

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Fall 2026 Term

FILED

October 20, 2026

No. 25-ICA-436

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INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

KATTI D.,
Petitioner Below, Petitioner,

v.

ANTHONY H.,
Respondent Below, Respondent.

Appeal from the Family Court of Harrison County
Honorable Lori B. Jackson, Judge
Civil Action No. FC-17-2021-D-173

AFFIRMED

Submitted: September 30, 2026
Filed: October 20, 2026

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JUDGE WHITE delivered the Opinion of the Court.

WHITE, Judge:

Petitioner Katti D. (“Mother”) appeals the October 9, 2025, final order of the Family Court of Harrison County denying her petition for modification seeking relocation and allocating Anthony H. (“Father”) primary custodial responsibility of their four minor children. The basis of Mother’s petition for modification was her desire to relocate to Rolla, Missouri, with the children. On appeal, Mother argues the family court violated numerous statutory provisions in denying her petition for modification and asks this Court to reverse the family court’s order. Based upon our review of the record, the oral and written arguments of counsel, and the applicable law, we find no error in the family court’s order denying Mother’s petition for modification. For the reasons discussed below, we affirm the Family Court of Harrison County’s October 9, 2025, order.

I. FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father were divorced by order entered June 30, 2021. They share four minor children, all of whom were born between 2011 and 2017. At the time of their divorce, Mother and Father had agreed on the allocation of custodial responsibility for the children, as well as the parenting plan they would follow. Pursuant to their agreement, Mother would have primary custodial allocation of the four children and Father would exercise custodial time with the children every other weekend from Friday at 3:00 p.m. until Sunday at 11:00 a.m. Further, Mother and Father would share holiday time equally,

and Father would exercise custodial time with the children for the entire month of June each year.¹ The parties also agreed to share all major decision-making for the children.

On May 1, 2025, Mother filed a petition for modification seeking the court's permission to relocate with the children from Harrison County to Rolla, Missouri, asserting that she was seeking to relocate to be closer to her husband's parents who would be providing her childcare assistance. Moreover, Mother alleged that she and her husband had purchased a home in Rolla in April 2025. Mother also alleged that Father was not fully exercising his custodial time with the children, he was not involved in the children's medical or educational decisions, and that he owed substantial child support arrears.²

On May 5, 2025, Father filed his own petition to modify the parties' allocation of custodial responsibility seeking equal custodial allocation of the children. In support of his petition, Father alleged that his work schedule and employment had changed and that such was a substantial change in circumstances warranting modification because

¹ Without court approval, the parties had previously agreed to modify the court ordered custodial schedule following the entry of the June 30, 2021, divorce order in that they agreed to follow their regular custodial schedule during the summers instead of Father having the children in June and Mother having the children in July. Also, the parties agreed to extend Father's Sunday custodial time from 11:00 a.m. to 7:00 p.m.

² As of the date Mother filed her petition for modification, Father owed child support arrears in the amount of \$19,734.98.

his new work schedule would allow him to exercise equal (50-50) custodial allocation of the children.

On May 20, 2025, Mother filed a motion for temporary relief asking the court for permission to immediately relocate to Rolla, Missouri, with the children pending the hearing on her petition for modification. Mother further alleged that neither she nor Father had family in West Virginia, that they moved here in 2018 during their marriage for Father's employment, and that they did so with the understanding that the move would be temporary. Mother also asserted that her primary support network consisted of her husband's parents, her in-laws, who lived in the Rolla, Missouri, area. In her motion, Mother also asked the family court to modify Father's child support obligation. On June 6, 2025, Father filed a response in opposition to Mother's motion for temporary relief.

