

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2024 Term

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No. 23-265

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**FILED**  
**November 14, 2024**

released at 3:00 p.m.  
C. CASEY FORBES, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

*IN RE* B.L.-1, B.L.-2, K.L., M.L., and M.S.

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Appeal from the Circuit Court of Barbour County  
The Honorable Shawn D. Nines, Judge  
Juvenile Action Nos. 18-JA-111, 18-JA-112,  
18-JA-113, 18-JA-114, and 18-JA-115

**AFFIRMED**

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Submitted: October 22, 2024

Filed: November 14, 2024

Rachel Fetty Anderson, Esq.  
Morgantown, West Virginia  
Attorney for the Petitioner, R.S.L.

Mary S. Nelson, Esq.  
Allison C. Iapalucci, Esq.  
Mountaineer Legal Services, PLLC  
Grafton, West Virginia  
Guardians ad Litem for the  
Minor Children

Patrick Morrissey, Esq.  
Attorney General  
Caleb Seckman, Esq.  
Assistant Solicitor General  
James "Jake" Wegman, Esq.  
Assistant Attorney General  
Charleston, West Virginia  
Attorneys for the Respondent,  
West Virginia Department of  
Human Services

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. “Pursuant to West Virginia Code § 49-4-601(i) (2019), a circuit court’s finding that a child is an ‘abused child’ or a ‘neglected child’ must be based upon the conditions existing at the time of the filing of the abuse and neglect petition.” Syllabus point 8, in part, *In re C.S.*, 247 W. Va. 212, 875 S.E.2d 350 (2022).

3. “*W. Va. Code*, [§ 49-4-601(i)], requires the State Department of [Human Services], in a child abuse or neglect case, to prove ‘conditions existing at the time

of the filing of the petition . . . by clear and convincing [evidence].’ The statute, however, does not specify any particular manner or mode of testimony or evidence by which the State Department of [Human Services] is obligated to meet this burden.” Syllabus point 1, *In Interest of S.C.*, 168 W. Va. 366, 284 S.E.2d 867 (1981).

**BUNN, Justice:**

The petitioner herein and respondent below, Grandmother<sup>1</sup> R.S.L.<sup>2</sup> (“Grandmother”), appeals an adjudicatory order entered March 22, 2023, by the Circuit Court of Barbour County finding Grandmother to be “an abusing and neglectful parent” and the children, B.L.-1, B.L.-2, K.L., M.L., and M.S., to be “abused and neglected children.” On appeal, Grandmother contends that the West Virginia Department of Human Services<sup>3</sup> (“DHS”) and the circuit court failed to comply with the requisite time limits for certain phases of the underlying abuse and neglect proceedings. Grandmother additionally assigns error to the circuit court’s findings of abuse and neglect contained in its adjudicatory order. Both the DHS and the children’s guardian ad litem (“GAL”) urge this Court to affirm the circuit court’s rulings.

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<sup>1</sup> Grandmother is the paternal grandmother of children B.L.-1, B.L.-2, K.L. and M.L. The record is not clear as to whether Grandmother is the paternal grandmother of child M.S., the child’s adoptive mother, or both. However, to maintain consistency with the circuit court’s order and the parties’ characterization of the parties, we will refer to the petitioner as Grandmother with respect to all the children at issue in this proceeding.

<sup>2</sup> We use the parties’ initials, instead of their full names, in cases involving sensitive facts, such as abuse and neglect proceedings. *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). In this case, because two of the children have the same initials, we have added numbers to differentiate between them.

<sup>3</sup> 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”).

As we explain below, we find that Grandmother is not entitled to relief based on her contention that the time limits for abuse and neglect proceedings were not strictly followed. We further conclude that the circuit court did not err by adjudicating Grandmother as abusing and neglectful and the children as having been abused and neglected by Grandmother. Finally, we find that Grandmother's other assignments of error regarding her status as a "psychological parent," the "de facto disposition," and visitation rulings by the circuit court are likewise meritless. Accordingly, we affirm the circuit court's rulings.

