

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

September 25, 2026

**CHRISTOPHER M.,
Respondent Below, Petitioner**

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

v.) No. 26-ICA-91 (Fam. Ct. Harrison Cnty. Case No. FC-17-2024-D-97)

**LUCIA M.,
Petitioner Below, Respondent**

MEMORANDUM DECISION

Petitioner Christopher M.¹ (“Husband”) appeals the Family Court of Harrison County’s January 14, 2026, Order Regarding Spousal Support and Equitable Distribution After Remand, and February 18, 2026, order denying his motion to vacate the January 14, 2026, order. Respondent Lucia M. (“Wife”) filed a response in support of the family court’s order.² 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 no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the family court’s orders is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

In a prior appeal, we provided a detailed recitation of the facts surrounding the parties’ underlying divorce proceeding. *See Christopher M. v. Lucia M.*, No. 25-ICA-39, 2025 WL 2993689 (W. Va. Ct. App. Oct. 24, 2025) (memorandum decision) (affirming, in part, vacating, in part, and remanding to the family court with instructions to enter an amended order recalculating the equitable distribution of the parties’ property after excluding Wife’s student loans, and to make a certain finding of Husband’s income for spousal support purposes). Therefore, we need only provide a brief discussion of the relevant factual and procedural history in this decision.

The parties were married in 2008 and separated in early 2024. In March of 2024, Wife filed a petition for divorce. On October 7, 2024, the family court held a final divorce

¹ To protect the confidentiality of the juveniles 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 Both parties are self-represented.

hearing. During the hearing, the parties presented evidence and arguments regarding spousal support and the equitable distribution of their marital property, among other issues. Notably, Wife testified that she agreed to assume sole responsibility for her student loans in the divorce.

On December 18, 2024, the family court entered an Amended Decree of Divorce that was the subject of Husband's previous appeal. In that order, the family court included Wife's student loans in its equitable distribution calculations, despite Wife's testimony that she would assume responsibility for their repayment. In our prior decision, we concluded that the family court erred by including Wife's student loans in the equitable distribution calculation because, although the debt was incurred during the marriage, Wife agreed to be fully responsible for the total amount in the divorce. On remand, we instructed the family court to recalculate the equitable distribution of the parties' marital property after excluding Wife's student loan debt from its calculations.

In the prior appeal, this Court also found error in the family court's inconsistent factual findings regarding Husband's income relating to spousal support and child support. In the child support section of the family court's December 18, 2024, order, the court found that Husband's monthly income was \$3,418.57 per month based on the thirteen weeks' pay history he provided, from an average of thirty-five hours per week at a regular pay rate. The court stated that Husband also earned an average of ten hours per week at an overtime pay rate of \$33.81 per hour. In contrast, in the family court's award of spousal support, the court found that Husband's monthly income was \$5,500 and awarded Wife monthly spousal support for two years in the amount of \$250. Because the family court's order contained two distinctly different findings regarding Husband's monthly income, we remanded the issue for the family court to enter an amended order that determined the appropriateness of spousal support after making an accurate income finding.³ We discerned no reversible error in the rest of the family court's order based on Husband's remaining assignments of error, thus, affirming the same.

After remand, by order entered January 14, 2026, the family court omitted Wife's student loan debt from its equitable distribution calculation. As such, the value of the marital estate changed, and the family court equitably redistributed the parties' marital property. Regarding Husband's monthly income, the court found that Husband's gross income was \$4,400 per month but concluded that the reduced income level did not change the outcome of the court's previous spousal support finding. Thus, the family court, after

³ In the prior appeal, we did not assume that the inconsistencies in the court's income findings were anything more than a clerical error. We simply noted that the family court was required to use Husband's appropriate income amount in its spousal support determination.

considering Husband's correct income, found that Husband's obligation to pay Wife \$250 per month in spousal support for two years remained appropriate.

