Virginia appellate briefs for your signature.

I have written dozens of appeal briefs from the research, strategy, and design stage, including petitions for writ of certiorari to the U.S. Supreme Court, opening and reply appellate briefs, Amicus Curiae briefs, petitions for writ of mandamus, and various appellant motions during appeals, including unusual and unexpected twists and turns during appeals. Obviously, this includes careful attention to correct citations and legal style and formatting, as well as proofreading.

My appellate services normally include analyzing the trial court's final order(s) and other orders appealed from, reviewing the trial record, identifying the strongest issues for appeal, developing, strategizing, and framing the questions presented, legal research determining the viability and strength of each question presented identified, legal research for precedents in support of arguments, legal and appellate strategy, creating and drafting argument in support of each question presented, review of formatting rules for the relevant jurisdiction, and drafting briefs for your final review.

You decide if you want to identify the issues to be decided on appeal, arguments, and appeal strategy or you want a fresh set of eyes to review the trial record and develop appeal issues and arguments. In the Supreme Court of Virginia, Virginia Court of Appeals, or U.S. Court of Appeals for the Fourth Circuit, I can file the finalized, agreed brief myself and argue the case in the appellate court, or prepare them for lead counsel's signature.

My work also may include assembling the Appendix (Excerpt of the Record in some Circuits) both in terms of the substance of determining relevant documents, review of the deadlines, and in formatting and assembly as required by the rules of the jurisdiction.

Of course, my work can be customized to cover only some of these individual

tasks depending on your needs.

In contrast to extremely expensive legal printing firms, I have typeset briefs including in U.S. Supreme Court booklet format, and arranged printing with correct covers, page size, binding and formats at low cost. I am experienced in arranging the printing of appeal briefs as booklets with the proper color-coded covers, including for the U.S. Supreme Court, and preparing the appendix of the record including as assembled and booklets and digital versions on CD-ROM's according to the technical requirements of the appellate courts. (Costs of printing are of course extra, payable separately.)

I am experienced in arranging the printing of appeal briefs as booklets with the proper color-coded covers, including for the U.S. Supreme Court, and preparing the appendix of the record including as assembled and booklets and digital versions on CD-ROM's according to the technical requirements of the appellate courts.

I can provide examples of my work and a list of appeals I have worked on and references.

Of course, the transition and hand-off from the end of the case in the trial court, the filing of the Notice of Appeal, and filing of a court reporter's transcript are very important and all these steps have to be handled very carefully. If I am called in early, immediately after the final judgment, i can assist in making sure that all of the technical requirements are handled properly. But the opportunities to pursue an appeal may be lost if the technical requirements immediately after the final judgment are not taken care of by someone carefully and correctly.

CONTACT ME for a free initial consultation or meeting.

Following legal advertising guidelines, this is ADVERTISING MATERIAL AND AN ADVERTISEMENT FOR LEGAL SERVICES.

Sincerely,

Jonathon A. Moseley, Esq.
(703) 656-1230
Fax: (703) 783-0449
Contact@JonMoseley.com

COURT OF APPEALS OF VIRGINIA

UNPUBLISHED

Present: Judges Frank, Petty and Senior Judge Haley
Argued by teleconference

JULIE ANN HUGHES

v. Record No. 0267-13-4

TROY ALEXANDER HUGHES

MEMORANDUM OPINION* BY
JUDGE WILLIAM G. PETTY
SEPTEMBER 10, 2013

FROM THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY
William D. Hamblen, Judge

Jonathon A. Moseley for appellant.

No brief or argument for appellee.

Julie Ann Hughes ("wife") appeals from an equitable distribution order dividing the assets and debts of her former marriage with Troy Alexander Hughes ("husband"). Wife argues that the trial court erred in its equitable distribution of the parties' debt and in failing to enforce a *pendente lite* order requiring husband to reimburse wife's medical expenses. For the reasons stated below, we reverse the trial court's decision and remand for further proceedings consistent with this opinion.

I.

