239 W. Va. 382, 801 S.E.2d 260

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2017 Term

No. 16-0786

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

IN RE: A.L.C.M.

Certified Question from the Circuit Court of Ohio County
Honorable James P. Mazzone, Judge
Civil Action No. 16-CJA-22

CERTIFIED QUESTION ANSWERED

Submitted: February 28, 2017
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Patrick Morrisey
Attorney General
Thomas M. Johnson, Jr.
Deputy Attorney General
Erica N. Peterson
Assistant Attorney General
Charleston, West Virginia
Attorneys for the Petitioner,
West Virginia Department of
Health and Human Resources

Betsy Griffith
McPhail Law Office
Wheeling, West Virginia
Attorney for the Respondent,
Father A.C.

Joseph J. Moses
Wheeling, West Virginia
Petitioner and
Guardian ad Litem for the Minor Child,
A.L.C.M.

JUSTICE DAVIS delivered the Opinion of the Court.

CHIEF JUSTICE LOUGHRY concurs and reserves the right to file a concurring opinion.

JUSTICE WALKER concurs and reserves the right to file a concurring opinion.

SYLLABUS BY THE COURT

1. When a child is born alive, the presence of illegal drugs in the child's system at birth constitutes sufficient evidence that the child is an abused and/or neglected child, as those terms are defined by W. Va. Code § 49-1-201 (2015) (Repl. Vol. 2015), to support the filing of an abuse and neglect petition pursuant to W. Va. Code § 49-4-601 (2015) (Repl. Vol. 2015).

Davis, Justice:

The instant proceeding is before the Court upon a question certified by the Circuit Court of Ohio County regarding the parameters of an abuse and neglect proceeding. By order entered August 17, 2016, the circuit court certified the following question to this Court:

> Is a Petition for Relief from Parental Abuse and Neglect alleging abuse and/or neglect of an unborn child who is subsequently born alive, actionable under West Virginia law?

The circuit court answered this question "YES."

Under the power vested in this Court by the governing authorities, we deem it necessary to reformulate the circuit court's certified question to more accurately address the facts involved in and issues raised by the case *sub judice*. *See* Syl. pt. 2, *Martino v. Barnett*, 215 W. Va. 123, 595 S.E.2d 65 (2004) ("'When a certified question is not framed so that this Court is able to fully address the law which is involved in the question, then this Court retains the power to reformulate questions certified to it under both the Uniform Certification of Questions of Law Act found in *W. Va. Code*, 51-1A-1, *et seq.* and *W. Va. Code*, 58-5-2 [1967], the statute relating to certified questions from a circuit court of this State to this Court.' Syl. Pt. 3, *Kincaid v. Mangum*, 189 W. Va. 404, 432 S.E.2d 74 (1993)."). Accordingly, we reformulate the subject query as follows:

> When a child is born alive, is the presence of illegal drugs in the child's system at birth sufficient evidence that the child is an

> abused and/or neglected child to support the filing of an abuse and neglect petition?

We answer this question in the affirmative: when a child is born alive, the presence of illegal drugs in the child's system at birth constitutes sufficient evidence that the child is an abused and/or neglected child, as those terms are defined by W. Va. Code § 49-1-201 (2015) (Repl. Vol. 2015), to support the filing of an abuse and neglect petition pursuant to W. Va. Code § 49-4-601 (2015) (Repl. Vol. 2015).

I.

FACTUAL AND PROCEDURAL HISTORY

The child subject to the underlying abuse and neglect proceeding, A.L.C.M.,[1] was born alive in February 2016 at 25 3/7 weeks gestation; upon birth, the child's umbilical cord tested positive for cocaine, opiates, codeine, hydrocodone, and oxycodone, which is indicative of Mother's undisputed prenatal drug use. The child's twin was not born alive; it is believed that A.L.C.M.'s twin died as a result of twin-to-twin transfusion syndrome[2] and

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[1]We follow our longstanding practice in cases involving sensitive facts and refer to the child by the child's initials only. *See, e.g.*, *In re: S.H.*, 237 W. Va. 626, 628 n.1, 789 S.E.2d 163, 165 n.1 (2016). *See also* W. Va. R. App. P. 40(e) (restricting use of personal identifiers in cases involving children).

