IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

ANDREW B.,
Petitioner Below, Petitioner

v.) No. 26-ICA-162 (Fam. Ct. Lincoln Cnty. Case No. FC-22-2016-D-142)

MEGAN M.,
Respondent Below, Respondent

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

MEMORANDUM DECISION

Petitioner Andrew B. ("Father")[1] appeals the Family Court of Lincoln County's final order entered March 24, 2026. Respondent Megan M. ("Mother") filed a response in support of the family court's order.[2] Father 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 that there is error in the family court's decision but no substantial question of law. This case satisfies the "limited circumstances" requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure for reversal in a memorandum decision. For the reasons set forth below, we affirm the family court's decision as it relates to the modification of the parenting plan and reverse the family court's decision as to the transfer of property, and remand for further proceedings consistent with this decision.

The parties were married in Putnam County, West Virginia on December 16, 2006. The parties share two children born in 2007 and 2008. Father filed a petition for divorce, and the family court held a final hearing in the matter on August 7, 2017. The family court entered the parties' agreed final divorce order on September 25, 2017, finding that Mother would remain the children's primary caregiver and Father would exercise parenting time with the children every other weekend from Friday at 6:00 p.m. through Sunday at 6:00 p.m. and every Wednesday from 5:00 p.m. through Thursday morning. Father was ordered to pay child support in the amount of $715.74 per month. The family court entered a

[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 Paul Saluja, Esq. Mother is represented by James Pierson, Esq.

modification order on August 19, 2019, wherein Father's parenting time with the eldest child was limited to being at the discretion of the child. The family court entered an additional modification order on April 27, 2020, which reduced Father's parenting time with the youngest child to every other weekend and reduced his child support obligation to $650.00 per month.

Mother filed a petition for modification on November 27, 2023, seeking to modify the current parenting plan with the youngest child. The family court entered a temporary modification order on March 27, 2024, finding that Father would only have contact with the youngest child at the child's discretion. Although a final hearing in the matter had yet to be held, Mother filed a renewed motion for modification and for attorney's fees on April 5, 2025. In her petition, Mother alleged that Father had not participated in the lives of either child, had refused to return the property of the youngest child, and had made no effort to provide in any way for the needs of the children including on birthdays and Christmas.

The family court held a final hearing on Mother's petition for modification on January 8, 2026. At the outset of the hearing, the family court addressed the modification of the existing parenting plan. Counsel for Mother proffered that the child, who was then seventeen years old, had not seen his father in two years and wished to have parenting time with his father solely at the child's discretion. Father stated that he would respect the child's wishes as to when parenting time would occur. The court confirmed that the parties agreed on this issue before proceeding. The family court then addressed the issue concerning Father's failure to provide the court with updated financial information. The court found that the outstanding issues of child support modification and attorney's fees would have to be heard at a later date. Mother then requested that the court address a list of personal property that the child wished to obtain from Father's residence. Mother, by counsel, called the child as a witness to testify about the list of personal items. Father also testified concerning the same.

The family court entered a final order on modification of parenting and "distribution of child's property" on March 24, 2026. The final order modified the parenting plan and ordered that Father may exercise parenting time as he and the child may agree. By this same order, the court awarded the child the following property: four-wheeler, riding clothes, helmet, daily clothes, shoes, PlayStation console, games and controllers, gaming chair, bicycle, and the sign over his bed. The court further awarded Mother the following property for the benefit of the child and ordered Mother to exercise dominion and control over this property until the child reaches the age of majority: rifle, crossbow, and revolver. The court ordered Father to make all these items available to Mother and/or the child within a reasonable time and if any of these items are not found, the court ordered Father to purchase replacements for any missing items. The court further ordered Father to file legally sufficient financial disclosures for the tax years of 2024 and 2025 and any supporting documentation with the court and opposing counsel on or before April 8, 2026. The court found that if Father failed to timely file these documents, it would assess him