On June 1, 2025, Mother filed a response to Father's petition for modification and a proposed parenting plan. Following a hearing on June 9, 2025, the family court denied Mother's motion for temporary relief and ordered that the parties maintain the status quo pending a final hearing on the modification petitions; the court entered this order on August 1, 2025. On June 27, 2025, Mother filed a motion asking the court to permit the *in camera* testimony of their two eldest children, then ages thirteen and eleven. Father opposed this motion. On July 21, 2025, Father filed a motion for contempt alleging that Mother had violated the court's order denying temporary relief by relocating to Missouri

with the children on July 17, 2025.³ Father further alleged that Mother had moved with the children without telling him, but he had learned from a mutual friend that they had moved. Mother filed her response to Father's motion for contempt and motion to dismiss on July 22, 2025, in which she denied vacating her home and moving the children to Missouri. By order entered July 25, 2025, the court issued a rule to show cause against Mother and set a hearing on Father's motion for contempt on August 26, 2025.⁴

On August 6, 2025, the family court conducted a hearing on Mother's motion to take *in camera* testimony of two of the children and entered an order granting her motion that same day. In its August 6, 2025, order, the court prohibited the parties from discussing the matter with the children and set a deadline for the parties to submit to the court their proposed questions for the children's *in camera* testimony. The court took the two children's *in camera* testimony on August 13, 2025.

On August 18, 2025, the family court conducted a hearing on the parties' modification petitions. By order entered October 9, 2025, the court denied Mother's petition for modification finding that Mother failed to meet the burden of proof set forth in

³ At some point, Father amended his motion, making it a petition for contempt.

⁴ Father moved to withdraw his petition for contempt on August 25, 2025. The court entered the parties' "Agreed Order Withdrawing Respondent's Petition for Contempt" on August 26, 2025.

West Virginia Code § 48-9-403(d)(3). Specifically, the court found that Mother failed to prove that her relocation to Rolla, Missouri, was for a legitimate purpose pursuant to West Virginia Code § 48-9-403(d)(2). The court found that Mother's in-laws were not "immediate family members" and that the relocation was not for a work opportunity for Mother's husband as West Virginia Code § 48-9-403(d)(3) requires. The court also found that Mother's only other stated purpose for the relocation, that her in-laws, who lived in the Rolla, Missouri, area, would assist her with childcare, did not qualify as a legitimate purpose pursuant to West Virginia Code § 48-9-403(d)(3) "because the children of the parties are all over the age of 7 and enrolled full-time in school, the childcare in question would rarely, if ever, pertain to the parties' children." Moreover, the court found that "no reasonable alternative to Mother's proposed move was suggested or refuted by either party" and that, based upon the evidence presented, it was not in the children's best interests to relocate to Rolla, Missouri. As to the two eldest children's stated preference to reside with Mother in Missouri, the court found that "neither child is of sufficient maturity to be able to consider all of the ramifications of moving to Missouri away from Father, their school, [child's] therapist, and their friends."

Based upon these findings and considering Mother's testimony that she would relocate to Missouri even if the court did not allow the children's relocation, the court modified the parties' custodial allocation and parenting plan pursuant to West Virginia Code § 48-9-403(d)(5) and ordered that the children would primarily reside with Father.

The court granted Mother less than equal allocation of custodial responsibility finding that the distance between Mother's home in Rolla, Missouri, and Father's residence in Harrison County would not permit an equal custodial allocation.⁵ The court granted Mother custodial time with the children for all but three weeks of the children's summer break, their entire spring break, and alternating Thanksgiving breaks. The court further granted Mother custodial time with the children on weekends when she was in Harrison County, conditioned upon her meeting certain notice requirements. The court granted Father custodial time with the children during Father's Day weekend, plus ten days of vacation during the summer, both conditioned upon his meeting certain notice requirements. It is from this order that Mother appeals.

II. STANDARD OF REVIEW

In appeals from family court proceedings, our standard of review is as follows:

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.

⁵ While not specifically articulated in the order, it appears that given the distance between Rolla, Missouri, and Harrison County, the family court found the statutory presumption of equal allocation of custodial responsibility being in the best interests of the children to be rebutted pursuant to West Virginia Code § 48-9-209(f)(5)(A).

