

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Sara Jane Workman (now Phelps),
Petitioner Below, Petitioner**

vs.) **No. 11-0795** (Greenbrier County 06-D-280)

**Carl Samuel Workman, Respondent
Below, Respondent**

FILED

March 12, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Greenbrier County, wherein the circuit court denied petitioner's petition for appeal of the Greenbrier County Family Court's order granting, in part, and denying, in part, her petition to modify parenting plan. The appeal was timely perfected by counsel, Timothy R. Ruckman, with petitioner's appendix accompanying the petition. The respondent has filed a response by counsel, Alyson A. Dotson.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the appendix presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On appeal, petitioner argues that the circuit court erred in affirming the family court's ruling modifying the parenting plan. Petitioner asserts that the modified plan fails to address in any meaningful fashion the fact that the child's paternal grandmother has assumed a custodial responsibility for the child in place of the Respondent Father, and also that the grandmother continues to interfere with the petitioner's parental rights, thereby causing conflict. Petitioner also argues that the circuit court erred by affirming the family court's adoption of the parenting plan because it does not address the conflict between the petitioner and the grandmother, it does not promote stability for the child, and is also not in the child's best interest. According to petitioner, the Respondent Father has relinquished his role as parent to his mother, who is not a part of the parenting plan approved by any court. Because of the constant conflict between the grandmother and petitioner, it would be in the child's best interest for the petitioner's proposed parenting plan to be approved and adopted in order to promote stability for the family. She further argues that this Court has admonished lower courts to focus on the factors contained in West Virginia Code § 48-9-102 in determining how to serve a child's best interests, and that the circuit court's decision does not promote these factors. *See Storrie v. Simmons*, 225 W.Va. 317, 693 S.E.2d 70 (2010).

In response, Respondent Father argues that the circuit court appropriately addressed the petitioner's concerns by developing a parenting plan that promoted the child's best interest by

maintaining the stability of shared parenting while instituting specific provisions to ensure the participation of the parties and reduce the conflict with the paternal grandmother and other third parties. Respondent argues that both the family court and the circuit court were presented with the evidence upon which petitioner now relies to argue that a substantial change in circumstances has occurred. After hearing that evidence, the family court instituted a plan approved by the guardian ad litem for the child, and the circuit court upheld the same upon review of that same evidence. As such, respondent argues that the family court's order does adequately address petitioner's concerns, and cites to the plan's elimination of contact between petitioner and the paternal grandmother, and the fact that the plan forces both parents to take a more active role in their child's upbringing. Respondent further argues that it is inaccurate for petitioner to state that anyone has confirmed that the grandmother has taken over his parenting responsibilities, as she merely assists with transportation and care at respondent's direction due to his erratic work schedule. Lastly, petitioner's request for modification was done out of her own interest in limiting her interaction with the paternal grandmother, not because of any negative impact upon the child. For these reasons, respondent argues that the circuit court's order should be affirmed.

“In reviewing a final order entered by a circuit court judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law *de novo*.” Syllabus, *Carr v. Hancock*, 216 W.Va. 474, 607 S.E.2d 803 (2004).” Syl. Pt. 1, *Storrie v. Simmons*, 225 W.Va. 317, 693 S.E.2d 70 (2010). The Court has carefully considered the merits of these arguments as set forth in the petition for appeal and in the response, and it has reviewed the appendix designated by the petitioner. The Court finds no error in the circuit court's denial of petitioner's appeal of the family court's order granting, in part, and denying, in part, petitioner's petition to modify parenting plan, and fully incorporates and adopts, herein, the circuit court's detailed order dated April 15, 2011. The Clerk of Court is directed to attach a copy of the same hereto.

For the foregoing reasons, we affirm the circuit court's order.

Affirmed.

ISSUED: March 12, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

NOT PARTICIPATING:

Justice Margaret L. Workman