[2]Twin-to-twin transfusion syndrome is defined as

> [a] complication of monochorionic multiple pregnancies in which one fetus receives a greater flow of blood than the other from the placenta. It is diagnosed by fetal

(continued...)

conditions related to the twin's premature birth.[3] Following the child's birth, A.L.C.M. was transferred from Ohio Valley Medical Center in Wheeling, West Virginia, to Ruby Memorial Hospital in Morgantown, West Virginia, where the child remained in the NICU until being discharged on October 26, 2016.

It appears from the record[4] that Mother and Father had a casual relationship

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[2](...continued)
ultrasonography: one twin's amniotic sac has polyhydramnios (excessive amniotic fluid), while the other twin's sac has oligohydramnios (insufficient amniotic fluid). Death of one or both twins will occur without intervention. Treatments include repeated amniocenteses, laser therapy to prevent the exchange of blood between twins, or intrauterine surgery. . . .

Taber's Cyclopedic Medical Dictionary 2360-61 (22d ed. 2013). *Accord* Dorland's Illustrated Medical Dictionary 1851-52 (32d ed. 2012) (indicating that, in twin-twin transfusion syndrome, recipient twin usually develops congestive heart failure). The deceased twin of A.L.C.M., who was larger than A.L.C.M., appears to have been the recipient twin because that twin received a greater proportion of the prenatal blood supply than did A.L.C.M.

[3]A.L.C.M.'s neonatologist could not definitively say to what extent Mother's prenatal drug use caused or contributed to the death of A.L.C.M.'s twin as compared to the twin's other conditions of twin-to-twin transfusion syndrome and prematurity. However, the doctor testified that Mother's prenatal use of cocaine could have contributed to the twins' premature births. The underlying abuse and neglect petition attributes the twin's death to twin-to-twin transfusion syndrome, prematurity, and fetal hydrops. *See* Mosby's Medical Dictionary 866 (9th ed. 2013) (defining "fetal hydrops" as "massive edema in the fetus or newborn, usually in association with severe erythroblastosis fetalis. Severe anemia and effusions of the pericardial, pleural, and peritoneal spaces also occur. The condition usually leads to death, even with immediate exchange transfusions after delivery.").

[4]The record in this case consists primarily of DHHR's abuse and neglect (continued...)

that began in spring 2015. During this time, Mother used illegal drugs and prescription medications that had not been prescribed for her, predominantly using heroin. Father, who has an extensive criminal record for dealing and distributing drugs, does not appear to have been dealing, distributing, or using any illegal drugs or ill-gotten prescription drugs during this time. The record also indicates that Father was working various construction jobs, while Mother was not employed. Upon learning of Mother's pregnancy in December 2015, around the 16th week of gestation, Mother and Father commenced a more committed dating relationship and began living together. Father testified that, while they cohabited, he discouraged Mother's use of drugs and would ask her to leave the apartment whenever he found evidence of Mother's drug use. Mother testified that she was aware of Father's disapproval of her drug use and admitted that she would lie to Father about needing money to buy household supplies and personal hygiene items in order to fund her addiction.

From December 2015, when Mother's pregnancy was discovered, until the child's birth in February 2016, Father took Mother to two[5] prenatal doctor's appointments.[6]

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[4](...continued)
petition, the Guardian ad Litem's report, various circuit court orders, Father's motion to dismiss, and hearing transcripts from Mother's adjudicatory and dispositional hearings and Father's adjudicatory hearing, although the circuit court has held Father's adjudication in abeyance pending our resolution of the instant certified question. *See infra* note 19. As such, the statement of alleged facts in this opinion is derived from these sources insofar as the circuit court's findings of fact are limited to those set forth in its certification order.

[5]The record reflects that Mother had only two prenatal doctor's appointments
(continued...)