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) (specifying standards for appellate court review of family court orders).

III. DISCUSSION

On appeal, Mother argues that the family court abused its discretion by denying her petition for modification seeking permission to relocate with the children to Rolla, Missouri, and by modifying the parties' custodial allocation to make Father the primary custodial parent.⁶ Mother asserts that, contrary to the family court's findings, she met the burden of proof set forth in West Virginia Code § 48-9-403, proving that her proposed relocation to Missouri was for a legitimate purpose, made in good faith, in the best interests of the children, and that there was no other reasonable alternative other than the proposed move that would be in the children's best interests.⁷

“Questions relating to . . . the maintenance and custody of the children are within the sound discretion of the court and its action with respect to such matters will not be disturbed on appeal unless it clearly appears that such discretion has been abused.” Syl.

⁶ Mother raises eight assignments of error on appeal. We have consolidated and restated them in our discussion for clarity and efficiency. *See Tudor's Biscuit World of Am. v. Critchley*, 229 W. Va. 396, 402, 729 S.E.2d 231, 237 (2012) (per curiam) (stating the general proposition that related assignments of error may be consolidated for ruling).

⁷ The parties do not dispute that Mother complied with the notice requirements of West Virginia Code § 48-9-403(b).

Pt., *Nichols v. Nichols*, 160 W. Va. 514, 236 S.E.2d 36 (1977). An appellate court may reverse for abuse of discretion if “a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed but the [lower] court makes a serious mistake in weighing them.” *Gentry v. Mangum*, 195 W. Va. 512, 520 n.6, 466 S.E.2d 171, 179 n.6 (1995).

[We] cannot set aside a family court’s factual findings “unless they are clearly erroneous.” A finding is clearly erroneous only when “the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” Syl. Pt. 1, *In re Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996). Under the clearly erroneous standard, an appellate court does not reweigh the evidence and cannot reverse a family court’s findings simply because it may have viewed the evidence differently. *See Mulugeta v. Misailidis*, 239 W. Va. 404, 408, 801 S.E.2d 282, 286 (2017). Further, a family court is entitled to deference to the extent it relies on determinations it made of the parties’ credibility. *See Thomas E. v. Amy F.*, No. 13-0176, 2013 WL 5708438, at *2 (W. Va. Oct. 21, 2013) (memorandum decision).

James W. v. Ciara R., Nos. 23-ICA-237, -238, and -239, 2024 WL 1740353, at *6 (W. Va. Ct. App. Apr. 22, 2024) (memorandum decision). “We have repeatedly stated that we will accord great deference to findings of fact by a family [court].” *Porter v. Bego*, 200 W. Va. 168, 173, 488 S.E.2d 443, 448 (1997). *See also Jacob H. v. Siera G.*, No. 24-ICA-147, 2024 WL 4787833, at *3 (W. Va. Ct. App. Nov. 14, 2024) (memorandum decision) (“A family court’s decision is entitled to significant deference.”). Moreover, “[f]or a century-and-a-half, the courts of this State have been guided by the fundamental rule that, when addressing custody issues involving children, the best interests of the child trump all other considerations. It is the polar star that steers all discretion.” *Brooke B. v. Ray*, 230 W. Va.

355, 361-362, 738 S.E.2d 21, 27-28 (2013) (internal citations omitted). With these standards in mind, we turn to the issues raised on appeal.

First, Mother argues that the family court abused its discretion by finding that she failed to prove that the move to Missouri was for a legitimate purpose because she was seeking to move to be close to “immediate family members,” those being her mother-in-law and father-in-law.⁸ We disagree. In reaching its decision, the court specifically found that Mother had no immediate family members in Missouri, and that her mother-in-law and father-in-law were not “immediate family members” as contemplated by West Virginia Code § 48-9-403(d). Accordingly, the court found that Mother failed to prove that her proposed relocation was for a legitimate purpose.

