

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

September 25, 2026

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

WILLIAM WASIELAK,
Petitioner Below, Petitioner

v.) No. 26-ICA-104 (Fam. Ct. Jefferson Cnty. Case No. FC-19-2019-D-351)

JULIE WASIELAK,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner William Wasielak¹ (“Husband”) appeals the Family Court of Jefferson County’s February 24, 2026, Final Modification Order, which denied his Motion to Modify Spousal Support. Respondent Julie Wasielak (“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 (2026). After considering the parties’ arguments, the record on appeal, and the applicable law, this Court finds error in the family court’s decision, but no substantial question of law. Therefore, this case satisfies the “limited circumstances” requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure, and a memorandum decision is appropriate to reverse the family court’s order and to remand to the family court for further proceedings consistent with this decision.

The parties were married in 2000 and divorced in 2020. The parties’ Final Divorce Order, entered January 15, 2020, incorporated the parties’ Mediated Settlement Agreement. The following language appears in the parties’ Final Divorce Order and Mediated Settlement Agreement regarding spousal support:

Final Divorce Order:

19. The Petitioner shall pay the Respondent spousal support in the sum of \$950.00 per month for 144 consecutive months with the first payment January, 2020. Spousal support is subject to judicial modification, and terminates whichever occurs first: 144th payment, death or remarriage of Respondent, further order of the Court. Spousal Support remains a debt of husband’s estate.

¹ Husband is represented by Paul G. Taylor, Esq. Wife is represented by Cinda L. Scales, Esq. Both parties were self-represented for the initial divorce proceedings.

Mediated Settlement Agreement:

2. REAL AND PERSONAL PROPERTY. The parties have agreed to the distribution of real and personal property, joint accounts, and investments as follows:

H. Financial Maintenance. Husband has agreed to pay alimony to Wife by wage garnishment in the amount of \$950 per month for 144 months (12 years) from the date the decree of divorce has been fully-executed and ordered by the Court.

1. Payments are to commence on the 15th day of the month after ordered by the Court.
2. Payments become null and void when Wife remarries.
3. In the event of the Husband's death, the husband's estate will pay any outstanding alimony balance to Wife.
4. Any request for an increase or decrease in said payment for any reason must be granted by order of modification.

The family court held a final divorce hearing on January 15, 2020, where the judge² confirmed with both parties the terms of spousal support under the agreement. Specifically, the family court said to the parties: "It could go up; it can go down. It can be extended or it can be shortened. That's what your agreement says." Both parties replied affirmatively as to their agreement with the family court's understanding of the terms of spousal support.

On May 21, 2025, Husband was involuntarily separated from his employer, after twenty-seven years, due to workforce restructuring, thus losing his substantial income. Husband received one-time severance and transition payments as part of his separation agreement with his former employer. On May 22, 2025, Husband filed a Petition to Modify Spousal Support alleging that Husband's income changed as of May 21, 2025, due to loss of employment, and that Wife's income had substantially increased.

The family court held an initial hearing on Husband's petition for modification on October 9, 2025, and entered its Order from Initial Modification Hearing-October 9, 2025, on November 13, 2025. In that order, the family court found that "both parties have a change in circumstance as of this date" because Husband was no longer working and Wife had been furloughed due to the government shutdown. Both parties were directed to file a Memorandum of Law by November 6, 2025, and a final hearing date was scheduled for January 29, 2026. On October 27, 2025, Wife filed a Motion to Increase Spousal Support, alleging that Wife had been furloughed by her employer and that Husband's income had increased. Wife then filed her Memorandum of Law on November 6, 2025. Husband filed his Memorandum of Law on November 20, 2025. On January 14, 2026, Husband filed a

² A different family court judge presided over the initial divorce action than the modification proceedings.

Motion for Leave to File a Supplemental Memorandum of Law wherein he requested the spousal support modification be granted retroactively.

At the time of the final hearing, Wife was no longer furloughed and received back-pay for the time she was furloughed. Additionally, Wife's earnings have increased over 38% since the time of the divorce. Wife argued that her salary increase was temporary in nature as a way for the federal government to retain technology personnel and that it could be "taken away" at any time.

The family court entered its Final Modification Order on February 24, 2026. In its order, the family court found that Husband had paid seventy-two of the one hundred forty-four months of spousal support payments totaling \$68,400.00. The family court went on to find that "the payment terms for spousal support indicate that the Wife was to receive a total amount of ... \$136,800.00 over a period of twelve years." Based on those findings, the family court concluded that the initial spousal support award was "spousal support in gross and therefore vested as of the date of decree." The family court went on to state that the family court "approved the private contract" and that Husband "agreed to pay the total amount of \$136,800.00 and still owes \$68,400.00" and specified that spousal support in gross is not subject to modification based upon changed circumstances.

