IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 22-917

IN RE M.F.-1, M.F.-2, and M.F.-3

Appeal from the Circuit Court of Kanawha County
The Honorable Joanna I. Tabit, Judge
Juvenile Action Nos. 21-JA-291, 21-JA-293, and 21-JA-294

AFFIRMED

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JUSTICE BUNN delivered the Opinion of the Court.

SYLLABUS BY THE COURT

1. "Although conclusions of law reached by a circuit court are subject to *de novo* review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected. These findings shall not be set aside by a reviewing court unless clearly erroneous. A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety." Syllabus point 1, *In Interest of Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996).

2. "In an emergency which imminently threatens the welfare, health or life of any minor child, the State, as *parens patriae*, exercises an interest which temporarily overrides the rights of natural parents to the custody of the child and warrants the assumption of the child's custody by the State for a reasonable time, without regard to the requirements of Due Process." Syllabus point 3, *In re Willis*, 157 W. Va. 225, 207 S.E.2d 129 (1973).

3. “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.” Syllabus point 1, *Dunlap v. State Compensation Director*, 149 W. Va. 266, 140 S.E.2d 448 (1965).

4. “It is a traumatic experience for children to undergo sudden and dramatic changes in their permanent custodians.” Syllabus point 3, in part, *James M. v. Maynard*, 185 W. Va. 648, 408 S.E.2d 400 (1991).

5. “An appellant must carry the burden of showing error in the judgment of which he complains[.]” Syllabus point 4, in part, *State v. Delorenzo*, 247 W. Va. 707, 885 S.E.2d 645 (2022).

6. “‘Where objections were not shown to have been made in the trial court, and the matters concerned were not jurisdictional in character, such objections will not be considered on appeal.’ Syllabus point 1., *State Road Commission v. Ferguson*, 148 W. Va. 742, 137 S.E.2d 206 (1964).” Syllabus point 7, *Wheeling Dollar Savings & Trust Co. v. Leedy*, 158 W. Va. 926, 216 S.E.2d 560 (1975).

7. “This Court will not consider an error which is not properly preserved in the record nor apparent on the face of the record.” Syllabus point 4, *State v. Browning*, 199 W. Va. 417, 485 S.E.2d 1 (1997).

BUNN, Justice:

The petitioner, N.C.-F.[1] (also, "the siblings' mother"), is the mother of children M.F.-1 and M.F.-2, who are M.F.-3's half-siblings. N.C.-F. appeals to this Court from the Circuit Court of Kanawha County's November 23, 2022 dispositional order terminating the Father's parental rights[2] and denying N.C.-F.'s request for placement of M.F.-3 with her and the child's half-siblings. The respondents, the West Virginia Department of Human Services ("DHS")[3] and the child's kinship placement, S.M.,[4] as well as the children's guardian ad litem ("GAL"), oppose N.C.-F.'s appeal.

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[1] We use initials instead of full names to refer to the parties in cases involving sensitive facts. *See, e.g.*, *In re K.L.*, 241 W. Va. 546, 548 n.1, 826 S.E.2d 671, 673 n.1 (2019); *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).

Because several of the individuals involved in this case share the initials M.F., we will refer to the children's father as "the Father" and his youngest child as M.F.-3. The children of N.C.-F. and the Father, who are M.F.-3's half-siblings, will be referenced as M.F.-1 and M.F.-2.

[2] We affirmed the circuit court's termination of the Father's parental rights in a companion case. *See In re M.F.-1*, No. 22-929, 2024 WL 1193570 (W. Va. Mar. 20, 2024) (memorandum decision).

[3] Pursuant to West Virginia Code § 5F-2-1a (eff. 2023), 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 (eff. 2024). For purposes of abuse and neglect appeals, the agency is now the Department of Human Services ("DHS").

[4] S.M. is M.F.-3's maternal aunt and has been his kinship placement since the occurrence of the events giving rise to the underlying abuse and neglect proceeding. By order entered March 23, 2023, we granted S.M. intervenor status in the instant appeal.

Upon review, we find that the circuit court did not err in rendering the rulings that N.C.-F. challenges on appeal or in determining that maintaining M.F.-3's placement with S.M., instead of placing the child with N.C.-F., served his best interests. Therefore, we affirm the circuit court's November 23, 2022 dispositional order.