Because the parties are fully conversant with the record in this case and this memorandum opinion carries no precedential value, we recite below only those facts and incidents of the proceedings as are necessary to the parties' understanding of the disposition of this appeal. "On appeal, we view the evidence in the light most favorable to . . . the party prevailing below, 'and grant all reasonable inferences fairly deducible therefrom.'" Johnson v.

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

Johnson, 56 Va. App. 511, 513-14, 694 S.E.2d 797, 799 (2010) (quoting Anderson v. Anderson, 29 Va. App. 673, 678, 514 S.E.2d 369, 372 (1999)).

II.

A. Equitable Distribution

Wife first argues that the trial court erred in ruling that it had no legal power to apportion the debt on the marital residence because husband discharged his debt to the third-party creditors in bankruptcy protection. Wife also argues that the trial court erred by failing to equitably distribute the parties' marital debt.[1] While we disagree with wife in her assertion as to the trial court's rationale for not apportioning the debt, we agree that the trial court erred in failing to apportion the debt as required by statute.

"Fashioning an equitable distribution award lies within the sound discretion of the trial judge and that award will not be set aside unless it is plainly wrong or without evidence to support it." Srinivasan v. Srinivasan, 10 Va. App. 728, 732, 396 S.E.2d 675, 678 (1990). "'[T]he abuse of discretion standard requires a reviewing court to show enough deference to a

[1] Wife's assignments of error are far from the clear, concise, and non-argumentative assignments envisioned by the Rules of the Supreme Court. It has long been established that "'[t]he purpose of assignments of error is to point out the errors with reasonable certainty in order to direct [the] court and opposing counsel to the points on which appellant intends to ask a reversal of the judgment, and to limit discussion to these points.'" Yeatts v. Murray, 249 Va. 285, 290, 455 S.E.2d 18, 21 (1995) (quoting Harlow v. Commonwealth, 195 Va. 269, 271, 77 S.E.2d 851, 853 (1953)). Consequently, it is the duty of an appellant's counsel "to 'lay his finger on the error' in his [assignments of error]," Carroll v. Commonwealth, 280 Va. 641, 649, 701 S.E.2d 414, 418 (2010) (quoting First Nat'l Bank of Richmond v. William R. Trigg Co., 106 Va. 327, 342, 56 S.E. 158, 163 (1907)), and not to invite an appellate court "to delve into the record and winnow the chaff from the wheat," Loughran v. Kincheloe, 160 Va. 292, 298, 168 S.E. 362, 364 (1933). We note, however, that husband has neither filed a brief nor objected to the sufficiency of the assignments. Thus, despite the imprecise and argumentative nature of the wife's second assignment of error, we will consider it in the context of her argument that "[r]egardless of whether [the apportionment of debts of the marriage] was done right or wrong under the findings of facts or discretion of the Judge, here the task was simply not done." Accordingly, we will address whether the trial court properly apportioned the marital debts of the parties.

primary decisionmaker's judgment that the court does not reverse merely because it would have come to a different result in the first instance.'" Lawlor v. Commonwealth, 285 Va. 187, 212, 738 S.E.2d 847, 861 (2013) (quoting Evans v. Eaton Corp. Long Term Disability Plan, 514 F.3d 315, 322 (4th Cir. 2008)). However, "the law often circumscribes the range of choice available to a court in the exercise of its discretion." Id. at 213, 738 S.E.2d at 861. "'The abuse-of-discretion standard includes review to determine that the discretion was not guided by erroneous legal conclusions.'" Id. (quoting Landrum v. Chippenham & Johnston-Willis Hosps., Inc., 282 Va. 346, 357, 717 S.E.2d 134, 139 (2011) (Millette, J., concurring)). Accordingly, we will not reverse an award "[u]nless it appears from the record that the [trial court] has abused [its] discretion, . . . has not considered or misapplied one of the statutory mandates, or that the evidence fails to support the findings of fact underlying [the] resolution of the conflict." Smoot v. Smoot, 233 Va. 435, 443, 357 S.E.2d 728, 732 (1987).