After the family court classified Husband's spousal support obligation as spousal support in gross and not subject to modification, the family court went on to also find that Husband's "temporary employment change" and Wife's "temporary furlough" were not significant, unexpected and continuing changes" and concluded that "no substantial change in circumstances occurred warranting the modification of the spousal support in gross obligation." As part of this analysis, the family court found that Husband had "sufficient assets available to him to satisfy the award of spousal support." The family court denied Husband's petition for modification of spousal support and ordered that spousal support remain the same until Husband has paid the total amount of \$136,800.00 to Wife. Husband 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, Husband asserts six assignments of error. Because several of his assignments of error are similar, we will consolidate and restate them for clarity and efficiency. First, Husband argues that the family court erred by classifying the spousal support award as “in gross.” We agree.

Spousal support in gross is defined as,

spousal support payable either in a lump sum, or in periodic payments of a definite amount over a specific period of time. A spousal support award is “spousal support in gross” only if the award grants spousal support in such terms that a determination can be made of the total amount to be paid as well as the time such payments will cease.

W. Va. Code § 48-1-243 (2001). Further, West Virginia Code § 48-6-201(b) (2001) directs that “[a]ny award of periodic payments of spousal support shall be ... subject to subsequent modification unless there is some explicit, well expressed, clear, plain and unambiguous provision to the contrary set forth in the court-approved separation agreement or the order granting the divorce.” Additionally, the Supreme Court of Appeals of West Virginia (“SCAWV”) held that “any award of periodic payments shall be governed by the law of alimony ... and not by contract law.” Syl. Pt. 3, in part, *In re Estate of Hereford*, 162 W. Va. 477, 250 S.E.2d 45 (1978).

In this case, Husband and Wife agreed that the initial spousal support award was subject to modification. There is no evidence in the record that Husband agreed to pay a fixed total amount of spousal support in the initial divorce proceeding. Instead, the final divorce order from 2020, and the mediated settlement agreement expressly provide for the termination of spousal support upon death or remarriage of Wife, and that spousal support could otherwise be modified for any reason through a family court order. The family court erred when it discarded these terms and concluded that the original agreement and award of spousal support was “in gross.” Moreover, because the spousal support award was that of periodic spousal support and not spousal support in gross, the award was subject to modification and thus governed by spousal support law. Accordingly, the family court also erred by finding that the spousal support agreement was a private contract and not subject to alimony provisions.

Second, Husband contends that the family court erroneously found no substantial change in circumstances to warrant a modification of his spousal support obligation. We agree that Husband is entitled to a modification of his spousal support obligation based on a substantial change in circumstances.

The “sole purpose” of spousal support is “to provide for the support of a former spouse.” Syl. Pt. 3, in part, *Clay v. Clay*, 182 W. Va. 414, 388 S.E.2d 288 (1989). However, a spousal support award “shall not be disproportionate to a party’s ability to pay as

disclosed by the evidence before the court.” W. Va. Code § 48-8-103(a) (2012). Therefore, a spousal support award can be modified, should the parties’ altered financial circumstances warrant, and a new order may be entered as “necessary to meet the ends of justice.” See W. Va. Code § 48-8-103(b) (2012). The “primary standard to determine whether or not a trial court should modify an order awarding alimony is a substantial change of circumstances.” *Zirkle v. Zirkle*, 172 W. Va. 211, 217, 304 S.E.2d 664, 671 (1983).

The SCAWV has interpreted the criteria for a modification of a spousal support award stating that: “In order to satisfy the requirement of a substantial change in circumstances necessary to grant a modification in support obligations, the change must be one which would not reasonably have been expected at the time of the divorce decree.” Syl. Pt. 4, *Goff v. Goff*, 177 W. Va. 742, 356 S.E.2d 496 (1987). The SCAWV further held that courts are required “to consider the financial needs of the parties, their incomes and income earning abilities and their estates and the income produced by their estates in determining the amount of alimony to be awarded in a modification proceeding.” *Campbell v. Campbell*, 243 W. Va. 71, 75, 842 S.E.2d 440, 444 (2020) (citing Syl. Pt. 2, in part, *Yanero v. Yanero*, 171 W. Va. 88, 297 S.E.2d 863 (1982)). Additionally, “[t]he party petitioning for a modification of the support provisions of a divorce decree bears the burden of showing a substantial change of circumstances.” Syl. Pt. 3, *Goff*, 177 W. Va. 742, 356 S.E.2d 496. Accord Syl. Pt. 7, in part, *Lucas v. Lucas*, 215 W. Va. 1, 592 S.E.2d 646 (2003) (“The burden of proof to establish changed financial circumstances justifying reduction or termination of spousal support ... remains upon the payor, as the party petitioning for modification.”). It is with these standards in mind that we address Husband’s second assignment of error.