On February 14, 2026, Husband filed a "Motion to Vacate the January 14, 2026, Order for Failure to Comply with ICA Mandate, Lack of Jurisdiction, and Lack of Proper Service." After review, the family court found no merit in the motion and denied the same by order entered February 18, 2026. The court stated that it did not believe the order denying Husband's motion to vacate was appealable, but that the deadline for filing an appeal was likely thirty days after the court's entry. The court noted that the parties should consult the West Virginia Rules of Appellate Procedure. It is from the January 14, 2026, and February 18, 2026, orders that Husband 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, Husband argues sixteen assignments of error that can be consolidated and reduced to three arguments. First, Husband argues that the family court acted outside the scope of remand by failing to properly equitably distribute the marital estate and by extending a payment plan without a modification proceeding. In support of his argument, Husband contends that the family court improperly redivided the marital estate after excluding Wife's student loans from its equitable distribution calculation. We disagree.

The law "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) (citing 5 Am.Jur.2d Appellate Review § 605 at 300 (1995) (footnotes omitted)). The Supreme Court of Appeals of West Virginia ("SCAWV") has explained that,

a [lower] court has no power, in a cause decided by the Appellate Court, to re-hear it as to any matter so decided, and, though it must interpret the decree or mandate of the Appellate Court, in entering orders and decrees to carry it

into effect, any decree it may enter that is inconsistent with the mandate is erroneous and will be reversed.

Id. (citation modified). On remand, a lower court must review the entire mandate and examine every part of the decision to determine the appropriate actions to take and the certain relevant principles to be applied in making such a determination. *See id.* at 809, 591 S.E.2d at 735. Notably, “the relevant language could appear anywhere in an opinion or order, including a designated paragraph or section, or certain key identifiable language.” *Id.* It cannot be stressed enough “that individual paragraphs and sentences must not be read out of context.” *Id.*

On remand, we instructed the family court “to enter an amended order excluding Wife’s student loans and recalculating the equitable distribution of the parties’ property[.]” *Christopher M.*, 2025 WL 2993689, at *7. Equitable distribution is a three-step process: the first step is to classify the parties’ property as marital or nonmarital; the second step is to value the marital assets; and the third step is to divide the marital estate between the parties in accordance with statutory principles. *See Chafin v. Chafin*, 202 W. Va. 616, 623, 505 S.E.2d 679, 686 (1998). West Virginia Code § 48-7-103 (2001) states that “in the absence of a valid agreement, the court shall presume that all marital property is to be divided equally between the parties[.]” To achieve an equitable distribution of the marital property, West Virginia Code § 48-7-104(7)(C) (2001) provides family courts with discretion to direct either party to pay sums “in installments or otherwise[.]” Here, the family court properly excluded Wife’s student loan debt so that Husband was not equally responsible for debt that Wife agreed to wholly assume in the parties’ divorce. Excluding the debt altered the marital estate’s value. As such, the family court was then required to divide the marital estate pursuant to the statute and had the discretion to order a payment plan. Therefore, we discern no reversible error in the family court’s recalculation and implementation of the equitable distribution process, as instructed.

Next, Husband maintains that the family court erred by failing to conduct a new spousal support analysis after making an income finding because the spousal support award was vacated on remand. Husband also contends that the income finding was erroneous as it was not supported by the evidentiary record. We disagree.

In the prior appeal, Husband argued that the family court based its spousal support award on an income finding that was different and greater than his income finding in the child support calculation. We partially agreed and explained that we could not assume the difference regarding Husband’s separate income findings was anything more than a clerical error. *Christopher M.*, 2025 WL 2993689, at *6. Thus, we concluded that the family court’s finding that Husband earned \$5,500 per month in the spousal support section of the order was erroneous and instructed the family court to enter an amended order determining the appropriateness of spousal support based upon the correct income finding.