twenty dollars ($20.00) per day for each day the disclosures are delinquent. A final hearing on the issues of child support and attorney's fees was scheduled for May 18, 2026. It is from the order entered on March 24, 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 six assignments of error, several of which are similar or closely related, that we have consolidated where appropriate for efficiency and clarity of our review.[3] We first address Father's argument that the family court lacked jurisdiction to transfer ownership of property belonging solely to Father to Mother, for the benefit of the minor child, outside of an equitable distribution/divorce matter and that the family court exceeded its authority when it transferred ownership of property belonging to Father directly to the parties' child. Father contends that the family court lacks authority to transfer personal property belonging solely to one parent to a child or the other parent during a modification proceeding. Father argues that the weight of statutory text and case law strongly indicates that the transfer of property outlined in the order on appeal is improper and unauthorized. We agree.

A West Virginia family court is a court of limited jurisdiction. "The jurisdiction of family courts is limited to only those matters specifically authorized by the Legislature." Syl. Pt. 5, in part, *Lindsie D.L. v. Richard W.S.*, 214 W. Va. 750, 591 S.E.2d 308 (2003). The Legislature has defined the breadth of a family court's jurisdiction through its adoption of West Virginia Code § 51-2A-2 (2018), and the limit on this authority is firmly demonstrated by subsection (e) of that statute.[4] West Virginia Code § 48-7-104 (2001)

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[3] Father's sixth assignment of error concerns the family court implementing a future sanction against Father if he were to fail to supply the court with his tax returns by a certain date. Father withdrew this assignment of error in his reply brief, asserting that the requested documents have been provided to the family court and that the issue is now moot.

[4] West Virginia Code § 51-2A-2(e) – "A family court is a court of limited jurisdiction. A family court is a court of record only for the purpose of exercising

instructs courts on how they are to value marital property and requires courts to "designate the property which constitutes separate property of the respective parties or the separate property of their children." The family court's authority to *transfer* property is confined exclusively to marital property and does not extend to a child's separate property. The family court's role with respect to a child's separate property under this code section is limited to identification and designation, not reallocation or transfer between the parties or a child. Further, this matter was before the court on a post-divorce petition to modify the parenting plan, not an equitable distribution issue which had long since been decided. The modification jurisdiction of a family court is expressly confined to parenting plans, custodial and decision-making responsibility, child support, and spousal support. Even the limited authority to revisit marital property distribution in a modification context, found in West Virginia Code § 48-5-706 (2001), does not open the door to designating or transferring a child's separate property.

Here, the family court order purported to vest property to the child "as his sole property," even though the child is a non-party, unemancipated minor over whose disputed property claims the court has no enumerated jurisdiction. Further, the family court awarded firearms to Mother "for the benefit of" the child, with dominion until the child's majority or legal ownership age. This effectively established a custodial arrangement without any statutory footing under West Virginia Code § 51-2A-2. Because the family court exceeded its limited statutory jurisdiction by distributing nonmarital property to a non-party minor and to Mother as a custodian for the benefit of the minor, we reverse the March 24, 2026, order as it pertains to the purported distribution or transfer of the personal property.

Father next argues that the family court erred by exceeding its authority when it improperly permitted and considered the testimony of the parties' minor child. Father contends that the court failed to address the potential harm imposed upon the child by testifying before the court under oath in a contested modification proceeding, nor did the court make a finding that the necessity of the child's testimony outweighed the potential psychological harm. Father further argues that the court erred by allowing the child to testify in lieu of conducting an in-camera interview.

During the January 8, 2026, family court proceeding, Father's objection to the child's testimony was limited to Mother failing to provide notice pursuant to Rule 17(b) of the West Virginia Rules of Practice and Procedure for Family Court. The family court overruled Father's objection by observing that the notice requirement of Rule 17(b) is limited to children under the age of 14. Rule 17(b) states, "[a] motion to offer the testimony of a child under the age of 14 shall be in writing; and shall be filed with the circuit clerk,

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jurisdiction in the matters for which the jurisdiction of the family court is specifically authorized in this section and in chapter 48 of this code. A family court may not exercise the powers given courts of record in § 51-5-1 of this code or exercise any other powers provided for courts of record in this code unless specifically authorized by the Legislature."

provided to the court, and served on all parties not less than 20 days before the hearing." Therefore, the family court did not commit error of law when it overruled Father's objection.