The record also demonstrates that Father drove Mother to an out-of-state Subutex[7] clinic for treatment and paid for her Subutex prescription when he could afford to do so.[8] Additionally, Father stated that he contemplated having Mother involuntarily committed to a mental health facility so that she could receive treatment for her drug addiction, but Mother convinced him that she would agree to a voluntary commitment. Upon arrival at the facility, however, Mother changed her mind and refused to enter the facility's rehabilitation program. Father testified that, during this time, he continued to live with Mother in order to provide her support and to make sure she received the proper nutrition she needed for her pregnancy; he also said that he believed if he could provide Mother with a stable home environment, he might be able to encourage her to stop using drugs, particularly for the sake of the babies.

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[5](...continued)
between the time she learned of her pregnancy and her premature delivery of the twins.

[6]It is unclear from the record to what extent Mother's prenatal drug use was discussed at these doctor's appointments, whether Father was permitted to accompany Mother into the exam room, or whether Father was given the opportunity to speak with Mother's doctor during these appointments.

[7]The medication Mother received as treatment for her heroin addiction is alternately referenced in the record as Subutex and Suboxone. Both of these medications are used to wean persons addicted to heroin from the drug and to lessen withdrawal symptoms, which was a concern herein given Mother's pregnancy. *See generally* Drug Identification Bible 2014/2015 Edition 881 (2014/2015) (describing both "Subutex" and "Suboxone" as the "[b]rand name for a Schedule III medication used to treat narcotic addiction").

[8]Testimony elicited during the hearings below indicated that the cost for the Subutex clinic treatment and prescription was several hundred dollars per month. *See supra* note 7.

As previously noted, the twins were born prematurely in February 2016. On the day of their birth, Father stayed at the Wheeling hospital with the deceased twin and Mother until Mother's friend arrived to stay with her. Father then drove to Morgantown to visit A.L.C.M., who had been transferred there by helicopter following birth. Mother left the Wheeling hospital later that same day against medical advice. Father stated that, out of concern for Mother, her ongoing drug use, and her ability to parent A.L.C.M., he filed a mental hygiene petition that resulted in Mother's involuntary commitment to Hillcrest Behavioral Health Services on February 27, 2016, during which time she went through withdrawal.

On March 4, 2016, the West Virginia Department of Health and Human Resources ("DHHR") filed the instant abuse and neglect petition against both Mother and Father alleging that A.L.C.M. was an abused and/or neglected child.[9] The allegations of Father's misconduct vis-a-vis his child[10] include his failure to protect A.L.C.M. from

[9]DHHR's petition concerned only A.L.C.M.; DHHR did not include A.L.C.M.'s deceased twin in this petition or file a separate petition alleging A.L.C.M.'s deceased twin to be an abused and/or neglected child.

[10]During the pendency of the underlying abuse and neglect proceedings, Mother voluntarily relinquished her parental rights to A.L.C.M. and, thus, is not a party to the case *sub judice*. Nevertheless, it should be noted that, in addition to Mother's prenatal drug use, she has had her parental rights to one child involuntarily terminated, and she has placed her two other children in her grandmother's care. A.L.C.M., and the child's twin, are Father's first and only children, and he has had no prior charges of child abuse and/or neglect.

Mother's drug use – both prenatal and ongoing after the twins' births – and his continued association with Mother, who DHHR considers to be a danger to and an unsuitable guardian for the child in light of her ongoing drug use and history of prior abuse and neglect proceedings.[11] In this regard, the petition specifically alleged that:

> The Respondent [Father] has been dating [Mother] for the last year and a half. [Father] knew or should have known of [Mother's] drug abuse during her pregnancy and took no steps to try to stop the same.
>
> [Father] has a history involving drug abuse and drug dealing and/or involvement with drugs himself, and this has led to criminal activity that has resulted in his incarceration.
>
> [Father] has a criminal history including a conviction for unlawful taking of a vehicle in 1996; a conviction for conspiracy with intent to deliver crack cocaine in 1998, for which he was incarcerated for 87 months; a revocation of his supervised release in 2005; conviction for distribution of cocaine in 2005, with a 40 month sentence; a conviction in 2012 for delivery of marijuana, with a 1 to 5 year sentence; a conviction in 2013 for manufacturing or delivery of a controlled substance with a sentence of 1 to 5 years.
>
> The Department cannot ensure the safety of the child in the care of [Father] or [Mother].
>
> The infant [A.L.C.M.] has significant health issues, and [the child] will require extensive medical care and very attentive custodians. The Department cannot rely on Respondents

[11]Following the circuit court's certification order, DHHR moved to amend the underlying abuse and neglect petition, which motion the circuit court granted. Insofar as the record contains no evidence or testimony to support or refute the additional allegations of abuse and/or neglect, our consideration of this matter is limited to the allegations contained in the initial petition filed in March 2016.

