

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

*In re* F.S.

No. 23-292 (Kanawha County 22-JA-404)

**MEMORANDUM DECISION**

Petitioner Mother K.T.<sup>1</sup> appeals the Circuit Court of Kanawha County’s April 26, 2023, order terminating her parental rights to the child, F.S.,<sup>2</sup> arguing the evidence did not support termination. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision vacating and remanding the circuit court’s April 26, 2023, order is appropriate in accordance with the “limited circumstances” requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

In September 2022, the DHS filed an abuse and neglect petition alleging that the petitioner tested positive for drugs upon giving birth to F.S. and that she previously had her parental rights to two other children involuntarily terminated.<sup>3</sup> Based on evidence presented at an adjudicatory hearing held in December 2022, the circuit court found aggravated circumstances and that the petitioner’s substance abuse interfered with her ability to parent. Therefore, the court adjudicated the petitioner as an abusive and neglectful parent and found the child to be abused and neglected.

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<sup>1</sup> The petitioner appears by counsel Jason S. Lord. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Andrew T. Waight. Counsel Catherine B. Wallace appears as the child’s guardian ad litem (“guardian”).

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”).

<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> The petitioner appealed the involuntary termination of her parental rights to the two other children in 2020, and this Court affirmed the circuit court’s decision. *See In re J.T.*, No. 20-0151, 2020 WL 5240655, at \*3 (W. Va. Sept. 3, 2020) (memorandum decision).

Thereafter, the circuit court continued the dispositional hearing on two occasions due to the DHS's failure to complete proper case plans within the requisite time frame. Upon receipt of the DHS's case plan in April 2023, the court held a dispositional hearing that same month, at which time the DHS and guardian supported termination of the petitioner's parental rights. A Child Protective Services ("CPS") worker testified and admitted that no services had been provided to the petitioner during the pendency of the case. The petitioner testified on her own behalf and indicated that she was currently enrolled in an inpatient drug rehabilitation program without any assistance from the DHS. The petitioner said she attempted to participate in rehabilitation services earlier in the case, but an inpatient bed had only recently become available. Despite the foregoing testimony, the court terminated the petitioner's parental rights finding it to be in the best interests of the child. Neither the transcript from the dispositional hearing nor the dispositional order indicate that the circuit court explicitly found that there was no reasonable likelihood that the conditions of neglect or abuse could be substantially corrected in the near future or that termination was necessary for the child's welfare. It is from the dispositional order that the petitioner appeals.<sup>4</sup>

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). The petitioner argues that the circuit court erred in terminating her parental rights, and upon our review of the record, we find it necessary to vacate and remand this matter for entry of a sufficient dispositional order.

West Virginia Code § 49-4-604(c)(6) explicitly states that, in order to terminate parental rights, a circuit court must find that there is no reasonable likelihood that the conditions of abuse and neglect can be substantially corrected in the near future and that termination is necessary for the child's welfare. Here, the record from the dispositional hearing and the written dispositional order reveal that the circuit court simply declared that the child's best interests required termination of the petitioner's parental rights. As we have previously held, such conclusory declarations are insufficient for termination of parental rights. *See* Syl. Pt. 4, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001) (holding that a dispositional order is inadequate when a trial court fails to state statutory findings required by West Virginia Code § 49-4-604(c)(6)). Moreover,

“[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 . . . 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). Despite the court's conclusion that termination was in the child's best interests, pursuant to *Edward B.*, it was necessary for the court to make specific findings in support of its decision. Accordingly, we find the dispositional

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<sup>4</sup> The father's parental rights were terminated by the same dispositional order. The permanency plan for the child is adoption by foster placement.

process has been substantially disregarded and the order is inadequate without including the requisite findings and conclusions under West Virginia Code § 49-4-604(c)(6).

For the foregoing reasons, we vacate the circuit court's April 26, 2023, order, and remand for further proceedings consistent with this decision.<sup>5</sup> The Clerk is directed to issue the mandate contemporaneously herewith.

Vacated and remanded, with directions.

**ISSUED:** May 13, 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>5</sup> The vacation of this order applies only to the petitioner. The father's parental rights were also terminated by the court's April 26, 2023, order, and he did not appeal the circuit court's decision. Additionally, the court's April 26, 2023, order denied the maternal grandmother's motion to intervene and for placement, and she appealed the circuit court's decision as it pertained to her in a separate proceeding. Accordingly, the portions of the order concerning the father and the grandmother remain in full force and effect.