

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

September 25, 2026

KELSI H.,
Respondent Below, Petitioner

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

v.) No. 26-ICA-155 (Fam. Ct. Ritchie Cnty. Case No. FC-43-2024-D-47)

ROBERT H.,
Petitioner Below, Respondent

MEMORANDUM DECISION

Petitioner Kelsi H.¹ (“Mother”) appeals the Family Court of Ritchie County’s modification order entered March 19, 2026.² Respondent Robert H. (“Father”) 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 parties’ 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 vacating the decision and remanding to the family court for further proceedings is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

The parties were married on September 15, 2021, in Harrison County, West Virginia, and share two children who were born in 2016 and 2022. The parties last resided together as husband and wife in Ritchie County, West Virginia, on October 21, 2024. Father filed for divorce on October 23, 2024. The family court entered a final order on February 24, 2025, adopting the parties’ agreed parenting agreement which had been prepared by the parties. This parenting plan provided that Father would exercise parenting time on weekends from Friday at 6:00 p.m. until Sunday at 5:00 p.m. Additionally, Father would receive one week with the children during the summers for vacation.

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 Mother is represented by Gerald M. Titus, Jr., 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.

Father filed a petition for modification on November 18, 2025, asserting that Mother's work schedule required her to be absent from home every weekday from 7:30 a.m. until approximately 7:00 p.m., and, as a result, Mother's family members or a neighbor cared for the children during Mother's absence. Father also alleged that since the entry of the last parenting order, he had remarried and had another child. Lastly, Father argued that Mother had failed to provide appropriate care for the oldest child's diabetes and that the health and safety of the child was, therefore, endangered. Accordingly, Father requested that the family court modify the parenting plan to grant him primary custody of the children.

The family court issued a notice of hearing on November 19, 2025. Mother, then self-represented, accepted service of Father's petition for modification in the circuit clerk's office on November 19, 2025, and she filed a proposed parenting plan the same day. However, Mother did not file a response to Father's petition for modification. Mother's parenting plan proposed that the youngest child would reside with her Monday through Thursday and that Father would have custodial time with that child on the 2nd and 4th weekends from Friday at 6:00 p.m. to 5:00 p.m. on Sunday. Mother proposed that the oldest child would reside with Father during the week and Mother would exercise custodial time with that child on the 1st, 3rd, and 5th weekends of the month. The court held the final hearing on the following day, November 20, 2025.

After hearing brief testimony from both parties at the November 20, 2025, hearing, the family court ordered that Father would be the primary residential parent of both minor children and that Mother would have parenting time with the children every weekend from Friday at 5:00 p.m. until Sunday at 5:00 p.m. The court further ordered that during the summer the parents share equal custodial allocation of the children, alternating weekly, from Friday at 5:00 p.m. until the following Friday at 5:00 p.m. The court entered the order from the November 20, 2025, hearing on March 19, 2026. It is from this order that Mother 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, Mother asserts five assignments of error, several of which are similar or closely related, that we have consolidated and restated where appropriate for efficiency and clarity of our review. Mother argues that the family court erred by failing to make appropriate and necessary findings of fact, by refusing to allow Mother to present evidence, by failing to follow the statutory presumption of equal allocation of custodial responsibility (50-50), and by failing to make sufficient findings of fact to justify a deviation from a 50-50 allocation of custodial responsibility. Further, throughout Mother's appeal, she asserts that the family court's March 19, 2026, order is insufficient in that the court failed to make thorough findings of fact on the relevant issues, failed to properly apply the law to its limited findings, and failed to include adequate analysis in support of its decision. We agree.

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)).

Further, pursuant to West Virginia Code § 48-9-102a (2022), equal custodial allocation is presumed to be in the best interest of the children, but that presumption is rebuttable. Moreover, West Virginia Code § 48-9-206(a) (2022) requires that "[u]nless otherwise resolved by agreement of the parents under § 48-9-201 . . . or unless harmful to the child, the court shall allocate custodial responsibility so that, except to the extent required under § 48-9-209 . . . , the custodial time the child spends with each parent shall be equal (50-50)." It is the burden of the party who opposes the equal allocation of custodial responsibility to rebut the presumption. See *Jesse C. v. Veronica C.*, No. 23-ICA-169, 2024 WL 1590468, at *3 (W. Va. Ct. App. Feb. 8, 2024) (memorandum decision). This Court has previously explained this rebuttable presumption as follows:

This statute presumes equal (50-50) parenting time for both parents unless the parties agree otherwise. This presumption may be rebutted if the family court finds by a preponderance of the evidence that the arrangement would be harmful to the child, or a provision of West Virginia Code § 48-9-209(f) (2022) requires a different custodial allocation. West Virginia Code § 48-9-206(d) requires that a determination of custodial allocation in a final permanent parenting plan order be based on the presentation of evidence and include specific findings of fact and conclusions of law supporting the determination.

