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

MICHELLE TURNER,
Respondent Below, Petitioner

v.) No. 26-ICA-71 (Fam. Ct. Cabell Cnty. No. FC-06-2022-D-177)

JAMES TURNER,
Petitioner Below, Respondent

MEMORANDUM DECISION

Petitioner Michelle Turner ("Wife") appeals the Family Court of Cabell County's final order on Wife's motion for relief from judgment and final order regarding the parties' cross motions for fees, both entered on January 26, 2026. Respondent James Turner ("Husband") filed a response in support of the family court's orders.[1] Wife 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 on May 11, 1991. They have six children born of the marriage, all of whom are emancipated. The parties were divorced by final order entered on January 26, 2023. The final divorce order adopted the parties' property settlement agreement. The property settlement agreement contained a provision that acknowledged that each party fully and truthfully disclosed their assets to one another.

On August 29, 2023, Wife filed a motion for relief from judgment pursuant to Rule 60(b)(3) of the West Virginia Rules of Civil Procedure[2] asserting that Husband failed to disclose, or misrepresented, his ownership interest in Steptoe & Johnson, PLLC ("Steptoe") as well as his ownership interest in the firm's real estate. Husband responded

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[1] Wife is represented by Arik C. Paraschos, Esq., and Husband is represented by Amy C. Crossan, Esq.

[2] A motion pursuant to West Virginia Code § 51-2A-10 (2001) has replaced a motion for relief from judgment under Rule 60(b) of the West Virginia Rules of Civil Procedure in family court. *See Dower v. Dower*, No. 24-ICA-310, 2025 WL 1249489, at *3 (W. Va. Ct. App. Apr. 29, 2025) (memorandum decision).

that the motion should be denied because Wife failed to put forth any evidence supporting her claims and, in any event, was aware at all relevant times of his status in the firm, given she was his spouse and they previously filed joint tax returns. Wife filed a supplemental memorandum and offered a supporting affidavit. Husband replied and again noted the lack of evidence supporting Wife's claims.

On March 18, 2024, without a hearing, the family court entered an order finding that "[a] review of the file clearly shows that [Husband] did not disclose any ownership interest in his law firm." The family court further found that Wife could not have knowingly and intelligently entered into the parties' property settlement agreement without knowledge of all the marital assets. Accordingly, the family court re-opened the matter for the purpose of permitting discovery to determine whether Husband has any marital ownership in his firm or the real estate assets owned by the firm. Husband appealed this order to this Court. On October 23, 2024, we dismissed the appeal finding that the order on appeal was an interlocutory order over which this Court lacks jurisdiction.

Thereafter, the parties engaged in discovery concerning Husband's ownership interest in Steptoe as reflected in a capital account, his interest in real estate owned by Steptoe, and Northwestern Mutual and Pershing life insurance accounts. Husband filed a motion for summary judgment and costs and supporting memorandum on September 16, 2025, arguing that Wife had not produced evidence on her claims regarding the capital account, the real estate, and the life insurance accounts. Wife filed her response to Husband's motion stating that she was no longer pursuing her claims regarding the life insurance accounts. Separately, Wife filed a cross motion for summary judgment arguing that Husband's capital account and real estate distributions were marital property. Wife also filed a motion for attorney's fees seeking to recover $45,635.28 that she incurred to pursue the remaining issues set forth in her motion for relief from judgment. By an order dated October 26, 2025, the family court 1) granted Husband's motion for summary judgment and costs in part with respect to the life insurance accounts; 2) denied Husband's motion for summary judgment and costs for all remaining issues; and 3) denied Wife's motion for summary judgment.

On October 28, 2025, and October 29, 2025, the family court proceeded to the final hearing on Wife's motion for relief from judgment. On January 26, 2026, the family court entered a final order granting Wife's motion for relief from judgment as it related to the capital account, finding that Husband's nondisclosure was a negligent omission, and denied Wife's motion as it related to husband's interest in real estate. Further, this order amended the final decree of divorce entered January 26, 2023, "to reflect that [Husband] shall pay to [Wife] 22.13% of any future capital account payments received by [Husband] if and when he receives them." The family court also entered a final order regarding the parties' cross motions for fees on January 26, 2026, in which it granted Wife's motion and ordered Husband to pay one third (1/3) of Wife's attorney's fees and costs, for a total of $15,211.76. It is from these two orders that Wife 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, Wife asserts four assignments of error, several of which are similar, or closely related, that we have consolidated where appropriate for efficiency and clarity of our review. Wife's first three assignments of error concern how the family court distributed Wife's marital share of Husband's interest in the capital account. More specifically, Wife alleges that the family court erred by granting her 22.13% of any future capital account payments received by Husband, if and when he receives them, instead of applying the immediate offset method to Wife's share. Additionally, Wife argues that the family court erred by failing to award interest on Wife's share of the capital account and valuing the capital account as of January 1, 2020, instead of the parties' date of separation, August 1, 2020.