As we stated in the prior appeal, the SCAWV has held that “[q]uestions relating to [spousal support]” lie “within the sound discretion of the court” and those decisions will not be disturbed on appeal “unless it clearly appears that such discretion has been abused.” Syl. Pt. 2, in part, *Mulugeta v. Misailidis*, 239 W. Va. 404, 801 S.E.2d 282 (2017). Here, the family court specifically found that based on the evidence presented at the final divorce hearing, Husband’s correct monthly income was \$4,400. The family court explained that the amount and duration of Husband’s spousal support obligation of \$250 per month for two years remained appropriate based on the court’s previous spousal support analysis.⁴ Thus, the family court was not required to reiterate its previous spousal support analysis in its January 14, 2026, order. While Husband argues that the court’s income finding was not supported by the record and improperly included his overtime wages, the family court based its finding on the thirteen weeks’ pay history Husband provided that regularly included overtime hours.⁵ See Syl. Pt. 1, *Rexroad v. Rexroad*, 186 W. Va. 696, 414 S.E.2d 457 (1992) (“In determining the amount of alimony or child support that may be obtained, consideration may be given not only to regular wages earned, but also to the amount of overtime pay ordinarily obtained.”). As such, we discern no reversible error in the family court’s findings and conclusion regarding its spousal support determination.

Lastly, Husband argues that the family court erred in denying his motion to vacate the January 14, 2026, order without addressing his arguments and by erroneously finding that the order was not appealable. Husband asserts that the February 18, 2026, order fails to contain sufficient findings of fact and conclusions of law, and that the appeal language created ambiguity regarding his appellate rights. We are unpersuaded by these arguments.

Husband filed his motion to vacate on February 14, 2026, alleging that the family court’s January 14, 2026, order was void ab initio because it exceeded its scope of authority on remand and because the court based its January 14, 2026, order on Wife’s remand brief. As stated above, we are unable to conclude that the family court acted beyond the scope of our instructions on remand. Husband also contends that the family court erred by basing its January 14, 2026, order on Wife’s remand brief because he did not have the opportunity to review or respond as he was never served with her brief. First, the family court was not required to afford the parties the opportunity to submit briefs in support of their arguments

⁴ We explained that “the family court articulated all twenty spousal support factors and analyzed those relevant to the case at bar” in our previous decision. *Id.* As such, the family court was not required to reanalyze the spousal support factors unless the court’s corrected finding regarding Husband’s income warranted a change in the court’s spousal support award.

⁵ Upon review, the record supports this finding; the paystubs Husband submitted during the final divorce hearing revealed that Husband regularly earned overtime wages.

on remand and did so as a courtesy. Second, the family court's January 14, 2026, order specifically states that the court considered this Court's memorandum decision, evidence presented by the parties during the final divorce hearing, and the subsequent *relevant* arguments contained in the parties' briefs. Based on the record, the family court adhered to our instructions on remand; thus, we discern no reversible error in the family court's consideration of the parties' relevant arguments in their remand briefs.

Regarding Husband's motion to vacate the January 14, 2026, remand order in its entirety, there is simply no basis to grant this request. *See Toler v. Shelton*, 157 W. Va. 778, 786, 204 S.E.2d 85, 90 (1974) ("[W]here a claim is absolutely without merit, neither a reviewing court nor a [lower] court should engage in a fruitless venture to vacate a judgment by reason of procedural defects merely to reconfront a substantive rule which mandates a denial of the movant's underlying claim."). Therefore, we are unable to conclude that the family court committed reversible error by denying Husband's motion to vacate after concluding it meritless. Further, to the extent that the family court's appeal language in the February 18, 2026, order was in error, we conclude it was harmless. Husband was neither deprived of the opportunity to appeal the order nor did he endure any detriment.

Based on the foregoing, we affirm the family court's January 14, 2026, and February 18, 2026, orders.

Accordingly, we affirm.

Affirmed.

ISSUED: September 25, 2026

CONCURRED IN BY:

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