> [Mother and Father] to make sure this necessary medical care and attention is provided for the infant.

The petition further alleged that A.L.C.M. is an abused child and/or neglected child, as those terms are defined by W. Va. Code § 49-1-201 (2015) (Repl. Vol. 2015). Finally, the petition alleged that

> Respondents' [Mother's and Father's] drug and/or alcohol use is pervasive and threatens the child's safety.
>
> The infant [A.L.C.M.] is in imminent danger inasmuch as an emergency situation exists that threatens the welfare or the life of the child, pursuant to West Virginia Code § 49-1-201, as there is reasonable cause to believe that the infant is threatened by non-accidental trauma; substantial emotional injury inflicted by a parent, guardian or custodian; and the parent, guardian or custodian's abuse of alcohol or drugs or other controlled substance has impaired his or her parenting skills to a degree as to pose an imminent risk to the child's health or safety.[12]

(Footnote added).

Though both parents waived their preliminary hearings, Father nevertheless questioned his paternity of A.L.C.M. because of the possibility that another man was the child's father. During her dispositional hearing on June 2, 2016,[13] Mother voluntarily

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[12]*See id.* From the time of the child's birth until the filing of the petition, the child was in the hospital and never resided with the Respondent parents, including Father, who has no other children and has never been charged with child abuse and/or neglect until the instant proceeding. *See supra* note 10.

[13]Father's adjudicatory hearing was stayed pending the outcome of the paternity testing.

relinquished her parental rights to A.L.C.M. Following confirmation through paternity testing that Father is A.L.C.M.'s biological father, Father's adjudicatory hearing was scheduled. Prior to said hearing, however, Father filed a motion to dismiss the subject petition claiming that, pursuant to this Court's recent decision in *State v. Louk*, 237 W. Va. 200, 786 S.E.2d 219 (2016), an abuse and neglect proceeding could not be brought to protect a child who has not yet been born, and, thus, by extension, a parent could not be charged with injuries sustained *in utero*. The circuit court heard both Father's motion to dismiss and evidence regarding his adjudication on August 9, 2016.

Following the conclusion of the hearing, the circuit court held in abeyance a determination as to whether Father should be adjudicated to be an abusive and/or neglectful parent pending resolution of Father's motion to dismiss. As to this issue, the parties agreed to certify the following question to this Court insofar as it was deemed to be determinative of Father's motion to dismiss:

> Is a Petition for Relief from Parental Abuse and Neglect alleging abuse and/or neglect of an unborn child who is subsequently born alive, actionable under West Virginia law?

The circuit court answered this question in the affirmative by order entered August 17, 2016.[14] This Court then accepted the certified question for consideration.

[14]Following entry of the circuit court's certification order, Father's motion for custody of his child was denied. A.L.C.M. was discharged from the hospital on October 26, (continued...)

II.

STANDARD OF REVIEW

With respect to questions certified to this court by a circuit court, we previously have held that "[t]he appellate standard of review of questions of law answered and certified by a circuit court is *de novo*." Syl. pt. 1, *Gallapoo v. Wal-Mart Stores, Inc.*, 197 W. Va. 172, 475 S.E.2d 172 (1996). In accordance with this standard, we will consider the parties' arguments.

III.

DISCUSSION

The instant proceeding is before this Court upon certification of a question of law by the Circuit Court of Ohio County.[15] Through this question, we are called upon to determine the extent to which, if any, a parent can be charged with abuse and/or neglect of a child who has suffered injuries in utero as a result of illegal drug use by the child's mother

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[14](...continued)
2016, and placed with a foster family who is equipped to care for a child with special needs.