I.

FACTUAL AND PROCEDURAL HISTORY

The underlying abuse and neglect case began in May 2021 when the Father admitted to killing[5] the mother of M.F.-3 in their residence. Responding law enforcement and Child Protective Services ("CPS") officials found M.F.-3, who was approximately five months old, in the same room as his mother's body. Although the Father called his ex-wife, N.C.-F., to come to his residence to pick up M.F.-3, CPS instead placed the child with S.M., who is the mother's sister and the child's maternal aunt.[6]

[5] The Father ultimately pleaded guilty to voluntary manslaughter.

[6] When M.F.-3 was placed with S.M., S.M. was living with her mother, who is M.F.-3's maternal grandmother. DHS claims that CPS made its placement decision based upon the DHS's policy to place children with relatives when they are removed from their parents' care. *See* W. Va. Code § 49-4-601a (eff. 2020) ("When a child is removed from his or her home, placement preference is to be given to relatives or fictive kin of the child. If a child requires out-of-home care, placement of a child with a relative is the least restrictive alternative living arrangement.").

In addition to the child's placement with his maternal aunt and grandmother, M.F.-3's placement was in close proximity to another half-sibling who has the same mother as M.F.-3 but a different father.

The DHS filed a child abuse and neglect petition naming the Father and N.C.-F. as respondent parents and alleging that the children M.F.-1, M.F.-2, and M.F.-3 were abused and neglected based upon the Father's killing of M.F.-3's mother. The petition did not make any allegations of abuse or neglect against N.C.-F. Although M.F.-1 and M.F.-2 remained in N.C.-F.'s physical custody during the entirety of the abuse and neglect proceedings, the circuit court placed their legal custody with DHS and named N.C.-F. as a non-offending respondent parent for the duration of the case.[7] During the proceedings, the GAL facilitated regular visitation between M.F.-3 and his half-siblings, M.F.-1 and M.F.-2.[8] The circuit court memorialized the visitation arrangement in an order to ensure its continuity after disposition.[9]

After numerous continuances, the circuit court held an adjudicatory hearing on April 22, 2022, and adjudicated M.F.-1, M.F.-2, and M.F.-3 as abused and neglected children. The circuit court found that the Father had "feloniously murdered" the mother of M.F.-3; that the Father's commission of such acts in the child's presence constituted

[7] N.C.-F. requested the circuit court to change her status in the abuse and neglect proceeding from respondent parent to co-petitioner. Although the circuit court ordered that she be designated as a non-abusing and non-neglecting parent, the court did not change N.C.-F.'s status from respondent parent to co-petitioner.

[8] This visitation appears to have occurred every weekend, with overnight visitation every other weekend. M.F.-3's paternal grandparents, who were also M.F.-1 and M.F.-2's paternal grandparents, were permitted to participate in these weekly visits.

[9] The exact nature of the sibling visitation detailed in the court's sibling visitation order is unclear because this order is not included in the appendix record. For further discussion of this issue, see Section III.C., *infra*.

"grossly immoral conduct," which, when combined with his incarceration, prevented him from caring for M.F.-3; and that the Father's abuse and neglect of M.F.-3 extended to M.F.-1 and M.F.-2.

The circuit court then terminated the Father's parental rights by dispositional order entered November 23, 2022. Again, the court based its decision on the harm M.F.-3 suffered as a result of the Father's killing of M.F.-3's mother in the child's presence and the extension of such harm to the Father's other children, M.F.-1 and M.F.-2. Having terminated the Father's parental rights, the court then restored legal custody of M.F.-1 and M.F.-2 to N.C.-F. The circuit court also denied N.C.-F.'s request for placement of M.F.-3 with her and his half-siblings. The court determined that maintaining M.F.-3's placement with S.M. would serve his best interests by avoiding disruption, particularly in light of his young age and the length of time he had resided with S.M. The court also found that the children's liberal visitation schedule, which the court ordered be continued following disposition, helped to maintain their sibling bond. Finally, the court referenced the difference in the children's post-termination contact with the Father: the court granted the Father post-termination supervised visitation with M.F.-1 and M.F.-2,[10] but ordered that the Father could not have any post-termination contact with M.F.-3. After denying

[10] It appears from the record that the Father had supervised visitation with M.F.-1 and M.F.-2 prior to the events giving rise to the underlying proceeding.

