

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

September 25, 2026

CHERYL BATTISTA,
Respondent Below, Petitioner

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

v.) No. 26-ICA-182 (Fam. Ct. Wayne Cnty. Case No. FC-50-2021-D-90)

ANDREW BATTISTA,
Petitioner Below, Respondent

MEMORANDUM DECISION

Petitioner Cheryl Battista (“Wife”) appeals the Family Court of Wayne County’s March 31, 2026, order granting her petition for contempt and denying her petition for modification of spousal support. Respondent Andrew Battista (“Husband”) filed a response in support of the family court’s order.¹ Wife did not file 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 no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the family court’s order is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

This Court has addressed similar issues involving these parties in previous appeals.² As such, we will only briefly discuss the facts of the case in this decision because our prior decisions contain detailed factual recitations.

The parties were married on September 2, 1983. Husband filed for divorce on or around April 15, 2021. The final divorce hearing was held in Wayne County Family Court on April 1, 2022. The court determined the date of separation was April 1, 2009, and found Husband purchased the home on Waverly Road at the date of separation and deemed the house to be separate property owned by Husband. Wife was awarded permanent alimony in the amount of \$1,000.00 per month. However, since Wife was residing in Husband’s home, the court ordered that his monthly mortgage payment of \$400.00 be deducted from the total spousal support amount, the difference being \$600.00 per month to Wife until the

¹ Both parties are self-represented.

² See *Battista v. Battista*, No. 23-ICA-40, 2023 WL 5695427 (W. Va. Ct. App. September 5, 2023) (memorandum decision) and *Battista v. Battista*, No. 25-ICA-404, 2026 WL 1880706 (W. Va. Ct. App. June 30, 2026) (memorandum decision).

debt was retired or Wife left the home. Husband was declared to be Wife's landlord and was directed to make the reasonable and necessary repairs to the home.

Sometime after the Final Order of Divorce was entered on April 14, 2022, Wife filed a Motion to Reconsider with the court. A hearing was held on October 21, 2022, where after taking testimony from the parties, the court found that the date of separation should have been in 2014 and the Waverly Road property was marital property. As such, Wife was owed one-half of the property's equity, estimated to be \$7,500.00. A quitclaim deed was filed April 11, 2024, conveying Wife's interest in the Waverly Road property to Husband. Thereafter, Husband initiated eviction proceedings against Wife in the Magistrate Court of Wayne County in early August 2025.

Wife subsequently filed a Motion to Clarify with the court, requesting that the court clarify ownership of the Waverly Road home. A hearing on her motion was held on September 15, 2025. The court entered an order on September 18, 2025, finding that the Waverly Road home was purchased at the date of separation and was Husband's separate property. The court further found Husband was Wife's landlord and cited the relevant paragraphs in the Final Order of Divorce. Wife appealed the family court's order on October 15, 2025. *See Battista v. Battista*, No. 25-ICA-404, 2026 WL 1880706 (W. Va. Ct. App. June 30, 2026) (memorandum decision).

In Wife's previous appeal, she alleged judicial misconduct and bias on the part of the family court judge. She also alleged that the family court judge evicted her from the Waverly Road home, in contradiction of its own order which said Wife was to reside at the Waverly Road home. On June 30, 2026, this Court affirmed the family court's order, declining to rule on Wife's claims of judicial misconduct and bias because Wife did not file a motion to disqualify the family court judge below, but even if she had, this Court lacks jurisdiction over such matters, and Wife provided no legal authority to support these claims. This Court also found that the family court's findings in the previous appeal inappropriately relied on the wrong divorce order, but that Wife failed to show that she was harmed by the family court's error. This Court filed its memorandum decision on June 30, 2026, and the subsequent mandate on July 31, 2026.

Prior to the entry of this Court's mandate, Wife filed a motion to increase alimony on January 21, 2026, and a petition for contempt on February 4, 2026, in family court. The family court set both matters for hearing on March 24, 2026. In the order entered March 31, 2026, the family court first addressed Wife's petition for contempt. The court found that in an order entered July 16, 2025, Husband was ordered to pay Wife \$4,400.00 for unpaid spousal support by January 11, 2026, and that Husband had only paid Wife \$2,000.00. The court found Husband in contempt for failing to satisfy this debt to Wife and ordered Husband to pay Wife \$500.00 per month until he extinguished the \$2,400.00 debt he owed to her.

