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

JOSHUA DOWER,
Respondent Below, Petitioner

v.) No. 26-ICA-48 (Fam. Ct. Monongalia Cnty. Case No. FC-31-2018-D-176)

MELISSA DOWER,
Petitioner Below, Respondent

MEMORANDUM DECISION

Petitioner Joshua Dower ("Husband") appeals the Family Court of Monongalia County's January 7, 2026, Order Containing Findings Regarding Northwestern SEP IRA QDRO, which the court entered as a means of explaining the separate Qualified Domestic Relations Order entered that same day. Respondent Melissa Dower ("Wife") filed a summary response in support of the family court's order.[1] 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 previously married and share three children born in 2003, 2006, and 2010. Husband was/is a medical doctor, and Wife was a teacher who became a stay-at-home mother. The parties were divorced by a final order entered September 19, 2019. Relevant to this appeal, the 2019 divorce order incorporated the following provisions from the parties' settlement agreement:

- The assets and debts of the parties shall be divided as set forth in Joint Exhibit No. 1 which was filed with the Court at the final hearing. A copy of Joint Exhibit No. 1 is also attached and incorporated into this Order.[2]

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[1] Husband is self-represented. Wife is represented by Raymond H. Yackel, Esq.

[2] Joint Exhibit No. 1 refers to the parties' agreed equitable distribution table that listed the values of all marital property and how that property was to be divided between them.

- To equalize equitable distribution, [Husband] shall remit the amount of $20,000 to [Wife] no later than May 26, 2019.

According to the parties' divorce order and Joint Exhibit No. 1, the court ordered six retirement accounts distributed between the parties by Qualified Domestic Relations Orders (QDRO). In January 2024, Husband asserted that Joint Exhibit No. 1 overvalued a whole life insurance policy awarded to him by approximately $40,000 and that he should have received $80,000 in *Conrad* credits[3] that were not included in the divorce. The QDROs were not presented to the family court until 2024. On June 16, 2024, Husband filed a motion to reopen equitable distribution. On July 1, 2024, the family court held a hearing on the QDROs, children's books, watches, the alleged errors in Joint Exhibit No. 1, and Husband's claim for *Conrad* credits.

The family court denied Husband's request to reopen equitable distribution by an order entered July 8, 2024, based on the following: neither issue was raised at the March 26, 2019, hearing when the parties' settlement agreement was placed on the record, nor at any time prior to the entry of the final divorce order entered September 19, 2019; neither party appealed the final divorce order; the first time Husband raised the issues was January 5, 2024; both parties were represented by counsel throughout the case leading up to the final hearing and through the entry of the final divorce order; the divorce order was entered more than four years prior to Husband raising the issues; Husband is well beyond the one-year deadline under Rule 60(b); the family court does not believe these issues are warranted relief under the Rule 60(b)(6) "catch all" provision; and Husband's failure to raise the issue of *Conrad* credit at the time the parties put their settlement agreement on the record can only be treated as a waiver of such claim. Husband appealed the family court's July 8, 2024, order. *See Dower v. Dower*, No. 24-ICA-310, 2025 WL 1249489 (W. Va. Ct. App. April 29, 2025) (memorandum decision).

This Court entered a memorandum decision on April 29, 2025, affirming the family court's July 8, 2024, order concluding that Husband had the obligation to present accurate values for equitable distribution, and to review Joint Exhibit No. 1 before it was submitted to the court, and that Husband's motion to reopen equitable distribution was untimely as it was filed nearly five years after the entry of the final divorce order. Thereafter, Wife filed a motion to compel the execution of a release with the family court on July 25, 2025, because Husband had refused to sign the release authorizing Wife to contact Northwestern Mutual Life Insurance to ensure the accuracy of the QDRO. Husband filed a reply and a countermotion again arguing that the values of the equitable distribution chart were incorrect and requested that the family court reconsider the values. The family court issued

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[3] *See Conrad v. Conrad*, 216 W. Va. 696, 612 S.E.2d 772 (2005) (discussing a potential credit to a party in divorce proceedings where that party has made payments of marital debt or maintenance on the marital home between the time of separation and the divorce).

an order, without holding a hearing, on August 23, 2025, granting Wife's motion to compel execution of release and affirming the values in Joint Exhibit No. 1 as final, accurate, and not subject to modification. Neither party appealed this order.

On September 8, 2025, Husband filed a "motion to enforce the settlement from a contract formed in court on January 10, 2024," alleging that the parties had orally agreed to alter the equitable distribution of the marital estate while on the record during the January 10, 2024, family court hearing. By order entered September 15, 2025, the family court denied Husband's motion as it had already ruled on this issue in two recent final orders. However, in this order, the family court found that if the parties reached any such agreement, that alteration was never incorporated into a court order; therefore, it is unenforceable. Neither party appealed this order.

Wife submitted an amended QDRO to the family court for entry on November 10, 2025. Husband filed an objection to the amended QDRO, and the family court held a hearing on the matter on January 7, 2026. Thereafter, the family court entered its "order containing findings regarding Northwestern SEP IRA QDRO" and an amended QDRO on January 7, 2026. The family court used its order regarding the Northwestern SEP IRA QDRO to explain why it entered the amended QDRO that same date. In this order, the family court found that the property settlement agreement contained in Joint Exhibit No. 1 transferred the sum of $53,884.00 to Wife from the Husband's SEP IRA account as of March 13, 2017, and the amended QDRO achieved that distribution and transfer contemplated by the property settlement agreement of the parties. The court further addressed the alleged agreement between the parties finding that if that any such agreement existed, it was "extra-judicial" as it was never adopted or approved by the family court. It is from the "order containing findings regarding Northwestern SEP IRA QDRO" entered January 7, 2026, 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).

Husband raises seven assignments of error on appeal, several of which are similar, or closely related, that we have consolidated where appropriate for efficiency and clarity of our review. For Husband's first and fifth assignments of error, he claims the family court violated due process by refusing to review the hearing transcript and recording for the alleged agreement made at the January 10, 2024, hearing. Husband filed a motion on August 11, 2025, alleging that during that hearing, Wife's attorney agreed to accept a SEP-IRA value of $53,884 with no interest forward. The court entered an order on August 23, 2025, stating that it had not reviewed the recording of the January 10, 2024, hearing, that the court speaks through its orders, and that no order from January 10, 2024, exists. The family court again addressed and rejected this issue by an order entered September 15, 2025. Husband failed to appeal either of these orders.

Husband again raised this issue with the family court during the hearing held on January 7, 2026, and as reflected in the order entered that same date, the family court again found that the "agreement, if it exists, is extra-judicial and was never adopted or approved by the court even after the matter was discussed during a hearing held long after the divorce took place." In the instant case, the original record reflects that the family court did not enter an order containing any such findings from the January 10, 2024, hearing. The West Virginia Supreme Court of Appeals ("SCAWV") has previously held, "Courts of record can speak only by their records, and what does not so appear does not exist in law." *State ex rel. Ashworth v. Boles*, 148 W. Va. 13, 15, 132 S.E.2d 634, 635. *See State v. Underwood*, 130 W. Va. 166, 43 S.E.2d 61 (1947). Accordingly, we find that the family court did not err.[4]

For Husband's sixth and seventh assignments of error, he contends that the family court used selective valuation dates and misrepresentations to calculate equitable distribution which resulted in equitable distribution being unfair, inconsistent, or not supported by the evidence presented. These assignments of error pertain to the parties' final divorce order and Joint Exhibit No. 1 which the court entered September 19, 2019. The family court addressed these issues again by a subsequent order entered July 8, 2024, which this court later affirmed in its memorandum decision issued April 29, 2025. *See Dower v. Dower*, No. 24-ICA-310, 2025 WL 1249489 (W. Va. Ct. App. April 29, 2025) (memorandum decision). Husband argues that Joint Exhibit No. 1, which the court incorporated into the divorce decree entered September 19, 2019, contained incorrect valuation dates and figures. However, Husband failed to appeal the original divorce order. Both parties were represented by counsel at the original divorce hearing and voluntarily entered into the settlement agreement. The family court and this Court have already found that Husband failed to timely appeal the court's order as to this issue.

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[4] This Court reviewed the video recording from the January 10, 2024, hearing, as well as the hearing transcript, and could not find any reference to this alleged agreement. The previously assigned family court judge mentioned two options for dealing with the asset, but Wife did not expressly agree to accept either.

Accordingly, we find that Husband's repackaged arguments are nothing more than a thinly veiled attempt to relitigate claims which were previously decided by the family court and this Court. The law of the case doctrine "generally prohibits reconsideration of issues which have been decided in a prior appeal in the same case, provided that there has been no material changes in the facts since the prior appeal, such issues may not be relitigated in the trial court or re-examined in a second appeal." *State ex rel. Frazier & Oxley, L.C. v. Cummings*, 214 W. Va. 802, 808, 591 S.E.2d 728, 734 (2003). As such, we decline to address Husband's sixth and seventh assignments of error.

Lastly, Husband's second, third, and fourth assignments of error concern the amended QDRO and the "order containing findings regarding the Northwestern SEP IRA QDRO" entered on January 7, 2026.[5] Husband asserts that the family court reopened equitable distribution by entering the amended QDRO, that the court further erred by granting Wife the entire SEP IRA account plus the overvalued portion, and that this resulted in double recovery. We disagree. The final divorce order granted Wife the entire Northwestern SEP IRA valued at $53,884 in equitable distribution (Joint Exhibit No. 1) as the parties had agreed and as reflected in the parties' final divorce order. Husband made post-separation contributions to this account, including roll-over funds from another account he owned. Because of these post-separation contributions, the family court made provisions in the amended QDRO to ensure that Wife received the dollar amount to which the parties had agreed.

The SCAWV has routinely held that "the distribution of retirement benefits [. . .] to a former spouse is accomplished through a QDRO and not through the terms of the final order of divorce." *Jones v. W. Va. Pub. Emps. Ret. Sys.*, 235 W. Va. 602, 613, 775 S.E.2d 483, 494 (2015). The Court also has emphasized that "a QDRO is merely the vehicle by which a former spouse seeks to enforce an interest in a pension plan that has already been determined to exist." *Id.* at 617, 775 S.E.2d at 498. Because Wife was enforcing her interest in Husband's Northwestern SEP IRA account that the court awarded her in the final divorce order, we cannot conclude that the family court erred or abused its discretion.

Accordingly, we affirm the family court's January 7, 2026, order.

Affirmed.

ISSUED: August 27, 2026

[5] Husband did not appeal the amended QDRO; he appealed only the family court's "order containing findings regarding Northwestern SEP IRA QDRO."

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge S. Ryan White

Judge Charles O. Lorensen, not participating