

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

September 25, 2026

**RICHARD T.,
Petitioner Below, Petitioner**

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

v.) No. 26-ICA-90 (Fam. Ct. Fayette Cnty. Case No. FC-10-2023-D-198)

**TIFFANY C.,
Respondent Below, Respondent**

MEMORANDUM DECISION

Petitioner Richard T.¹ (“Father”) appeals the Family Court of Fayette County’s February 23, 2026, final order that awarded Respondent Tiffany C. (“Mother”) unsupervised parenting time every other weekend with the parties’ child.² 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 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.

The parties were never married but are the biological parents of one child who was born in 2022. The case was initiated on September 1, 2023, by Father filing a petition for emergency ex parte relief in family court. On September 2, 2023, the family court entered an emergency temporary order granting Father’s emergency petition and awarding him immediate sole custody of the parties’ child.⁴ Thereafter, the parties entered into a

¹ To protect the confidentiality of the juvenile involved in this case, we refer to the parties’ last names 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 Amber R. Hinkle, Esq.

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

⁴ Father’s emergency petition was not provided to this Court on appeal. However, the record suggests that Father’s emergency petition was initiated due, at least in part, to

temporary agreement to share equal custodial allocation of the child, which the court approved and adopted by temporary order entered September 29, 2023. The court then scheduled a final hearing for January 18, 2024. However, on October 25, 2023, Father filed a motion for an expedited hearing, alleging that a substantial change in circumstances existed that warranted an expedited hearing and a modification of the September 29, 2023, temporary order.⁵

On November 20, 2023, the family court held a hearing on Father's motions and subsequently entered a supplemental temporary order on December 4, 2023. The court found that Mother's sister testified and attempted to mitigate the concerns she previously expressed to Father concerning Mother, but that her testimony continued to raise concerns about Mother's parenting abilities.⁶ In its December 4, 2023, supplemental temporary order, the court found that Father rebutted the presumption of equal custodial allocation and restricted Mother's parenting time to "reasonable and frequent contact" to be supervised by Father or his mother. The court based its determination on Mother's lack of stable housing and the need to protect the child from exposure to any physical harm. The court explained, based on the testimony of Mother's sister, that Mother left the child unsupervised in the sister's home where the child could not be heard, that Mother paid more attention to men on the phone than to caring for the child, and that Mother was in need of parenting classes. The court found that Mother not having an appropriate, clean home, and proper supervision exposed the child to harm. The court then scheduled a final hearing for January 18, 2024.

After conducting a final evidentiary hearing on January 18, 2024, the family court entered a final order granting Father primary custody of the child on February 6, 2024. In its final order, the court found that the parties agreed for the court to "largely adopt" the temporary parenting plan as a final parenting plan. As such, pursuant to the December 4, 2023, supplemental temporary order, the court found that it was not in the child's best interest to grant Mother equal custody of the child. Rather, based on the December 4, 2023, order, the court granted Mother continued supervised reasonable and frequent contact with the child. The court required Mother to provide Father or his mother with forty-eight hours' notice of her planned parenting time.

safety issues concerning Mother's housing situation, or lack thereof, partying, and parenting abilities.

⁵ Mother's sister purportedly contacted Father concerning Mother's lack of care for the child during her parenting time.

⁶ The court's order explained that Mother's sister had previously contacted Father and his attorney regarding reports of corporal punishment and neglect of the child.

On October 28, 2025, Mother filed a petition to modify the February 6, 2024, order alleging that a substantial change in circumstances had arisen that warranted a modification of the parenting plan. Mother asserted that she had remedied the problems that resulted in the previous parenting plan, that the restrictions on her parenting time should be lifted, and that she should have regular, unsupervised and overnight parenting time on the weekends. Specifically, Mother maintained that she leased a trailer and was employed. Mother did not request equal parenting time.

On December 2, 2025, Father filed an answer and motion to dismiss Mother's petition for modification, a counter-petition for modification, and a petition for contempt. In his answer and motion to dismiss, Father asserted that Mother had not reached a level of stability in her life to constitute a substantial change in circumstances and that even her limited visits cause stress to the parties' child. In his counter-petition for modification, Father alleged that the child had been diagnosed with Autism Level 1, which required the child to have routines and consistency, and that Mother only exercised supervised visitation once every three months. Father requested the court reduce Mother's parenting time by giving him discretion over Mother's visits or to at least set a reduced supervised parenting schedule, contending that due to Mother's inconsistency, the child suffered setbacks after each of her visits. Father asserted that continued visitation with Mother was manifestly harmful to the child. In his petition for contempt, Father alleged that Mother failed to give him the required forty-eight hours' notice of her intended visits, that she regularly failed to give him twenty-four hours' notice of cancelled visits, and that she continually failed to update Father as to her residence addresses or changes in employment.

On February 4, 2026, the family court held a final hearing on the pending petitions, counter-petition, and motions. Mother testified that she previously had unstable housing, frequented parties, and frequently consumed alcohol at the parties, but that she had "stepped up" since the February 6, 2024, order. Mother testified that she leased a trailer so she had stable housing and had reliable transportation. Mother testified that she was no longer employed because they hired someone who "works for the company instead" of having to pay them "under the table[,] but that she was starting CNA classes in March. Regarding drugs, alcohol, and partying, Mother testified that she just stayed at home and volunteered to submit to a drug screen. Father and his mother testified that Mother's visits were sporadic, did not adhere to the notice requirements of the February 6, 2024, order, and that the child always regressed after visits with Mother. Father's mother stated that it was not in the child's best interest to lift the supervision requirement from Mother's visits because Mother did not know the child "well enough." Father testified that he did not believe it was in the child's best interest to have unsupervised visits with Mother; rather, Father stated that it would be in the child's best interest to have fewer visits that were further apart due to the child's autism.