[15]At this juncture, we wish to recognize Father's counsel for her diligent representation of her client and her astute recognition of a possible discrepancy between DHHR's petition charging Father with abuse and/or neglect, the facts of the case *sub judice*, and the recent decision of this Court in *State v. Louk*, 237 W. Va. 200, 786 S.E.2d 219 (2016), and, further, her determination to bring this matter to the circuit court's attention in the interest of vindicating her client's rights to his child. In fact, were it not for counsel's intrepid perseverance to achieve justice for her client, it is doubtful that we ever would have been presented with this critical issue of first impression.

during her pregnancy. In this regard, the circuit court certified the following question to this Court:

> Is a Petition for Relief from Parental Abuse and Neglect alleging abuse and/or neglect of an unborn child who is subsequently born alive, actionable under West Virginia law?

During the proceedings below, which gave rise to the subject certified question, DHHR filed a petition alleging that the subject child, A.L.C.M., was an abused and/or neglected child. This petition was filed *after* the child was born alive. Furthermore, DHHR did *not* file a separate petition alleging that the child's twin, who was not born alive, was an abused and/or neglected child or include the twin in the petition it filed regarding A.L.C.M. Therefore, DHHR never sought to protect a child in utero, but, rather, sought only to protect a child who had been born alive. In light of these facts of the case *sub judice*, we find it necessary to reform the certified question to more accurately depict the nature of the instant controversy.

Inherent in this Court's power to answer certified questions is the corresponding ability of this Court to rephrase a certified question when the facts and circumstances giving rise to the question so warrant. *See* Syl. pt. 2, *Martino v. Barnett*, 215 W. Va. 123, 595 S.E.2d 65 (2004) ("'When a certified question is not framed so that this Court is able to fully address the law which is involved in the question, then this Court

retains the power to reformulate questions certified to it under both the Uniform Certification of Questions of Law Act found in *W. Va. Code*, 51-1A-1, *et seq.* and *W. Va. Code*, 58-5-2 [1967], the statute relating to certified questions from a circuit court of this State to this Court.' Syl. Pt. 3, *Kincaid v. Mangum*, 189 W. Va. 404, 432 S.E.2d 74 (1993).").

Here, the certified question assumes facts that were not before the circuit court, *i.e.*, an unborn child, and asks us to resolve a hypothetical controversy insofar as the question contemplates the filing of an abuse and neglect petition seeking to protect an unborn child who later is born alive. However, this Court is comprised to resolve only *actual*, not *potential*, controversies. *See, e.g.*, Syl. pt. 2, in part, *Harshbarger v. Gainer*, 184 W. Va. 656, 403 S.E.2d 399 (1991) ("'Courts are not constituted for the purpose of making advisory decrees or resolving academic disputes.' *Mainella v. Board of Trustees of Policemen's Pension or Relief Fund of City of Fairmont*, 126 W. Va. 183, 185-86, 27 S.E.2d 486, 487-88 (1943)."). *See also State ex rel. ACF Indus., Inc. v. Vieweg*, 204 W. Va. 525, 533 n.13, 514 S.E.2d 176, 184 n.13 (1999) ("[T]his Court cannot issue an advisory opinion with respect to a hypothetical controversy.").

Moreover, the circuit court's question addresses the abuse and/or neglect of an *unborn* child who is subsequently born alive. However, DHHR never sought to protect an *unborn* child in this case. Rather, DHHR waited until *after* A.L.C.M.'s birth to file the

underlying abuse and neglect petition, which was based, *in part*, upon the injuries the child received in utero as a result of the illegal drug use of the child's mother during her pregnancy; the petition also alleged that Father had failed to protect the child. Insofar as a court reviewing a petition alleging that a child has been abused and/or neglected must "base[] [its findings] upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence," W. Va. Code § 49-4-601(i) (2015) (Repl. Vol. 2015),[16] the certified question arising from such petition also should be based upon facts "existing at the time of the filing of the petition," *id.* Because the subject child had already been born alive[17] when DHHR filed its petition, we therefore find it necessary to reformulate the circuit court's certified question to correspond with the conditions existing at that time, as follows:

> When a child is born alive, is the presence of illegal drugs in the child's system at birth sufficient evidence that the child is an abused and/or neglected child to support the filing of an abuse and neglect petition?