## **I.**

### **FACTUAL AND PROCEDURAL HISTORY**

In 2018, the DHS filed an abuse and neglect petition against Grandmother's son and the children's respective mothers. At the time of the petition's filing, children K.L., M.L., and M.S. were already residing with Grandmother. During the pendency of the proceeding, the DHS placed B.L.-1 and B.L.-2 with Grandmother as well. Beginning in the spring of 2021, several referrals were made to Child Protective Services ("CPS") expressing concerns about Grandmother's care of the children. Although the DHS dismissed some of these allegations of abuse and neglect as unsubstantiated, it continued to investigate other allegations. In December 2021, the DHS removed all five children from Grandmother's home upon new allegations of threats of harm to Grandmother's husband and, by extension, to the children. The day after the children's removal, the DHS prepared a "Notification of Placement Change" for each child consistent with its customary practice

when it removes children from a foster placement. These notices were addressed to members of the children's Multidisciplinary Treatment Team ("MDT"), but Grandmother claims she never received those notices.<sup>4</sup> The DHS based its removal of the children from Grandmother's home on (1) its concern for the children's safety after Grandmother's husband filed a domestic violence petition seeking an emergency order of protection on behalf of himself and the five children residing in the home,<sup>5</sup> and (2) Grandmother's failure to notify the DHS of her August 2021 marriage to her husband.

The DHS then filed its "Sixth Amended Petition" in the case, in April 2022,<sup>6</sup> alleging for the first time that Grandmother had abused and neglected the children. The amendments pertaining to Grandmother recounted CPS referrals regarding Grandmother

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<sup>4</sup> The record reflects that children K.L. and M.L. had lived with Grandmother since they were very young, but Grandmother does not appear to have been named as the children's legal guardian. Child M.S. also has resided in Grandmother's home from a very young age, but, as explained in note 1, above, the exact familial status between M.S. and Grandmother is not clear from the record. Finally, the DHS placed children B.L.-1 and B.L.-2 with Grandmother as a relative/kinship placement in the early stages of the underlying abuse and neglect case.

<sup>5</sup> The husband's domestic violence petition alleged that Grandmother had threatened to have him killed.

<sup>6</sup> Between the children's removal in December 2021 and the filing of the Sixth Amended Petition in April 2022, Grandmother requested visitation and other emergency relief from the circuit court, but the circuit court did not take any action on her various motions.

from May 2021,<sup>7</sup> November 2021,<sup>8</sup> and December 2021.<sup>9</sup> The amended petition also alleged that Grandmother had abused and neglected the children by using marijuana, antidepressants, and alcohol that rendered her incapable of caring for the children; marrying her husband in August 2021 and not informing the DHS in violation of clear DHS directives; threatening to have her husband killed in December 2021; neglecting the children's education; using inappropriate physical discipline with the children; leaving the children unsupervised or in the care of the oldest child; allowing the oldest child to physically discipline the younger children; and encouraging the children to fight each other, and even cheering for them during these physical altercations. The allegations also reported that, upon their removal from Grandmother's home, the children and their clothes were dirty, and the clothes that the children took with them were in poor condition, dirty, and did not fit. The amended petition further alleged that the children hoarded food and exhibited food insecurity in their respective foster placements. Finally, the amended petition stated that Grandmother had had three marriages and two divorces (with a third

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<sup>7</sup> CPS closed this investigation with no finding of neglect by Grandmother.

<sup>8</sup> The petition noted that this investigation was ongoing.

<sup>9</sup> These allegations formed the basis for the children's removal from Grandmother's home. After their removal, the children disclosed additional allegations of abuse and neglect to their foster families and forensic interviewers that were incorporated into the Sixth Amended Petition.

divorce pending), and that she had lived with the children in at least three different residences in different counties during the underlying abuse and neglect proceeding.

