

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In re K.S. and I.S.

No. 25-844 (ICA No. 25-ICA-120)

MEMORANDUM DECISION

Petitioners Penny S. and Kevin S.,¹ the legal guardians of children K.S. and I.S., appeal the memorandum decision of the Intermediate Court of Appeals (“ICA”) affirming the Circuit Court of Fayette County’s February 19, 2025, order modifying the guardianship.² *See In re K.S. and I.S.*, No. 25-ICA-120, 2025 WL 2993510 (W. Va. Ct. App. Oct. 24, 2025) (memorandum decision). On appeal, the petitioners challenge the circuit court’s modification of the legal guardianship after the mother withdrew her petition to terminate the same and the ICA’s affirmance thereof.

The children were the subject of a proceeding resulting in the petitioners being appointed their legal guardians. *Id.* at *1. In March 2022, the mother filed a petition to terminate the guardianship, which resulted in an order entered on February 10, 2023, modifying the children’s residential schedule to allow visitation with “the parents.” *Id.* In April 2024, the mother filed a second petition to terminate the legal guardianship, and on January 27, 2025, the circuit court held a hearing on the petition to terminate but noted that, shortly before the hearing, the mother filed a notice of withdrawal of her petition. *Id.* at *1-2. Despite her withdrawal, her counsel requested that the court modify the guardianship order based upon the children’s wishes. *Id.* at *2. The court noted that the father had previously been barred from visiting or contacting the children and opined that the visitation provision referring to “the parents” was therefore inaccurate. *Id.* Thus, the court modified the February 10, 2023, order, in relevant part, changing holiday visitation with “the parents” to “the mother.” *Id.* at *3. The petitioners appealed the circuit court’s decision to the ICA, arguing that the modification after the mother withdrew her petition was error. *Id.* The ICA affirmed the circuit court, reasoning that the petitioners had notice and were heard on the issue and that the circuit court was permitted to modify the minor guardianship. *Id.* at *3-4.

Upon this Court’s review of “challenges to the findings and conclusions of the circuit court, a two-prong deferential standard of review is applied. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court’s underlying factual findings under a clearly erroneous standard.” *In re Guardianship of A.C.*, 240 W. Va. 23,

¹ We use initials where necessary to protect the identities of the juveniles involved in this case. *See* W. Va. R. App. P. 40(e).

² The petitioners appear by counsel Brandon L. Gray. Respondent Mother Paula M. appears by counsel Robert P. Dunlap II.

27, 807 S.E.2d 271, 275 (2017) (quoting Syl. Pt. 1, *McCormick v. Allstate Insurance Co.*, 197 W. Va. 415, 475 S.E.2d 507 (1996)). Regarding custody matters,

““[t]he exercise of discretion by a trial court in awarding custody of a minor child will not be disturbed on appeal unless that discretion has been abused; however, where the trial court’s ruling does not reflect a discretionary decision but is based upon an erroneous application of the law and is clearly wrong, the ruling will be reversed on appeal.” Syllabus point 2, *Funkhouser v. Funkhouser*, 158 W.Va. 964, 216 S.E.2d 570 (1975), superseded by statute on other grounds as stated in *David M. v. Margaret M.*, 182 W.Va. 57, 385 S.E.2d 912 (1989).’ Syl. Pt. 1, *In re Abbigail Faye B.*, 222 W.Va. 466, 665 S.E.2d 300 (2008).” Syl. Pt. 2, *In re Antonio R.A.*, 228 W.Va. 380, 719 S.E.2d 850 (2011).

Syl. Pt. 2, *In re S.W.*, 236 W. Va. 309, 779 S.E.2d 577 (2015).³ Before this Court, the petitioners argue that the circuit court erred by modifying its prior orders in the absence of a pending petition or motion because they had no notice. The respondent counters that the circuit court permissibly exercised its authority to make minor modifications to the visitation schedule based upon the children’s stated desires and best interests. The respondent further argues that the petitioners filed a response to the mother’s petition to terminate, indicating they were on notice, and had notice of and attended the hearings at which the court made the modifications. Having considered the record and the briefs, we find no reversible error and therefore summarily affirm the ICA’s decision. *See* W. Va. R. App. P. 21(c).

Affirmed.

ISSUED: October 14, 2026

³ This Court consistently reviews appeals of ICA decisions by considering the relevant circuit court, family court, or administrative order under our well-settled standards of review. *See, e.g.*, Syl. Pt. 3, *Duff v. Kanawha Cnty. Comm’n*, 250 W. Va. 510, 905 S.E.2d 528 (2024) (on appeal from the ICA, reviewing a decision of the West Virginia Workers’ Compensation Board of Review under the statutory standards in West Virginia Code § 23-5-12a(b) (eff. Jan. 13, 2022)); Syl. Pt. 3, *Christopher P. v. Amanda C.*, 250 W. Va. 53, 902 S.E.2d 185 (2024) (on appeal from the ICA, reviewing family court order for clear error and abuse of discretion); Syl. Pt. 1, *Folse v. Rollyson*, 251 W. Va. 566, 915 S.E.2d 344 (2025) (on appeal from the ICA, applying de novo review to circuit court order granting motion to dismiss); Syl. Pt. 1, *Moorhead v. W. Va. Army Nat’l Guard*, 251 W. Va. 600, 915 S.E.2d 378 (2025) (on appeal from the ICA, applying de novo review to circuit court’s entry of summary judgment); Syl. Pt. 1, *In re D.K.*, 252 W. Va. 495, 923 S.E.2d 425 (2025) (on appeal from the ICA, applying abuse of discretion review to a circuit court order granting or denying expungement of criminal records).

CONCURRED IN BY:

Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan

DISSENTING:

Chief Justice C. Haley Bunn

Bunn, Chief Justice, dissenting:

I dissent to the majority's resolution of this case. I would have set this case for oral argument to thoroughly address the error alleged in this appeal. Having reviewed the parties' briefs and the issues raised therein, I believe a formal opinion of this Court was warranted, not a memorandum decision. Accordingly, I respectfully dissent.