On appeal, Father makes an additional objection to child's testimony pursuant to Rule 17(a) of the West Virginia Rules of Practice and Procedure for Family Court, which references Rules 8 and 9 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings governing the testimony of children. Father argues that the family court committed error when it failed to address the potential harm to the child before allowing the child to testify. However, Father did not raise a Rule 17(a) objection or identify Rules 8 and 9 as a basis for his objection during the January 8, 2026, proceedings. The SCAWV recently explained the following:

> It is well-settled that this Court applies a "raise or waive" rule: an objection must be raised before the trial court to preserve an assignment of error or that error is waived. Simply stated, [o]ur general rule in this regard is that, when nonjurisdictional questions have not been decided at the trial court level and are then first raised before this Court, they will not be considered on appeal.
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> The rationale behind this rule is that when an issue has not been raised below, the facts underlying that issue will not have been developed in such a way so that a disposition can be made on appeal. Moreover, we consider the element of fairness. When a case has proceeded to its ultimate resolution below, it is manifestly unfair for a party to raise new issues on appeal. Finally, there is also a need to have the issue refined, developed, and adjudicated by the trial court, so that we may have the benefit of its wisdom. *Whitlow v. Bd. of Educ. of Kanawha Cnty*., 190 W. Va. 223, 226, 438 S.E.2d 15, 18 (1993) (citations omitted).

State v. Rose, No. 23-272, 2026 WL 1430001, at *4 (W. Va. May 21, 2026).

It was necessary for Father to place a formal objection on the record during the hearing regarding his Rule 17(a) arguments in order for the family court to make factual findings necessary to address the objection. Because Father failed to make the necessary objection, we find that this assignment of error was waived, and we decline to entertain the issue on appeal.

Lastly, Father alleges that the family court erred by entering a final order which modified the parenting time of Father and effectively all but eliminated any required parenting time with little or no justification noted in the order's findings and conclusions. Father argues that the family court failed to make a preliminary inquiry into the child's intelligence and maturity and further failed to examine whether the child's preference was

both "reasonable" and "firm" pursuant to West Virginia Code § 48-9-402(b).[5] Additionally, Father contends that the court failed to conduct a best interest analysis separate from the child's stated preference and neglected to make any of the required findings which would justify a modification of Father's parenting time.

The record reflects that during the January 8, 2026, family court hearing, Father stated that he wanted to respect the child's wishes as to visitation. However, on appeal Father raises assignments of error regarding the family court's parenting time decision. As aforementioned, this Court will only address objections placed on the record before a family court. In this case, Father stated that he did not object to child making his own decision with respect to visitation. In fact, Father openly acquiesced to the child making his own decision on this matter. Therefore, Father waived objections to the family court's determination that the child may determine the parenting time exercised between father and child.[6] We therefore affirm the family court's order as it relates to custodial allocation.

Accordingly, we affirm the March 24, 2026, order as to parenting time and reverse the order as to the transfer of property and remand the matter to the Family Court of Lincoln County for further proceedings consistent with this decision.

Affirmed, in part, Reversed, in part, and Remanded.

ISSUED: November 10, 2026

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[5] West Virginia Code § 48-9-402(b)(3) (2022) states:

> The court may modify any provisions of the parenting plan without the showing of the changed circumstances required by § 48-9-401(a) of this code if the modification is in the child's best interests, and the modification:
> . . .
> (3) Is necessary to accommodate the reasonable and firm preferences of a child who, has attained the age of 14;

[6] The order on appeal does not mention the court's reasoning for accepting Mother's parenting plan. However, Mother notes in her arguments that Father waived any objections regarding parenting time during the family court hearing. We reviewed the family court proceedings and note that Father consented to the child determining parenting time. The family court's failure to provide reasoning on the subject of parenting time is not grounds for reversal on this occasion. Nevertheless, we emphasize to the family court the importance of providing adequate reasoning in its orders.

CONCURRED IN BY:

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