IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

November 12, 2026

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

ASHLEY B.,
Petitioner Below, Petitioner

v.) No. 25-ICA-437 (Fam. Ct. of Jefferson Cnty. Case No. FC-19-2023-D-97)

DUSTIN K.,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Ashley B. ("Mother")[1] appeals the October 9, 2025, order of the Family Court of Jefferson County, denying Mother's petition for modification of custodial allocation, in which Mother sought increased parenting time following Father's relocation. Dustin K. ("Father") filed a summary response in support of the family court's order, to which Mother filed a reply.[2]

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). After considering the record on appeal, the oral and written arguments of counsel, and the applicable law, this Court finds that there is error in the family court's decision, but no substantial question of law. For the reasons set forth below, a memorandum decision vacating and remanding this matter to family court, for further proceedings consistent with this decision, is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

The parties were married on August 20, 2016, and are the parents of a minor child, W.K. ("Child"), born in July of 2022. In May of 2023, Mother filed for divorce, sought primary custody of the Child, and raised concerns regarding alleged deficiencies in Father's parental fitness. A guardian ad litem ("GAL") was appointed to represent the interests of the Child and determined that there were "no behaviors of the [Father] or any incidents

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[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]Ashley B. is represented by Jeremy Cooper, Esq. Dustin K. is represented by Paul Taylor, Esq.

involving the [C]hild which raise[d] any concern" and that Father was a "fit person to have custodial time with" his Child. Accordingly, the GAL recommended that the parties share equal custody of the Child.

A final divorce hearing was held on May 8, 2024, at which the court concurred with the recommendation of the GAL as to custodial allocation of Child and implemented equal shared custody between the parties of 4-3/3-4. Thereafter, on October 17, 2024, Father filed a petition to modify custodial allocation and find Mother in contempt, as Mother allegedly refused to follow the parties' visitation schedule and reportedly made a false allegation of child abuse against Father. A hearing was held on Father's petition on December 4, 2024. A final hearing order from the December 4, 2024, hearing was entered on December 13, 2024. In this order, the court directed the parties to work on an agreed order to resolve "any and all outstanding issues[,]" citing that the parties had been working "amicably in an effort to raise their child peaceably." Further, the court noted if the parties were unable to agree upon any issue, they were free to motion the court for additional relief.

In April of 2025, Mother filed a petition for modification of custodial allocation and sought primary custody of the Child. In her petition, Mother argued that Father had relocated without notice to or permission of the family court, which created "practical hardships" upon the Child and Mother that necessitated a modification of the parties' custodial allocation. A hearing was held on Mother's petition for modification on August 28, 2025. In an order entered on August 31, 2025, the court referred the parties to mediation and set a status/final hearing in this matter for October 9, 2025.[3] Following the October 9, 2025, hearing, on that same day, the court entered its final modification order, in which it denied Mother's petition for modification. It is from the family court's October 9, 2025, order that Mother now appeals.

In reviewing a final order of a family court, "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 review of family court orders).

On appeal, Mother argues that the family court abused its discretion in denying her petition for modification as there was "an absence of findings to justify [Father's]

[3]The parties participated in a mediation on September 16, 2025, wherein they reached an agreement to change the location of their custody exchange and an agreement as to custody of the Child for certain holidays and vacations. The report of the mediator from the September 16, 2025, mediation makes no reference to Father's relocation or Mother's petition for modification.

relocation." Conversely, Father argues that the family court did not err in failing to make findings regarding Father's relocation as Father's "residence did not impair either parties' custodial allocation, or the exercise of either parties' parental responsibilities."[4] Based upon our review of the record, we agree with Mother.

As to relocation of a parent, West Virginia Code § 48-9-403(b) (2021) provides that "[a] parent who has responsibility under a parenting plan who changes . . . residences must file a verified petition with the court for modification of the parenting plan." However, this subsection further provides that "[f]ailure to comply with the requirements of this section may be a factor in the determination of whether the relocation is in good faith."

West Virginia Code § 48-9-403(d)(1) (2021) states, in pertinent part, that the

> relocating parent has the burden of proving that: (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.

West Virginia Code § 48-9-403(d)(5) (2021) further states that

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[4]We find no merit in Father's argument in this regard. Father argues that the relocation statute is inapplicable because the relocation did not "impair either parent's ability to exercise responsibilities that the parent has been exercising, or when it impairs the schedule of custodial allocation that has been ordered by the court for a parent or any other person" per West Virginia Code § 48-9-403(a). However, the family court made no such finding in its October 9, 2025, order. Thus, Father's argument is a mere speculation of the family court's basis for denial of Mother's petition for modification and further highlights the need for the remand of this matter to family court for entry of an order containing sufficient findings of fact and conclusions of law to facilitate meaningful appellate review.