In May 2022, the circuit court held a preliminary hearing followed by several adjudicatory hearings to take testimony and receive evidence regarding the amended petition. The court held the final adjudicatory hearing on March 14, 2023, and issued its final adjudicatory order on March 22, 2023. In this order, the court found that Grandmother had abused and neglected the children explaining that,

[w]ithin the context of that history of [Grandmother's] multiple relationships, the [c]ourt finds the Infant Respondents were subjected to various forms of abuse and neglect, to include a lack of medical care, noting the dental problems and burns<sup>[10]</sup> on the children testified to, their exposure to drugs, and the dangers commiserate with the drug culture, a lack of supervision by the Respondent Grandmother, educational neglect, inappropriate forms of discipline, to include prohibited corporal punishment, and a lack of stability that was so extreme as to be neglectful, if not abusive.

(Footnote added). The court then directed the MDT

to meet and discuss what an improvement period, for the limited purpose of continued visitation would look like, and those recommendations be submitted to the [c]ourt. The [c]ourt cannot envision a scenario where the children are returned to the Respondent Grandmother in any custodial fashion, so this [MDT] Meeting is to craft what can be possible, in the guise of visitation only, as the [c]ourt is mindful of the Guardian ad Litem's sentiment regarding the lack of permanency for these children.

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<sup>10</sup> The youngest child suffered burns when she got too close to a heat lamp the family was using to raise baby chicks.

Grandmother appeals from the circuit court's adjudicatory order.<sup>11</sup>

## II.

### STANDARD OF REVIEW

We consider assignments of error regarding a circuit court's order in an abuse and neglect proceeding pursuant to the following standard of review:

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).

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<sup>11</sup> Although Grandmother appeals from the circuit court's adjudicatory order, not the final dispositional order, which had not yet been entered at the time Grandmother filed her Notice of Appeal, we find that her appeal is properly before this Court because West Virginia Code § 49-4-601(k) contemplates appeals from adjudicatory orders. *See In re K.K.*, No. 23-341, 2024 WL 4751685, at \*3 n.11 (W. Va. Nov. 12, 2024) (memorandum decision) (acknowledging that "this Court regularly and historically has accepted and docketed appeals directly from adjudicatory orders" and citing with approval authority for appeal from an adjudicatory order (citation omitted)).

### III.

#### DISCUSSION

Grandmother raises numerous assignments of error. She first contends that the circuit court and the DHS failed to comply with the procedural timelines for the completion of various stages of the underlying abuse and neglect proceedings. Grandmother additionally asserts that the circuit court improperly adjudicated her as an abusing and neglectful parent; failed to consider her status as the children's psychological parent; deprived her of visitation with the children; and rendered a "de facto disposition." We find no error and therefore affirm the circuit court's rulings.

##### *A. Procedural Delays*

Grandmother contends that the DHS and the circuit court did not comply with many of the mandatory timelines for child abuse and neglect proceedings, including West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings 16(d),<sup>12</sup>

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<sup>12</sup> Grandmother claims that, when removing the children from her home, the DHS was required to comply with Rule 16(d) of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings, which requires a hearing when children are removed without a court order "within 10 days [of removal] to determine if (1) there is imminent danger to the physical well-being of the child and (2) there is no reasonably available alternative to removal of the child." By contrast, the DHS claims that it was not required to comply with Rule 16(d) because it removed the children from a foster placement with Grandmother pursuant to West Virginia Code § 49-4-111(a), which does not provide a time period within which the DHS must notify a foster parent of the reason for a foster child's removal from the home. However, it is unnecessary to determine which of these provisions governed the DHS's removal of the children from Grandmother's home because, as set forth below, we find that she is not entitled to relief on this assignment of error.