West Virginia Code § 48-9-403(d) provides that a relocating parent has the burden of proving three elements:

(A) The reasons for the proposed relocation are legitimate and made in good faith; (B) that allowing relocation of the relocating parent with the child is in the best interests of the child as defined in § 48-9-102 of this code; and (C) that there is no reasonable alternative, other than the proposed relocation, available to the relocating parent that would be in the child's best interests and less disruptive to the child.

⁸ In April 2025, just before filing her petition for modification, Mother and her husband purchased a home in Rolla, Missouri.

W. Va. Code § 48-9-403(d)(1). *See also Katherine A. v. Jerry A.*, 248 W. Va. 672, 679, 889 S.E.2d 754, 761 (Ct. App. 2023). West Virginia Code §§ 48-9-403(d) defines “legitimate” for the purposes of a relocation as follows:

A relocation is for a legitimate purpose if it is to be close to immediate family members . . . to pursue a significant employment . . . opportunity, or to be with one’s spouse . . . with whom the relocating parent has cohabitated for at least a year, who is established, or who is pursuing a significant employment . . . opportunity. . . in another location.

The relocating parent has the burden of proving the proposed relocation is for one of these legitimate purposes. The relocating parent has the burden of proving the legitimacy of any other purpose. A move with a legitimate purpose is unreasonable unless the relocating parent proves that the purpose is not substantially achievable without moving, and that moving to a location that is substantially less disruptive of the other parent’s relationship to the child is not feasible.

W. Va. Code §§ 48-9-403(d)(2)-(3).

If the relocating parent successfully proves the three elements identified in West Virginia Code § 48-9-403(d)(1), “the court shall modify the parenting plan in accordance with the child’s best interests.” W. Va. Code § 48-9-403(d)(4).⁹ If the relocating parent does not prove the three elements, “the court may modify the parenting plan in accordance with the child’s best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial

⁹ “The relocation of a parent constitutes a substantial change in the circumstances of the child under § 48-9-401(a) . . . when it impairs either parent’s ability to exercise responsibilities that the parent has been exercising, or when it impairs the schedule of custodial allocation . . . ordered by the court” W. Va. Code § 48-9-403(a).

responsibility, to become effective if and when the parent’s relocation occurs.” W. Va. Code § 48-9-403(d)(5).

Mother acknowledges that West Virginia Code Chapter 48, Article 9 does not include a definition of “immediate family members.” Nonetheless, she asks this Court to apply the definition of “family or household members” found in West Virginia Code § 48-27-204, which addresses the “prevention and treatment of domestic violence,” and to conclude that the family court erred by finding that Mother’s mother-in-law and father-in-law are not her immediate family members. However, West Virginia Code § 48-27-204 defines “family or household members” rather than “immediate family members,” the latter of which denotes a narrower classification of family members due to the Legislature’s use of the word “immediate.” We must remember that,

[a] cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute. Syl Pt. 3, *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (1999). It is presumed that the Legislature intended that “every word used in a statute has a specific purpose and meaning.” *State ex rel. Johnson v. Robinson*, 162 W. Va. 579, 582, 251 S.E.2d 505, 508 (1979)

W. Va. Auto. v. Ford Motor Co., 251 W. Va. 352, 359, 913 S.E.2d 534, 541 (2025).

Additionally, West Virginia Code § 48-27-204 is inapplicable because this appeal does not involve domestic violence or any allegations of domestic violence.

The term “immediate family members” refers to relatives who bear a certain degree of kinship, which could under certain facts and circumstances include parents, brothers, sisters, and spouses. Our Legislature has not provided a specific definition of “immediate family members” that applies in parental relocation actions. In this case, the family court made a finding, based upon the evidence presented, that the Mother’s new husband’s parents were not immediate family members pursuant to West Virginia Code § 48-9-403(d)(2). As the family court is the trier of fact, its findings are entitled to great deference. *See Porter*, 200 W. Va. at 173, 488 S.E.2d at 448; *Jacob H.*, 2024 WL 4787833, at *3. For these reasons, we find no abuse of discretion in the family court’s finding in this regard.