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[16]*Accord* Syl. pt. 1, *In Interest of S.C.*, 168 W. Va. 366, 284 S.E.2d 867 (1981) ("*W. Va. Code*, 49-6-2(c) [1980] [now W. Va. Code § 49-4-601(i)], requires the State Department of Welfare [now the Department of Health and Human Services], in a child abuse or neglect case, to prove 'conditions existing at the time of the filing of the petition . . . by clear and convincing proof.' The statute, however, does not specify any particular manner or mode of testimony or evidence by which the State Department of Welfare is obligated to meet this burden."); Syl. pt. 6, *In re Simmons Children*, 154 W. Va. 491, 177 S.E.2d 19 (1970) ("The right to custody of children by the parents is not absolute but is founded on natural law, and in order to separate a child from its parents on the ground of unfitness of the parents there must be clear, cogent and convincing proof.").

[17]As such, we find the circuit court's reliance on this Court's prior decision in *Farley v. Sartin*, 195 W. Va. 671, 466 S.E.2d 522 (1995), to be misplaced insofar as *Farley* concerned an unborn child en ventre sa mere whereas the facts of the case *sub judice* involve a child who was born alive.

To resolve this query, we first must look to the statutes governing abuse and neglect cases for the definition of those terms.[18] W. Va. Code § 49-1-201 (2015) (Repl. Vol. 2015) defines an "abused child" as follows:

> "Abused child" means a child whose health or welfare is being harmed or threatened by:
>
> (A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;
>
> (B) Sexual abuse or sexual exploitation;
>
> (C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section fourteen-h, article two, chapter sixty-one of this code; or
>
> (D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

Additionally, W. Va. Code § 49-1-201 defines "neglected child" as follows:

> "Neglected child" means a child:
>
> (A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's

[18]For this reason, we find our recent decision in *State v. Louk*, 237 W. Va. 200, 786 S.E.2d 219 (2016), to be distinguishable insofar as it decided matters regarding W. Va. Code § 61-8D-4a (1997) (Repl. Vol. 2014), a criminal statute, whereas the case *sub judice* arises in the context of abuse and neglect proceedings governed by W. Va. Code § 49-1-101 *et seq.*

> parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when that refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian;
>
> (B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;
>
> (C) "Neglected child" does not mean a child whose education is conducted within the provisions of section one [§ 18-8-1], article eight, chapter eighteen of this code.

When interpreting statutory provisions, we are guided by our longstanding rules of statutory construction. Our inquiry is bound by the Legislature's intent in promulgating the provision under review. "The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature." Syl. pt. 1, *Smith v. State Workmen's Comp. Comm'r*, 159 W. Va. 108, 219 S.E.2d 361 (1975). *Accord Lowe v. Richards*, 234 W. Va. 48, 55, 763 S.E.2d 64, 71 (2014) ("In our review of a statutory provision, it is essential to afford the enactment an interpretation that comports with the intent of the Legislature."); *In re Clifford K.*, 217 W. Va. 625, 633, 619 S.E.2d 138, 146 (2005) ("The cardinal rule of statutory interpretation is to first identify the legislative intent expressed in the promulgation at issue."); *Ewing v. Board of Educ. of Cnty. of Summers*, 202 W. Va. 228, 241, 503 S.E.2d 541, 554 (1998) ("To interpret a statutory provision, we must determine the legislative intent underlying the statute at issue." (citation omitted)).

Where the legislative intent is plain, we apply the statute as written without resorting to interpretative rules. "[I]f the legislative intent is clearly expressed in the statute, this Court is not at liberty to construe the statutory provision, but is obligated to apply its plain language." *Dan's Carworld, LLC v. Serian*, 223 W. Va. 478, 484, 677 S.E.2d 914, 920 (2009). *Accord State ex rel. McGraw v. Combs Servs.*, 206 W. Va. 512, 518, 526 S.E.2d 34, 40 (1999) ("Once the legislative intent underlying a particular statute has been ascertained, we proceed to consider the precise language thereof."); *Henry v. Benyo*, 203 W. Va. 172, 177, 506 S.E.2d 615, 620 (1998) ("When the legislative intent of a statute's terms is clear, we will apply, not construe, its plain language.").

