IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

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

CAITLYN H.T.,
Petitioner Below, Petitioner

v.) No. 26-ICA-179 (Fam. Ct. McDowell Cnty. Case No. FC-27-2019-D-183)

CHRISTOPHER H.,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Caitlyn H.T.[1] ("Mother") appeals the Family Court of McDowell County's April 3, 2026, Order Following Second Remand, which awarded her less than an equal 50-50 custodial allocation of the parties' minor children. Respondent Christopher H. ("Father") and the Guardian ad Litem ("GAL") for the children filed responses in support of the family court's order.[2] Mother 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 no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the family court's order entered April 3, 2026, is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

In prior appeals, we provided detailed recitations of the facts surrounding the parties' underlying custody action. *See Caitlyn H. v. Christopher H.*, No. 23-ICA-399, 2024 WL 1738282 (W. Va. Ct. App. Apr. 22, 2024) (memorandum decision) (vacating and remanding to the family court with directions to conduct a hearing on any remaining issues, reconsider its custody ruling, and issue a new order); *Caitlyn T. v. Christopher H.*, No. 25-ICA-167, 2025 WL 3068208 (W. Va. Ct. App. Nov. 3, 2025) (memorandum decision) (vacating and remanding to the family court with directions to enter an order with sufficient findings of fact and conclusions of law to facilitate a meaningful appellate review). Thus, we will recount only the facts necessary to this appeal.

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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] Mother is represented by Diana Carter Wiedel, Esq., and Marsha Webb Rumora, Esq. Father is represented by Anthony R. Veneri, Esq. The GAL representing the children is Patricia Kinder Beavers, Esq.

Mother and Father divorced by agreed order on April 7, 2020, and share three minor children (born in 2015, 2016, and 2018). After the divorce, the children lived with their maternal grandparents for approximately two-and-a-half years in a de facto guardianship, agreed upon by Mother and Father.

In November 2022, both parents petitioned for an equal 50-50 custodial allocation, and in December 2022, the grandparents petitioned for infant guardianship. The parents agreed to a 50-50 custodial allocation with the grandparents receiving no allocation of custodial time with the children. However, following an emergency hearing initiated by the grandparents on December 15, 2022, the family court consolidated the grandparents' guardianship case and the parents' modification of custodial allocation case, and kept the children primarily with the grandparents, while giving each parent equal parenting time.

After an overnight visit with Father, two of the children told their grandmother that Father sexually abused them. The children's doctor made a mandatory report to Child Protective Services ("CPS"), which resulted in forensic interviews. A sheriff's deputy who witnessed the interviews said that he believed the children were coached, and CPS closed its investigation within twenty-four hours. Thereafter, Father filed an emergency petition with the family court seeking no contact between the children and the grandparents. The family court held hearings on February 23, 2023, and March 23, 2023, that resulted in an order that directed the parties not to speak of the sexual abuse issue around the children, dismissed the grandparents' guardianship case, and ordered that the grandparents would have no contact with the children.

In May 2023, the GAL filed a motion to suspend Mother's parenting time, alleging that Mother continued to raise the abuse issue in front of the children and exposed the children to grandmother, both in violation of the family court's previous order. The family court held a hearing on June 29, 2023, and converted it into a final hearing without proper notice to Mother. As a result of the hearing, Mother's parental allocation was reduced by order entered August 9, 2023. This led to Mother's first appeal, where this Court vacated and remanded the matter on due-process grounds and directed the family court to view the forensic interviews, hold a hearing, reconsider the parties' custodial allocation, and issue a new order. *Caitlyn H. v. Christopher H.*, No. 23-ICA-399, 2024 WL 1738282 (W. Va. Ct. App. Apr. 22, 2024) (memorandum decision).

Following this Court's remand, the family court appointed a new GAL, upon the retirement of the previous GAL. The family court held hearings on September 6, 2024, and November 8, 2024. The family court advised the parties at the outset of the hearings that, going forward, they were not to present evidence from the past but to focus on the present. The GAL testified that neither parent was a threat and the children were thriving, but the GAL recommended keeping the current parenting plan during the school year, with Mother receiving less than an equal 50-50 custodial allocation and having an equal 50-50 custodial allocation during the summer months. The family court's final order entered March 31,

2025, adopted the GAL's recommendations, found the 50-50 presumption rebutted by the parties' conduct and named Father the primary residential parent. In finding that Father rebutted the presumption of an equal 50-50 custodial allocation, the family court took judicial notice of the parties' prior conduct.

