IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

CHRISTOPHER F.,
Petitioner Below, Petitioner

v.) No. 26-ICA-153 (Fam. Ct. Wayne Cnty. Case No. FC-50-2017-D-48)

LYNDSEY F.,
Respondent Below, Respondent

FILED
November 10, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Christopher F. (Father)[1] appeals the Family Court of Wayne County's order entered March 16, 2026, denying his petition for modification. Respondent Lyndsey F. ("Mother") filed a response in support of the family court's order. The Guardian ad Litem also filed a response.[2]

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 previously married and share two children born in 2011 and 2012. The parties were divorced by an order entered August 24, 2017. In this order, the family court awarded Father parenting time with the children every other weekend during the school year and two weeks on, one week off in the summer. Father filed a petition for modification on June 23, 2025. The family court held a final hearing on the petition for modification on August 20, 2025. By an order entered October 22, 2025, the family court modified the custodial allocation of the children designating Father the residential parent and granted Mother "parenting time, at a minimum, with the children every other weekend during the school year and . . . two (2) consecutive weeks to the father's one (1) week during the summer." The order further terminated Father's child support obligation and ordered each parent to provide support when the children were in their care. Neither party appealed this order.

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[1] To protect the confidentiality of the juveniles involved in this case, we refer to the parties' last name 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 Morgan Switzer, Esq. Mother is represented by Amy Crossan, Esq. The Guardian ad Litem is Ryan Turner, Esq.

On January 9, 2026, Father filed a petition for modification requesting that child support be increased. As grounds for his petition, Father stated that since the final hearing he began a doctorate program and that he was unable to work. Mother filed a response to the petition for modification on February 19, 2026, arguing that the petition for modification should be denied as Father had not alleged a substantial change of circumstances that would warrant a modification of the prior order. Mother further alleged that Father informed Mother that he had started a doctorate program to become a Certified Registered Nurse Anesthetist (CRNA) at the end of August 2025. Therefore, Father was aware of his acceptance into the program at the time of the August 20, 2025, hearing, but he failed to advise the court of this or that he would be leaving his employment.

The family court held a hearing on Father's petition for modification on March 6, 2026. Upon consideration of the petition for modification and the testimony of the parties, the family court denied Father's petition for modification, finding that Father did not prove that there had been a substantial change in circumstances warranting modification. The court found that Father starting school and quitting his job was clearly foreseeable when the parties were in court in August 2025. The court further found that a reasonable, similarly situated parent would have waited to pursue education after the children graduated high school and that the children would not realize any economic benefit from Father exiting the workplace for another three years. The family court further found any alleged economic benefit the children may receive after they graduate high school to be irrelevant because child support obligations cease upon graduation from high school. It is from this order entered March 16, 2026, 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).

On appeal, Father asserts four assignments of error, several of which are similar or closely related, that we have consolidated where appropriate for efficiency and clarity of our review. First, Father argues that the family court abused its discretion when it found that Father's loss of income when he enrolled in a CRNA program was not a substantial change in circumstances warranting modification of the child support order. Father contends that the family court erred by concluding that Father was not acting as a

reasonable and similarly situated parent would act when he enrolled in the program prior to his minor children graduating from high school. We disagree.

The West Virginia Code provides that "[t]he court may modify a child support order, for the benefit of the child, when a motion is made that alleges a change in the circumstances of a parent or another proper person or persons." W. Va. Code § 48-11-105(a) (2024), in part. Furthermore, "[t]he provisions of the order may be modified if there is a substantial change in circumstances. If application of the guideline would result in a new order that is more than fifteen percent different, then the circumstances are considered a substantial change." *See* W. Va. § 48-11-105(b). Upon review of the record, in his petition to modify child support, Father requested that the child support obligation be increased because, since the last hearing, he began a doctorate program that limits his ability to work to 8 hours per week and his previous employer did not offer 8-hour shifts.

At the hearing held on March 6, 2026, Father testified that he knew as he sat in the courtroom during the hearing held on August 20, 2025, that he would be starting school in one week and would no longer be fully employed. Accordingly, the family court found that there had been no change in circumstances since the August 2025 hearing because the court addressed child support at that hearing, Father knew that he would be leaving the workplace at that time, but he did not inform the court.

Unlike the statute for modifying a parenting plan, West Virginia Code § 48-11-105 does not require that a change in circumstances be unknown, unanticipated, or unforeseeable at the time the prior child support order was entered by the family court. Based upon our review of the record, we interpret the court's final order on appeal as attributing to Father the income he had in August 2025 when the court previously addressed child support pursuant to West Virginia Code § 48-1-205, which was before Father voluntarily left employment to start the educational program. Given the facts of this particular case, we cannot find that the court abused its discretion on this issue.