Mother further argues that the family court erred in finding that her husband’s move to Missouri, as well as her proposed move to be with him, was not for a legitimate purpose pursuant to West Virginia Code § 48-9-403(d)(2) because the relocation was for her husband to pursue an employment opportunity. Again, we disagree. The family court based its findings on both Mother and her husband’s testimony which revealed that her husband did not work in Rolla, Missouri, or nearby. Instead, at the time of the proceedings below, Mother’s husband worked on site in DeKalb, Illinois, more than five hours from Rolla, and he worked remotely on a site in Louisiana. Further, while the evidence demonstrated that husband planned to bid on a job located in St. Louis, Missouri, husband had not yet done so, let alone received that job, at the time of the proceedings below. However, even if he had received that job, it was still located over an hour from Rolla.

While the family court recognized that husband usually returned to Harrison County on weekends, the family court reasoned that his “work takes him far from Harrison County . . . for long-term periods, and if Mother were living elsewhere, it appears that [husband’s] work would take him far from that location regularly for long periods of time since that has been the pattern recently.” As such, the family court found that “Mother and [husband] could live just about anywhere in the continental United States, and [husband’s] work would not be affected.” The court also noted that Mother’s husband’s next work assignment was unknown at the time of the final hearing. For these reasons, the court found that “Mother cannot show that her spouse’s relocation is for a work opportunity.”

Mother argues, however, that the family court missed the point of her argument: Rolla, Missouri, is much closer to DeKalb, which would allow her husband to come home every weekend because the drive would be much shorter than the drive from DeKalb to Harrison County. Further, Mother notes that if her husband got the job in St. Louis, he would be able to drive home nightly. Therefore, Mother asserts that the relocation was for her husband to pursue an employment opportunity. Again, while we understand Mother’s argument, we can find no discernible error in the family court’s decision. First, the statute is clear, “[a] relocation is for a legitimate purpose if it is . . . to be with one’s spouse . . . with whom the relocating parent has cohabitated for at least a year, who is established, or who is pursuing a significant employment . . . opportunity in another location.” W. Va. Code § 48-9-403(d)(2). Mother’s husband was not pursuing significant

employment in another location. His job had not changed, he had not bid on the St. Louis job, and neither his current job nor the St. Louis job, even if he received it, was in Rolla, Missouri. Accordingly, the family court's determination that Mother was not relocating for a legitimate purpose, that being for her husband to pursue a significant employment opportunity in another location, is entitled to substantial deference.

Mother further asserts that the family court abused its discretion by finding that she failed to prove that her relocation to Rolla, Missouri, was for a legitimate purpose even though she was also relocating "to be close to significant family or other support networks who [would] provide her a support network that she [did] not have in West Virginia" pursuant to West Virginia Code §§ 48-9-403(d)(2)-(3).¹⁰ Again, we disagree.

Mother testified below that one of the reasons she was seeking to relocate to Rolla was to receive childcare assistance from her mother-in-law and father-in-law for her two children with her husband, as well as for the parties' four minor children. The family court rejected this as a legitimate purpose because the parties' children were all over seven years of age and enrolled in school on a full-time basis; therefore, "the childcare in question would rarely, if ever, pertain to the parties' children and consequently, would not qualify as a legitimate purpose under that portion of the statute," referring to West Virginia Code

¹⁰ The current versions of West Virginia Code §§ 48-9-403(d)(2)-(3) (2021), do not include language addressing significant family or support networks. However, the prior version of West Virginia Code § 48-9-403 included these terms.

§ 48-9-403(d)(3) which provides, in part, that “[t]he relocating parent has the burden of proving the legitimacy of *any other purpose*.” (Emphasis added).

