

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

***In re C.L. and C.A.***

**No. 23-268** (Cabell County 22-JA-110 and 22-JA-143)

**MEMORANDUM DECISION**

Petitioner Mother J.J.<sup>1</sup> appeals the Circuit Court of Cabell County’s March 20, 2023, order terminating her parental rights to C.L. and C.A.,<sup>2</sup> arguing that the circuit court lacked jurisdiction to terminate her parental rights to C.L., that the DHS failed to provide necessary services, that she was not provided an improvement period, and that her parental rights were wrongfully terminated. 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 March 20, 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.

On August 8, 2022, the DHS filed an abuse and neglect petition alleging that the petitioner abandoned C.L. According to the petition, Child Protective Services (“CPS”) received a referral in June 2022 that the petitioner had essentially abandoned C.L. Upon investigation, CPS learned that the petitioner had a “custody arrangement” with C.L.’s grandparents for C.L. to stay with them during the school year, and the petitioner would visit C.L. on the weekends. Eventually, however, the petitioner stopped visiting C.L. The grandparents then filed a petition for legal guardianship of C.L. in the Family Court of Cabell County. A hearing was held on June 24, 2022, regarding the guardianship petition. The family court granted temporary guardianship to the grandparents and referred the matter to circuit court. On August 30, 2022, the petitioner gave birth to C.A. The DHS filed an amended petition adding C.A. as an infant respondent. The amended petition alleged that the petitioner used drugs while pregnant with C.A. and that C.A. was born drug affected.

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<sup>1</sup> The petitioner appears by counsel Steven T. Cook. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Deputy Attorney General Steven R. Compton. Counsel Moriah N. Myers 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).

In September 2022, the petitioner was ordered to submit to a drug screen following the preliminary hearing. The drug screen was positive for amphetamine, methamphetamine, THC, norfentanyl, buprenorphine, and norbuprenorphine. An adjudicatory hearing was then held in October 2022. The petitioner was not present but was represented by counsel. A CPS worker testified that when the petitioner gave birth to C.A., the petitioner tested positive for fentanyl, benzodiazepines, THC, and amphetamine. The CPS worker explained that the petitioner had not cooperated and failed to drug screen as requested. The CPS worker opined that the petitioner could not care for the children because of her active drug addiction. After considering all of the evidence, the circuit court found that the children were abused and neglected “as a result of the acts of the [petitioner]” and adjudicated the petitioner as a neglectful parent.

The dispositional hearing was held in March 2023. The petitioner did not attend but was represented by counsel, who reported to the circuit court that the petitioner did not appear for her scheduled appointment at his office and, as a result, he had not spoken with her in “several months.” The DHS presented testimony from the CPS worker. She explained that the petitioner was noncompliant with the case plan and did not participate in any services that were offered, including drug screens, multidisciplinary team meetings, visitation, and parenting and adult life skills classes. The CPS worker testified that she received a phone call two days before the dispositional hearing from an inpatient drug rehabilitation facility asking the DHS to pay a “bed fee” for the petitioner. The CPS worker declined to pay because it had not been discussed in court. Based on the evidence presented, the circuit court found that the petitioner failed to comply with the case plan, that there was no reasonable likelihood the conditions of neglect could be substantially corrected in the near future, and that termination of the petitioner’s parental rights was necessary for the welfare of the children. Accordingly, the circuit court terminated the petitioner’s parental rights.<sup>3</sup> It is from the dispositional order that the 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). Before this Court, the petitioner first argues that the circuit court did not have jurisdiction to terminate her parental rights to C.L. because C.L. was in a legal guardianship at the time the petition was filed. However, we have explained that “[t]he mere fact that a child is in a legal guardianship at the time an abuse and neglect petition is filed does not preclude a circuit court from exercising subject matter jurisdiction” in an abuse and neglect proceeding, “provided that the child meets the definition of an ‘abused child’ or ‘neglected child’ as defined in West Virginia Code § 49-1-201 (2018) so as to confer that jurisdiction.” Syl. Pt. 3, in part, *In re B.V.*, 248 W. Va. 29, 886 S.E.2d 364 (2023). We went on to explain that “[t]o exercise subject matter jurisdiction, the court must make specific factual findings explaining how each child’s health and welfare are being harmed or threatened by the allegedly abusive or neglectful conduct of the parties named in the petition.” *Id.* Notwithstanding these statutory requirements, the record reflects that the circuit court failed to make the specific factual findings necessary to support jurisdiction over C.L. In its November 10, 2022, adjudicatory order, the circuit court’s findings focused solely on the petitioner’s drug use while pregnant with C.A. and that C.A. was born drug affected. The order fails to make specific findings with regard to how the

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<sup>3</sup> The parental rights of the children’s respective fathers were also terminated. The permanency plan for the children is adoption in their current placements.

petitioner's drug use resulted in the abuse or neglect of C.L., nor did the court make any attempt to adjudicate the petitioner upon grounds of abandonment as alleged in the original petition. For these reasons, we must vacate the circuit court's November 10, 2022, order adjudicating the petitioner as a neglecting parent as it pertains to C.L. *See id.* ("Due to the jurisdictional nature of this question, generalized findings applicable to all children named in the petition will not suffice . . ."). Further, the circuit court's March 20, 2023, order terminating the petitioner's parental rights must likewise be vacated as it pertains to C.L., and the matter must be remanded for the circuit court to enter an order with the requisite findings as to whether C.L. met the statutory definitions of an abused or neglected child. *See* W. Va. Code § 49-1-201.