N.C.-F.'s placement request, the court dismissed M.F.-1, M.F.-2, and N.C.-F. from the abuse and neglect case. N.C.-F. now appeals to this Court.[11]

II.

STANDARD OF REVIEW

N.C.-F. assigns error to numerous rulings of the circuit court. We apply the following standard of review to appeals in abuse and neglect cases:

> Although conclusions of law reached by a circuit court are subject to *de novo* review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected. These findings shall not be set aside by a reviewing court unless clearly erroneous. A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety.

Syl. pt. 1, *In Int. of Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996).

[11] The paternal grandparents of M.F.-1, M.F.-2, and M.F.-3 also filed an appeal from the circuit court's order denying their motions to intervene and requesting that M.F.-3 be placed with them. We affirmed the circuit court's denial of intervenor status but remanded with directions for the DHS to comply with the terms of West Virginia Code § 49-4-114(a)(3) (eff. 2015). *See In re M.F. III*, No. 22-884, ___ W. Va. ___, ___ S.E.2d ___, 2024 WL _____ (June 12, 2024) (paternal grandparents' appeal).

III.

DISCUSSION

On appeal to this Court, N.C.-F. asserts that the circuit court erred by (1) violating her constitutional due process rights by removing her children, M.F.-1 and M.F.-2, from her custody during the abuse and neglect proceedings; (2) denying her request for placement of M.F.-3; and (3) failing to order sibling visitation in accordance with the parties' purported agreement.

A. Custody and Constitutional Rights

N.C.-F. first contends that the circuit court infringed upon her constitutional due process rights by placing custody of her children, M.F.-1 and M.F.-2, with the DHS for the duration of the underlying abuse and neglect proceeding because, she claims, she was a "non-offending parent" and the children "were in her sole custody and control at the time of [the] Father's arrest." *See generally* Syl. pt. 1, *In re Willis*, 157 W. Va. 225, 207 S.E.2d 129 (1973) ("In the law concerning custody of minor children, no rule is more firmly established than that the right of a natural parent to the custody of his or her infant child is paramount to that of any other person; it is a fundamental personal liberty protected and guaranteed by the Due Process Clauses of the West Virginia and United States Constitutions."). The DHS, S.M., and the GAL respond that N.C.-F.'s constitutional rights were not violated because she received all the process she was due.

N.C.-F.'s argument in this regard is convoluted and fails to appreciate the gravity of the circumstances that led to the abuse and neglect petition. Although the circuit court placed the children's legal custody with the DHS at the beginning of the underlying proceedings, the DHS allowed N.C.-F. to retain physical custody of M.F.-1 and M.F.-2 throughout the entirety of the case. In other words, the DHS *never* removed M.F.-1 and M.F.-2 from N.C.-F.'s home or physical custody. The circuit court ratified the DHS's assumption of the children's legal custody and afforded the DHS discretion as to their placement because the children's father admitted to fatally stabbing their half-sibling's mother. The court further found that, given the heinousness of the Father's alleged actions, any threat of harm he posed to M.F.-3 also extended to his other children, M.F.-1 and M.F.-2.

When the DHS filed the underlying abuse and neglect petition, it was required to name each of the children's parents and set forth the allegations of abuse and neglect, if any, against them. *See* W. Va. Code § 49-4-601(b) (eff. 2019) ("The petition shall allege specific conduct including time and place, how the conduct comes within the statutory definition of neglect or abuse with references to the statute, . . . and the relief sought. Each petition *shall* name as a party each parent, guardian, [or] custodian . . . of . . . the child allegedly neglected or abused and state with specificity whether each parent, guardian, [or] custodian . . . is alleged to have abused or neglected the child." (emphasis added)).

