

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re **W.B.**

No. 23-668 (Raleigh County CC-41-2017-JA-132)

MEMORANDUM DECISION

Petitioner Mother A.G.¹ appeals the Circuit Court of Raleigh County’s October 19, 2023, order modifying child support, arguing that the court erred in calculating her child support obligation and directing that it be awarded retroactively.² Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court’s order is appropriate. *See* W. Va. R. App. P. 21.

From the limited record on appeal, it appears that this matter was initiated as an abuse and neglect proceeding, which resulted in the parties’ parental rights remaining intact and the circuit court implementing a parenting plan. On October 28, 2020, the respondent father filed a petition³ seeking to modify child support due to a change in the petitioner’s income.⁴ It is unclear from the record when the petitioner was served with the petition; however, the parties appeared for a hearing on the petition on November 23, 2020. After the parties agreed to recalculate child support, there were then several delays due to the parties’ failure to submit financial information.

In September 2022, the petitioner filed a petition for contempt related to an issue with parenting time that is not relevant to this appeal. The respondent then filed a counter-petition for contempt and again sought modification of child support.⁵ A hearing on the parties’ petitions was held in November 2022, during which counsel presented legal arguments. The court thereafter

¹ The petitioner appears by counsel Brandon L. Gray, and the respondent appears by counsel P. Michael Magann.

² We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

³ We have previously held that “[w]hen a child is the subject of an abuse or neglect or other proceeding in a circuit court pursuant to Chapter 49 of the West Virginia Code, the circuit court, and not the family court, has jurisdiction to establish a child support obligation for that child.” Syl. Pt. 3, *W. Va. Dep’t of Health & Hum. Res., Bureau for Child Support Enf’t v. Smith*, 218 W. Va. 480, 624 S.E.2d 917 (2005).

⁴ The petition for modification was not made part of the record on appeal.

⁵ Neither of the parties’ petitions were made part of the record on appeal.

ordered the parties to submit updated financial disclosures and issued the subject order modifying child support on October 19, 2023. Based on the petitioner's change in income, the court increased her child support payment from \$416 to \$466, considering her average income since 2020 when the initial petition for modification was filed. The court further ordered that the petitioner's child support obligation be applied retroactively from November 1, 2020. In so ordering, the court found that "the [petitioner] knew or should have known that she was facing a substantial increase in her child support obligation based upon her substantial increase in income since the entry of the previous child support order" and "the [petitioner] has benefited financially from not paying an increase in child support for thirty-six months during the pendency of this action." It is from the order modifying the petitioner's child support obligation that she appeals.

In the case sub judice, the petitioner challenges the correctness of the circuit court's October 19, 2023, order. We previously have held that,

[i]n reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a *de novo* review.

Syl. Pt. 2, *Walker v. W. Va. Ethics Comm'n*, 201 W.Va. 108, 492 S.E.2d 167 (1997). Furthermore, "[q]uestions relating to alimony and to the maintenance and custody of the children are within the sound discretion of the court and its action with respect to such matters will not be disturbed on appeal unless it clearly appears that such discretion has been abused." Syl. Pt. 2, *Collins v. Collins*, 209 W. Va. 115, 543 S.E.2d 672 (2000) (quoting Syl. Pt. 2, *Lambert v. Miller*, 178 W. Va. 224, 358 S.E.2d 785 (1987)). Mindful of these standards, we proceed to consider the petitioner's arguments before this Court.

The petitioner first argues that the circuit court failed to correctly calculate child support, asserting that the court did not consider the petitioner's student loan payments or her financial obligation to an additional child that was born in 2021. However, the appendix record on appeal contains no evidence to support the petitioner's claims of a student loan obligation or an additional child. Indeed, before this Court, the petitioner's appendix contains only the docket sheet for this matter, the order on appeal, and a transcript of the November 2022 hearing, none of which include any mention of the petitioner's alleged financial obligations. In short, the petitioner has completely failed to establish that she presented any evidence on these issues in the circuit court. She cites only to the circuit court's final order in an attempt to assert that the absence of references to these issues constitutes a failure to have considered them. As we have stated, "[t]his Court will not reverse the judgment of a trial court unless error affirmatively appears from the record. Error will not be presumed, all presumptions being in favor of the correctness of the judgment." Syl. Pt. 5, in part, *Skidmore v. Skidmore*, 225 W. Va. 235, 691 S.E.2d 830 (2010) (quoting Syl. Pt. 5, *Morgan v. Price*, 151 W. Va. 158, 150 S.E.2d 897 (1966)); *see also* W. Va. R. App. P. 10(c)(7) (requiring that appellate briefs "contain . . . specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal" and permitting this Court to "disregard errors that are not adequately supported by specific references to the record on appeal."). Therefore, the petitioner is entitled to no relief in this regard.

The petitioner further argues that the court erred by awarding child support retroactively, citing Rule 23 of the West Virginia Rules of Practice and Procedure for Family Court, which provides that “[e]xcept for good cause shown, orders granting relief in the form of . . . child support shall make such relief retroactive to the date of service of the motion for relief.” The petitioner’s argument is premised upon her assertion that the various delays in this proceeding were not solely caused by the petitioner, but that the respondent and the circuit court were also at fault; therefore, good cause existed to deny retroactive relief. Upon our review, we disagree. The respondent’s original petition for modification of child support was filed on October 28, 2020. While the date of service is unclear, the petitioner does not dispute that she was served and participated in a hearing on the petition in November 2020. The circuit court’s October 19, 2023, order modifying child support indicates that the court specifically considered the causes of the delays in this matter and found that the petitioner knew she would be facing an increase in child support and benefited from not paying an increase since receiving the initial petition for modification in November 2020. We, therefore, discern no error in the court’s retroactive application of child support in this matter.

Accordingly, we find no error in the decision of the circuit court, and its October 19, 2023, order is hereby affirmed.

Affirmed.

ISSUED: September 24, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice William R. Wooton
Justice C. Haley Bunn

DISQUALIFIED:

Justice John A. Hutchison