IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
August 27, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

CHRISTOPHER CARR,
Petitioner Below, Petitioner

v.) No. 25-ICA-442 (Fam. Ct. Monongalia Cnty. Case No. FC-31-2024-D-350)

DEBORAH POST,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Christopher Carr ("Husband") appeals the Family Court of Monongalia County's October 10, 2025, final order that equitably distributed the parties' marital property and awarded Respondent Deborah Post ("Wife") rehabilitative spousal support.[1] Wife filed a response in support of the family court's order. Husband filed 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 West Virginia Rules of Appellate Procedure.

The parties were married in 2004 and separated in 2020. Wife is a resident of Baltimore County, Maryland, and Husband is a resident of Monongalia County, West Virginia. They last lived together in Baltimore County, Maryland. Wife had a child from a previous relationship before the parties' marriage, and the parties had two additional children during their marriage. Although the oldest child was not Husband's biological child, the child was raised within the marriage as well. All three children are now adults.

Prior to filing for divorce in 2024, the record indicates that the parties purportedly negotiated an oral settlement agreement by which they distributed most of their property. On July 7, 2025, the family court entered an order scheduling the final divorce hearing for September 15, 2025. The order noted that equitable distribution and Wife's request for spousal support were contested issues and ordered the parties to file their updated financial documents on or before September 5, 2025.

[1] Husband is represented by Alivia Rosnick, Abigail Paugh, and Jared Mazezka, appearing under the supervision of Kristin Antolini, Esq., through the West Virginia University College of Law Clinical Program. Wife is self-represented.

On September 15, 2025, the family court held a final divorce hearing. Wife was self-represented, and Husband was represented by counsel. During the hearing, the parties referred to a prior separation agreement. The court asked the parties about their agreement and the parties testified that they had an oral agreement that was never reduced to writing, read into the record, or adopted by another court. However, testimony indicated that the parties had divided much of their property by agreement.

On October 10, 2025, the family court entered a final divorce order from the September 15, 2025, final hearing. Relevant to this appeal, regarding the equitable distribution process, the court found as follows:

> The last marital home located at 8112 Bullneck Road in Dundalk, Maryland is separate property of [Wife] by means of inheritance, and not considered herein.
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> [Husband] receives a Disability Pension through the Maryland State Retirement and Pension System through his previous employment with the Maryland State Port Authority Police. 28% of this pension is deemed to be a marital asset. [Wife] is therefore entitled to 14% of same via a Qualified Domestic Relations Order (hereinafter "QDRO") to effectuate this distribution of the pension. [Wife]'s 14% is valued at approximately $541.38 net per month, with the specific amount to be determined by the plan.
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> . . .
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> [Wife] previously had a pension through the Baltimore County School Systems that was liquidated by her in a lump sum after separation for approximately $8,000.00. Half of this pension was earned prior to the marriage and half during the marriage. As such, half of this pension is deemed marital. [Wife] is thereby deemed to have received a marital asset worth $4,000.
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> . . .
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> All told, (and not including the pension which has been divided by QDRO) the marital estate is found to have a net value of negative $2,000.00, and thus each party would be entitled to an equitable division in the amount of negative $1,000.00. Under the division described above, [Husband] has received negative $6,000 and the [Wife] has received positive $4,000. To equalize this division, [Husband] WOULD be entitled to an equalizing payment from [Wife] of $5,000.00. However, [Husband] has agreed to repay to [Wife] the costs of various child-related expenses for their children incurred prior to their having reached majority, or otherwise agreed to, which are highlighted in yellow on [Husband]'s Exhibit 2, in the total amount of $3,668.17. Additionally, by this court's ruling, [Husband is] responsible to reimburse children's co-pays in the amount of $66.37. [Husband] is also responsible to reimburse to [Wife] $750.00 . . . for the 2021 Tax Credit

> (Listed as #1 on [Husband]'s Exhibit 2). Therefore, the total amount [Husband] WOULD owe to [Wife] is $4,485.54 related to the parties' children. [Wife] owes [Husband] $5,000 and [Husband] owes [Wife] $4,485.54. Given the uncertainty as to some of the figures utilized herein, the Court finds it equitable to offset the two, and finds that neither party owes the other.