1. Husband's Bankruptcy

Wife alleges that the trial court erred by concluding that husband's bankruptcy barred it from apportioning the marital debt on the house. In announcing the rationale for its decision on the issues of equitable distribution, spousal support, and child support, the trial court made the comment that "[wife] remains in debt on the marital residence both the purchase money, deed of trust, and the HELOC. The [husband] rid himself of these debts by bankruptcy, an option the [wife] has elected not to pursue." However, neither the transcript of the proceeding nor the final order indicates that the trial court held that it did not have the legal power to apportion the parties' debt due to husband's bankruptcy discharge. In fact, when wife asked the trial court if it was implicitly ruling that the bankruptcy barred it from apportioning the debt on the house, the trial court responded, "I don't take your point, Counselor." While wife revisited the matter in a motion to reconsider, the record does not reflect that the trial court ever ruled on the motion.

Thus, wife assigns error to a ruling the trial court never made, and we need not address it. See Hodnett v. Stanco Masonry, 58 Va. App. 244, 253, 708 S.E.2d 429, 434 (2011) (declining to consider an appellant's assignment of error where there was "no . . . ruling to review on the issue"); Scialdone v. Commonwealth, 279 Va. 422, 437, 689 S.E.2d 716, 724 (2010) ("If . . . there is no ruling by the trial court . . . [there is] no basis for review or action by this Court on appeal."); Ohree v. Commonwealth, 26 Va. App. 299, 308, 494 S.E.2d 484, 489 (1998) ("[B]ecause the trial court never ruled upon [appellant's] objection[s] . . . there is no ruling for us to review on appeal."); Fisher v. Commonwealth, 16 Va. App. 447, 454, 431 S.E.2d 866, 890 (1993) ("Fisher failed to obtain a ruling [and] [h]e requested no relief. Because he was denied nothing by the trial court, there is no ruling for us to review.").

Furthermore, "'[a]bsent clear evidence to the contrary in the record, the judgment of a trial court comes to us on appeal with a presumption that the law was correctly applied to the facts.'" Groves v. Commonwealth, 50 Va. App. 57, 61-62, 646 S.E.2d 28, 30 (2007) (quoting Yarborough v. Commonwealth, 217 Va. 971, 978, 234 S.E.2d 286, 291 (1977)). Accordingly, a "'judge is presumed to know the law and to apply it correctly in each case.'" Id. at 62, 646 S.E.2d at 30 (quoting Crest v. Commonwealth, 40 Va. App. 165, 172 n.3, 578 S.E.2d 88, 91 n.3 (2003)). And "[o]nly 'clear evidence to the contrary in the record,' suffices to rebut the presumption." Id. (quoting Campbell v. Commonwealth, 39 Va. App. 180, 186, 571 S.E.2d 906, 909 (2002)). Therefore, "[i]n reviewing the record . . . we will not 'fix upon isolated statements of the trial judge taken out of the full context in which they were made, and use them as a predicate for holding the law has been misapplied.'" Id. (quoting Bullock v. Commonwealth, 48 Va. App. 359, 368, 631 S.E.2d 334, 339-40 (2006)). "[A] 'trial court's remark is not, in and of itself, the full context simply because it represents the only point at which the court expressly

addressed the issue in dispute.'" Id. (quoting Parker v. Commonwealth, 41 Va. App. 643, 656-57, 587 S.E.2d 749, 755 (2003)).

11 U.S.C. § 523(a)(15) of the Bankruptcy Code excludes from discharge any debt

> to a spouse, former spouse, or child of the debtor . . . that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit.

"[C]ourts have held that joint . . . debt allocated to one spouse in a property settlement agreement or court decree may fall within the scope of the statute." Rogers v. Rogers, 51 Va. App. 261, 273, 656 S.E.2d 436, 441 (2008). We are unwilling to presume, based solely on the isolated comment of the trial court, that it did not recognize or apply this limitation on discharge.