The DHS's petition quoted from the criminal complaint charging the Father with first-degree murder of M.F.-3's mother and named all of the children of the Father—M.F.-1, M.F.-2, and M.F.-3—and of the deceased mother—M.F.-3 and his oldest half-sibling—as abused and neglected children. In addition to naming the Father and the deceased mother as respondent parents, the petition also named the children's other parents—N.C.-F., as to children M.F.-1 and M.F.-2, and an additional father, as to M.F.-3's oldest half-sibling. With respect to each of the parents, the petition described the conduct that constituted each parent's allegedly abusive or neglectful conduct: the petition noted that M.F.-3's mother was deceased; alleged that M.F.-3's oldest half-sibling's father had "abandoned his child"; stated that the Father's "criminal activities prevent[ed] him from parenting his children"; and specifically noted that "[t]here are currently no allegations as to Respondent Mother [N.C.-F.]." It was proper for the DHS to list all the allegedly abused and neglected children's parents, including N.C.-F., as respondent parents to the abuse and neglect proceedings as required by West Virginia Code § 49-4-601(b).

In its May 20, 2021 order filing the abuse and neglect petition, the circuit court found that "[t]here exists imminent danger to the physical well-being of the children" named in the petition, and, therefore, placed "[t]he temporary custody of the children" with the DHS "to provide for the children's best interest and welfare." The circuit court's transfer of temporary legal custody of N.C.-F.'s children to the DHS was justified given the gravity of the facts alleged in the abuse and neglect petition and is consistent with this Court's recognition of the *parens patriae* doctrine:

> In an emergency which imminently threatens the welfare, health or life of any minor child, the State, as *parens patriae*, exercises an interest which temporarily overrides the rights of natural parents to the custody of the child and warrants the assumption of the child's custody by the State for a reasonable time, without regard to the requirements of Due Process.

Syl. pt. 3, *In re Willis*, 157 W. Va. 225, 207 S.E.2d 129.

Therefore, even though the petition did not allege that N.C.-F. had abused or neglected her children, the criminal acts the petition alleged the Father had committed and the exigent circumstances resulting from those acts supported the circuit court's decision to place temporary custody of all of the children named in the petition with the DHS. As noted previously, though, while the DHS retained the children's legal custody throughout the abuse and neglect proceedings, it allowed N.C.-F. to retain physical custody of her children and never removed them from her care. The circuit court then restored full custody of M.F.-1 and M.F.-2 to N.C.-F., as memorialized by its dispositional order, and found that the children had achieved permanency through their placement with N.C.-F.

While the DHS and the circuit court followed established procedures to protect the children named in the underlying proceedings, N.C.-F. maintains in her brief that her due process rights nevertheless were violated because "the removal of children from their parents' custody violates a constitutional right if removal occurs without reasonable suspicion of child abuse." (Citation omitted). The petition specifically stated that there were "no allegations" of abuse or neglect against N.C.-F., but the extreme acts

of domestic violence that resulted in the Father's killing of M.F.-3's mother supported the circuit court's decision to place the temporary legal custody of *all* of the named children with the DHS, particularly in light of the relationship N.C.-F. maintained with the Father, as evidenced by the parents' actions and the petition's allegations. Following the mother's death, the Father called N.C.-F., told her what had happened, and asked her to come to his residence to pick up M.F.-3. The petition also alleged that N.C.-F. "ha[d] spoken with Respondent Father . . . from Jail" following his arrest for his killing of M.F.-3's mother. Therefore, we find that the circuit court did not err by temporarily transferring the legal custody of M.F.-1 and M.F.-2 to the DHS during the underlying abuse and neglect proceedings in order to ensure the safety of all the children named in the petition.[12] Accordingly, we affirm the circuit court's rulings in this regard.

[12] Apart from N.C.-F.'s complaints regarding the temporary transfer of legal custody of her children to the DHS, N.C.-F. does not contend that her ability to parent and make decisions regarding her children was limited during the underlying proceedings or that she was deprived of the process due to parties in a child abuse and neglect case. "In a child abuse and neglect civil proceeding, statutory due process protections entitle the child's parent to have notice of hearing, right to counsel, and a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses." *In re S.C.*, 245 W. Va. 677, 691, 865 S.E.2d 79, 93 (2021) (footnotes and internal quotations omitted). N.C.-F. does not aver that she failed to receive notice of the proceedings or that she did not have an opportunity to be heard at the hearings. In fact, the appendix record shows that N.C.-F. attended and testified at hearings. Thus, we do not find a violation of N.C.-F.'s constitutional rights or error in the circuit court's transfer of temporary legal custody of her children to the DHS during the underlying abuse and neglect proceedings.