22(a),<sup>13</sup> 25,<sup>14</sup> and 27.<sup>15</sup> Although Grandmother filed a motion for an emergency hearing as well as a subsequent motion for injunctive relief between the time of the children’s removal and the DHS’s filing of its Sixth Amended Petition, the circuit court did not rule on these requests for relief. However, the record reflects that, during this same period, Grandmother

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<sup>13</sup> Rule 22(a) of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings requires “a preliminary hearing on emergency custody shall be initiated within ten (10) days after the continuation or transfer of custody is ordered.” The circuit court entered an order on April 8, 2022, in which it noted that it “continues to ratify placement of the children with the Department,” but the record is not clear as to when the court first ratified the DHS’s emergency custody of the children and their removal from Grandmother’s home.

<sup>14</sup> Pursuant to West Virginia Rule of Procedure for Child Abuse and Neglect Proceedings 25, “the final adjudicatory hearing shall commence within thirty (30) days of the filing of the petition” if there is no preadjudicatory improvement period. Here, the circuit court held a preliminary hearing and began the adjudicatory process on May 3, 2022; the circuit court entered the order from this hearing on May 11, 2022, and allowed visitations between Grandmother and the children to begin upon Grandmother’s clean drug screens. While this order did not grant Grandmother a preadjudicatory improvement period, there is no written motion for a preadjudicatory improvement period in the record. *See* W. Va. Code § 49-4-610(1)(A) (requiring written motion to request preadjudicatory improvement period).

<sup>15</sup> After the circuit court held the preliminary/first adjudicatory hearing referenced in note 14, above, the court held additional adjudicatory hearings on August 10 and 11, 2022 (orders entered April 7, 2023), and August 29, 2022 (order entered October 17, 2022). The court held the final adjudicatory hearing on March 14, 2023 (order entered March 22, 2023). Rule 27 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings requires the entry of “an order of adjudication, including findings of fact and conclusions of law, within ten (10) days of the conclusion of the hearing.” While the time period for the entry of the court’s final adjudicatory order was met in this case, the orders for the court’s three intermediate adjudicatory hearings were entered at a later date.

participated in MDT meetings regarding the children and received updates about them during the meetings.

One of the express purposes of the Rules governing child abuse and neglect proceedings is “[t]o provide fair, timely, and efficient disposition of cases involving suspected child abuse or neglect[.]” W. Va. R. P. Child Abuse & Neglect Proceeds. 2(a). This Court has emphasized the need for the expeditious resolution of child abuse and neglect proceedings to ensure the prompt achievement of permanency for the children. *See* Syl. pt. 1, in part, *In Interest of Carlita B.*, 185 W. Va. 613, 408 S.E.2d 365 (1991) (“Child abuse and neglect cases must be recognized as being among the highest priority for the courts’ attention. Unjustified procedural delays wreak havoc on a child’s development, stability and security.”). *See also* Syl. pt. 5, *id.* (“The clear import of the statute [West Virginia Code § 49-4-601(j)] is that matters involving the abuse and neglect of children shall take precedence over almost every other matter with which a court deals on a daily basis, and it clearly reflects the goal that such proceedings must be resolved as expeditiously as possible.”).

Where a circuit court has failed to comply with the procedural time periods established for child abuse and neglect proceedings, we have found the party aggrieved by such delay may request extraordinary relief in mandamus from this Court to compel the circuit court to perform its required function. *See State ex rel. W. Va. Dep’t of Health & Hum. Res. ex rel. Chastity D. v. Hill*, 207 W. Va. 358, 532 S.E.2d 358 (2000) (granting

mandamus relief to compel circuit court to hold dispositional hearings). *See also* Syl. pt. 1, *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966) (“Mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies.”). In fact, we have encouraged parties who have raised issues extraneous to the merits of an abuse and neglect proceeding to seek extraordinary relief because such a “proceeding[] would be external to the underlying abuse and neglect proceedings, there exists a lesser likelihood of unnecessary and disruptive procedural delay” during the abuse and neglect case. *In re Michael Ray T.*, 206 W. Va. 434, 443, 525 S.E.2d 315, 324 (1999) (citations omitted).

