

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

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

In re A.B., S.B., and M.B.

No. 23-301 (Wayne County CC-50-2022-JA-122, CC-50-2022-JA-123, and CC-50-2023-JA-19)

MEMORANDUM DECISION

Petitioner Father L.B.¹ appeals the Circuit Court of Wayne County’s May 17, 2023, order terminating his parental rights to A.B., S.B., and M.B., arguing that the circuit court erroneously terminated his parental rights.² Upon our review, we determine that oral argument is unnecessary and that a memorandum decision vacating the circuit court’s March 16, 2023, adjudicatory order and May 17, 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 November 2022, the DHS filed a petition³ alleging that the petitioner sexually abused his stepdaughters, who are not the subject of this appeal,⁴ and that he argued with the children’s mother in front of the children. On December 20, 2022, the petitioner and the mother had another child, M.B. In February 2023, the DHS filed an amended petition adding M.B. to the proceedings.

In March 2023, the circuit court held an adjudicatory hearing at which it heard the testimony of a Child Protective Services worker, the mother, and the two stepdaughters who

¹ The petitioner appears by counsel Kerry Nessel. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Deputy Attorney General Steven Compton. Counsel Kimberly McGann 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”).

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

³ The children’s nonabusing mother was a co-petitioner along with the DHS.

⁴ While the petitioner’s stepdaughters are not at issue on appeal, the stepdaughters’ testimony and interviews are relevant to this appeal.

claimed the petitioner sexually abused them. After the two stepdaughters testified, in detail, about the petitioner's sexual abuse and other conduct, the court found clear and convincing evidence that the petitioner sexually abused two of his stepdaughters and physically abused another one of his stepdaughters. Critical to the resolution of this appeal, however, is that the circuit court's adjudicatory order makes no findings in regard to any of the children who are the subject of this appeal. Furthermore, the transcript shows that the court did not make any findings on the record regarding the children at issue here.

Given that the resolution of this appeal turns on the circuit court's failure to properly adjudicate the children, it is sufficient to note that the petitioner's parental rights to A.B., S.B., and M.B. were terminated following a dispositional hearing in April 2023. It is from the dispositional order that the petitioner appeals.⁵

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). Further,

“[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).

We cannot address the petitioner's assignment of error because of the jurisdictional defect in the adjudicatory order. See Syl. Pt. 2, *State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 239 W. Va. 338, 801 S.E.2d 216 (2017) (“This Court, on its own motion, will take notice of lack of jurisdiction at any time or at any stage of the litigation pending therein.” (quoting Syl. Pt. 2, *In re Boggs' Est.*, 135 W. Va. 288, 63 S.E.2d 497 (1951))). The circuit court failed to provide factual findings to support its conclusion that the children were neglected or abused as defined in West Virginia Code § 49-1-201 and thus, lacked jurisdiction to proceed to disposition. As we have explained, “[t]o exercise subject matter jurisdiction [over a child in an abuse and neglect proceeding], 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.” Syl. Pt. 3, in part, *In re B.V.*, 248 W. Va. 29, 886 S.E.2d 364 (2023). We went on to clarify that, “[d]ue to the jurisdictional nature of this question, generalized findings applicable to all children named in the petition will not suffice; the circuit court must make specific findings with regard to each child so named.” *Id.* Here, although the court made findings that the petitioner abused several children in the home, it failed to make specific findings that the children

⁵ The nonabusing mother's parental rights remain intact and the children's permanency plan is to remain in her care.

at issue in this appeal were abused or neglected, thus, it lacked jurisdiction to proceed to disposition of the children who are at issue in this appeal.

For the foregoing reasons, we vacate the circuit court's March 16, 2023, adjudicatory order and its May 17, 2023, order terminating the petitioner's parental rights and remand this matter to the circuit court for further proceedings, including but not limited to the entry of an order setting out the requisite findings as to whether A.B., S.B., and M.B. met the statutory definitions of abused or neglected children.⁶ *See* W. Va. Code § 49-1-201. The court is further directed to undertake any additional proceedings consistent with the applicable rules and statutes. The Clerk is directed to issue the mandate contemporaneously herewith.

Vacated and remanded, with directions.

ISSUED: August 27, 2024

CONCURRED IN BY:

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

⁶ The dispositional order contains provisions relating to children that are not at issue here, as well as provisions relating to other adult respondents. Those portions of the order remain in full force and effect.