Regarding spousal support, the family court found that the parties were married for sixteen years, had two children during the marriage, and one pre-existing child of Wife's, who was "raised within the marriage." The court found that neither party proved significant fault on the part of the other. Wife was forty-four years old and in good health and Husband was fifty-three years old and in reasonably good health. The court explained that Husband received a disability pension through previous employment but still maintained full employment. The court found that Wife has a high school diploma, worked approximately ten years of the parties' marriage, and wished to obtain further training and education. Husband has a high school diploma and was the primary wage earner during the marriage. The court found that Wife was in a de facto marriage with her boyfriend, the boyfriend's income was approximately $65,000.00 per year, and Wife's net monthly income was $4,360.94. The court explained that because Wife's expenses each month were $5,259.73, she was living at a net negative $898.78 per month, but her income will increase by $541.38 per month once a QDRO is prepared and accepted as set forth above.

The family court further found that Husband's current net income was $6,085.43 but will decline by approximately $541.38 due to the 14% portion allocated to Wife in a QDRO. The court explained that because Husband's income was $5,544.00 and his total monthly expenses were $3,472.24, he was currently living at a net positive $2,072.00 per month above his expenses, which was considered "disposable income." Based on the foregoing, the court concluded that Wife was entitled to rehabilitative spousal support in the amount of $300.00 per month, for eight years, from October 1, 2025, to September 30, 2033. It is from this order that Husband now appeals.

When reviewing the order of a family court, we apply 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).

On appeal, Husband argues five assignments of error. First, Husband contends that the family court erred by engaging in the equitable distribution of the parties' marital assets, which was against the parties' previous agreement. In support of his argument, Husband asserts that his petition for divorce informed the family court that the parties had "already distributed all marital property in agreement with each other after they separated[.]" We are unpersuaded by this argument. As Husband acknowledges on appeal, the family court's July 7, 2025, order scheduling the final hearing provided the parties with notice that equitable distribution was a contested issue and would be heard at the final divorce hearing.

The Supreme Court of Appeals of West Virginia ("SCAWV") has stated the following:

> Even though there is an express legislative preference in divorce cases for a separation agreement to be in writing and signed by the parties, we do not prohibit per se the practice of orally placing on the record the terms of a separation agreement if certain conditions are met.

Syl. Pt. 1, *Gangopadhyay v. Gangopadhyay*, 184 W. Va. 695, 403 S.E.2d 712 (1991).

Upon review of the hearing in the current matter, the family court asked the parties if they had entered into an agreement. Testimony revealed that the parties did not have a written agreement but had orally agreed to the general distribution of most of their property after their separation. However, neither party provided the court with the terms and conditions of their oral agreement by testimony or otherwise. Because the prior agreement had never been executed by either party, reduced to writing, or placed orally on the record, we are unable to find that the family court abused its discretion or clearly erred by ordering the equitable distribution of the marital property.

For his second and third assignments of error, Husband argues that if the previous separation agreement was invalid, the family court erred in the equitable distribution process because Wife did not provide her updated financial information. In support of his argument, Husband contends that Wife provided no evidence of her liquidated pension. We disagree. It has been well-established that "with regard to the family court's factual findings that underlie its equitable distribution order, this Court will not set aside findings of fact, whether based on oral or documentary evidence, unless they are clearly erroneous." *Mulugeta v. Misailidis*, 239 W. Va. 404, 408, 801 S.E.2d 282, 286 (2017).

> It is within the sole province of the family court, as fact-finder, to decide issues of credibility, and this Court will not disturb those determinations. Even where testimony is uncontroverted, a fact-finder is free to disregard such testimony if it finds the evidence self-serving, and not credible.

Id. at 408-09, 801 S.E.2d at 286-87.

Wife responds that she filed her updated financial documents in September of 2025. The docket sheet in the appendix record shows that Wife filed financial documentation on March 11, 2025, and September 9, 2025, but it does not specify what financial information was included in the filings. However, Wife subsequently provided oral evidence of her current finances and the value of her liquidated pension by testimony at the September 15, 2025, final hearing. Husband argues that the family court erred by basing its ruling on Wife's testimony alone "without any proof of the true value of the asset . . . and without proper documentation[.]" However, this issue was addressed in *Mulugeta*, where the SCAWV explained that the absence of documentary support for a litigant's testimony in a divorce proceeding did not invalidate the family court's ruling, because it is within the province of the family court to determine what weight to accord testimony. *See id*. at 412, 801 S.E.2d at 290. Thus, because the family court found Wife's testimony relating to her updated finances and the value of her liquidated pension credible in its equitable distribution process, we are unable to conclude that the family court clearly erred or abused its discretion on this issue.[2]

For his fourth assignment of error, Husband asserts that the family court erred by equitably dividing his pension plan. On appeal, Husband makes numerous contentions in support of his argument. However, the SCAWV recently explained the following:

> It is well-settled that this Court applies a "raise or waive" rule: an objection must be raised before the trial court to preserve an assignment of error or that error is waived. Simply stated, [o]ur general rule in this regard is that, when nonjurisdictional questions have not been decided at the trial court level and are then first raised before this Court, they will not be considered on appeal.
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> The rationale behind this rule is that when an issue has not been raised below, the facts underlying that issue will not have been developed in such a way so that a disposition can be made on appeal. Moreover, we consider the element of fairness. When a case has proceeded to its ultimate resolution below, it is manifestly unfair for a party to raise new issues on appeal. Finally, there is also a need to have the issue refined, developed, and adjudicated by the trial court, so that we may have the benefit of its wisdom. *Whitlow v. Bd. of Educ. of Kanawha Cnty*., 190 W. Va. 223, 226, 438 S.E.2d 15, 18 (1993) (citations omitted).

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[2] In further support of his second and third assignments of error, Husband also argues that Wife's pension would have presumably received additional interest and growth had she not liquidated it after their separation. However, the record reflects that Husband did not raise this issue with the family court. Accordingly, this argument is waived. *See Noble v. W. Va. Dep't of Motor Vehicles*, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009) (citations and quotations omitted) ("Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.").

State v. Rose, No. 23-272, 2026 WL 1430001, at *4 (W. Va. May 21, 2026).

Here, a review of the hearing demonstrates that when the issue of Husband's pension was raised, the family court orally detailed its equitable distribution calculations and informed the parties of its determination relating to the percentage and approximate monthly amount Wife would receive from her marital portion of the pension. In response, Husband's counsel stated that they were "not prepared to discuss the pension[.]" On appeal, Husband raises his objection to the family court's pension equitable distribution calculations. However, as previously explained, it was necessary for Husband to place a formal objection on the record during the hearing to preserve this issue for appeal. For this reason, we find that this assignment of error has been waived, and we decline to entertain the issue on appeal.

Lastly, Husband assigns error to the family court's rehabilitative spousal support award. Husband maintains that the court erred in granting Wife rehabilitative spousal support based on the statutory spousal support factors. In support of his argument, Husband contends that Wife failed to present any evidence proving her updated financial information or plan to pursue higher education, and that there was no established standard of living for the court to consider to properly determine spousal support. We disagree.

The SCAWV has long held that "[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., *Nichols v. Nichols*, 160 W. Va. 514, 236 S.E.2d 36 (1977). West Virginia Code § 48-8-105(a) (2021) provides the following:

> The court may award rehabilitative spousal support for a limited period of time to allow the recipient spouse, through reasonable efforts, to become gainfully employed. When awarding rehabilitative spousal support, the court shall make specific findings of fact to explain the basis for the award, giving due consideration to the factors set forth in § 48-6-301 of this code. An award of rehabilitative spousal support is appropriate when the dependent spouse evidences a potential for self-support that could be developed through rehabilitation, training, or academic study.

"The concept of 'rehabilitative [spousal support]' generally connotes an attempt to encourage a dependent spouse to become self-supporting by providing [spousal support] for a limited period of time during which gainful employment can be obtained." Syl. Pt. 1, *Molnar v. Molnar*, 173 W. Va. 200, 314 S.E.2d 73 (1984). Importantly, "as long as the family court fully considers the mandatory statutory factors, and its award of spousal support is within the parameters of reasonableness, this Court should not disturb the award on appeal." *Mulugeta*, 239 W. Va. at 410, 801 S.E.2d at 288. This Court "must give appropriate deference to the family court's determination of the amount, nature and duration of the spousal support." *Mayle v. Mayle*, 229 W. Va. 179, 185, 727 S.E.2d 855, 861 (2012).

Here, the family court fully considered the mandatory statutory spousal support factors, analyzing the parties' health, history, incomes, and financial need, and further reasoned that a rehabilitative spousal support award was necessary for Wife to obtain further training and education. Husband persistently argues that the family court based its decision without "evidence" concerning Wife's debts, income, and expenses. However, a review of the hearing demonstrates that Wife *testified* that she wanted to pursue foundational college classes before going into respiratory care or sonography and that she was unable to pursue higher education during the parties' marriage because of their three children and Husband's job as a police officer. Because the family court considered the statutory factors, its findings were plausible in light of the record viewed in its entirety, and the court's award of rehabilitative spousal support was within the parameters of reasonableness. Thus, we find no error in the family court's rehabilitative support award.

Accordingly, we affirm the family court's October 10, 2025, final order.

Affirmed.

ISSUED: August 27, 2026

CONCURRED IN BY:

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