B. Placement of M.F.-3

N.C.-F. also contends that the circuit court erred by not considering her as either a temporary placement at the time that M.F.-3 was removed from the Father's residence or as a permanent placement at disposition.[13] N.C.-F asserts that the sibling placement preference[14] was not honored despite her repeated requests that M.F.-3 be placed

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[13] N.C.-F. challenges M.F.-3's placement in her second and fourth assignments of error. Because the arguments asserted in both of these assignments are substantially similar and require the same analysis, we consider them together.

Additionally, in connection with these alleged errors, N.C.-F. avers that the GAL did not meet with her children, M.F.-1 and M.F.-2, during the underlying proceedings even though the GAL was appointed to represent all four of the children named in the abuse and neglect petition. These assertions are concerning, and we remind guardians ad litem of their duty to provide effective representation to their young clients. *See generally* Syl. pt. 3, in part, *In re K.B.-R.*, 246 W. Va. 682, 874 S.E.2d 794 (2022) ("'Each child in an abuse and neglect case is entitled to effective representation of counsel. To further that goal, [W. Va. Code § 49-4-601(f)] mandates that a child has a right to be represented by counsel in every stage of abuse and neglect proceedings. Furthermore, Rule [21.03] of the *West Virginia* [*Trial Court Rules*] provides that a guardian *ad litem* shall make a full and independent investigation of the facts involved in the proceeding, and shall make his or her recommendations known to the court. Rules 1.1 and 1.3 of the *West Virginia Rules of Professional Conduct*, respectively, require an attorney to provide competent representation to a client, and to act with reasonable diligence and promptness in representing a client. The Guidelines for Guardians *Ad Litem* in Abuse and Neglect cases . . . are in harmony with the applicable provisions of the *West Virginia Code*, the *West Virginia* [*Trial Court Rules*], and the *West Virginia Rules of Professional Conduct*, and provide attorneys who serve as guardians *ad litem* with direction as to the[ir] duties in representing the best interests of the children for whom they are appointed.' Syl. Pt. 5[, in part], *In re Jeffrey R.L.*, 190 W. Va. 24, 435 S.E.2d 162 (1993).").

[14] We have held that there is "a preference for placing siblings into the same adoptive home pursuant to W. Va. Code § 49-4-111 (2015)." Syl. pt. 2, in part, *In re K.L.*, 241 W. Va. 546, 826 S.E.2d 671. *Accord* Syl. pt. 2, *In re B.A.*, 243 W. Va. 650, 849 S.E.2d 650 (2020) ("'W. Va. Code [§ 49-4-111(e) (2015)] provides for a "sibling preference" wherein the West Virginia Department of [Human Services] is to place a child who is in the department's custody with the foster or adoptive parent(s) of the child's sibling or siblings, where the foster or adoptive parents seek the care and custody of the child, and

with her so that he could be united in the same home as his half-siblings, M.F.-1 and M.F.-2. The respondents urge this Court to find that M.F.-3's best interests are served by his current placement with S.M.

As to M.F.-3's initial placement, the DHS argues that the statute[15] governing the filing of abuse and neglect petitions includes a preference for a child's initial placement upon removal to be with a family member or with fictive kin. Pursuant to West Virginia

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the department determines (1) the fitness of the persons seeking to enter into a foster care or adoption arrangement which would unite or reunite the siblings, *and* (2) placement of the child with his or her siblings is in the best interests of the children. In any proceeding brought by the department to maintain separation of siblings, such separation may be ordered only if the circuit court determines that clear and convincing evidence supports the department's determination. Upon review by the circuit court of the department's determination to unite a child with his or her siblings, such determination shall be disregarded *only* where the circuit court finds, by clear and convincing evidence, that the persons with whom the department seeks to place the child are unfit *or* that placement of the child with his or her siblings is not in the best interests of one or all of the children.' Syllabus Point 4, *In re Carol B.*, 209 W. Va. 658, 550 S.E.2d 636 (2001)."). *See also* W. Va. Code § 49-2-126(a)(6) (eff. 2020) (recognizing that "[f]oster children and children in a kinship placement are active and participating members of the child welfare system and have the following rights . . . The right, when placed with a foster of [sic] kinship family, to be matched as closely as possible with a family meeting the child's needs, including, when possible, the ability to remain with siblings[.]"); Syl. pt. 11, *In re R.S.*, 244 W. Va. 564, 855 S.E.2d 355 (2021) ("W. Va. Code § 49-2-126(a)(6) (2020) requires a circuit court to conduct a best interest of the child analysis by considering a child's needs, and a family's ability to meet those needs. One factor that may be included in this analysis is a child's ability to remain with his or her siblings. A circuit court considering this factor should conduct its analysis in conformity with W. Va. Code § 49-4-111(e) (2015).").

