

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

C. CASEY FORBES, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

***In re S.B. and E.B.***

**No. 23-59** (Kanawha County 20-JA-413 and 21-JA-125)

**MEMORANDUM DECISION**

Petitioner Father J.B.<sup>1</sup> appeals the Circuit Court of Kanawha County’s January 3, 2023, order terminating his parental rights to S.B. and E.B.<sup>2</sup> Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming, in part, and vacating, in part, the circuit court’s January 3, 2023, dispositional order and remanding for further proceedings is appropriate, in accordance with the “limited circumstances” requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

In September 2020, the DHS filed a petition alleging that petitioner neglected and abused S.B.<sup>3</sup> because the child tested positive for marijuana and methadone at birth and, as an infant, was left unattended in a car while her mother went for a manicure. The DHS also alleged that petitioner failed to provide the child with financial support. That same month, petitioner was directed to participate in services including parenting classes, adult life skills classes, and random drug and alcohol screenings. After the DHS filed an amended petition to include additional allegations in October 2020, the court again ordered petitioner to participate in services through the DHS. In

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<sup>1</sup>Petitioner appears by counsel Carl J. Dascoli Jr. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Andrew T. Waight. Counsel Sharon K. Childers appears as the children’s guardian ad litem.

Additionally, pursuant to West Virginia Code § 5F-1-2, the agency formerly known as the West Virginia Department of Health and Human Resources was terminated, effective January 1, 2024, and is now three separate agencies—the Department of Health Facilities, the Department of Health, and the Department of Human Services. For purposes of abuse and neglect appeals, the agency is now the Department of Human Services (“DHS”).

<sup>2</sup>We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

<sup>3</sup>E.B. was not included in the initial petition.

February 2021, petitioner represented that he no longer desired services through the DHS because he wanted to obtain his own services, so, the court ordered services be terminated.

In March 2021, the DHS filed its second amended petition alleging, in addition to the prior allegations, that A.C. (another child in the home<sup>4</sup>) disclosed that she witnessed petitioner choke and smack her and S.B.'s mother, K.V., and she witnessed K.V. using drugs. This petition also added E.B. and his mother<sup>5</sup> to the proceeding. However, the petition made no new allegations relating to petitioner's abuse or neglect of E.B.

In June 2021, the court held an adjudicatory hearing. The DHS presented the testimony of the psychologist from Saar Psychological. Petitioner testified on his own behalf. The evidence established that A.C. witnessed petitioner choke and smack her mother and that petitioner failed to protect S.B., the only child at issue in this appeal who lived in that home, from her mother's drug use. However, it does not appear that any evidence was introduced regarding petitioner's conduct toward E.B. In fact, the evidence indicated that E.B. did not live in the home. Despite the disparity in evidence concerning the two children, the court found that S.B. and E.B. were neglected in that their physical or mental health was harmed or threatened by a then-present refusal, failure, or inability of the children's parent to supply the children with the necessary food, clothing, shelter, supervision, medical care, or education. Additionally, petitioner was found to be an abusing parent. The order contained no specific findings as to how petitioner abused or neglected E.B. The following month, petitioner filed a motion for a post-adjudicatory improvement period.

During an October 2021 hearing, the psychologist who performed petitioner's evaluation testified that petitioner was untruthful, failed to take responsibility, and had a "very poor" prognosis for achieving minimally adequate parenting. Then, petitioner testified on his own behalf and denied the allegations against him. At a hearing in January 2022, petitioner again testified on his own behalf and again denied the allegations in the petition. Additionally, petitioner denied prior involvement with Child Protective Services ("CPS"), contrary to the testimony presented by a CPS employee who investigated petitioner in 2018 regarding a domestic violence incident with petitioner's mother and again in 2019, when S.B. was born drug affected. Over the objections of the DHS and the guardian, the court granted petitioner a post-adjudicatory improvement period. For a second time, the court ordered petitioner to participate in services. The court specifically instructed petitioner that he must comply with services and the improvement period was his last opportunity to make progress before the court would proceed with disposition.