Grandmother’s assignment of error based on procedural delay during the underlying abuse and neglect proceedings cannot be addressed now, on direct appeal, after the circuit court has, albeit untimely, held the required hearings and rendered rulings. While Grandmother may have sought extraordinary relief through a petition for writ of mandamus to this Court prior to the circuit court taking these required actions, now, after the fact, we are unable to provide Grandmother relief. Though the circuit court did not strictly abide by the timelines reflected in the Rules governing abuse and neglect proceedings, it nevertheless ultimately held the hearings the Rules required it to hold and entered the orders the Rules directed it to enter. Therefore, “[a]lthough we find that [certain of] the temporal requirements . . . [may not have been] satisfied in this case, such error is harmless as the delay did not substantially frustrate the purpose of such procedural rules.” *In re Stephen Tyler R.*, 213 W. Va. 725, 735 n.17, 584 S.E.2d 581, 591 n.17 (2003) (citation

omitted). “Nevertheless, we admonish courts in which abuse and neglect cases are pending to be ever vigilant and mindful of the procedural rules governing such proceedings in order that the purpose thereof not be defeated.” *Id.* Accordingly, we find Grandmother is not entitled to relief based on this assignment of error.

### ***B. Adjudication***

Grandmother also argues that the circuit court misconstrued the evidence presented, improperly adjudicated her as an abusing and neglecting parent, and erred by finding the children to be abused and neglected. The DHS and the GAL support the circuit court’s findings of abuse and neglect and its adjudicatory order. We agree with the DHS and the GAL that the circuit court properly adjudicated Grandmother and the children.

Since Grandmother appeals from the circuit court’s adjudicatory order, the limited question before us is whether the circuit court properly found that the DHS proved the conditions of abuse and neglect by clear and convincing evidence:

**Findings of the court.** – Where relevant, the court shall consider the efforts of the department to remedy the alleged circumstances. *At the conclusion of the adjudicatory hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether the child is abused or neglected and whether the respondent is abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence.*

W. Va. Code § 49-4-601(i) (italicized emphases added). We have recognized that “[t]his process of adjudication enables the presiding tribunal to identify what abuse and/or neglect the subject children have sustained and to implement procedures to help the parents remedy these conditions to prevent future incidences thereof[.]” *In re I.M.K.*, 240 W. Va. 679, 685, 815 S.E.2d 490, 496 (2018) (citations omitted).

West Virginia Code § 49-1-201 defines “[a]bused child,” in pertinent part, as

(1) A child whose health or welfare is being harmed or threatened by:

(A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment[.]

Similarly, an “[a]busing parent” is “a parent, guardian, or other custodian, regardless of his or her age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as alleged in the petition charging child abuse or neglect.” *Id.* A “[n]eglected child” is defined, in pertinent part, as “a child”

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child’s parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care, or education, when that refusal, failure, or inability is not due primarily to a lack of financial means on the part of the parent, guardian, or custodian; [or]

(B) Who is presently without necessary food, clothing, shelter, medical care, education, or supervision because of the disappearance or absence of the child’s parent or custodian[.]

*Id.* West Virginia Code § 49-1-201 does not define the term “neglecting parent.”

“Pursuant to West Virginia Code § 49-4-601(i) (2019), a circuit court’s finding that a child is an ‘abused child’ or a ‘neglected child’ must be based upon the conditions existing at the time of the filing of the abuse and neglect petition.” Syl. pt. 8, in part, *In re C.S.*, 247 W. Va. 212, 875 S.E.2d 350 (2022). Moreover,

*W. Va. Code*, [§ 49-4-601(i)], requires the State Department of [Human Services], in a child abuse or neglect case, to prove “conditions existing at the time of the filing of the petition . . . by clear and convincing [evidence].” The statute, however, does not specify any particular manner or mode of testimony or evidence by which the State Department of [Human Services] is obligated to meet this burden.