[15] The statute the DHS cites in support of this proposition, West Virginia Code § 49-4-601(a) (eff. 2019), does not contain the referenced initial placement preference. However, West Virginia Code § 49-4-601a (eff. 2020) does provide authority to support a placement preference.

Code § 49-4-601a (eff. 2020), "[w]hen a child is removed from his or her home, placement preference is to be given to relatives or fictive kin of the child. If a child requires out-of-home care, placement of a child with a relative is the least restrictive alternative living arrangement." Thus, when a child is initially removed from a home, there is no established sibling placement preference, but rather a preference for the child's relatives or fictive kin. While N.C.-F.'s children, who are M.F.-3's half-siblings, might be considered his relatives, so, too, were the individuals with whom M.F.-3 was placed. The DHS placed M.F.-3 with his maternal aunt, S.M., and his maternal grandmother. The child's placement was also in close proximity to his oldest half-sibling's placement with another member of the children's maternal family. Therefore, the circuit court did not err in approving M.F.-3's initial placement with S.M. because it was consistent with the statutory placement preference for relatives set forth in West Virginia Code § 49-4-601a.

N.C.-F. also contends that the circuit court erred by continuing the child's placement with S.M. instead of transferring his placement to N.C.-F.'s home with his half-siblings. In support of her position, N.C.-F. cites West Virginia Code § 49-4-111(b)(3) & (e)(1) (eff. 2015). However, application of these sections does not resolve the placement issue for two reasons: (1) the plain language of § 49-4-111(e)(1) does not apply to the facts of this case and (2) § 49-4-111(b)(3) requires that a child's placement with his siblings must also serve his best interests.

When applying a statute, we look to the language used by the Legislature to determine the statute's meaning. "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. 1, *Dunlap v. State Comp. Dir.*, 149 W. Va. 266, 140 S.E.2d 448 (1965). *Accord* 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.").

N.C.-F. first relies on West Virginia Code § 49-4-111(e)(1), which provides that

> [w]hen a child is in a foster care arrangement and is residing separately from a sibling or siblings who are in another foster home or who have been adopted by another family and the parents with whom the placed or adopted sibling or siblings reside have made application to the department to establish an intent to adopt or to enter into a foster care arrangement regarding a child so that the child may be united or reunited with a sibling or siblings, the department shall, upon a determination of the fitness of the persons and household seeking to enter into a foster care arrangement or seek an adoption which would unite or reunite siblings, *and if termination and new placement are in the best interests of the children*, terminate the foster care arrangement and place the child in the household with the sibling or siblings.

Id. (emphasis added). This statute does not support a change in M.F.-3's placement for two reasons. First and foremost, the statute contemplates the transfer of a child from one foster home to another foster or adoptive home in which the child's siblings reside. Here, N.C.-F.

is the half-siblings' biological mother—she is not the foster or adoptive home of M.F.-1 or M.F.-2. Therefore, on its face, this statute does not apply to the facts of this case. Moreover, even if this statute governed M.F.-3's placement, it requires that a transfer of the child's placement to a new foster or adoptive home serve the child's best interests. *See also* W. Va. Code § 49-4-111(e)(2) ("If the department is of the opinion based upon available evidence that residing in the same home would have a harmful physical, mental or psychological effect on one or more of the sibling children or if the child has a physical or mental disability which the existing foster home can better accommodate, or *if the department can document that the reunification of the siblings would not be in the best interest of one or all of the children*, the department may petition the circuit court for an order allowing the separation of the siblings to continue." (emphasis added)). Here, the circuit court specifically found at the conclusion of the dispositional hearing that "it is in [M.F.-3's] best interest to keep him in his current placement" with S.M. rather than transferring his placement to N.C.-F. and his half-siblings.[16]

