IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
June 6, 2025
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

JOSEPH B.,
Petitioner Below, Petitioner

v.) No. 24-ICA-425 (Fam. Ct. Upshur Cnty. Case No. FC-49-2018-D-182)

CANDIE G.,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Joseph B. ("Father")[1] appeals the Family Court of Upshur County's September 23, 2024, order that denied his motion for reconsideration of custodial allocation. Respondent Candie G. ("Mother") and the guardian ad litem ("GAL") for the minor child filed responses in support of the family court's order.[2] Father did not file a reply.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2024). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the family court's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

The parties are the parents of one minor child who was born in 2017. On April 3, 2019, the family court entered the original custodial allocation order that designated Mother as the child's primary parent and awarded Father parenting time every weekend from Friday to Sunday and every Wednesday evening.

[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] Father is self-represented. Mother is represented by Sarah L. Petitto-Meyers, Esq. The GAL for the minor child is Cheryl E. LaNasa, Esq.

On March 29, 2021, a "Special Family Court Judge" entered an order that limited Father's parenting time to only supervised time because Father exposed the child to domestic violence on January 18, 2021.[3]

In early January 2023, Father filed a petition for a domestic violence protective order ("DVPO") on behalf of the child against Mother's significant other, which contained sexual assault allegations. Following the DVPO petition, Child Protective Services ("CPS") investigated Father's allegations. However, Father's allegations were unsubstantiated following the investigation. Although the DVPO was denied after a hearing on February 17, 2023, a no-contact order was entered on February 24, 2023, in the instant matter prohibiting contact between Mother's significant other and the child seemingly due in large part to how CPS conducted the investigation. The court acknowledged that the parties agreed that the CPS investigation was "terrible."

On January 30, 2023, Father filed a petition to modify custody of the parties' child. In the interim, the family court entered a Pendente Lite Order on June 9, 2023, discussing the history of the case, as well as present issues. The Pendente Lite Order continued the family court's previous order prohibiting any direct or indirect contact between Mother's significant other and the child. Father was awarded supervised parenting time on Sundays and Fridays from 11:00 a.m. until 1:00 p.m., with the paternal grandmother picking the child up and dropping the child off for his parenting time.

A final hearing on Father's petition for modification was scheduled for April 25, 2024. However, Father filed a motion to continue before the hearing was set to begin on April 25, 2024. The family court granted Father's motion and rescheduled the final hearing to September 3, 2024. On September 3, 2024, Father failed to appear in person or by counsel and the court proceeded with the matter. On September 4, 2024, Father filed a letter with the court, updating his mailing address and stating that he did not receive notice of the final hearing because he was no longer residing at the address on file. Father also asked the family court to reschedule the final hearing in the matter.

On September 23, 2024, the family court entered an order denying Father's petition for modification, leaving the previous March 29, 2021, order's parenting schedule in place. Thus, Father received supervised parenting time, to be agreed upon by the parties, with no overnight visitation. Mother's significant other was permitted to have supervised contact with the child except for in an emergency. It is from this order that Father now appeals.

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[3] The record is unclear as to why a special judge was appointed for only that proceeding, but the family court considers the March 29, 2021, order in a Pendente Lite Order that we discuss below. In the Pendente Lite Order, the family court found that the domestic violence that occurred in the presence of the child was an altercation between Father and his brother at the paternal grandmother's home.

At the outset, we must note that Father's brief fails to state any assignments of error as required by Rule 10 of the West Virginia Rules of Appellate Procedure, nor does it comply with Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure in terms of containing an argument pointing to the law or authority relied on or "appropriate and 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." As we have observed previously, we cannot consider indecipherable arguments made in appellate briefs. *See Vogt v. Macy's, Inc.*, 22-ICA-162, 2023 WL 4027501, at *4 (W. Va. Ct. App. June 15, 2023) (memorandum decision) (citing *State v. Lilly*, 194 W. Va. 595, 605 n.16, 461 S.E.2d 101, 111 n.16 (1995) (explaining that appellate courts frequently refuse to address undeveloped, perfunctory, or cursory arguments on appeal)). However, as has been our past practice, we will be mindful that "[w]hen a litigant chooses to represent himself, it is the duty of the [court] to insure fairness, allowing reasonable accommodations for the pro se litigant so long as no harm is done an adverse party." *Bego v. Bego*, 177 W. Va. 74, 76, 350 S.E.2d 701, 703 (1986).

Therefore, we will only address the issues that we can reasonably determine comprise the substance of Father's appeal. Upon review, we conclude that those issues are whether the family court erred by (1) conducting the final hearing on Father's modification of custody without providing him adequate notice, (2) denying his petition on an erroneous assessment of the evidence, and (3) by appointing a GAL who was biased against him.

First, Father argues that he did not properly receive notice of the final hearing because the family court failed to update his change of address in a timely manner. We are unpersuaded by this argument. Rule 5(b) of the West Virginia Rules of Civil Procedure permits service to be made upon a party "by mailing [a copy] to the . . . party at the . . . party's last-known address." The record reflects that Father did not attempt to notify the family court of his new address until *after* the final hearing; thus, we find no error.

As to the second issue, Father complains about the family court's factual findings and its failure to consider Mother's alleged substance abuse and other evidence concerning Mother's boyfriend. We disagree. The clear error standard of review for a lower court's factual findings is "highly deferential." *Argus Energy, LLC v. Marenko*, 248 W. Va. 98, 105, 887 S.E.2d 223, 230 (2023). An appellate Court "may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the [family] court's account of the evidence is plausible in light of the record viewed in its entirety." Syl. Pt. 1, *In Int. of Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996). While Father is dissatisfied with the family court's decision, he ultimately failed to demonstrate how the family court's factual findings were clearly erroneous. Based on the record before us, we find no basis in law to warrant relief for Father's second argument.

Lastly, Father argues that the family court should have appointed another GAL for the child because Mother was not held to the same accountability standard as he was. We

decline to rule on this issue as it is merely a complaint about how the proceedings were conducted below. *See Siraaj M. v. Stephanie M.*, No. 24-ICA-168, 2024 WL 5003520, at *3 (W. Va. Ct. App. Dec. 6, 2024). "To preserve an issue for appellate review, a party must articulate it with such sufficient distinctiveness to alert a [reviewing] court to the nature of the claimed defect." Syl. Pt. 2, *State ex rel. Cooper v. Caperton*, 196 W. Va. 208, 470 S.E.2d 162 (1996). Father not only failed to articulate how the family court abused its discretion or acted erroneously, but he also neglected to point to when and how he raised the issue before the lower court pursuant to the Rules of Appellate Procedure. As such, we can find no basis to warrant relief.

Accordingly, we affirm the family court's September 23, 2024, order.

Affirmed.

ISSUED: June 6, 2025

CONCURRED IN BY:

Chief Judge Charles O. Lorensen
Judge Daniel W. Greear
Judge S. Ryan White