

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Marilyn Fay Minor,
Petitioner Below, Petitioner

v.) No. 25-229 (ICA No. 24-ICA-245)

Kevin Scott Ford,
Respondent Below, Respondent

MEMORANDUM DECISION

The petitioner, Marilyn Fay Minor, appeals from the memorandum decision of the Intermediate Court of Appeals (“ICA”) affirming the Family Court of Marion County’s May 17, 2024, order holding her in contempt of the parties’ final divorce decree.¹ *See Minor v. Ford*, No. 24-ICA-245, 2025 WL 658325 (W. Va. Ct. App. Feb. 28, 2025) (memorandum decision). Upon our review, we determine that oral argument is unnecessary and that a memorandum decision reversing and remanding the family court’s order is appropriate, in accordance with the “limited circumstances” requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

The parties were married in November 2021 and separated on April 9, 2022, at which time Husband (the respondent herein) vacated the marital home. After Wife (the petitioner herein) initiated divorce proceedings, the family court entered a final divorce order in February 2023. At the final hearings, Husband provided a list of forty-nine items of separate property that he claimed Wife did not return to him following separation. However, Wife presented a witness who testified that Husband removed all items from the home. In the final order, the family court found that Wife was in possession of *only* two specific items of separate property (a lamp and a clock) and ordered her to return them to Husband. The family court also ordered Wife to return any items from Husband’s list “that she ha[d] in her possession” within ten days. On March 7, 2023, Husband filed a contempt petition alleging that Wife returned the lamp and clock but failed to return any additional items. The family court held the petition in abeyance pending a related appeal to the ICA. *See Minor v. Ford*, No. 23-ICA-130, 2024 WL 794605 (W. Va. Ct. App. Feb. 27, 2024) (memorandum decision).

The family court held a hearing on the petition in May 2024. Husband did not produce any new evidence regarding the forty-seven remaining items from his list. Instead, he relied on the previously filed handwritten list of separate property and his assertion that the items had not been returned. Wife then testified that she did not possess any of the items in question. By order issued

¹ The petitioner is represented by counsel Marci R. Carroll. The respondent, Kevin Scott Ford, made no appearance before this Court.

May 17, 2024, the family court found that Wife maintained possession of the former marital home and its contents since the parties separated on April 9, 2022, when the items Husband listed were in the home. The family court also found that Wife's testimony lacked credibility. While the family court found that the items were not presently in Wife's possession, it was undisputed that they were in her possession at the time of separation and that a prior temporary order placed them in a constructive trust pending the final hearing. The family court concluded that Wife violated that prior order by not maintaining the items in her possession. Because Wife did not challenge Husband's list of possessions or their value, the family court found the total value of the unreturned property to be \$3,735 and directed that Wife could purge the contempt by returning the property within ten days or pay Husband \$100 per month until the entire amount was satisfied.

Wife then appealed to the ICA,² arguing that the family court erred in holding her in contempt. In affirming the family court, the ICA found that Wife waived her right to challenge the family court's final divorce decree and its order that she return any items in her possession because she did not do so in the first appeal to the ICA. *Minor*, 2025 WL 658325, at * 3. The ICA further found that it was required to afford the "lower court's interpretation of its own order . . . some degree of deferential treatment on appeal." *Id.* (citation omitted). The ICA concluded that "the court intended for Wife to return all the items to Husband, and Wife did not return them as ordered" and further characterized Wife's arguments on appeal as disagreeing with this finding. *Id.* Finally, in regard to her argument that the family court relied on "constructive trust language of a prior temporary order to impose a finding of contempt when Husband did not include that order in his contempt petition," the ICA rejected this contention and reiterated that "it is clear from the entirety of the family court's order that its finding of contempt was expressly based upon Wife's failure to return the remaining items as directed by the final divorce order." *Id.* It is from the ICA's decision affirming the family court that Wife appeals.

On appeal of a final order of a family court from the ICA, this Court reviews the family court's findings of fact for clear error, the family court's application of law to the facts for an abuse of discretion, and questions of law de novo. *See* Syl. Pt. 3, *Christopher P. v. Amanda C.*, 250 W. Va. 53, 902 S.E.2d 185 (2024). Before this Court, the petitioner argues that it was error to find that she was in contempt for failure to return items that were not in her possession. We agree. At the outset, we note that the ICA's reliance on Wife's waiver concerning findings from the final divorce decree is immaterial, as Wife is not challenging the family court's direction that she return any items in her possession. Instead, she challenges the family court's later finding that she was in contempt for failing to return items that the family court never found were in her possession. As such, Wife has properly preserved her arguments on appeal.

Additionally, we reject the ICA's conclusion that contempt was appropriate because the family court intended for Wife to return *all* items from Husband's list of property, given that it found she was in possession of only *two* of those items. "In civil contempt proceedings that do not involve child support arrearage, courts have recognized that 'the general rule is that the burden of proof rests with the complaining party to demonstrate . . . that the defendant is in noncompliance with a court order.'" *Carpenter v. Carpenter*, 227 W. Va. 214, 219, 707 S.E.2d 41, 46 (2011)

² The family court later entered an order staying the contempt order pending appeal.

(quoting *Lachat v. Hinchliffe*, 769 A.2d 481, 488 (Pa. Super. Ct. 2001)). Here, Husband bore the burden of establishing that Wife was in noncompliance and he wholly failed in this regard given that he produced no new evidence that Wife was in possession of the items and the final divorce decree did *not* find that she was in possession of any items other than the lamp and clock, which it is undisputed Wife returned to Husband. Therefore, the family court could not hold Wife in contempt for failure to return those items. See Syl. Pt. 2, *Watson v. Sunset Addition Prop. Owners Ass’n, Inc.*, 222 W. Va. 233, 664 S.E.2d 118 (2008) (“A party may not ordinarily be held in contempt for failure to perform an act that the party is unable to legally perform, if the evidence establishes that the party’s inability to perform the act is not the party’s fault.”).

Further compounding the issue is that the family court based its contempt finding, in part, upon Wife’s alleged violation of earlier orders, which it used to find that she previously possessed the items and must have discarded them. Not only did Husband not allege violations of these orders in his petition for contempt, but the earlier orders do not comport with the family court’s final order, where it declined to find Wife possessed these disputed items. Further, the ICA’s deference to the family court in interpreting its prior orders should not prevent relief, as interpretation and deference are unnecessary where the final divorce decree clearly did not find Wife possessed the disputed items. “When interpreting a court’s order, we apply the same rules of construction as we use to construe other written instruments.” Syl. Pt. 6, in part, *State ex rel. State Farm Mut. Aut. Ins. Co. v. Bedell*, 228 W. Va. 252, 719 S.E.2d 722 (2011); see also *DirecTV, Inc. v. Leto*, 467 F.3d 842, 845 (3d Cir. 2006) (recognizing that the deference afforded a lower court in interpreting its own orders does not apply where “the plain language of the order is completely contrary to the Court’s interpretation”). Here, the family court’s final divorce decree plainly distinguished between the two items it found Wife possessed (the lamp and clock) and the forty-seven remaining items from Husband’s list that it did not find she possessed. Therefore, the family court did not need to interpret any prior orders in determining whether Wife was in contempt.

For the foregoing reasons, we reverse the family court’s May 17, 2024, order holding Wife in contempt of the parties’ final divorce decree and remand this matter to the family court for the entry of an order denying Husband’s petition for contempt.

Reversed and remanded.

ISSUED: August 25, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan