

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

August 27, 2026

MARC D.,
Respondent Below, Petitioner

ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

v.) No. 26-ICA-54 (Fam. Ct. Kanawha Cnty. Case No. FC-20-2022-D-568)

JODI D.,
Petitioner Below, Respondent

MEMORANDUM DECISION

Petitioner Marc D.¹ (“Father”) appeals the Family Court of Kanawha County’s January 16, 2026, Final Order Re: Modification of Child Support, Attorney Fees, and Minor Child’s Passport. Respondent Jodi D. (“Mother”) filed a summary response in support of the family court’s order.² Father did not file 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 entered January 16, 2026, is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

The parties were previously married and divorced. They share an equal (50-50) custodial allocation of their one minor child. In 2025, both parties filed petitions to modify their parenting plan, which resulted in a hearing in September 2025. Some of Mother’s modification requests were held in abeyance and subsequently addressed during a hearing on January 6, 2026, which also addressed Father’s petition to modify child support. Mother’s request to obtain a passport for the parties’ minor child for future vacation purposes was one such request. A passport application for a minor child requires both parents’ signatures; however, Father objected to the child having a passport because he did not trust Mother and the current geopolitical climate.

¹ To protect the confidentiality of the juvenile 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 Father is represented by Joseph Hunter, Esq. Mother is represented by Joshua Fix, Esq.

At the final hearing on January 6, 2026, the family court addressed the pending issues of child support, the minor child's passport, and Mother's request for attorney's fees. The family court calculated Father's monthly child support obligation using the income shares calculation formula and determined that Father's child support obligation would decrease by more than 15%, therefore, constituting a substantial change in circumstances warranting modification. Accordingly, the family court ordered Father's child support obligation decreased.

On the issue of the child's passport, the family court determined that "Mother shall be able to apply for and obtain a passport for the minor child" and ordered Father to sign the passport application. The family court also ordered Mother to share the child's passport with Father for any international travel with the child he may plan and required the parties to provide advanced notice and a travel itinerary to one another for any intended international travel. Furthermore, the family court prohibited both parties from traveling with the minor child to any country for which the United States Department of State had issued a travel advisory for U.S. citizens.

In Mother's Counter-Petition for Modification of Parenting Time and her Answer to Father's Motion for Modification of Child Support, Mother requested reasonable attorney's fees. Mother asserted that she paid at least \$5,000 in retainer fees to her attorney for the parenting plan modification petition and an additional retainer to defend against Father's child support modification petition. The family court awarded Mother partial attorney's fees in the amount of \$2,000. Father objected to any award of attorney's fees to Mother because Mother was financially capable of paying her own attorney's fees.

It is from this order that Father now appeals.

For these matters, 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, Father asserts two assignments of error. First, Father argues that the family court erred by awarding Mother partial attorney's fees after the family court found that Father had not acted vexatiously, wantonly, or oppressively, and Father was successful on his petition to modify child support. Father contends that because Mother is a high-

income earner who possesses ample financial resources to prosecute or defend her interests, that the family court abused its discretion when it used an equitable basis as rationale for awarding attorney's fees to Mother. We decline to find error in the family court's decision.

The family court relied on West Virginia Code § 48-5-611 (2001) for its decision to award attorney's fees, which allows family courts to compel either party to pay attorney's fees as "reasonably necessary to enable the other party to prosecute or defend the action." Furthermore, the family court based its decision on the factors identified by the Supreme Court of Appeals of West Virginia in *Banker v. Banker*, 196 W. Va. 535, 474 S.E.2d 465 (1996) and *Whiteside v. Whiteside*, 222 W. Va. 177, 663 S.E.2d 631 (2008). Here, the family court specifically found that even though "Father did not act vexatiously or wantonly ... due to the vast discrepancies in the parties' respective incomes ... that the equities in this case determines that justice requires" an award of partial attorney's fees to Mother.

The family court's consideration of the disparity in the parties' incomes alone is a sound reason to award attorney fees. *See Cochran v. Cochran*, 230 W. Va. 580, 588, 741 S.E.2d 138, 146 (2013) (finding no abuse of discretion in awarding attorney fees based on disparate incomes of the parties despite both parties' ability to pay their own fees); *Landis v. Landis*, 223 W. Va. 325, 674 S.E.2d 186 (2007) (finding that the party with substantial income is in a better position to absorb costs of attorney fees); *Grose v. Grose*, 222 W. Va. 722, 671 S.E.2d 727 (2008) (finding no abuse of discretion in awarding attorney fees where one party had substantially more income and other party had a need for award of attorney fees). Due to the family court's application of the well-established law relating to awarding attorney's fees, we find that it was in the family court's sound discretion to award Mother partial attorney's fees based on the disparity of the parties' incomes. *See Robert K. v. Elizabeth K.*, No. 25-ICA-203, 2026 WL 292039 (W. Va. Ct. App. Feb. 3, 2026) (memorandum decision).

Second, Father claims that the family court erred by compelling Father to execute a passport application for the parties' minor child over Father's objections. We disagree. This Court has previously held that:

This Court cannot set aside a family court's factual findings "unless they are clearly erroneous." A finding is clearly erroneous only when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Syl. Pt. 1, *In re Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996). Under the clearly erroneous standard, an appellate court does not reweigh the evidence and cannot reverse a family court's findings simply because it may have viewed the evidence differently. *See Mulugeta v. Misailidis*, 239 W. Va. 404, 408, 801 S.E.2d 282, 286 (2017). Further, a family court is entitled to deference to the extent it relies on determinations it made of the parties' credibility. *See Thomas E. v. Amy*

F., No. 13-0176, 2013 WL 5708438, at *2 (W. Va. Oct. 21, 2013) (memorandum decision).

James W. v. Ciara R., Nos. 23-ICA-237, -238, -239, 2024 WL 1740353, at *6 (W. Va. Ct. App., Apr. 22, 2024) (memorandum decision). Upon our review of the record, we find no error in the family court's decision to permit Mother to obtain a passport for the minor child and to compel Father to sign the necessary application in order to do so, subject to reasonable restrictions on and communications concerning such international travel.

Accordingly, we affirm the family court's January 16, 2026, final order.

Affirmed.

ISSUED: August 27, 2026

CONCURRED IN BY:

Judge Charles O. Lorensen

Judge S. Ryan White

Chief Judge Daniel W. Greear, not participating