

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Jimmy Lipscomb,
Petitioner Below, Petitioner**

v.) No. 25-92 (ICA No. 24-ICA-54)

**Pamela Hagedorn,
Respondent Below, Respondent**

MEMORANDUM DECISION

Petitioner Jimmy Lipscomb (“Husband”) appeals the memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”) affirming the Family Court of Monongalia County’s January 10, 2024, order denying his request to modify spousal support. *See Lipscomb v. Hagedorn*, No. 24-ICA-54, 2024 WL 5003300, at *3 (W. Va. Ct. App. Dec. 6, 2024) (memorandum decision).¹ Husband argues that the ICA erred in affirming the family court’s decision denying his motion for modification of alimony. The Respondent Pamela Hagedorn (“Wife”) asserts two cross-assignments of error contending that the ICA erred in affirming the family’s court’s denial of her requests for attorney’s fees and interest on Husband’s missed alimony payments. This case satisfies the “limited circumstances” requirement of Rule 21(d) of the Rules of Appellate Procedure and is appropriate for a memorandum decision. For the reasons set forth below, the family court’s decision is affirmed, in part; vacated, in part; and remanded to the family court with directions, as set forth herein.

The parties were married in 1984 and divorced in 2010. In March 2010, the parties entered into a voluntary separation and property settlement agreement (“separation agreement”) which was incorporated into the parties’ final divorce decree. The separation agreement, in relevant part, provided that Husband pay Wife “permanent spousal support” each month in the amount of \$1,164.67. Wife was awarded the marital home and was responsible for its mortgage; however, the parties further agreed that Husband would pay the mortgage for the home, in the amount of \$564.67, and could deduct that amount from his monthly spousal support obligation and pay Wife the remaining \$600 per month. In a section titled “Modification and Waiver,” the separation agreement states that “[n]either this [a]greement nor any provision hereof shall be amended or modified or deemed amended or modified except by an [a]greement in writing duly subscribed and acknowledged with the same formality as this [a]greement.” Further, the separation agreement states that if either party is in breach, “said party shall be responsible for any legal fees incurred by the other party” who seeks to enforce the agreement.

¹ Husband is represented by Alyson A. Dotson and Michelle L. Bechtel. Wife is represented by John R. Angotti.

In July 2020, Husband paid off the mortgage two years early, but continued to pay Wife only \$600 per month, instead of the full alimony obligation of \$1,164.67. In August 2023, Wife filed a petition for contempt, requesting all past-due alimony, attorney's fees, and interest on all late payments made by Husband.² Husband filed a counter-petition to modify spousal support. In January 2024, the family court heard all pending issues and denied Husband's counter-petition to modify spousal support finding that the separation agreement provided for modification only through an agreement in writing by the parties. Further, after a calculation by the court, the parties agreed that Husband owed Wife \$14,891.14 "in satisfaction of her claim for back spousal support from July 1, 2020 through September 30, 2023." Therefore, the court found that the "issue ha[d] been resolved by agreement of the parties." Wife then requested \$5,054.06 in attorney's fees and \$54.06 in court costs to be paid by Husband. The family court denied this request, finding that Husband's claim to modify was not made in bad faith, Wife filed her petition for contempt more than two years after Husband stopped paying the full amount, Wife made no effort to resolve the matter before filing the petition, and that it was "likely that [Husband's] attorney fees are comparable to" Wife's. The court also denied Wife's request for interest to be added to the missed alimony payments by Husband, stating that Wife benefitted from the home being paid off two years early. Additionally, the court stated that although it was denying Husband's request to modify spousal support, it took the request for modification into consideration when denying Wife's motion for attorney's fees and interest.

Husband appealed this ruling to the ICA, and Wife asserted two cross-assignments of error. The ICA agreed with the family court that the parties' separation agreement was not subject to modification by the court pursuant to the clear agreement between the parties and affirmed the family court's ruling denying Wife's request for attorney's fees and interest. The ICA reasoned that because Wife did not specify to the family court that the separation agreement addressed attorney's fees, she waived the ability to request attorney's fees through the separation agreement on appeal. Additionally, regarding Wife's request for interest on missed alimony payments, the ICA stated that it would have been inappropriate for the family court to award interest because the parties reached a settlement agreement. Husband now appeals, and Wife asserts cross-assignments of error.

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). Husband argues that the separation agreement was not clear as to whether a court could modify the spousal support obligation, and, thus, it is deemed modifiable. West Virginia Code § 48-6-201(b) states that an award of spousal support shall be "subject to subsequent modification unless there is some explicit, well expressed, clear, plain and unambiguous provision to the contrary set forth in the court-approved separation agreement." Here, the record indicates that the separation agreement explicitly provides that "[n]either this

² Wife also claimed that Husband failed to disclose real estate in the divorce proceeding. The court addressed this claim at the hearing in January 2024, designated the property as nonmarital, and denied all relief requested by Wife regarding this property.

