

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

July 30, 2024

**CHRISTOPHER D.,
Respondent Below, Petitioner**

ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

v.) No. 24-ICA-16 (Fam. Ct. Jefferson Cnty. No. FC-19-2022-D-15)

**TRYSTIN T.,
Petitioner Below, Respondent**

MEMORANDUM DECISION

Petitioner Christopher D.¹ appeals the Family Court of Jefferson County’s December 29, 2023, final modification order. Respondent Trystin T. did not participate in the appeal.² The issue on appeal is whether the family court properly calculated Christopher D.’s child support obligation.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2022). After considering the parties’ arguments, the record on appeal, and the applicable law, this Court finds that there is error in the lower tribunal’s decision but no substantial question of law. This case satisfies the “limited circumstances” requirement of Rule 21(d) of the Rules of Appellate Procedure to be vacated in a memorandum decision. For the reasons set forth below, the family court’s decision is vacated, and this case is remanded for further proceedings consistent with this decision.

Christopher D. (“Father”) and Trystin T. (“Mother”) share one minor child. Events leading to this appeal began with a custody allocation order that was entered on or about August 11, 2022, which set Father’s monthly child support obligation at \$592.00 per month. Thereafter, on June 20, 2023, Father filed for the modification of custody and child support. A final hearing on Father’s modification petition was held on December 13, 2023. During the hearing, the parties reached an agreement wherein Father would have parenting time three of four weekends each month from 1:40 p.m. on Friday through 8:40 a.m. on Monday. Mother would have the child at all other times.

¹ To protect the confidentiality of the juvenile involved in this case, we refer to the parties’ last name by the first initial. *See, e.g.*, W. Va. R. App. P. 40(e); *State v. Edward Charles L.*, 183 W. Va. 641, 645 n.1, 398 S.E.2d 123, 127 n.1 (1990).

² Christopher D. is self-represented.

The final modification order, entered on December 29, 2023, stated that child support was recalculated and “the calculation resulted in a less than fifteen percent change and therefore [child support was] not modified” even though Father allegedly recently lost his job and recently experienced the birth of a new child. It is from the December 29, 2023, order that Father now appeals.

We apply the following standard of review:

When a final order of a family court is appealed to the Intermediate Court of Appeals of West Virginia, the Intermediate Court of Appeals shall review the findings of fact made by the family court for clear error, and the family court’s application of law to the facts for an abuse of discretion. The Intermediate Court of Appeals shall review questions of law de novo.

Syl. Pt. 2, *Christopher P. v. Amanda C.*, No. 22-918, 2024 WL 2966177, __ W. Va. __, __S.E.2d __ (2024); *accord* W. Va. Code § 51-2A-14(c) (2005) (specifying standards for appellate court review of family court orders).

On appeal, Father raises one assignment of error—that the family court miscalculated child support.³ Upon review of the modification order, we agree.

West Virginia Code § 48-11-105(b) (2008) states that “[t]he provisions of [an] order may be modified if there is a substantial change in circumstances. If application of the guideline would result in a new order that is more than fifteen percent different, then the circumstances are considered a substantial change.” *See also Skidmore v. Rogers*, 229 W. Va. 13, 725 S.E.2d 182 (2011) (holding that the birth of a child’s half-siblings was a change in circumstance upon which a modification could be based). Here, Father alleges that he not only recently experienced the birth of a new child, but that he also lost his job, which likely would have resulted in more than a fifteen percent difference in child support. Because the family court did not include the child support calculation worksheet with the final order, we are unable to review how the family court reached its decision.

Accordingly, we vacate and remand the December 29, 2023, order to the Family Court of Jefferson County with directions to recalculate Father’s child support obligation in light of his alleged changes in circumstances.

Vacated and Remanded.

³ We recognize our limited and circumspect review of a family court order in an uncontested appeal, like this one, where the respondent fails to participate on appeal to support the order.

ISSUED: July 30, 2024

CONCURRED IN BY:

Chief Judge Thomas E. Scarr

Judge Charles O. Lorensen

Judge Daniel W. Greear