In April 2022, the court reviewed petitioner's improvement period. The guardian informed the court that petitioner refused services set up for him by the DHS and instead decided to obtain his own services. However, petitioner did not present any evidence that he was participating in any services. The guardian moved to terminate petitioner's improvement period, but the court held the motion in abeyance. The court cautioned petitioner that participating in services was necessary. At the next hearing, the DHS again moved to terminate petitioner's improvement period, as petitioner

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<sup>4</sup>A.C. is not petitioner's biological child and is not at issue in this appeal.

<sup>5</sup>E.B. has a different mother than S.B. and A.C.

still refused services and failed to show that he arranged his own. However, the court found that petitioner's improvement period had expired and set the matter for disposition.

In December 2022, the court held a disposition hearing. Petitioner testified and presented the testimony of Keith Cole, the licensed professional counselor petitioner hired to provide services after he refused services through the DHS. Mr. Cole testified that he was not provided a copy of the Saar Psychological parental fitness evaluation or any documents related to the abuse and neglect petition. Mr. Cole further stated that he did not author any reports related to his sessions with petitioner nor was he aware of the car incident with S.B. Petitioner then testified that he did not complete anger management, did not complete parenting classes, and again denied the domestic violence incidents with S.B.'s mother. Based on the evidence, the court found that petitioner failed to acknowledge his abusive conduct, failed to rectify the circumstances that led to the filing of the initial petition, refused to participate in services through DHS, and did not obtain adequate services himself. Thus, there was no reasonable likelihood that the conditions of neglect could be substantially corrected. The court further held that the children's best interests required termination of petitioner's parental rights. Accordingly, petitioner's parental rights to S.B. and E.B. were terminated.<sup>6</sup> It is from this order that petitioner appeals.

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court's findings of fact for clear error and its conclusions of law de novo. Syl. Pt. 1, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011). Further, we have explained that

[w]here it appears from the record that the process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes for the disposition of cases involving children adjudicated to be abused or neglected has been substantially disregarded or frustrated, the . . . case [will be] remanded for compliance with that process.

Syl. Pt. 5, in part, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001).

At the outset, we must address the circuit court's adjudication of petitioner in regard to E.B.<sup>7</sup> As we recently explained,

[t]o exercise subject matter jurisdiction [over a child in an abuse and neglect proceeding], the court must make specific factual findings explaining how each child's health and welfare are being harmed or threatened by the allegedly abusive

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<sup>6</sup>The permanency plan for S.B. is reunification with her mother. E.B. is to remain with his grandmother.

<sup>7</sup>While petitioner's argument on appeal does not specifically concern E.B., this Court, as more fully explained above, believes that petitioner's adjudication regarding E.B. requires vacation due to a lack of subject matter jurisdiction. "This Court, on its own motion, will take notice of lack of jurisdiction at any time or at any stage of the litigation pending therein." Syl. Pt. 2, *In re Boggs' Estate*, 135 W.Va. 288, 63 S.E.2d 497 (1951)." Syl. Pt. 2, *State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 239 W. Va. 338, 801 S.E.2d 216 (2017).

or neglectful conduct of the parties named in the petition. Due to the jurisdictional nature of this question, generalized findings applicable to all children named in the petition will not suffice; the circuit court must make specific findings with regard to each child so named.

Syl. Pt. 3, *In re B.V.*, 248 W. Va. 29, 886 S.E.2d 364(2023). In its June 8, 2021, adjudicatory order, the court made no findings at all regarding how E.B. was abused and/or neglected. Instead, it explicitly adjudicated petitioner for failing to protect the children from S.B.'s mother, even though E.B. has a different mother and no evidence was introduced that petitioner exposed E.B. to S.B.'s mother's drug use. There are no findings in the record specific to E.B. and how petitioner is alleged to have abused and/or neglected that child. In accordance with *In re B.V.* and the requirement that specific findings as to how each child is either abused and/or neglected are necessary for a court to exercise subject matter jurisdiction, the circuit court's June 8, 2021, order adjudicating petitioner must be vacated as it pertains to petitioner's adjudication of E.B. only. Further, the court's January 3, 2023, order terminating petitioner's parental rights must be vacated as it pertains to E.B. only, and the matter must be remanded for the court to enter a new adjudicatory order satisfying these requirements regarding E.B. and for further proceedings consistent with the applicable statutes and rules governing abuse and neglect proceedings.