Further, Father's educational plans and income information were known only to him, and he should not benefit from, or be rewarded for, his nondisclosure. Cf. Syl. Pt. 1, in part, *Maples v. West Virginia Dep't of Commerce, Div. of Parks & Recreation*, 197 W. Va. 318, 475 S.E.2d 410 (1996) ("A litigant may not silently acquiesce to an alleged error, or actively contribute to such error[.]"). In August 2025, Father led the court to find that both parents were "fully employed" while knowing that would be changing in a matter of weeks. Father cannot now leverage that silence into affirmative relief against Mother.[3]

However, we note that West Virginia Code § 48-1-205(c)(2) states, in part, as follows:

[3] We note that Father did not appeal the order resulting from the August 2025 hearing entered October 22, 2025.

> Income shall not be attributed to an obligor who is unemployed, under employed, or is otherwise working below full earning capacity if . . . The parent is pursuing a plan of economic self-improvement which will result, within a reasonable time, in an economic benefit to the children to whom the support obligation is owed, including, but not limited to, self-employment or education: *Provided*, That if the parent is involved in an educational program, the court shall ascertain that the person is making substantial progress toward completion of the program.

Here, the family court found that Father's participation in the CRNA program was not a plan for economic self-improvement because the children would not realize an economic benefit from their father exiting the workplace to pursue higher education because any alleged benefit after they graduate high school is not relevant as the child support obligation will end at that time. Father argues that the court's finding on this issue was an abuse of discretion. We find Father's arguments lack merit. The relevant question is not whether Father's education will ever benefit the children, but whether it "will result, within a reasonable time, in an economic benefit to the children to whom the support obligation is owed." *See* W. Va. Code § 48-1-205(c)(2). The SCAWV has previously measured "reasonable time" against the period the children remain eligible for child support. In *Melinda H. v. William R.*, 230 W. Va. 731, 736, 742 S.E.2d 419, 424 (2013), the SCAWV found that father's new employment would not accrue an economic benefit to the child before the child turned eighteen and that he had failed to meet the statutory requirement of proving otherwise. *See id.*

Here, Father will be out of the workforce until the fall of 2028. His own testimony showed that the children would not realize the benefit of his higher income for as long as he was out of the market. Further, the benefits he envisioned, paying for college or a new car, are expenses that would occur after his support obligation had ended. In this limited situation, the family court's finding that the children "will not realize an economic benefit" within the relevant period was not an abuse of discretion. Accordingly, for the purpose of calculating child support, we cannot find that the family court erred or otherwise abused its discretion in its calculation of child support.

Next, Father argues that the family court abused its discretion by failing to apply the child support guidelines to the parties' respective incomes to determine whether there had been a substantial change in circumstances pursuant to West Virginia Code § 48-11-105(b). Father argues that his petition for modification alleged a change in financial circumstances and, therefore, the family court should have addressed, specifically, matters concerning child support. We are unpersuaded by Father's argument.

The 15% guideline comparison found in subsection (b) of W. Va. Code § 48-11-105 defines what can count as a substantial change; it is not a freestanding command to

recalculate whenever a petition for modification is filed. Where the evidence presented establishes that the operative income facts of the parties have not changed since the last order, as in this case, there is nothing to recalculate. The SCAWV has held that "the child support modification process under W. Va. Code, 48-11-105 cannot be used to ... relitigate the findings made in a prior support order." *Allen v. Allen*, 226 W. Va. 384, 389, 701 S.E.2d 106, 111 (2009) (citing *Ray v. Ray*, 216 W. Va. 11, 602 S.E.2d 454 (2004), overruled in part on other grounds by *Allen*, 226 W. Va. at 386, 701 S.E.2d at 108, Syl. Pt. 4). Under these limited circumstances, the family court's decision not to run the child support formula was not an abuse of discretion.

Lastly, the court's finding that post-graduation benefits are not relevant "as child support obligations cease at that time" was tied specifically to the children in this case, not a categorical legal conclusion that child support always ends at the age of 18, or graduation from high school. West Virginia Code § 48-11-103(a) (2008) states that child support can be extended past the age of 18,

> so long as the child is unmarried and residing with a parent, guardian or custodian and is enrolled as a full-time student in a secondary educational or vocational program and making substantial progress towards a diploma: Provided, That such payments may not extend past the date that the child reaches the age of twenty.

Based on the testimony of the parties, the children will graduate with their respective classes in 2029 and 2031. To the extent the family court implied that child support obligations generally cease at the time of a child's high school graduation, we find that to be harmless error.

Accordingly, we affirm the family court's March 16, 2026, order.

Affirmed.

ISSUED: November 10, 2026

CONCURRED IN BY:

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