2. Distribution of Debt on the Marital Residence

Code § 20-107.3(A) authorizes a trial court, upon entry of a decree of divorce, to divide both marital assets and marital debt between the parties. Specifically, upon request of either party, the trial court

> (i) shall determine the legal title as between the parties, and the ownership and value of all property, real or personal, tangible or intangible, . . . and (ii) shall determine the nature of all debts of the parties, or either of them, and shall consider which of such debts is separate debt and which is marital debt.

Code § 20-107.3(A). Having done so, and based on the factors listed in Code § 20-107.3(E), "[t]he court shall also have the authority to apportion and order the payment of debts of the parties, *or either of them*, that are incurred prior to the dissolution of the marriage." Code § 20-107.2(C) (emphasis added).

"In making an equitable distribution, the court must classify the property, assign a value, and then distribute the property to the parties, taking into consideration the factors listed in Code § 20-107.3(E)." Theismann v. Theismann, 22 Va. App. 557, 564, 471 S.E.2d 809, 812 (1996).

The most relevant factor, for our purposes here, is factor seven, which requires the trial court to consider the "debts and liabilities of each spouse, the basis for such debts and liabilities, and the property which may serve as security for such debts and liabilities." Code § 20-107.3(E)(7).

Here, wife was granted a divorce from husband in 2010. When the parties separated, they had significant joint debts, in the form of mortgages and a home equity line of credit (HELOC), encumbering the marital residence. Much of the debt was used to finance a business run by both parties during the marriage. Husband continues to operate this business.

Shortly after the divorce proceedings began, and before the trial court addressed equitable distribution, husband filed for bankruptcy. Pursuant to 11 U.S.C. § 362, the court stayed the equitable distribution hearing during the bankruptcy proceedings. In bankruptcy, husband discharged his obligations to the creditors who held the mortgage and home equity line, leaving wife solely responsible for the entire obligation to their third-party creditors.

After a hearing on equitable distribution, the trial court granted wife the marital residence and granted husband possession and control of the business. In granting wife the marital residence, the trial court noted that it "has no value in excess of the liens currently against it," i.e., the marital residence had a negative equity. The trial court stated that the negative equity was in the amount of $100,000 to $150,000. However, when the trial court specifically turned to the issue of debt, it apportioned only two credit card debts. The trial court properly classified the marital residence as marital property and properly valued the marital residence. However, the trial court failed to properly account for or apportion the mortgage loan or the HELOC. Further, it failed to take into account the negative equity in the marital residence in arriving at its equitable distribution award. "[T]o the extent that a valid indebtedness which is secured creates an encumbrance on the legal title, that indebtedness must be considered by the trial court in determining the value of the marital property for purposes of determining the amount of the

monetary award." Trivett v. Trivett, 7 Va. App. 148, 151, 371 S.E.2d 560, 562 (1988). At the time of the equitable distribution award, the marital residence was encumbered by the mortgage and HELOC. The trial court failed to consider these encumbrances in determining the value of the marital property and the apportionment of marital debt. Therefore, the trial court misapplied the statutory mandate contained in Code § 20-107.3 and, in doing so, abused its discretion. Accordingly, we reverse and remand for reconsideration of the equitable distribution of the parties' property and debt.

B. *Pendente Lite* Order

Wife next argues that the trial court erred in failing to enforce the *pendente lite* order. The record indicates that there was a hearing on June 5, 2012 concerning wife's allegations that husband had violated the *pendente lite* order. However, there is no transcript or written statement of facts from that hearing. See Rule 5A:8(a) and (c). Thus, we are unable to determine what evidence was presented to the trial court and what conclusions it reached. To compound the problem, there is no order reflecting the holding of the trial court. For these reasons, we conclude that a transcript or written statement of facts is indispensable to a determination of this assignment of error. See Anderson v. Commonwealth, 13 Va. App. 506, 508-09, 413 S.E.2d 75, 76-77 (1992); Turner v. Commonwealth, 2 Va. App. 96, 99-100, 341 S.E.2d 400, 402 (1986). Therefore, the Court will not consider this assignment of error.

III.

For the foregoing reasons, we reverse the trial court's decision and remand for further proceedings consistent with this opinion.

Reversed and remanded.