The petitioner next argues that the DHS failed to provide services to her by refusing to pay for a drug treatment program. Under the limited circumstances of this case, we disagree. West Virginia Code § 49-4-604 requires the creation of a child and family case plan that must include, among other things,

how the agency which is responsible for the child plans to assure that . . . services are provided to the parents, child, and foster or kinship parents in order to improve the conditions that made the child unsafe in the care of his or her parent(s).

*Id.* § 604(a)(1). This statute also requires the DHS to make "reasonable efforts . . . to preserve the family." *Id.* § 604(c)(5)(B). Here, while the family case plan recommended the petitioner complete an inpatient drug treatment program to remedy her drug addiction, there is no evidence that the DHS's nonpayment of the treatment program two days before the dispositional hearing created a barrier or otherwise prevented the petitioner from correcting the conditions of neglect, i.e., her drug addiction. *See In re M.M.*, 244 W. Va. 316, 326, 853 S.E.2d 556, 566 (2020) (noting that the DHS is not always required to pay for a parent's substance abuse treatment in an abuse and neglect case). In fact, the record is replete with evidence that the DHS offered numerous services to the petitioner, but she refused to participate. Additionally, the request for payment of a treatment program came *two* days before the dispositional hearing, without any verification that the petitioner was in the program, and absent any communication with the DHS from the petitioner or her counsel about the petitioner's desire to enroll in a treatment program. Further, the petitioner did not request an order from the circuit court for the DHS to pay for the treatment program. *See* W. Va. Code § 49-4-108(a) ("[T]he court may . . . upon a motion of any party, order the [DHS] to pay . . . for professional services rendered by a health care professional to a child or other party to the proceedings."). Thus, we find no merit in this argument.

Finally, the petitioner argues that the circuit court erred in terminating her parental rights to C.A.<sup>4</sup> because there was evidence that the conditions of abuse and neglect could be corrected;

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<sup>4</sup> The petitioner also argues that it was error for the circuit court to terminate her parental rights to C.A. without granting her an improvement period. However, the petitioner points to no portion of the record where she raised this issue below. "'Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.'" *Shaffer v. Acme Limestone Co., Inc.*, 206 W.Va. 333, 349 n. 20, 524 S.E.2d 688, 704 n. 20 (1999)." *Noble v. W. Va. Dep't of Motor Vehicles*, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009). As such, we decline to address this argument.

specifically, she contends that there was evidence that she had enrolled in a long-term substance abuse treatment program prior to the dispositional hearing. West Virginia Code § 49-4-604(c)(6) directs circuit courts to terminate an abusing parent's parental rights "[u]pon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child." The petitioner's refusal to cooperate or communicate with the DHS and participate in the proceedings is clear and convincing evidence that the conditions of abuse and neglect could not be substantially corrected in the near future. *See* W. Va. Code § 49-4-604(d)(1) & (3) (defining "no reasonable likelihood that conditions of abuse and neglect can be substantially corrected" to include circumstances where "[t]he abusing parent . . . [has] not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning" and "[t]he abusing parent . . . [has] not responded to or followed through with a reasonable family case plan or other rehabilitative efforts . . . designed to reduce or prevent the abuse or neglect of the child"). Furthermore, there was no evidence before the circuit court that the petitioner had actually enrolled in a substance abuse treatment program or that the petitioner had informed the DHS of her intent or desire to begin treatment for her drug addiction. In fact, the petitioner's counsel reported at the dispositional hearing that even he had not spoken with the petitioner "in months." As such, there was no error in the circuit court's termination of the petitioner's parental rights to C.A.

For the foregoing reasons, we vacate, in part, the circuit court's November 10, 2022, adjudicatory order as it relates to C.L.; vacate, in part, the March 20, 2023, order terminating the petitioner's parental rights to C.L.; and remand this matter to the circuit court for further proceedings, including but not limited to, the entry of an order setting forth the necessary findings as to whether C.L. met the statutory definitions of an abused or neglected child.<sup>5</sup> *See* W. Va. Code § 49-1-201. The circuit court is further directed to undertake any additional proceedings consistent with the applicable rules and statutes. As to that portion of the circuit clerk's order terminating the petitioner's parental rights to C.A., we find no error and affirm. The Clerk is hereby directed to issue the mandate contemporaneously herewith.

Affirmed, in part; vacated, in part; and remanded, with directions.

**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

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<sup>5</sup> The vacation of these orders applies only to the petitioner. Accordingly, the portions of the orders concerning other adult respondents remain in full force and effect.