N.C.-F. also cites West Virginia Code § 49-4-111(b)(3) to support her argument on appeal. West Virginia Code § 49-4-111(b)(3) provides that

> [w]hen a child has been placed in a foster care arrangement for a period in excess of eighteen consecutive months, and the department determines that the placement is a

[16] Given our conclusion that West Virginia Code § 49-4-111(e)(1) does not apply to the facts of this case because N.C.-F. is not the foster or adoptive home of M.F.-1 and M.F.-2, we need not reach the question of whether M.F.-3's placement with S.M. is a "foster care arrangement" as contemplated by section 49-4-111(e)(1).

> fit and proper place for the child to reside, the foster care arrangement may not be terminated *unless the termination is in the best interest of the child* and:
>
> . . .
>
> [t]he foster care arrangement is terminated due to the child being united or reunited with a sibling or siblings[.]

Id. (emphasis added). The DHS placed M.F.-3 with S.M. when it removed the child from his parents' home in May 2021, and the circuit court entered its dispositional order in this case in November 2022; by that point, M.F.-3 had been placed with S.M. for eighteen months, as contemplated by West Virginia Code § 49-4-111(b)(3). Therefore, under this statute, M.F.-3's placement could have been changed to "unite[] [him] . . . with . . . siblings," but, as with the foregoing statute, W. Va. Code § 49-4-111(e)(1), the child's placement change must also satisfy his best interests. *See* W. Va. Code § 49-4-111(b)(3).

Throughout the underlying proceedings, the circuit court found that changing the child's placement from S.M. to N.C.-F. would not serve the child's best interests. Specifically, in its dispositional order, the court stated that "continuity of the [kinship] placement for [M.F.-3] was in the best interests of the child since [he] had been with the familial placement since the beginning of this case." During the dispositional hearing, the court further recognized that the child was of "very tender years."[17] We have specifically

[17] *See generally* Syl. pt. 7, in part, *Garska v. McCoy*, 167 W. Va. 59, 278 S.E.2d 357 (1981) ("The concept of a 'child of tender years' is somewhat elastic; obviously an infant in the suckling stage is of tender years, while an adolescent fourteen years of age or older is not[.]").

held that "[i]t is a traumatic experience for children to undergo sudden and dramatic changes in their permanent custodians." Syl. pt. 3, in part, *James M. v. Maynard*, 185 W. Va. 648, 408 S.E.2d 400 (1991). Likewise, it goes without saying that an abrupt change in a child's long-term custodian, particularly after the child has undergone a traumatic event that necessitated his placement with a custodian, could also be deeply disturbing for the child.

The circuit court also found that transferring M.F.-3's placement to N.C.-F. would not serve his best interests because of the differences in post-termination contact and visitation between the Father and his various children. In this regard, the court determined that, given the heinous acts that occurred in the child's presence, M.F.-3 should not have any post-termination contact or visitation with the Father. In explaining this limitation as to M.F.-3, the circuit court referenced this Court's opinion in *Nancy Viola R. v. Randolph W.*, 177 W. Va. 710, 356 S.E.2d 464 (1987), wherein we observed that,

> [a]side from acts of abuse to the body and mind of a child, first degree murder[18] of a child's parent is the ultimate act of savagery to that child. The emotional and psychological scarring the child has sustained as a result of his mother's death at the hands of his father is no doubt substantial.

[18] Although the Father has pleaded guilty to voluntary manslaughter in relation to the deceased mother, we nevertheless find this case to be instructive given that the Father originally was charged with the mother's first-degree murder and admitted to killing her at the time of her death. *See* note 5, *supra*.

Id. at 716, 356 S.E.2d at 470 (footnote added). By contrast, M.F.-1 and M.F.-2 were older than M.F.-3, were not present in the Father's home at the time of the criminal acts giving rise to this case, were not related to the decedent, had an established relationship with the Father, visited with him following their parents' divorce, and further visited with him while he was in jail during the underlying abuse and neglect proceedings. Therefore, the circuit court granted the Father supervised post-termination visitation with M.F.-1 and M.F.-2. Given this difference in the children's pre-termination relationships with their Father and the court's decision as to their allowed post-termination contact and visitation, it would be difficult to shield M.F.-3 from all contact with and communication about the Father if he were living in the same household with his half-siblings who were permitted to have post-termination visitation with their Father.