During the final hearing, both parties testified and presented the testimony of their respective expert witnesses. Wife's expert opined that Wife was entitled to the immediate payment of 50% of the capital account's purported value as of the date of separation and that she should be awarded interest on her share of the capital account. Further, Wife's expert provided an analysis that prorated the contributions and interest made to the capital account in 2020 through the date of separation. In contrast, Husband's expert testified that the proper method of valuing and distributing the parties' interest in the capital account would be to award Wife 22.13% of any future amounts distributed to Husband from the capital account "if and when he receives them." The expert derived this percentage by determining that Wife's share of the capital account was $88,522, representing 50% of the capital account value assigned to Husband as of the date of separation. This $88,522 amount constituted 22.13% of the fully funded capital account which was valued at $400,000. Husband's expert further opined that Wife should not receive any interest credits the firm declares on the capital account post-separation because it is Husband's post-separation work that generates that interest credit and that the firm's operating agreement requires that capital contributions are credited to the capital account on an annual basis at the fiscal year end and there is no provision to prorate them.

Ultimately, the family court concluded that Husband's interest in the capital account was a marital asset subject to equitable distribution, but that the balance of the capital account at the time of the parties' separation was a potential "future interest." The court found that Husband's "receipt of distributions, if any, from the . . . capital account are contingent on future events and not reasonably assured[;]" therefore, it was inequitable "under these circumstances for the [c]ourt to attempt to determine the present value of these contingent and future payments." Citing West Virginia Code § 48-7-104, the family court specifically found that "[w]hen the value of future payments of marital property is not known, if their receipt is contingent on future events or not reasonably assured, or if for other reasons it is not equitable under the circumstances to include their value in the property assigned at the time of dissolution, the Court may decline to do so and fix the spouses' respective shares in such future payments if and when received."[3]

Accordingly, the family court ordered the interest in the capital account valued and divided in accordance with Husband's expert witness's opinion. Thus, the family court rejected Wife's argument that the capital account had a liquidated present value that was accruing interest and that Wife was entitled to one-half of the total value in equitable distribution by immediate payment.

As we have previously explained,

> 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

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> [3] After considering the factors set forth in section 7-103, the court shall: (1) Determine the net value of all marital property of the parties as of the date of the separation of the parties or as of such later date determined by the court to be more appropriate for attaining an equitable result. Where the value of the marital property portion of a spouse's entitlement to future payments can be determined at the time of entering a final order in a domestic relations action, the court may include it in reckoning the worth of the marital property assigned to each spouse. In the absence of an agreement between the parties, when the value of future payments is not known at the time of entering a final order in a domestic relations action, if their receipt is contingent on future events or not reasonably assured, or if for other reasons it is not equitable under the circumstances to include their value in the property assigned at the time of dissolution, the court may decline to do so; and (A) Fix the spouses' respective shares in such future payments if and when received . . . .

W. Va. Code § 48-7-104(1)(A).

> 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). As reflected in the order on appeal, the family court heard the testimony of both expert witnesses, weighed the evidence presented, and found the testimony of Husband's expert witness more "persuasive" as to valuing the parties' interest in the capital account. Given the record on appeal, we find no error in how the family court valued and equitably distributed the parties' interest in the capital account.

Lastly, Wife argues that the family court erred by "arbitrarily" awarding her only 1/3 of the attorney's fees she sought below. Specifically, Wife asserts that the court erred by basing the attorney's fees award on the fact that she prevailed on only one of the three claims she raised below, noting that the court found in her favor with respect to each factor set forth in *Banker v. Banker,* 196 W. Va. 535, 474 S.E.2d 465 (1996).

The Supreme Court of Appeals of West Virginia has explained that,

> In divorce actions, an award of attorney's fees rests initially within the sound discretion of the family law master and should not be disturbed on appeal absent an abuse of discretion. In determining whether to award attorney's fees, the family law master should consider a wide array of factors including the party's ability to pay his or her own fee, the beneficial results obtained by the attorney, the parties' respective financial conditions, the effect of the attorney's fees on each party's standard of living, the degree of fault of either party making the divorce action necessary, and the reasonableness of the attorney's fee request.

Syl. Pt. 4, *Banker v. Banker*, 196 W. Va. 535, 474 S.E.2d 465 (1996). Here, the order on appeal demonstrates that the family court properly considered the requisite *Banker* factors in determining whether to award Wife attorney's fees and made specific findings of fact regarding each factor. However, the court based its calculation of the attorney's fees award on Wife's degree of success on the claims she raised below, which is also a *Banker* factor. Given this, and the deference afforded the family court, we cannot conclude that the family court abused its discretion by awarding Wife only a portion of the attorney's fees she had requested. As such, we find no error.

Accordingly, we affirm the family court's January 26, 2026, orders.

Affirmed.

ISSUED: August 27, 2026

CONCURRED IN BY:

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