The family court then addressed Wife's petition to modify. The court found that in the original divorce order, Husband was ordered to pay Wife \$1,000.00 per month in permanent spousal support. However, because Wife was living in a home owned by Husband, the court ordered him to pay the monthly mortgage payment of \$400.00 and to pay Wife \$600.00 per month until the house debt was retired or until Wife left the home. Thereafter, the court ordered Husband to pay Wife \$1,000.00 per month in permanent spousal support. As of the date of the hearing, Husband had recently evicted Wife from the home, and Wife was having to pay \$1,000.00 per month in rent elsewhere. The court found that the primary difference in the parties' finances since the court established spousal support was Wife's cost of housing went from \$400.00 per month to \$1,000.00 per month, a 150% increase in Wife's housing costs. The court found that Husband was partially to blame for Wife's rise in housing expenses because he evicted Wife, but that Wife did not sufficiently mitigate her expenses. Although the court found that Wife may be entitled to an increase in spousal support, the court ultimately denied Wife's request because she failed to present sufficient evidence in support of her claim. It is from the order entered March 31, 2026, that Wife 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).

At the outset, we note that Wife's brief fails to comply with Rule 7 and Rule 10(c) of the West Virginia Rules of Appellate Procedure. Rule 10(c) requires a petitioner to submit a brief with an argument section that clearly presents points of fact and law with appropriate and specific citations to the record on appeal. Rule 10 provides that this Court may disregard assignments of error that are not adequately supported. *Id.* We have explained the importance of compliance with Rule 10 in providing for clear, concise, and organized briefs, and we emphasize that parties, including self-represented parties, should not anticipate that this Court will find or make arguments for them. *See Metro Tristate, Inc. v. Pub. Serv. Comm'n of W. Va.*, 245 W. Va. 495, 502-03, 859 S.E.2d 438, 445-46 (2021). The same principle applies to the need for a clear table of contents for appendix records and organized appendix records submitted under Rule 7. *See Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Westlake Chem. Corp.*, 249 W. Va. 575, 577 n.2, 900 S.E.2d 1, 3 n.2 (2024). As the Supreme Court of Appeals of West Virginia ("SCAWV") has previously

stated, this Court will “examine[] the briefs and the appendix record provided and we will address the petitioner’s assignments of error to the extent possible.” *Kevin D. v. Alexandria D.*, No. 23-15, 2024 WL 2946662, at *2 (W. Va. June 10, 2024).

On appeal, Wife has one assignment of error. Wife alleges that the family court erred by finding that the Waverly Road home was Husband’s separate property despite the court previously finding in the amended divorce order entered January 31, 2023, that it was marital property. Wife argues that contrary to that order, the family court has allowed Husband to evict her from the Waverly Road home where she was to live. Wife contends that she now must pay rent that she should not be paying and that the court informed the parties at the March 3, 2025, hearing that if Husband evicted Wife from the Waverly Road home, Husband may have to pay more in monthly spousal support because Wife’s expenses would increase. Wife further argues that despite making this finding, the court erred by denying her an increase in monthly spousal support.

We find that most of Wife’s arguments concern issues surrounding the Waverly Road home and are nothing more than an attempt to relitigate claims which were previously decided by the family court and addressed by this Court. The law of the case doctrine “generally prohibits reconsideration of issues which have been decided in a prior appeal in the same case, provided that there has been no material changes in the facts since the prior appeal, such issues may not be relitigated in the trial court or re-examined in a second appeal.” *State ex rel. Frazier & Oxley, L.C. v. Cummings*, 214 W. Va. 802, 808, 591 S.E.2d 728, 734 (2003). Wife also argues that the family court erred in failing to increase her spousal support. However, Wife did not provide any legal authority in support of this argument. *See State v. Sites*, 241 W. Va. 430, 442, 825 S.E.2d 758, 770 (2019) (declining to address an assignment of error that includes no legal authority to support the argument). Instead, Wife asks this Court to reconsider matters relating to the Waverly Road home, which are not currently before us. Therefore, we decline to address that portion of her assignment of error.³

Accordingly, we affirm the family court’s March 31, 2026, order.

Affirmed.

ISSUED: September 25, 2026

³ This decision does not preclude Wife from filing another petition for modification of spousal support in the future. *See* W. Va. Code § 48-5-701 and § 48-8-103(b).

CONCURRED IN BY:

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