Furthermore, where the statutory language is plain, we apply it without further construction. "When a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute." Syl. pt. 5, *State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 107 S.E.2d 353 (1959). *Accord* Syl. pt. 2, *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (1970) ("Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation."); Syl. pt. 1, *Dunlap v. State Comp. Dir.*, 149 W. Va. 266, 140 S.E.2d 448 (1965) ("Where the language of a statute is plain and unambiguous, there is no basis for application of rules of statutory construction; but courts must apply the statute according to

the legislative intent plainly expressed therein."); Syl. pt. 2, *State v. Epperly*, 135 W. Va. 877, 65 S.E.2d 488 (1951) ("A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.").

Applying these tenets to the statute defining "abused child" and "neglected child," we find the Legislature's intention to be clear and the statute's wording to be plain. In essence, the provisions of W. Va. Code § 49-1-201 seek to protect a child who is harmed or threatened with harm from the person inflicting such injury or failing to meet the child's needs. As it relates to the instant proceeding, abuse may be inflicted knowingly or intentionally. Alternatively, the harm to the child does not have to be consumated, but may be only attempted and still constitute abuse. Finally, a person who knowingly allows another person to abuse a child may also be charged with the abuse of that child. Similarly, neglect includes conduct that harms or threatens a child's welfare based upon the "refusal, failure or inability" to meet the child's needs. Neglectful conduct does not include, however, deprivation of a child's needs due to an economic inability to satisfy them. *See* W. Va. Code § 49-1-201.

The abusive and/or neglectful conduct at issue herein is twofold: (1) Mother's use of illegal drugs during her pregnancy and the resultant injuries that A.L.C.M. sustained

as a result of such substance abuse and (2) Father's alleged[19] failure to stop Mother's use of illegal drugs during her pregnancy. Common sense dictates that the presence of drugs in a child's system at birth occurs in one of two ways – as a result of medical treatment administered to the pregnant mother or child in utero or because of the mother's substance abuse during pregnancy. Here, there is no evidence that the twins received medication in utero as part of their prenatal care during Mother's pregnancy. Therefore, the only other logical explanation for the presence of cocaine, opiates, codeine, hydrocodone, and oxycodone in A.L.C.M.'s system at birth is Mother's prenatal drug use, which she has admitted and which the record evidence confirms did, in fact, occur.

A petition alleging that a child has been abused and/or neglected may be filed under the following circumstances:

> If the department [DHHR] or a reputable person believes that a child is neglected or abused, the department or the person may present a petition setting forth the facts to the circuit court in the county in which the child resides, or if the petition is being brought by the department, in the county in which the custodial respondent or other named party abuser resides, or in which the abuse or neglect occurred, or to the judge of the court in vacation. Under no circumstance may a party file a petition in more than one county based on the same set of facts.

W. Va. Code § 49-4-601(a). W. Va. Code § 49-4-601(b) defines the information that must

[19]The abusive and/or neglectful conduct attributed to Father is "alleged" because the circuit court held his adjudicatory hearing in abeyance pending this Court's resolution of the instant certified question. *See supra* note 4.

be included in the petition alleging that a child has been abused and/or neglected:

> The petition shall be verified by the oath of some credible person having knowledge of the facts. *The petition shall allege specific conduct including* time and place, *how the conduct comes within the statutory definition of neglect or abuse with references thereto*, any supportive services provided by the department to remedy the alleged circumstances and the relief sought.

(Emphasis added). We find these statutes also to be clear and unambiguous, and, thus, we apply the plain language used by the Legislature. *See, e.g.*, Syl. pt. 5, *General Daniel Morgan Post No. 548*, 144 W. Va. 137, 107 S.E.2d 353. Pursuant to these provisions, a petition alleging that a child has been abused and/or neglected is sufficient if the conduct alleged to be abusive and/or neglectful "comes within the statutory definition" of those terms. W. Va. Code § 49-4-601(b).

