

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

***In re J.W.-S. and H.W.-S.***

**No. 23-259** (Kanawha County 21-JA-466 and 21-JA-467)

**MEMORANDUM DECISION**

Petitioner Mother J.W.<sup>1</sup> appeals the Circuit Court of Kanawha County’s April 6, 2023, order terminating her parental rights to J.W.-S. and H.W.-S., arguing that the circuit erred by denying her motion for an improvement period and by terminating her rights.<sup>2</sup> Upon our review, we determine that oral argument is unnecessary and that a memorandum decision vacating the circuit court’s July 25, 2022, adjudicatory order and April 6, 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 August 2021, the DHS filed an abuse and neglect petition describing an incident where a police officer observed the petitioner push her children, who were seated in a wagon, into the path of a dump truck moving in reverse. The petition listed the petitioner and the children as residents of Illinois. The petition alleged that the petitioner abused and neglected the children due to mental health issues that prevented her from adequately parenting them.<sup>3</sup>

Without first establishing initial jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), West Virginia Code § 48-20-201, the circuit court held an adjudicatory hearing in July 2022, during which the petitioner stipulated to abusing and neglecting the children. The court accepted the petitioner’s stipulation that she had an undiagnosed mental illness that affected her ability to parent the children and adjudicated her of abusing and neglecting

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<sup>1</sup> The petitioner appears by counsel Joseph Curia III. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Deputy Attorney General Steven Compton. Counsel Sharon Childers 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”).

<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 DHS later filed an amended petition regarding the children’s unknown father.

the children. Because the resolution of the petitioner's appeal turns upon the circuit court's lack of jurisdiction, it is sufficient to note that, following a dispositional hearing in March 2023, the court terminated her parental rights.<sup>4</sup> The petitioner appeals from the dispositional order.

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). It is unnecessary to address the petitioner's specific assignments of error, as we must, instead, address the dispositive jurisdictional issue overlooked below. 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 UCCJEA then the court should sua sponte address the issue as early in the proceeding as possible."). We have held that "[t]he [UCCJEA], 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." Syl. Pt. 3 *In re A.T.-I*, 248 W. Va. 484, 889 S.E.2d 57 (2023) (quoting Syl. Pt. 6, *Rosen v. Rosen*, 222 W. Va. 402, 664 S.E.2d 743 (2008)). We have stated that "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)]." *In re Z.H.*, 245 W. Va. 456, 464, 859 S.E.2d 399, 407 (2021). "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." *Id.* (citing *In re J.C.*, 242 W. Va. 165, 171, 832 S.E.2d 91, 97 (2019)). Even though the petitioner and the children were residents of Illinois, there is nothing in the record to indicate that the circuit court analyzed whether it had sufficient emergency and/or initial jurisdiction under the UCCJEA and it must make these findings upon remand.<sup>5</sup>

For the foregoing reasons, we vacate the circuit court's July 25, 2022, adjudicatory order; vacate the April 6, 2023, order terminating the petitioner's parental rights; and remand this matter to the circuit court for further proceedings consistent with this decision.<sup>6</sup> The Clerk is directed to issue the mandate contemporaneously herewith.

Vacated and remanded, with directions.

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<sup>4</sup> The unknown father's parental rights were also terminated. The permanency plan for the children is adoption in the current placement.

<sup>5</sup> "[T]he scope of temporary emergency jurisdiction under West Virginia Code § 48-20-204(a) is limited to protecting the child pending action by the home state, if one exists. Other courts have likened the scope of temporary emergency jurisdiction to the entry of a temporary protective order, effective only until the home state is notified and either assumes jurisdiction over the children or declines to do so." *In re A.T.-I*, 248 W. Va. 484, 492, 889 S.E.2d 57, 65 (2023); see W. Va. Code §§ 48-20-201 & 204. With this in mind, the circuit court should determine both whether it had sufficient emergency jurisdiction under the UCCJEA to consider the DHS's petition in the first instance and whether it had UCCJEA jurisdiction to consider the case on its merits.

<sup>6</sup> The vacation of these orders applies only to the petitioner, not the unknown father, as he did not appeal.

**ISSUED:** July 31, 2024

**CONCURRED IN BY:**

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