Again, Mother is asking this Court to reweigh the evidence, which we cannot do. *See Mulugeta*, 239 W. Va. at 408, 801 S.E.2d at 286. An appellate court cannot reverse a family court’s findings simply because it may have viewed the evidence differently. *See id.* As we explained previously, a family court’s findings of facts and credibility determinations are entitled to deference. *See Thomas E.*, 2013 WL 5708438, at *2; *James W.*, 2024 WL 1740353, at *6; *Porter*, 200 W. Va. at 173, 488 S.E.2d at 448 (1997); *Jacob H.*, 2024 WL 4787833, at *3. Accordingly, this Court will not disturb the family court’s ruling on appeal.

Further, Mother argues that the family court abused its discretion in denying her petition for modification seeking to relocate by failing to consider the best interests of the children pursuant to West Virginia Code §§ 48-9-403(d)(1), 48-9-102(a)(1) to (3), (5), and (8), and 48-9-209(f)(3)(G). We disagree.

West Virginia Code §§ 48-9-403(d)(4)-(5) state as follows:

(4) When the relocation is for a legitimate purpose, in good faith, and renders it impractical to maintain the same proportion of custodial responsibility as that being exercised by each parent and all other persons exercising custodial responsibility for the child pursuant to an order of the court, the court shall modify the parenting plan in accordance with the child’s best interests.

(5) If the relocating parent does not establish that the purpose for that parent's relocation is made in good faith for a legitimate purpose to a location that is reasonable in light of the purpose, *the court may modify the parenting plan in accordance with the child's best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial responsibility,* to become effective if and when the parent's relocation occurs.

W. Va. Code § 48-9-403(d)(4)-(5) (Emphasis added.) Here, the family court found that Mother failed to meet her threshold burden of proving that her proposed move was legitimate as required by West Virginia Code § 48-9-403(d)(1). As such, the court denied Mother's petition for modification seeking permission to relocate to Rolla, Missouri, then performed an analysis pursuant to West Virginia Code § 48-9-403(d)(5) in which the court assessed the best interests of the children and the effects of the relocation on them.

In its West Virginia Code § 48-9-403(d)(5) analysis, the court considered that Mother was the parent who provided the most hands-on care and performed most "organizational functions" for the children. Further, the court considered the fact that the children had resided with Mother for twelve of every fourteen days, and Father spent time with at least some of the children more than the two days of the cycle because he coached several sports in which at least the older two children participated. The court considered the effect relocating to Missouri would have on the children and their relationship with their father, especially given that Harrison County was the only home they could remember. Further, the court considered the fact that one of the children had been seeing the same counselor for over one year, and that relocating would interrupt that treatment if the court

allowed that child to move with Mother to Missouri. The court found that relocating to Missouri would “effectively strip [the children] of their Father’s involvement in their lives during the school year and during all sports seasons. Father’s previous involvement in the children’s sports was extensive and long-standing.”

Moreover, the court considered the fact that Mother and her husband had knowingly allowed one of the older children to continue to have full access to Father’s personal text messages via the child’s iPad, without Father’s knowledge or permission, even though the text messages were not appropriate for the child to see.¹¹ The court found that “the child’s best interest was clearly not the priority for Mother or [her husband] in this instance. Mother’s priority was to gather ‘dirt’ on Father and his significant other to use against Father at trial.” Ultimately, the court found that “merely showing that most of the organizational and hands-on care for the children was provided by Mother since the (sic) 2021 does not outweigh the children being separated from Father for reasons that do not meet the criteria for relocation contained in the West Virginia Code.” While the family court did not conduct a “factor-by-factor analysis” specifically addressing each of the best interest factors found in West Virginia Code § 48-9-102(a), the order as a whole reflects that the court considered the applicable factors, made sufficient findings of fact, weighed

¹¹ The record on appeal revealed that Father had made an error when setting up the child’s iPad which resulted in the child being able to see all of Father’s personal text messages. Mother learned that the child had access to Father’s text messages, but she did not stop the child from seeing them or inform Father of the problem so that he could fix it. Instead, Mother continued to allow the child to access the text messages, then she presented some of those messages as evidence below.

the evidence, and provided adequate analysis explaining the factual and legal basis for its determination of the best interests of the children. *See Chandra T. v. Robert M.*, 253 W. Va. 52, 928 S.E.2d 433 (Ct. App. 2026).

