IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
September 30, 2025
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

N. RACHEL T.,
Respondent Below, Petitioner

v.) No. 25-ICA-23 (Fam. Ct. Jefferson Cnty. Case No. FC-19-2017-D-131)

OLIVER B.,
Petitioner Below, Respondent

MEMORANDUM DECISION

Petitioner N. Rachel T.[1] ("Mother") appeals the Family Court of Jefferson County's December 17, 2024, final modification order granting Respondent Oliver B. ("Father") additional parenting time during summer and holidays. Father did not participate in the appeal.[2]

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 that there is error in the family court's decision but no substantial question of law. For the reasons set forth below, a memorandum decision vacating the family court's order and remanding the matter for further proceedings is appropriate under Rule 21 of the Rules of Appellate Procedure.

The parties share two children, born in 2011 and 2013. The parties were divorced by an order entered in 2018. In 2020, Father filed a petition for custody modification. A hearing was held on his petition on August 17, 2020. The final order was entered on October 16, 2020, which granted Father parenting time as follows: (1) two out of every three weekends from 4:00 p.m. Friday until 6:00 p.m. Sunday, but extended to Monday if there was a school holiday; (2) begin on Thursdays during summer break or if there was no school on Friday and extended to Monday if no school; (3) phone calls Monday and Wednesday evenings; (4) Wednesdays prior to Father's off-weekends from 6:00 p.m. until 8:30 p.m.; (5) alternating weeks during summer for six weeks; and (6) rotating holiday

[1] To protect the confidentiality of the juveniles 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] Mother is represented by Victoria G. Camardi, Esq.

breaks based on even/odd years. The court also held that the children were only permitted to be around their older stepbrother if supervised.[3]

The parties followed the October 16, 2020, order until Father filed a second petition for modification on June 12, 2024. As grounds in support of his petition, Father alleged that it was difficult to exercise parenting time due to the distance between the parties, a significant amount of time had passed since the entry of the last final order, and his modification request reflected only a minor alteration, which constituted a change in circumstances. As relief, he requested additional time during summer break and holidays. Mother filed an answer and motion to dismiss on August 20, 2024, arguing that Father's petition failed to state a substantial change in circumstances and that it would not be in the children's best interest to increase his parenting time. On September 10, 2024, Mother filed a motion to appoint a guardian ad litem ("GAL"), arguing that the children desired to spend less time with Father, and Father had insisted that if the children play sports or attend counseling, it must be near his residence, in or around Frederick, Maryland.

The family court held a hearing on Father's petition on November 12, 2024. At the hearing, which lasted less than three minutes, the family court failed to rule on Mother's motion to dismiss or motion to appoint a GAL.[4] Father's attorney prepared the proposed final order on December 17, 2024, and the family court entered it on the same day. The order held that the passage of time since the entry of the last final order and the distance between the parties constituted a substantial change in circumstances. The court also held that there was no evidence presented to rebut the 50-50 presumption. Father was granted three separate two-week periods of parenting time to take place each month of summer break, and Christmas break was ordered split evenly. The court also removed the restriction that visits with the kids' stepbrother be supervised. Mother's counsel filed Rule 22(b) objections the same day the order was entered, noting, among other objections, that she was not given the five days in which to object, as required by the Rule.[5] It is from the December 17, 2024, order that Mother now appeals.

---

[3] The stepbrother had been convicted of a sex offense with an unrelated minor.

[4] Mother alleged on appeal that, prior to the hearing, the family court informed the parties that it would be implementing 50-50 parenting if the parties were unable to quickly reach an agreement, without hearing evidence or addressing Mother's outstanding motions. Mother suggests that she was forced to enter into an agreement under duress. After reaching a forced agreement, Father unilaterally asked that the restriction on the children's stepbrother be lifted, and the court agreed over Mother's objection.

[5] Rule 22(b) of the West Virginia Rules of Practice and Procedure for Family Court states, in part:

For these matters, we use 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.*, 250 W. Va. 53, 902 S.E.2d 185 (2024); *accord* W. Va. Code § 51-2A-14(c) (2005) (specifying standards for appellate court review of family court orders).

Mother raises seven assignments of error on appeal. Because four assignments of error present a single issue, that she was pressured to reach an agreement with Father and was not permitted to present her case, we will consolidate those arguments and address them together. *See generally Tudor's Biscuit World of Am. v. Critchley,* 229 W. Va. 396, 402, 729 S.E.2d 231, 237 (2012) (stating that "the assignments of error will be consolidated and discussed accordingly").

In assignments of error one, two, three, and six, Mother asserts that the family court erred by refusing to rule upon the merits of her outstanding motions; refusing to afford the parties an opportunity to present evidence; improperly forcing the parties to engage in a rushed "mediation" under the threat of a 50-50 parenting plan being imposed, regardless of feasibility; and in finding that there was no evidence presented on parental fitness or other limiting factors to rebut the presumption of 50-50 parenting.[6] Based upon our review of the record, we agree with Mother.

A review of the video from the November 12, 2024, hearing, establishes that the proceeding was rushed and lasted under three minutes, and that the family court failed to inquire of the parties about their alleged agreement. The Supreme Court of Appeals of West Virginia has long held:

> An attorney assigned to prepare an order or proposed findings shall deliver the order or findings to the court no later than ten days after the conclusion of the hearing . . . . Within the same time period the attorney shall send all parties copies of the draft order or findings together with a notice which informs the recipients to send written objections within five days to the court and all parties.

[6] West Virginia Code § 48-9-209 (2024) provides guidance with a non-exclusive list of limiting factors to be considered when making custody allocation findings which may warrant a deviation for 50-50 parenting.

> Where an oral separation agreement is dictated on the record, additional inquiries must be made by ... the family [court] to ascertain that the parties understand its terms and have voluntarily agreed to them without any coercion. Furthermore, ... the family [court] must find that the terms of the agreement are fair and equitable.

Syl. Pt. 2, *Gangopadhyay v. Gangopadhyay*, 184 W. Va. 695, 403 S.E.2d 712 (1991). Here, the family court made no inquiry regarding whether the parties' oral agreement was fair, equitable, and without coercion. Further, there was no attempt by the family court to ascertain whether both parties acknowledged that they had reached an agreement, and if so, whether they understood the terms of the agreement, and whether Mother's motions were now moot. Therefore, we vacate the family court's December 17, 2024, order and remand this matter to family court with directions to conduct a full evidentiary hearing on Father's petition for modification (including a review of any of the limiting factors set forth in West Virginia Code § 48-9-209); complete a review of Father's oral request for removal of the restriction based on the children's stepbrother; and to address Mother's motion to appoint a GAL.[7]

Accordingly, we vacate and remand to the family court for further proceedings consistent with this decision.

Vacated, and Remanded, with Directions.

ISSUED: September 30, 2025

CONCURRED IN BY:

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

[7] In Mother's fourth, fifth, and seventh assignments of error, she argues that the family court abused its discretion by finding there was a substantial change in circumstances warranting a modification when no evidence was presented; that the court erred by finding the 50-50 presumption automatically warrants an equal parenting schedule; and that the court abused its discretion by removing the requirement of supervision when the children's stepbrother is present without hearing evidence regarding the same. Because we are remanding this case for a full evidentiary hearing on the petition for modification, we decline to address these individual assignments of error, as they will be addressed during the remand hearing.