[a]greement *nor any provision hereof* shall be amended or modified . . . except by an [a]greement in writing.” Therefore, we discern no reversible error in the family court’s ruling in this regard and affirm.

In Wife’s first cross-assignment of error, she asserts that the ICA erred in upholding the family court’s denial of her request for attorney’s fees and costs despite Husband’s contempt and the separation agreement’s express provision for attorney’s fees in the event of a breach of the agreement. In cases where parties have executed a separation agreement that is incorporated into a judicial order, and is enforceable, fair, and reasonable, “the court shall conform the relief . . . to the separation agreement of the parties.” W. Va. Code § 48-6-201(a). *See also Evans v. Evans*, 219 W. Va. 736, 741, 639 S.E.2d 828, 833 (2006) (“[W]here the parties to a divorce execute a separation agreement that is found by a court to be fair and reasonable, the court should conform its decision to the provisions of that agreement.”). Further, as to attorney’s fees, we have held that “each litigant bears his or her own attorney’s fees absent a contrary rule of court or express statutory *or contractual authority* for reimbursement except when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive reasons.” Syl. Pt. 9, in part, *Helmick v. Potomac Edison Co.*, 185 W. Va. 269, 406 S.E.2d 700 (1991) (emphasis added). Here, the family court disregarded the fact that attorney’s fees were addressed in the separation agreement and proceeded to consider several factors in denying Wife’s request. However, the separation agreement that the court incorporated into the divorce decree unambiguously provides that the breaching party is to pay the attorney’s fees of the party seeking to enforce the agreement. The family court was required to conform its decision to the parties’ separation agreement. Additionally, although Wife did not specify to the family court that attorney’s fees were included in the separation agreement, she appropriately raised the issue of attorney’s fees and, therefore, did not waive the issue on appeal. *See Syl. Pt. 2, State ex rel. Cooper v. Caperton*, 196 W. Va. 208, 470 S.E.2d 162 (1996) (“To preserve an issue for appellate review, a party must articulate it with such sufficient distinctiveness to alert a circuit court to the nature of the claimed defect.”). Accordingly, we vacate, in part, the family court’s order denying Wife attorney’s fees and remand this matter to the family court with direction to determine the amount of Wife’s attorney’s fees for the contempt proceeding and award them pursuant to the parties’ separation agreement.

Wife argues in her second cross-assignment of error that the ICA erred when it affirmed the family court’s order denying her an award of interest from each missed spousal support payment in violation of West Virginia Code § 48-1-304(d).³ We disagree. Here, the parties reached an in-court settlement agreement regarding the amount the husband was required to pay as a result of his alimony arrearage. The family court calculated that agreed-upon amount (\$14,891.44) during a hearing with the parties and their attorneys present. Neither the parties nor the family court specifically addressed whether that agreed-upon amount subsumed and included any interest

³ West Virginia Code § 48-1-304(d) states that

[r]egardless of whether the court or jury finds the defendant to be in contempt, if the court shall find that a party is in arrears in the payment of alimony . . . ordered to be paid under the provisions of this chapter, the court shall enter judgment for such arrearage and award interest on such arrearage from the due date of each unpaid installment.

that might have accrued prior to the hearing. However, the family court ordered the husband to pay the agreed-upon amount within thirty days, and the family court ruled that if he did not, then interest would accrue on the entire agreed-upon amount from that point forward. Generally, the law favors the resolution of disputes by settlement and courts should abide by such agreement. *See Whittaker v. Whittaker*, 228 W. Va. 84, 88, 717 S.E.2d 868, 873 (2011) (citing Syl. Pt. 1 *Sanders v. Roselawn Memorial Gardens, Inc.*, 152 W. Va. 91, 159 S.E.2d 784 (1968)). Therefore, we discern no reversible error in the family court’s ruling on this issue, because the parties agreed in the hearing that Husband owed Wife \$14,891.14 “in satisfaction of her claim for back spousal support from July 1, 2020, through September 30, 2023.” Likewise, we see no error in the finding by the ICA that the “issue ha[d] been resolved by agreement of the parties,” and on this point, we affirm.

Accordingly, we affirm, in part; and vacate, in part, the ICA’s memorandum decision and the Family Court of Monongalia County’s January 10, 2024, order. This case is remanded to the family court for proceedings consistent with this decision.

Affirmed, in part; vacated, in part; and remanded, with directions.

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