In addition to considering the children's best interests, the court also considered Mother's testimony that if the court denied her request to relocate, Mother would relocate to Missouri anyway. Based upon the evidence presented, and as permitted by West Virginia Code § 48-9-403(d)(5), the court modified the parties' custodial allocation to reallocate primary custodial responsibility of all four children to Father. In this case, the family court clearly made a difficult decision on custodial allocation, and it adequately supported its conclusion in its order. Accordingly, this Court cannot find that the family court failed to consider the best interests of the children or otherwise abused its discretion in reaching its decision.

Mother also contends that the court erred by finding that the two eldest children were not sufficiently mature to express a firm and reasonable preference as to where they wanted to live because they did not fully understand all the ramifications of moving to Missouri. The statutory language allowing modification is discretionary, and we are to defer to the court's findings that the children did not understand the ramifications of the move to Missouri. Additionally, even if the court had found the children's preference firm and reasonable, the statute clearly grants the court the authority to assign such preference any weight it desires or to totally ignore a child's preference because the

statutory language is discretionary. Thus, we can find no discernible error in the family court's decision to discount the minor children's testimony.

Lastly, Mother asserts that the family court abused its discretion in determining the allocation of custodial responsibility by ignoring certain limiting factors found in West Virginia Code § 48-9-209.¹² Based upon the record, we cannot find that the family court erred in determining the parties' allocation of custodial responsibility. Mother testified that she would relocate to Missouri no matter the court's ruling on her petition for modification. Accordingly, the court specifically found that the distance between Harrison County and Missouri "would not permit a true 50/50 custodial plan" and noted that it would endeavor "to maximize Mother's custodial time with the children." While the court did not specifically state that it found the presumption "that equal (50-50) custodial allocation is in the best interest of the child" rebutted, that is effectively what the court did. Further, as West Virginia Code § 48-9-403(d)(5) permits, the court reallocated primary custodial responsibility to Father and determined a parenting plan that granted Mother parenting time with the children during nearly all of their school breaks, as well as additional parenting time when she was in Harrison County, subject to certain notice requirements. While this Court may not have decided the case in the same manner, we cannot find any discernible

¹² Mother raises these arguments in her brief in Assignments of Error numbers five through eight. As they each pertain to West Virginia Code § 48-9-209(f), we are consolidating them for our analysis.

error in the family court's order, and we must give the family court deference.¹³ Given our decision, there is no need to address Mother's other arguments.

IV. CONCLUSION

For the foregoing reasons, we affirm the Family Court of Harrison County's final Order Denying Relocation Request and Modifying Custodial Allocation.

Affirmed.

¹³ Mother asserts in her brief that the family court abused its discretion by attributing her income in its calculation of child support. However, Mother did not raise that issue as an assignment of error, or in a heading, and she, by counsel, did not address this issue during oral argument. Instead, Mother made this argument merely in passing in her brief while addressing her assignment of error that the court erred by not considering Father's child support arrearage in determining the parties' allocation of custodial responsibility and parenting plan pursuant to West Virginia Code § 48-9-209(f)(3)(a). Accordingly, we will not consider this argument and deem it waived. *See* W. Va. R. App. Pr. 10(c)(3) & (c)(7). *See also Fairmont Tool, Inc. v. Davis*, 246 W. Va. 258, 868 S.E.2d 737 (2021) (holding that the Court may construe headings contained in a brief to be assignments of error when the brief otherwise lacks designated assignments of error). "Assignments of error that are not argued in the briefs on appeal may be deemed by this Court to be waived." Syl. Pt. 6, *Addair v. Bryant*, 168 W. Va. 306, 284 S.E.2d 374 (1981).