Father further argues that Mother, in essence, waived her arguments against Father's relocation as she did not raise the issue at the parties' mediation. We disagree. In its August 28, 2025, Mediation Order, the family court ordered the parties to "participate in mediation to prepare an agreed parenting plan to serve the best interests of their child." This order made no reference to the propriety of Father's unapproved relocation, the propriety of which must be determined by the family court pursuant to West Virginia Code § 48-9-403. In fact, this order set the matter for further hearing (status/final hearing) following mediation, which is indicative of the court's belief that continued issues, such as the propriety of Father's relocation, may exist between the parties.

> [i]f the relocating parent does not establish that the purpose for that parent's relocation is made is 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.

Below, Mother filed a petition for modification related to the Father's relocation, which was heard by the family court during an October 9, 2025, hearing.[5] However, the family court's October 9, 2025, order related to that hearing does not address the propriety of Father's relocation, aside from a single finding that Father's relocation was not sanctioned by the court, as he did not follow the requirements of West Virginia Code § 48-9-403.[6][7]

The Supreme Court of Appeals of West Virginia ("SCAWV") has long reasoned that to properly review an order of a family court:

> "[t]he order must be sufficient to indicate the factual and legal basis for the [family court]'s ultimate conclusion so as to facilitate a meaningful review of the issues presented." *Province v. Province*, 196 W. Va 473, 483, 473 S.E.2d 894, 904 (1996); *see also Nestor v. Bruce Hardwood Flooring, L.P.*, 206 W. Va. 453, 456, 525 S.E.2d 334, 337 (1999) ("[O]ur task as an appellate court is to determine whether the circuit court's reasons for its order are supported by the record."). "Where the lower tribunals fail to meet this standard – i.e., making only general, conclusory or inexact findings – we

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[5]The record reflects that during the pendency of this matter, Father's residence changed twice, including a move from Boiling Springs, PA (approximately 80 miles from Mother's home) to Saxonburg, PA (approximately 216 miles from Mother's home). After his Saxonburg move, Father relocated again to Tarentum, PA, which is a similar distance to Mother's home as Saxonburg, PA. On appeal, Mother alleged that because of Father's relocation, the Child's total travel time per each custody transfer increased from approximately ninety minutes to nearly four hours.

[6]In paragraph 8 of the October 9, 2025, order, the family court found that "Father's relocation was not sanctioned by the [c]ourt as he did not follow the requirements of W. Va. Code § 48-9-403 et seq.; however, the [c]ourt decline[d] to modify the current custodial allocation at this time as the parties shall maintain the previously ordered schedule."

[7]The only formal written references to a change in Father's residence filed with the family court below were two *Address Change* forms – one dated April 7, 2025, and another dated October 21, 2025.

> must vacate the judgment and remand the case for further findings and development." *Province*, 196 W. Va. at 483, 473 S.E.2d at 904.

Collisi v. Collisi, 231 W. Va. 359, 364, 745 S.E.2d 250, 255 (2013) (per curiam).

The SCAWV, in *In re F.B.*, 253 W. Va. 133, ___, 929 S.E.2d 724, 731 (2026), explained that "clear and complete findings by the trial judge are essential to enable the appellate court properly to exercise and not exceed our powers of review." (citation modified). Further, the SCAWV has noted that when a family court does not make or "explain" its factual findings, "we do not get the benefit of [the court's] experience and reasoning." *Province*, 196 W. Va. at 483, 473 S.E.2d at 904. Without that reasoning, "any deference we might otherwise accord such a ruling will be nullified by the absence of a meaningful explanation." *Id*., 253 W. Va. at ___, 929 S.E.2d at 731. In other words, courts must "show their work" by making the necessary findings to support and thoroughly explain how they reached their legal conclusions. *See In re R.M., B.M., and H.M.*, 252 W. Va. 422, 923 S.E.2d 352 (2025) (Ewing, J., joined by Hutchison, S.S.J., concurring).

Here, without reference to any of the factors outlined in West Virginia Code § 48-9-403(d)(1), the court declined to modify the parties' current custodial allocation and denied Mother's petition for modification. The October 9, 2025, order was devoid of any discussion or analysis of the legitimacy or "good faith" basis of the relocation, whether the relocation was in the Child's best interest, whether the relocation impaired Mother's ability to exercise her responsibilities under the parenting plan, and did not address any possible "reasonable alternatives" to the relocation. Without inclusion of the court's analysis and factual and legal determinations of the propriety of the Father's relocation, our function as an appellate court is impaired. Because we cannot determine the basis for the family court's denial of Mother's petition for modification, we are unable to complete a meaningful appellate review.

Accordingly, we vacate the family court's October 9, 2025, order and remand this matter to family court for entry of an order containing findings of fact and conclusions of law sufficient for our review. In this new order, the family court is directed to address Father's relocation under the factors set forth in West Virginia Code § 48-9-403. The Clerk of this Court is hereby directed to issue the mandate contemporaneously herewith.

Vacated and Remanded with Directions.

ISSUED: November 12, 2026

CONCURRED IN BY:

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