In other words, if the conduct alleged to constitute abuse and/or neglect comes within the statutory definition of "abuse" and/or "neglect," such conduct is the proper subject of an abuse and/or neglect petition. As we observed, the presence of illegal drugs in a child's system at birth is indicative of the mother's use of such substances during her pregnancy, which conduct satisfies both the statutory definition of "abused child," *i.e.*, "[a] parent . . . who knowingly . . . inflicts . . . physical injury . . . upon the child," W. Va. Code § 49-1-201, and the statutory definition of "neglected child," *i.e.*, a child "[w]hose physical . . . health is harmed . . . by a present refusal [or] failure . . . of the child's parent . . . to supply the child

with necessary . . . supervision [or] medical care . . . when that refusal [or] failure . . . is not due primarily to a lack of financial means," *id.*

Moreover, with respect to Father's alleged failure to stop Mother's illegal drug use during her pregnancy, the statutes governing abuse and neglect proceedings allow a finding of abuse to be based upon a parent's knowledge that another person is harming his/her child. In this regard, W. Va. Code § 49-1-201 includes within the definition of "abused child"

> a child whose health or welfare is being harmed or threatened by:
>
> > (A) A parent . . . who . . . knowingly allows another person to inflict . . . physical injury or mental or emotional injury . . . upon the child . . . .

With respect to this statutory language, we previously have held that "W. Va. Code, 49-1-3(a) (1984) [now W. Va. Code § 49-1-201 (2015)], in part, defines an abused child to include one whose parent knowingly allows another person to commit the abuse." Syl. pt. 3, in part, *In re Betty J.W.*, 179 W. Va. 605, 371 S.E.2d 326 (1988). Moreover,

> [t]he term "knowingly" as used in West Virginia Code § 49-1-3(a)(1) (1995) [now W. Va. Code § 49-1-201] does not require that a parent actually be present at the time the abuse occurs, but rather that the parent was presented with sufficient facts from which he/she could have and should have recognized that abuse has occurred.

Syl. pt. 7, *West Virginia Dep't of Health & Human Res. ex rel. Wright v. Doris S.*, 197

W. Va. 489, 475 S.E.2d 865 (1996). Thus, for a child to be determined to be an "abused child," the parent charged with such abuse need not commit the abuse him/herself, so long as he/she knew that the subject abuse was being perpetrated, even if the alleged abuse occurs outside of the presence of the parent charged with such abuse. *Id.*

Accordingly, we now hold that when a child is born alive,[20] the presence of illegal drugs in the child's system at birth constitutes sufficient evidence that the child is an abused and/or neglected child, as those terms are defined by W. Va. Code § 49-1-201 (2015) (Repl. Vol. 2015), to support the filing of an abuse and neglect petition pursuant to W. Va. Code § 49-4-601 (2015) (Repl. Vol. 2015).[21] Therefore, we answer the certified question, as reformulated, in the affirmative.

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[20]This holding, as well as its attendant discussion, necessarily is limited by the facts at issue in this case that have given rise to the question certified by the circuit court. That is to say that, as noted in this opinion, DHHR filed the subject abuse and neglect petition against parents of a newborn child, *not* against parents of a child still in utero. As such, we do not decide, and this opinion should not be construed as deciding, whether such a petition may be brought against parents of a child in utero.

[21]We note that this holding is consistent with the result obtained in numerous cases previously decided by this Court in which we upheld a finding of abuse and/or neglect based upon the mother's illegal drug use during pregnancy and the presence of such illegal substances in the child's system at birth. *See, e.g.*, *State ex rel. J.E.H.G. v. Kaufman*, No. 16-0931, 2017 WL 526398 (W. Va. Feb. 8, 2017) (memorandum decision); *In re L.L.*, No. 15-0703, 2016 WL 700555 (W. Va. Feb. 16, 2016) (memorandum decision); *In re J.J.*, No. 13-0094, 2013 WL 5476390 (W. Va. Oct. 1, 2013) (memorandum decision); *In re J.W.*, No. 12-0496, 2012 WL 4069651 (W. Va. Sept. 7, 2012) (memorandum decision); *In Re: Dejah Rose P.*, 216 W. Va. 514, 607 S.E.2d 843 (2004).

IV.

CONCLUSION

The certified question having been answered, we remand this case to the Circuit Court of Ohio County for further proceedings consistent with this opinion.

Certified Question Answered.