

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

SHAWN D.,
Respondent Below, Petitioner

v.) No. 26-ICA-113 (Fam. Ct. Kanawha Cnty. Case No. FC-20-2021-D-475)

CYNTHIA H.,
Petitioner Below, Respondent

MEMORANDUM DECISION

Petitioner Shawn D.¹ (“Father”) appeals the Family Court of Kanawha County’s December 22, 2025, hearing order entered January 13, 2026, and the order denying his motion to reconsider entered February 20, 2026.² Respondent Cynthia H. (“Mother”) did not participate in this appeal.³

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). After considering the arguments, the record on appeal, and the applicable law, this Court finds that there is error in the family court’s decision but no substantial question of law. For the reasons set forth below, a memorandum decision affirming, in part, vacating, in part, and remanding is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

As this Court has addressed similar issues involving these parties in a previous appeal which contained a detailed recitation of the facts, we will only briefly discuss the facts of the case in this decision.⁴

¹ To protect the confidentiality of the juveniles 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 Shane Snyder, Esq.

³ We recognize our limited and circumspect review of a family court order in an uncontested appeal, like this one, when the respondent fails to participate on appeal to support the order.

⁴ *See Shawn D. v. Cynthia H.*, No. 24-ICA-145, 2024 WL 5003364 (W. Va. Ct. App. December 6, 2024) (memorandum decision).

The parties were never married but share two children born in 2011 and 2013. The family court entered an agreed final custodial allocation order on September 2, 2021, establishing a parenting plan and payment of child support. In this order, the family court ordered Father to pay child support to Mother for the two minor children in the amount of \$571.92 per month. Mother filed numerous petitions for contempt following the entry of the final order in 2021; however, we will be discussing two such petitions. Mother filed a petition for contempt on September 17, 2025, arguing that Father had failed to pay a \$17,089.12 purge bond ordered by the family court in an order entered on May 15, 2025. On October 2, 2025, Mother filed another petition for contempt in which she argued that Father failed to timely pay a performance bond in the amount of \$1,500.00 pursuant to the family court's August 18, 2025, order.

The family court scheduled a hearing on the petitions for contempt for December 4, 2025, but the court later continued the hearing after Father moved to continue the hearing citing a medical emergency. The family court rescheduled the hearing for December 22, 2025. On December 22, 2025, Father's counsel moved to continue the hearing after receiving information indicating that Father was being transported by ambulance to a hospital. However, the family court found Father's claims to be "of low credibility." On December 23, 2025, the court issued a capias for Father's arrest based on his failure to appear. The family court entered an order on January 13, 2026, finding Father in indirect contempt for his failure to pay the \$1,500.00 performance bond. The order directed Father to provide his medical records from his hospital visits on December 4 and December 22, 2025, to counsel and the court within 10 days. The court further found on the record that the contempt relating to the \$17,089.12 purge bond would be held in abeyance as the court wanted to have more evidence on that issue.

Father submitted medical records to the family court on January 16, 2026, as ordered in the January 13, 2026, order. On February 12, 2026, Father filed a motion to reconsider the January 13, 2026, order asking the court to reconsider its order and to find that Father was not in indirect contempt of court and to recall the capias for Father's failure to appear. The family court denied Father's motion to reconsider in an order entered February 20, 2026, in which the court found that Father "cannot fail to appear in court, as ordered, or timely comply with court orders and seek affirmative relief from this court." It is from the orders entered January 13, 2026, and February 20, 2026, that Father 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).

Father raises two assignments of error on appeal. First, Father asserts that the family court erred in issuing a *capias* for his failure to appear at the December 22, 2025, contempt hearing when Father was having a medical emergency.⁵ Father argues that the court should have granted his motion to continue because he had a legitimate reason for not appearing at the hearing. Father further asserts that he provided his medical records to the court to demonstrate the same as directed by the January 13, 2026, order. Father argues that his medical records are sufficient proof of his credibility that he was being treated for a medical emergency on the day of his hearing and that the family court erred by finding Father to be of “low credibility for non-appearances,” denying Father’s request for a continuance, and issuing a *capias* for his non-appearance. We disagree.