Nevertheless, the court agreed with N.C.-F.'s contentions that the three siblings, M.F.-1, M.F.-2, and M.F.-3, enjoyed each other's company and had a strong bond with each other that should be encouraged. To that end, the circuit court not only ordered liberal visitation,[19] but, as noted in its dispositional order, "ensured the continuity of the sibling bond by ordering regular sibling[] visitations"[20] to safeguard continued visitation among the children following the conclusion of the child abuse and neglect proceedings.

[19] *See* note 8, *supra*.

[20] See Section III.C., *infra*, for further treatment of the sibling visitation order.

This recognition of the sibling bond among M.F.-1, M.F.-2, and M.F.-3 and the court's efforts to foster and preserve the sibling relationship is consistent with this Court's holding in Syllabus point 4 of *James M. v. Maynard*, 185 W. Va. 648, 408 S.E.2d 400:

> In cases where there is a termination of parental rights, the circuit court should consider whether continued association with siblings in other placements is in the child's best interests, and if such continued association is in such child's best interests, the court should enter an appropriate order to preserve the rights of siblings to continued contact.

Id. Accordingly, the circuit court did not err in determining that M.F.-3's best interests required continued placement with S.M. and ongoing sibling visitation with M.F.-1 and M.F.-2.[21] Therefore, we affirm the circuit court's rulings regarding the placement of M.F.-3.

C. Sibling Visitation Agreement and Order

In her final assignment of error, N.C.-F. complains that the circuit court's sibling visitation order does not accurately reflect the parties' agreement as to sibling visitation time. However, we find that N.C.-F. is not entitled to relief on this ground for two reasons. First, we cannot review the visitation order because it is not included in the appendix record and has not been designated as an order from which N.C.-F. seeks to appeal. Rule 7(d)(1) of the West Virginia Rules of Appellate Procedure requires that "[t]he

[21] Because we also find that West Virginia Code § 49-4-111(b)(3) does not entitle N.C.-F. to relief in this case, we need not consider whether M.F.-3's placement with S.M. constitutes a "foster care arrangement" under this section.

petitioner shall prepare and file an appendix containing . . . [t]he judgment or order appealed from, *and all other orders applicable to the assignments of error on appeal*[.]" *Id.* (emphasis added). Moreover, "[a]n appellant must carry the burden of showing error in the judgment of which he complains[.]" Syl. pt. 4, in part, *State v. Delorenzo*, 247 W. Va. 707, 885 S.E.2d 645 (2022). Because the sibling visitation order is not included in the appendix record, we cannot review the order to determine whether it accurately represents the parties' alleged agreement as to sibling visitation time.

Second, it does not appear that N.C.-F. brought the claimed defects to the attention of the circuit court at the time of the hearing on the then-proposed sibling visitation order. N.C.-F. complains on appeal that she did not have sufficient time to review the proposed order before the circuit court entered it, but, from the limited record on this issue, there is nothing in the appendix record demonstrating that she objected to the sibling visitation schedule set forth in the order. We have held that "'[w]here objections were not shown to have been made in the trial court, and the matters concerned were not jurisdictional in character, such objections will not be considered on appeal.' Syllabus point 1., *State Road Commission v. Ferguson*, 148 W. Va. 742, 137 S.E.2d 206 (1964)." Syl. pt. 7, *Wheeling Dollar Sav. & Tr. Co. v. Leedy*, 158 W. Va. 926, 216 S.E.2d 560 (1975). To the extent that N.C.-F. now claims that the order does not memorialize the parties' previously agreed-upon sibling visitation schedule, she has waived her objection by not raising it earlier at a time when the circuit court could have corrected the alleged error. Thus, affirmance on this ground is also proper because "[t]his Court will not consider an

error which is not properly preserved in the record nor apparent on the face of the record." Syl. pt. 4, *State v. Browning*, 199 W. Va. 417, 485 S.E.2d 1 (1997).

IV.

CONCLUSION

For the reasons stated, we affirm the circuit court's November 23, 2022 dispositional order.

Affirmed.