

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

September 25, 2026

**CHRISTIAN CALDWELL,
Petitioner Below, Petitioner**

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

v.) No. 26-ICA-166 (Fam. Ct. Marshall Cnty. Case No. FC-25-2005-D-24)

**BRENDA CALDWELL,
Respondent Below, Respondent**

MEMORANDUM DECISION

Petitioner Christian Caldwell¹ (“Husband”) appeals the Family Court of Marshall County’s March 25, 2026, Order Denying Termination of Permanent Spousal Support. Respondent Brenda Caldwell (“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 previously married, separated after fifteen years, and divorced in 2006. In their divorce, Husband was ordered to pay Wife \$750.00 per month in permanent spousal support. After thirty-three years of employment, Husband retired. Upon retirement, Husband’s monthly income decreased to approximately one-third of his pre-retirement income and included social security and interest income. When he retired, Husband was not eligible to draw funds from his retirement assets. At the time of divorce, Husband also received oil and gas royalties; however, the wells have not produced income since 2024. Due to his change in income, Husband filed a petition to modify his spousal support obligation on April 17, 2025, requesting that his obligation be terminated.

On January 20, 2026, the family court held a hearing on Husband’s spousal support modification petition. At the hearing, Husband claimed that his monthly expenses, without spousal support, resulted in a substantial deficit each month. Husband testified that he has been depleting funds from an inheritance from his deceased parents to cover his expenses

¹ Husband is represented by Holli Massey Smith, Esq. Wife is self-represented.

and spousal support obligation. Husband has remained current on his spousal support obligation since 2006 and has not missed any payments.

Wife testified that she is also retired and her income consists of social security benefits and the \$750.00 monthly spousal support award. Wife also claimed a monthly deficit between her income and expenses and stated she heavily relies on spousal support to meet her basic needs. Wife has two retirement accounts from which she has elected not to draw, despite being past the mandatory pay-out age. Wife testified that she voluntarily chose not to withdraw from her own retirement accounts while Husband's modification request was pending. It was estimated that Wife would receive \$440.00 monthly from her retirement, with "double payments" possible at the beginning due to the delay in withdrawal past the mandatory draw down age.

On March 25, 2026, the family court entered a final order² on the modification petition and found that Husband "failed to prove a substantial and material change in circumstances sufficient to warrant termination of permanent spousal support" and thus denied Husband's petition. The family court further found that Husband maintained an ability to pay spousal support because he had "substantial financial resources available to him," which were mostly Husband's retirement assets that the family court awarded him in the initial divorce through equitable distribution. The family court "specifically [found] and conclude[d] that a failure to consider income from [Husband's] retirement assets allocated to him as part of the equitable division of the marital estate would result in substantial inequity." Additionally, the family court found that Wife "continues to demonstrate financial need" for spousal support. 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

² We note that the family court's final order failed to comply with Rule 22(c) of the West Virginia Rules of Practice and Procedure for Family Court, which states:

(c) Family court final orders. — A family court final order shall contain language explicitly informing the parties (1) that it is a final order; (2) that any party aggrieved by the final order may take an appeal either to the intermediate court of appeals or directly to the supreme court of appeals under West Virginia Code § 51-2A-15; (3) that an appeal to the intermediate court of appeals may be filed by either party within thirty days after entry of the final order; and (4) that in order to appeal directly to the supreme court both parties must file, either jointly or separately within fourteen days after entry of the final order, a joint notice of intent to appeal and waiver of right to appeal the intermediate court of appeals.

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).

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 Supreme Court of Appeals of West Virginia (“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.”). With these standards in mind, we address Husband’s arguments on appeal.

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 and abused its discretion when it found that no substantial material change in circumstances existed to warrant a modification of Husband’s spousal support obligation. We agree that Husband is entitled to a modification of his spousal support obligation.

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. At the time of the parties' divorce when the family court awarded spousal support, Husband was employed full time and earned over two and a half times the amount of his post-retirement income. Husband retired nineteen years after the initial spousal support award and saw a dramatic decrease in his monthly income. While the parties presumably knew that Husband would eventually retire at the time of the divorce, the initial divorce order does not appear to have contemplated Husband's retirement and does not contain provisions for his retirement. To this end, Husband's current financial circumstances were "not reasonably ... expected at the time of the divorce decree," and therefore, provide support for Husband's modification petition. Syl. Pt. 4, in part, *Goff*, 177 W. Va. 742, 356 S.E.2d 496; see *Campbell*, 243 W. Va. 71, 842 S.E.2d 440. For these reasons, this Court concludes that the family court erred by denying Husband's petition for modification. We conclude that Husband's retirement and reduction in monthly income is a substantial change in circumstances that warrants a modification of spousal support.

Next, Husband alleges that the family court erroneously failed to consider and apply each of the relevant spousal support factors as required by West Virginia Code § 48-6-301(b). We agree. 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 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 of spousal support, if any.

Lastly, Husband contends that the family court erred by resorting to the corpus of Husband's estate to provide financial justification for continued spousal support without making the required specific findings. We find merit in this argument. 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.

In this case, the family court erred by finding that Husband possessed substantial financial means to satisfy the current spousal support obligation. The family court relied heavily on the funds in Husband's retirement account without accounting for the fact that Husband was unable to yet access funds from his retirement account due to his age. Therefore, that resource was not available to Husband at the time for use toward his spousal support obligation.

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.

Here, the family court's finding that failure to consider income from Husband's "retirement assets allocated to him as part of equitable division of the marital estate would result in substantial inequity" is conclusory and not supported by an analysis of the evidence before the court. 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 specific findings 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.

Accordingly, we reverse the March 25, 2026, Order of the Family Court of Marshall County, and this case is remanded for the family court to hold further proceedings, if necessary, and to enter an order consistent with this decision.

Reversed and Remanded.

ISSUED: September 25, 2026

CONCURRED IN BY:

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