The Supreme Court of Appeals of West Virginia (“SCAWV”) has long held that “[i]t is well settled as a general rule that the question of continuance is in the sound discretion of the trial court, which will not be reviewed by the appellate court, except in case it clearly appears that such discretion has been abused.” Syl. Pt. 1, *Levy v. Scottish Union & Nat’l Ins. Co.*, 58 W. Va. 546, 52 S.E. 449 (1905). Given the last-minute nature of Father’s motion to continue and the fact that this was the second time Father had moved to continue the hearing, the family court did not abuse its discretion by refusing to grant Father’s motion to continue. Accordingly, the family court did not err by issuing a *capias* for Father’s non-appearance after he was properly served and received proper notice.

Lastly, Father argues that the family court erred by finding him in indirect contempt without proper findings, sufficient evidence, or giving Father the ability to appear and give testimony and evidence in his defense. Father argues he was not present for the contempt hearing as the record reviewed by this Court indicates that Father was being transported to and thereafter treated at a hospital for a potentially serious medical condition. Despite this, the family court proceeded to find Father in indirect contempt for Father’s failure to pay the previously ordered \$1,500.00 performance bond. Father contends that the family court erred in making this contempt finding without first eliciting evidence to show that Father’s nonpayment of the performance bond was willful as required by West Virginia Code § 48-1-304 (2001).⁶ We find merit in Father’s argument.

⁵ Father does not appeal the *capias* order entered December 23, 2025.

⁶ West Virginia Code § 48-1-304(b) states in part:
If . . . the court finds the defendant in contempt for willfully failing to comply with an order of the court . . . and if the court further finds the person has the

Due process requires a family court to hold a hearing on the matter of contempt and allow the contemnor the opportunity to present evidence in their defense. *See Hoylman v. Hoylman*, No. 22-ICA-146, 2023 WL 1463945, at *2 (W. Va. Ct. App. Feb. 2, 2023) (memorandum decision). Further, “[t]o find a person guilty of . . . contempt, it is necessary to find that he violated the order of court intentionally, knowingly and purposefully, without justifiable excuse.” *See Carpenter v. Carpenter*, 227 W. Va. 214, 218, 707 S.E.2d 41, 45 (2011). Upon review of the record, the family court did find that Father was in contempt but failed to set forth sufficient findings of fact to support its holding. In fact, the only reference to the finding of contempt is one sentence in the family court’s order. Further, the family court failed to provide any direction as to how Father could purge said contempt. The SCAWV has acknowledged that “[w]hen imposing sanctions for contempt [under W. Va. Code § 51-2A-9(b) (2001)], a court must afford the contemnor an opportunity to purge him/herself of the contempt.” *Deitz v. Deitz*, 222 W. Va. 46, 58, 659 S.E.2d 331, 343 (2008) (per curiam).

Because the family court issued a *capias* for Father’s failure to appear at the contempt hearing, the finding of contempt in the January 13, 2026, order was premature. As Father was found in indirect contempt without proper findings and the opportunity to be heard, the contempt finding in the order entered January 13, 2026, is vacated.

For the foregoing reasons, we affirm in part, and vacate and remand, in part, the family court’s January 13, 2026, order as it relates to the contempt finding and affirm in part, and vacate and remand, in part, the family court’s February 20, 2026, order as it pertains to the contempt finding.

Affirmed, in part, and Vacated and Remanded, in part.

ISSUED: September 25, 2026

CONCURRED IN BY:

Judge Charles O. Lorensen

Judge S. Ryan White

Chief Judge Daniel W. Greear, not participating

ability to purge himself of contempt, the court shall afford the contemnor a reasonable time and method whereby he may purge himself of contempt.