Jonathon F. v. Rebekah L., 247 W. Va. 562, 563, 883 S.E.2d 290, 291 (Ct. App. 2023). West Virginia Code § 48-9-102a also requires that “[i]f the presumption is rebutted, the court shall, absent an agreement between the parents as to all matters related to custodial allocation, construct a parenting time schedule which maximizes the time each parent has with the child and is consistent with ensuring the child’s welfare.”

Based on the record before us, the parties were no longer in agreement as to the parenting plan, and the family court granted Mother less than equal allocation of custodial responsibility; however, the family court made no findings of fact or conclusions of law to justify, or to explain, its decision to deviate from equal custodial allocation. Further, the few findings that the court included in its order are conclusory. “[A] deviation from the 50-50 presumption must be sufficiently explained and justified by the family court in its order.” *Kane M. v. Miranda M.*, 250 W. Va. 701, 705, 908 S.E.2d 198, 202 (Ct. App. 2024); *see also* W. Va. Code § 48-9-206(d) (mandating that the family court make specific findings of fact and conclusions of law when there is a deviation from equal (50-50) custodial allocation). Importantly, the family court also failed to address whether Father, who would have had the burden of proof, rebutted the presumption of equal custodial allocation.

As the order on appeal is wholly insufficient, this Court must vacate the order and remand the matter to the family court for the entry of a new order that meets all statutory requirements. Specifically, the family court must hear evidence, conduct a thorough analysis, and justify its decision through specific findings of fact and conclusions of law. Upon remand, the family court may reach the same conclusion. However, we note that if either party has sought more than equal custodial allocation, that party has the burden of rebutting the presumption that equal custodial allocation is in the best interests of the children through the presentation of evidence.

Lastly, Mother asserts that the family court made several procedural errors in scheduling the proceedings below and the entry of the order on appeal. Mother argues that the family court erred by conducting the final hearing a mere two days after Father filed his petition for modification, and by denying Mother time to retain counsel and to prepare for the hearing. Additionally, Mother argues that the family court erred by entering the proposed order granting Father’s petition for modification only one day after its submission, even though counsel for Father had submitted the proposed order pursuant to Rule 22(b) of the West Virginia Rules of Practice and Procedure for Family Court, which requires the family court to wait five days following presentment before entry to allow other parties to submit objections to the order. Therefore, Mother asserts that the family court deprived her of the opportunity to submit objections to the order. We find merit in Mother’s procedural arguments.

Rule 21 of the West Virginia Rules of Practice and Procedure for Family Court states that if the grounds pleaded in a petition for modification warrant a hearing, “the

hearing shall take place within [forty-five] days of the filing of a petition for ... modification.” Rule 21 also provides that “[e]xcept for good cause shown and placed on the record, a final hearing shall not be conducted prior to expiration of the time in which the respondent is required to serve an answer.” A respondent is generally afforded twenty days to serve an answer. Although Mother accepted service of the petition for modification on November 19, 2025, in the clerk’s office and filed a proposed parenting plan the same day, she did not file an answer to Father’s petition. Further, our review of the record does not disclose a finding of the family court of good cause for deviating from the Rule 21 timeframe. Absent “an agreement of all parties placed on the record” or a documented finding of good cause, the family court conducting the final hearing only two days after Father filed his petition for modification violated Rule 21.

Additionally, pursuant to Rule 22(b) of the West Virginia Rules of Practice and Procedure for Family Court,⁴ the family court was required to afford Mother five full days after Father presented his proposed final order to the court to submit written objections to the proposed modification order before the family court entered the same. Here, the family court entered the proposed order only one day after it received the same from Father’s counsel. Therefore, we conclude that the family court erred by refusing to allow Mother the full five days, as provided by Rule 22(b), to submit her written objections to Father’s proposed order.

Accordingly, the March 19, 2026, modification order of the Family Court of Ritchie County is vacated, and this matter is remanded to the family court for further proceedings to allow Mother to present evidence, including to testify and to cross-examine Father if she wishes, and for the court to enter an order with sufficient findings of fact and conclusions of law supporting its rulings. The March 19, 2026, modification order is converted into a temporary order to remain in effect only until the family court enters a new final order.

Vacated and Remanded.

ISSUED: September 25, 2026

⁴ Rule 22(b) of the West Virginia Rules of Practice and Procedure for Family Court states, in part:

An attorney assigned to prepare an order or proposed findings shall deliver the order or findings to the court no later than ten days after the conclusion of the hearing Within the same time period the attorney shall send all parties copies of the draft order or findings together with a notice which informs the recipients to send written objections within five days to the court and all parties.

CONCURRED IN BY:

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