Mother then appealed the family court's March 31, 2025, final order and this Court agreed that the family court's findings were insufficient for meaningful appellate review. We thus vacated the March 31, 2025, order, and remanded the matter to the family court a second time with instructions for the family court to issue a new order that contained adequate findings of fact and conclusions of law. *Caitlyn T. v. Christopher H.*, No. 25-ICA-167, 2025 WL 3068208 (W. Va. Ct. App. Nov. 3, 2025) (memorandum decision). Because this Court vacated and remanded based on the insufficiency of the family court's March 31, 2025, order, we declined to address Mother's argument regarding judicial notice.

Following this Court's second remand, the family court did not take action until Mother filed a Motion to Enforce the Appellate Mandate on March 24, 2026. On April 3, 2026, the family court entered an Order Following Second Remand. While this order was substantially similar to the family court's order following the first remand of this Court, and largely affirmed its prior decision on custodial allocation, the family court added several findings of fact and conclusions of law. Specifically, the family court made findings regarding Mother's conduct and determined that the children's lives were negatively impacted by the conduct of Mother and the grandparents. The family court concluded that application of a limiting factor would prevent recurrence of similar conduct in the future. The family court also described the testimony of the GAL and noted that the GAL "steadfastly maintained that it was in the best interests of these children to maintain the stability which has now been achieved." Finally, the family court order addressed the results of the psychological evaluation and the CPS investigation, which found no evidence of sexual abuse.

It is from this order that Mother now appeals.

For these matters, 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).

The Supreme Court of Appeals of West Virginia ("SCAWV") held that "[i]n visitation as well as custody matters, we have traditionally held paramount the best interests of the child." Syl. Pt. 5, *Carter v. Carter*, 196 W. Va. 239, 470 S.E.2d 193 (1996). "[A] family court's decision is entitled to significant deference. Absent an abuse of discretion, this Court must refrain from substituting its judgment for that of the family court, even if this Court might have decided a case differently." *Amanda A. v. Kevin T.*, 232 W. Va. 237, 245, 751 S.E.2d 757, 765 (2013). "In general, an abuse of discretion occurs when 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 . . . court makes a serious mistake in weighing them." *Shafer v. Kings Tire Serv., Inc.*, 215 W. Va. 169, 177, 597 S.E.2d 302, 310 (2004) (citation omitted). Further, "[q]uestions relating to . . . custody of the children are within the sound discretion of the [family] 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., *Nichols v. Nichols*, 160 W. Va. 514, 236 S.E.2d 36 (1977). With this standard in mind, we address Mother's arguments.

On appeal, Mother asserts two assignments of error. First, Mother argues that the family court erred when it ignored the statutory presumption in favor of an equal 50-50 custodial allocation. Mother contends that the family court failed to follow this Court's instructions on our second remand in that the family court did not make the required specific findings as to which of Mother's actions and behavior the family court relied on to find that Father successfully rebutted the presumption of an equal 50-50 custodial allocation. We disagree.

West Virginia Code § 48-9-102a (2022) creates a presumption that an equal 50-50 custodial allocation is in the best interest of the child. This presumption can be rebutted by a preponderance of the evidence. W. Va. Code § 48-9-102a. West Virginia Code § 48-9-206(a) (2022) states that: "[u]nless otherwise resolved by agreement of the parents under § 48-9-201 of this code or unless harmful to the child, the court shall allocate custodial responsibility so that, except to the extent required under § 48-9-209 of this code, the custodial time the child spends with each parent shall be equal (50-50)." The statute also mandates that the family court's allocation of custodial responsibility "include specific findings of fact and conclusions of law supporting the determination." W. Va. Code § 48-9-206(d).