As to the termination of petitioner's parental rights to S.B., however, we find no error. Before this Court, petitioner challenges the sufficiency of the evidence below, claiming that he was not responsible for any neglect. This argument, however, has no basis in the record, as the evidence demonstrated that petitioner perpetrated acts of domestic violence upon S.B.'s mother in front of the child. Furthermore, petitioner failed to provide adequate supervision for S.B. as evidenced by S.B. being left in a hot car and repeatedly exposed to the mother's drug use. *See* W. Va. Code § 49-1-201 (defining neglected child as a child whose health is harmed or threatened by a parent's refusal to supply the child with necessary supervision). Thus, petitioner's claim that he was not responsible for any neglect is meritless, and the court did not err in adjudicating petitioner as the DHS satisfied the applicable burden of proof. *See* Syl. Pt. 1, *In re Joseph A.*, 199 W. Va. 438, 485 S.E.2d 176 (1997) (“[West Virginia Code § 49-4-601(i)], requires the [DHS], in a child abuse or neglect case, to prove ‘conditions existing at the time of the filing of the petition . . . by clear and convincing [evidence].’” (citations omitted)).

To the extent petitioner argues that termination of his parental rights to S.B. was erroneous, we conclude that termination was appropriate. In support of termination, the circuit court found that petitioner failed to recognize and acknowledge that his conduct constituted neglect and “has not taken responsibility or accountability of anything in this matter.” We have previously held that “[f]ailure to acknowledge the existence of the problem . . . results in making the problem untreatable.” *In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (citation omitted). Petitioner's unwillingness to participate in proper services and denial of all allegations demonstrated his inability to acknowledge the problem. Petitioner's “strong impression he was complying with services” by hiring his own counselor and failing to provide his counselor relevant documents and information about the proceedings further demonstrates petitioner's disregard for the court's orders and refusal to correct the conditions that led to the filing of the initial petition. Thus, the court had ample evidence upon which to find that there was no reasonable likelihood that the conditions of neglect could be substantially corrected in the near future. As we have held:

“Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604] may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(c)(6)] that conditions of neglect or abuse can be substantially corrected.” Syllabus point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). Based upon the evidence presented, the court made the findings necessary for termination of petitioner’s parental rights, and we find no error. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental rights upon finding no reasonable likelihood conditions of neglect can be substantially corrected in the near future and when necessary for child’s welfare).

For the foregoing reasons, we vacate, in part, the circuit court’s June 8, 2021, adjudicatory order as it relates to petitioner’s adjudication of E.B. only; vacate, in part, the January 3, 2023, order terminating petitioner’s parental rights as it pertains to E.B. only;<sup>8</sup> and remand this matter to the circuit court for further proceedings, including but not limited to the entry of an order setting out the requisite findings as to whether E.B. met the statutory definitions of an abused or neglected child. *See* W. Va. Code § 49-1-201. The court is further directed to undertake any additional proceedings consistent with the applicable rules and statutes. The Clerk is directed to issue the mandate contemporaneously herewith.

Affirmed, in part, Vacated, in part, and Remanded, with directions.

**ISSUED:** February 7, 2024

**CONCURRED IN BY:**

Chief Justice Tim Armstead  
Justice Elizabeth D. Walker  
Justice John A. Hutchison  
Justice William R. Wooton  
Justice C. Haley Bunn

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<sup>8</sup>The vacation of these orders applies only to petitioner. Those orders included certain provisions relating to the other parents. Accordingly, the portions of the orders concerning the other adult respondents remain in full force and effect.