

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

August 27, 2026

DALLAS D.,
Respondent Below, Petitioner

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

v.) No. 26-ICA-84 (Fam. Ct. Wood Cnty. Case No. FC-54-2019-D-582)

DESIRAE F.,
Petitioner Below, Respondent

MEMORANDUM DECISION

Petitioner Dallas D.¹ (“Father”) appeals the Family Court of Wood County’s February 13, 2026, Dismissal Order that dismissed Father’s Petition for Modification of Parenting Plan without a final hearing. Respondent Desirae F. (“Mother”) filed a 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 February 13, 2026, is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

The parties share one child, born in 2018. At some point, the family court allocated custodial responsibility and ordered a parenting plan. On July 18, 2025, Father filed a Petition for Modification requesting increased parenting time and primary decision-making authority. Father’s proposed parenting plan allocated parenting time to Mother on the weekends with Father exercising parenting time during the week. Mother filed a form Answer on August 27, 2025, and checked the box “denying the matters set forth in this complaint” and further stated, in part, that she “ha[s] no issue if [child’s] father wants more time with [child] but [does] not want [child] living with [child’s] father full time.”

The family court held a hearing on September 18, 2025, and entered its order from the hearing on December 15, 2025. In that order, the family court ordered that: (1) a guardian ad litem would be appointed by separate order and the parties were to submit fee

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 Both parties are self-represented.

waivers; (2) the parties were to complete the high conflict parenting course and submit a report regarding said course prior to the next hearing; (3) Father was allocated parenting time every weekend beginning Friday at 5:00 p.m. until Sunday at 5:00 p.m.; (4) the minor child was to have no unsupervised visitation with a named third party; and (5) a final hearing was to be held on December 15, 2025.

According to Father, the family court rescheduled the December 15, 2025, hearing to February 26, 2026, because the parties had not completed fee waivers for the guardian ad litem services or filed verifications showing that they had attended the high conflict parenting class as ordered. It is unclear from the record on appeal whether the family court appointed a guardian ad litem for the minor child. Mother confirms Father's assertion that a hearing was scheduled for February 26, 2026. However, on February 13, 2026, the family court entered a Dismissal Order that stated as follows:

The Court has reviewed the case file in the above-styled action, and finds that the Petitioner has failed to complete the appropriate documentation to proceed as so Ordered by this Court. Accordingly, it is hereby **ORDERED** and **ADJUDGED** that this Petition for Modification is hereby **DISMISSED** and stricken from the docket of this Court.

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 one assignment of error. Father argues that the family court erred by dismissing his petition for modification without reaching a decision on the merits. Father contends that Mother's noncompliance with the family court's previous order to submit documents caused the dismissal. Father further asserts that the family court abused its discretion because he, the moving party, was compliant with the family court's order. We do not find merit in Father's argument. 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). Having reviewed the record, we find no error with the family court’s decision to dismiss Father’s Petition for Modification because Father has not shown that he complied with the family court’s order from the October 2025 hearing: that he *both* file a fee waiver affidavit *and* certify that he attended a high-conflict parenting course. The family court dismissed Father’s petition for modification as a sanction against Father for his noncompliance with its order, and this Court cannot find that the family court abused its discretion in doing so.³

Accordingly, we affirm the Family Court of Wood County’s February 13, 2026, Dismissal Order.⁴

Affirmed.

ISSUED: August 27, 2026

CONCURRED IN BY:

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

³ Because we are deciding this case on the validity of the family court’s dismissal as a sanction for failure to comply with the family court’s directives, we decline to address the merits of Father’s Petition for Modification.

⁴ Father is not foreclosed from petitioning the family court for a modification of custodial allocation in the future, once he has complied with the family court’s December 15, 2025, order.