Having reviewed the record on appeal, we find that Husband has sustained his burden of proof of a substantial change in circumstances and is thus entitled to a modification of his spousal support obligation. Husband’s involuntary job loss after twenty-seven years due to workforce restructuring does not appear to have been contemplated in the initial divorce order. To this end, Husband’s unemployment was “not reasonably ... expected at the time of the divorce decree,” and therefore, provides support for Husband’s modification petition. Syl. Pt. 4, in part, *Goff*, 177 W. Va. 742, 356 S.E.2d 496. For these reasons, this Court concludes that the family court erred by denying Husband’s petition for modification. We conclude that Husband’s involuntary job loss and reduction in monthly income is a substantial change in circumstances that warrants a modification of spousal support.

Third, Husband alleges that the family court made insufficient findings of fact and conclusions of law to support its determination that the spousal support amount should not be modified and that Husband should be required to resort to the corpus of his estate in satisfying his spousal support obligation. We find merit in Husband’s arguments.

To properly review an order of a family court, “[t]he order must be sufficient to indicate the factual and legal basis for the [family court]’s ultimate conclusion so as to facilitate a meaningful review of the issues presented.” *Province v. Province*, 196 W. Va. 473, 483, 473 S.E.2d 894, 904 (1996). “[I]n cases where there is an absence of adequate factual findings, it is necessary to remand the matter to the lower court to state or, at a minimum, amplify its findings so that meaningful appellate review may occur.” *Hicks v. Frame*, No. 25-351, 2026 WL 820826, at *2 (W. Va. Mar. 24, 2026) (memorandum decision) (quoting *Mullins v. Mullins*, 226 W. Va. 656, 662, 704 S.E.2d 656, 662 (2010)). In other words, courts must “show their work” by making the necessary findings of fact to support and to thoroughly explain how they reached their legal conclusions. *See In re R.M., B.M., and H.M.*, 252 W. Va. 422, 923 S.E.2d 352 (2025) (*Ewing, Hutchison, J., S.S.J., concurring*).

In this case, the family court did not make adequate findings of fact and conclusions of law that considered and applied the relevant spousal support factors as required by West Virginia Code § 48-6-301(b). While the family court’s order provides rationale for some of the relevant spousal support factors, it fails to conduct a full analysis of the factors or evaluate all the evidence in support of or opposition to those factors. The record on appeal also reflects that the family court misattributed Wife’s residence as an asset available to Husband when determining Husband’s ability to satisfy his spousal support obligation from the corpus of his estate.

The SCAWV stated that “[i]n fixing the amount of spousal support, if any, to be ordered where modification is requested ... the courts must also be guided by the specific list of factors set forth ... for determining spousal support in the original instance.” *Lucas*, 215 W. Va. at 8, 592 S.E.2d at 653. On remand, the family court must fully address the relevant spousal support factors contained in West Virginia Code § 48-6-301(b) when determining the modified amount, if any, of spousal support. Additionally, pursuant to West Virginia Code § 48-8-103(a):

Payments of spousal support are to be ordinarily made from a party’s income, but when the income is not sufficient to adequately provide for those payments, the court may, upon specific findings set forth in the order, order the party required to make those payments to make them from the corpus of his or her separate estate. An award of spousal support shall not be disproportionate to a party’s ability to pay as disclosed by the evidence before the court.

Further, West Virginia Code § 48-6-301(b)(5) states that:

for the purposes of determining a spouse’s ability to pay spousal support, the court may not consider the income generated by property allocated to the payor spouse in connection with the division of marital property unless the

court makes specific findings that a failure to consider income from the allocated property would result in substantial inequity.

On remand, the family court must ensure that the modified amount of spousal support is not disproportionate to Husband's ability to pay said amount. Additionally, if the family court requires Husband's spousal support payments to be made from the corpus of his estate, the family court must make the specific findings required by law with a full analysis of which resources from Husband's estate are to be used, along with what effect the depleting of such resources would have on Husband's ability to pay his own monthly expenses. *See Campbell*, 243 W. Va. at 75-76, 842 S.E.2d at 444-45.

Lastly, Husband argues that the family court erred by not granting his modification retroactively to the date Wife was served with his petition. Rule 23 of the West Virginia Rules of Practice and Procedure for Family Courts states that "[e]xcept for good cause shown, orders granting relief in the form of spousal support ... shall make such relief retroactive to the date of service of the motion for relief." On January 14, 2026, Husband filed a motion requesting that a modification of spousal support be applied retroactively. The issue of retroactively applying the spousal support modification was not addressed by the family court because the family court did not order a modification of the spousal support obligation. However, the family court is instructed to apply Rule 23 of the West Virginia Rules of Practice and Procedure for Family Courts in its new order on remand.

Accordingly, we reverse the Jefferson County Family Court's February 24, 2026, Final Modification Order and remand this case for further proceedings, if necessary, and entry of a new order consistent with this Court's instructions. The Clerk of this Court is hereby directed to issue the mandate contemporaneously herewith.

Reversed and Remanded.

ISSUED: September 25, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear

Judge Charles O. Lorensen

Judge S. Ryan White