By order entered February 23, 2026, the family court granted Mother's petition and denied Father's counter-petition, petition for contempt, and motion to dismiss. Regarding

Father's counter-petition to reduce Mother's parenting time due to the child's alleged autism, the court found that, "[F]ather offered no medical evidence, educational evidence, or expert opinion to support his allegation. Therefore, there is insufficient evidence to conclude that visits with the mother is causing the child to regress educationally." The court discussed how the February 6, 2024, final order restricted Mother's parenting time because at that time, Mother had just moved out of her sister's home, lacked stable living conditions, and lacked an appropriate, clean residence where she could exercise overnight parenting time. The court additionally explained how Mother had previously left the child unattended in her sister's home to go out and party without notifying her sister. The court found that throughout the hearings of the present case and a separate case involving Mother's oldest daughter, Mother had been exhibiting poor judgments by partying with other young people and there had been several occasions where Mother attended parties where people became intoxicated and behaved poorly, which ultimately resulted in restricting her parenting time.

However, the family court found that Mother had now obtained proper housing, had a safe and suitable home, had matured over the years that she had been before the court in the current matter and in the separate matter involving the child's half-sibling, had stopped her behavior related to issues with alcohol and partying, had come a long way since the entry of the February 6, 2024, order, and that the improvements in Mother's life were substantial. The court further found that it was in the child's best interest to remain in the primary care and custody of Father as he and the paternal grandmother clearly provided very well for the needs of the child. The court explained that it would be contrary to the child's best interest to allocate equal or close to equal parenting time to Mother, but due to the substantial improvements in Mother's life, a gradual transition lifting restrictions would serve the best interest of the child by assuring that the child has meaningful contact with Mother and his half-sibling. As such, the court granted Mother's petition for modification and ordered the following transitional parenting schedule:

- a) Beginning Saturday, February 7, 2026, for three (3) Saturdays, [Mother] shall have parenting time, supervised by [Father] or his mother, at Burger King in Summersville, West Virginia;
- b) The next three (3) Saturdays subsequent to that [02/28, 03/07, 03/14], [Mother] shall have unsupervised Saturday day visits from 11:00 a.m. until 5:00 p.m. with the subject child, with exchanges to occur at Sunoco in Hico, West Virginia;
- c) The next three (3) Saturdays subsequent to that [03/21, 03/28, 04/04], [Mother] shall have overnight parenting time from Friday at 5:00 p.m. until Saturday at 5:00 p.m., with exchanges to occur at Sunoco in Hico, West Virginia; and
- d) Thereafter, [Mother's] parenting time shall occur every other weekend [4/17] from Friday at 5:00 p.m. until Sunday at 5:00 p.m., with exchanges to occur at Sunoco in Hico, West Virginia.

As such, Mother began receiving unsupervised overnight parenting time every other weekend from Friday to Sunday beginning on April 17, 2026. It is from this February 23, 2026, order 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 argues two assignments of error on appeal. First, Father argues that the family court erred by taking into consideration findings made in a separate case involving Mother's oldest child that does not involve Father or his counsel. In support of his argument, Father asserts that the family court relied on Mother's separate case to support its determination here. Specifically, he argues that the court took judicial notice of a multitude of evidence that was apparently presented in the separate action without requiring Mother to introduce the same evidence in the current matter.

This Court will not disturb the family court's credibility finding. The Supreme Court of Appeals of West Virginia ("SCAWV") has consistently held that "[i]t is within the sole province of the family court, as fact-finder, to decide issues of credibility, and this Court will not disturb those determinations." *Mulugeta v. Misailidis*, 239 W. Va. 404, 408-09, 801 S.E.2d 282, 286-87 (2017).

Here, Father argues that the court's consideration of Mother's housing was erroneous because the written lease document was introduced in the separate action rather than in the current matter. However, at the hearing in this case, Mother testified that her name was on the lease to a trailer and that she could provide pictures of the lease if necessary. Father simply argues that Mother failed to offer any documentary evidence to support her testimony. Mother also testified that she had remedied her past issues regarding drinking, partying, and taking drugs. The absence of documentary support for Mother's testimony does not invalidate the court's finding of fact, because it was within the province of the family court to determine the weight accorded her testimony. *See id.* at 412, 801

S.E.2d at 290.⁷ We further note that the family court specifically found that Mother's substantial changes in her life did not support equal parenting time because it was in the child's best interest that he remain in Father's primary custody. The court simply awarded Mother unsupervised parenting time every other weekend. Therefore, we discern no reversible error in the family court's ruling on this issue.

Next, Father argues that the family court erred by finding that Mother had met her burden of proving that a substantial change in circumstances existed to warrant a modification of the parenting plan. In support of his argument, Father contends that he and his mother provided testimony to support Mother's lack of stability and consistency. Additionally, he maintains that the family court erred by failing to find that he had introduced evidence that the child's autism was a substantial change in circumstances that warranted a reduction of Mother's supervised parenting time. We disagree.

As previously stated, credibility findings are in the sole discretion of the family court. Here, Mother's testimony supported the court's finding that she had met her burden of proving a substantial change in the circumstances that had previously resulted in her restricted parenting time. While Father provided evidence through testimony that the child had autism, the family court explained that it was not willing to make such a determinative finding without a medical expert's confirmation. "Even where testimony is uncontroverted, a fact-finder is free to disregard such testimony if it finds the evidence self-serving, and not credible." *Id.* at 409, 801 S.E.2d at 287. As such, we are unable to discern reversible error in the family court's ruling on this issue.

Accordingly, we affirm.

Affirmed.

ISSUED: September 25, 2026

CONCURRED IN BY:

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

⁷ The family court's order makes no finding that it took "judicial notice" of evidence provided in Mother's separate action.