When determining whether the presumption of an equal 50-50 custodial allocation has been rebutted, the family court looks to the parenting plan considerations found in West Virginia Code § 48-9-209. West Virginia Code § 48-9-209(a)(5) (2022)[3] states that a family court shall consider whether a parent "has made one or more fraudulent reports of domestic violence or child abuse." The Code goes on to state that "[t]he parent found to

[3] West Virginia Code § 48-9-209 was updated and made effective January 22, 2024. The 2022 version of the statute was in effect during the initial proceedings below.

have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent." *See* W. Va. Code § 48-9-209(c).

In this case, the family court made a finding that Mother continued to bring up allegations that Father sexually abused the children after the family court warned that doing so could result in restrictions to her parenting time. Despite the warning, Mother publicly confronted Father at the post office in the presence of the children. The family court found that this incident violated its previous orders and constituted a limiting factor pursuant to West Virginia Code § 48-9-209 and thus placed restrictions on Mother's custodial allocation.

This Court held in *Jonathon F. v. Rebekah L.*, 247 W. Va. 562, 563, 883 S.E.2d 290, 291 (Ct. App. 2023) that under West Virginia Code § 48-9-206(a), the equal allocation presumption "may be rebutted if the family court finds by a preponderance of the evidence that the arrangement would be harmful to the child." This Court reiterated the statutory standard that "a deviation from the 50-50 presumption must be sufficiently explained and justified" in *Kane M. v. Miranda M.*, 250 W. Va. 701, 704-05, 908 S.E.2d 198, 201-02 (Ct. App. 2024). *See* W. Va. Code § 48-9-206(d). Here, the family court further found that Mother "continued a course of action to interfere with [Father]'s parenting time" in violation of West Virginia Code § 48-9-209(a)(4) and that Mother's conduct was "harmful to the children" when it deviated from the presumption of an equal 50-50 custodial allocation and placed restrictions on Mother's parenting time. On review, Mother has not shown that the family court abused its discretion when it found that Father had rebutted the presumption and deviated from awarding an equal 50-50 custodial allocation of the minor children. This Court does not find merit in Mother's argument that the family court failed to abide by our mandate on remand in *Caitlyn T. v. Christopher H.*, No. 25-ICA-167, 2025 WL 3068208 (W. Va. Ct. App. Nov. 3, 2025) (memorandum decision), as the family court made findings of fact and conclusions of law that were specific to Mother's conduct in support of its decision.

Second, Mother alleges that the family court erred in taking judicial notice in its April 3, 2026, order, after failing to advise the parties of its intent to take judicial notice and after limiting the scope of the presentation of evidence to exclude evidence of the judicially noticed facts. We do not find error in the family court taking judicial notice as Mother did not preserve this issue for appeal in the lower tribunal.

The SCAWV has long held that "[e]rrors assigned for the first time on appeal will not be regarded in any matter of which the trial court had jurisdiction or which might have been remedied in the trial court had objection been raised there." Syl. Pt. 1, *State v. Berry*, 227 W. Va. 221, 707 S.E.2d 831 (2011) (quoting Syl. Pt. 17, *State v. Thomas*, 157 W. Va. 640, 203 S.E.2d 445 (1974)).

Rule 201 of the West Virginia Rules of Evidence provides an opportunity to be heard when a court takes judicial notice. Specifically, the rule states "[o]n timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard." W. Va. R. Evid. 201(e). Pursuant to the rule, once Mother was made aware of the family court's intent to take judicial notice via its March 31, 2025, order following the first remand of this Court, Mother, upon timely request, was entitled to be heard by the family court. Mother did not avail herself of her opportunity to be heard on this matter, which could have been remedied by the family court. Instead, Mother raised the issue for the first time in her subsequent appeals to this Court. Additionally, at the time of this Court's second remand, Mother was aware of the family court taking judicial notice in its order following our first remand, and Mother still did not request to be heard on the issue.

As to Mother's argument regarding the family court limiting the scope of the presentation of evidence, we do not find merit in this argument. When Mother pressed the family court on whether the full record and limiting factors were going to be considered during the hearing following this Court's first remand, the family court offered to "start it all from scratch" and "hear all of the ugliness." However, Mother chose to rest her case and subsequently appealed, claiming she was denied a chance to address the issues. Consequently, Mother cannot obtain relief on this ground.

Accordingly, we affirm the McDowell County Family Court's April 3, 2026, order.

Affirmed.

ISSUED: November 10, 2026

CONCURRED IN BY:

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