

FILED
April 15, 2024

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

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re **H.W. and R.W.**

No. 23-319 (Preston County 21-JA-59 and 21-JA-60)

MEMORANDUM DECISION

Petitioner Mother A.H.¹ appeals the Circuit Court of Preston County’s April 20, 2023, order terminating her parental and custodial rights to the children, H.W. and R.W.² At issue is whether the circuit court properly considered whether it had subject matter jurisdiction. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision vacating and remanding the circuit court’s October 6, 2021, and April 20, 2023, orders is appropriate in accordance with the “limited circumstances” requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

In June 2021, the DHS filed an “Imminent Danger Petition” alleging that petitioner and the father overdosed on illegal substances while the children were present in the home and that their substance abuse affected their ability to properly care for the children. Importantly, when a Child Protective Services (“CPS”) worker interviewed the children, the oldest child revealed that the family had recently relocated to West Virginia in May 2021 after being unable to find housing in Maryland. Furthermore, when the CPS worker spoke to petitioner, she described their current home as “temporary.”

¹Petitioner appears by counsel Michael D. Safcsak. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Kristen E. Ross. Counsel Kristen D. Antolini appears as the children’s guardian ad litem.

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

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

Petitioner waived her right to a preliminary hearing in August 2021, and stipulated to the allegations in the petition at an adjudicatory hearing held in September 2021. The court, therefore, adjudicated petitioner an abusing and neglecting parent and found the children to be abused and neglected. Petitioner was granted an improvement period at a subsequent hearing held in August 2022. Several review hearings and evidentiary hearings were held thereafter, culminating in a final dispositional hearing in February 2023. In its final order, the court noted that petitioner “consistently stated that the CPS matter should have been transferred to the State of Maryland instead of being in West Virginia where both [she] and [the father] overdosed in the presence of the minor children.” The court ultimately found it proper to terminate petitioner’s parental and custodial rights to the children.³ It is from the final dispositional 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). On appeal, petitioner argues that the court erred in terminating her parental rights rather than employing a less restrictive dispositional alternative. However, we must address the dispositive jurisdictional issue that the parties and the circuit court overlooked in this case. *See* Syl. Pt. 5, in part, *In re Z.H.*, 245 W. Va. 456, 859 S.E.2d 399 (2021) (“Even if not raised by a party, if there is any question regarding a lack of subject matter jurisdiction under the [Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”)] then the court should sua sponte address the issue as early in the proceeding as possible.”). We have stated that,

[t]he UCCJEA’s requirements have been determined by this Court to demand a subject-matter jurisdiction analysis before a circuit court may proceed to reach the merits of an abuse and neglect petition: “[t]he Uniform Child Custody Jurisdiction and Enforcement Act, West Virginia Code § 48-20-101, et seq., is a jurisdictional statute, and the requirements of the statute must be met for a court to have the power to adjudicate child custody disputes.”

In re A.T.-I, 248 W. Va. 484, 489-90, 889 S.E.2d 57, 62-63 (2023) (quoting Syl. Pt. 6, *Rosen v. Rosen*, 222 W. Va. 402, 664 S.E.2d 743 (2008)). As we have previously outlined,

to exercise jurisdiction to determine child custody, a court of this state must satisfy one of the four bases of jurisdiction set forth in [West Virginia Code § 48-20-201(a)]. These four bases have been aptly summarized as 1) “home state” jurisdiction; 2) “significant connection” jurisdiction; 3) “jurisdiction because of declination of jurisdiction”; and 4) “default” jurisdiction. These jurisdictional bases do not operate alternatively to each other, but rather, in order of priority—reaching the next basis of jurisdiction only if the preceding basis does not resolve the jurisdictional issue.

In re Z.H., 245 W. Va. at 464, 859 S.E.2d at 407 (quoting *In re J.C.*, 242 W. Va. 165, 171, 832 S.E.2d 91, 97 (2019)). First, we cannot find that home state jurisdiction existed in this case based

³The father’s parental rights were also terminated during the proceedings. The permanency plan for the children is adoption by their foster placement.

on our review of the appellate record. We have held that “‘home state’ means the state in which the child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.” Syl. Pt. 3, in part, *Rosen*, 222 W. Va. at 404, 664 S.E.2d at 745. Taking the child’s disclosure to CPS as true based on petitioner’s stipulation, the family was not living in West Virginia for at least six consecutive months immediately before commencement of the case; rather, they had only moved to West Virginia approximately one month before the DHS’s petition was filed. Next, there was simply no evidence in the record or discussion by the court regarding any of the other means of conferring jurisdiction.⁴ The only analysis the court seemingly took regarding jurisdiction was its indication in the final dispositional order that the case was properly before the court due to the parents’ overdose occurring in this state. While we acknowledge the emergency situation that existed at the time of the filing of the DHS’s petition due to the parents’ overdose, temporary emergency jurisdiction does not confer subject matter jurisdiction upon a circuit court to continue presiding over the entirety of the abuse and neglect proceeding. *See* W. Va. Code § 48-20-204; *see also In re Z.H.*, 245 W. Va. at 468-69, 859 S.E.2d at 411-12. The circuit court must follow the statutory requisites for exercising jurisdiction beyond its temporary emergency jurisdiction and there is no indication in the record that this occurred. In that vein we have held,

“[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 [alleged] to be abused or neglected has been substantially disregarded or frustrated, the resulting order . . . will be vacated and the case remanded for compliance with that process and entry of an appropriate . .

⁴We have explained as follows:

Pursuant to West Virginia Code § 48-20-201(a)(2), “significant connection” jurisdiction may exist in West Virginia if no court in another state has home state jurisdiction under § 48-20-201(a)(1) or if a court in another state has home state jurisdiction but declines it; the child and parent or parents have a significant connection to West Virginia other than physical presence; and substantial evidence about the child’s care, protection, training and relationships is available in West Virginia.

In re Z.H., 245 W. Va. at 469, 859 S.E.2d at 412. Regarding “declination jurisdiction,” West Virginia Code § 48-20-201(a)(3), provides that,

West Virginia would have jurisdiction if “[a]ll courts having jurisdiction under subdivision (1) or (2) of this subdivision have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under 20-207 or 20-208” of the Act.

Id. at 471, 859 S.E.2d at 414. Lastly, “[d]efault jurisdiction’ under West Virginia Code § 48-20-201(a)(4) applies if ‘[n]o court of any other state would have jurisdiction under the criteria specified in subdivisions (1), (2), or (3)’ of § 48-20-201(a).” *Id.* at 472, 859 S.E.2d at 415.

. order.” Syllabus point 5, in part, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001).

Syl. Pt. 3, *In re Emily G.*, 224 W. Va. 390, 686 S.E.2d 41 (2009). Therefore, we must vacate the circuit court’s adjudicatory and dispositional orders and remand this case for the court to undertake an appropriate review considering the provisions of the UCCJEA.

Accordingly, for the foregoing reasons, we vacate the circuit court’s October 6, 2021, adjudicatory order, and the court’s April 20, 2023, dispositional order, and remand for further proceedings consistent with this decision.⁵ The Clerk is directed to issue the mandate contemporaneously herewith.

Vacated and Remanded, with directions.

ISSUED: April 15, 2024

CONCURRED IN BY:

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

⁵The vacation of these orders applies only to petitioner, not the father. Because the father did not appeal, his case is not before us.