Syl. pt. 1, *In Int. of S.C.*, 168 W. Va. 366, 284 S.E.2d 867 (1981). “Clear and convincing evidence means that more than a mere scintilla of evidence has been presented to establish the veracity of the allegations of abuse and/or neglect, but it does not impose as exacting an evidentiary burden as criminal proceedings which generally require proof beyond a reasonable doubt.” *In re A.M.*, 243 W. Va. 593, 598, 849 S.E.2d 371, 376 (2020) (citations omitted). Finally, a circuit court’s findings of abuse and neglect “shall not be set aside by a reviewing court unless clearly erroneous.” Syl. pt. 1, in part, *In Int. of Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177.

Upon review of the record evidence in this case, we affirm the circuit court's adjudication of Grandmother as abusing and neglecting and the grandchildren as abused and neglected. The record reflects that the circuit court recounted evidence of Grandmother's "drinking to excess," which included episodes of "passing out multiple times per week" and indicated that she was not capable of caring for or supervising the children; using "illegal drugs" while the children were in her care; abdicating "her parenting duties to supervise the children"; inappropriately disciplining the children "by engaging in corporal punishment"; and exposing "the children to extreme instability." The court further found that Grandmother's failure to disclose her "clandestine marriage" constituted "intentional and direct circumvention" of the DHS's placement policies. Lastly, the circuit court acknowledged that, during her testimony, "Grandmother expressed no degree of responsibility for her actions toward the children," which may be considered indicia of Grandmother's culpability for the abuse and neglect of the children. *See* Syl. pt. 2, *W. Va. Dep't of Health & Hum. Res. ex rel. Wright v. Doris S.*, 197 W. Va. 489, 475 S.E.2d 865 (1996) ("Because the purpose of an abuse and neglect proceeding is remedial, where the parent or guardian fails to respond to probative evidence offered against him/her during the course of an abuse and neglect proceeding, a lower court may properly consider that individual's silence as affirmative evidence of that individual's culpability."). Given these numerous, disturbing allegations of various forms of abuse and neglect, as well as Grandmother's failure to accept any responsibility for her actions, the circuit court properly found that the DHS had proven the conditions of abuse and neglect alleged in the petition

by clear and convincing evidence. Because we find no clear error in the circuit court's adjudications of Grandmother or the children, we affirm the court's rulings in this regard.

### ***C. Psychological Parent Status***

Grandmother additionally asserts that the circuit court failed to consider her alleged status as the children's psychological parent. However, this consideration is not relevant at the adjudicatory phase, when the court is tasked with determining whether the respondent adult has abused and/or neglected the children named in the petition. Rather, an individual's status as a child's psychological parent is a factor to be considered in the context of custodial placement, such as at the dispositional phase of the proceedings, or in making the determination of the propriety of visitation at the conclusion of an abuse and neglect proceeding. *See generally In re Clifford K.*, 217 W. Va. 625, 619 S.E.2d 138 (2005) (recognizing concept of "psychological parent"). Therefore, consideration of Grandmother's status as the children's alleged psychological parent is premature at this phase of the abuse and neglect case, and the circuit court did not err by rejecting Grandmother's assertions that she is the children's psychological parent.

### ***D. Deprivation of Visitation and "De Facto Disposition"***

Grandmother's final assignments of error concern the alleged deprivation of visitation with the children and what she terms the circuit court's "de facto disposition" in its adjudicatory order. As to Grandmother's contention that she has been denied visitation with the children, we find she is not entitled to relief. First, Grandmother contends that she

was not permitted to visit with the children for the extended period between their removal from her home and the circuit court's preliminary order allowing visitation after the DHS had filed its amended abuse and neglect petition alleging that Grandmother had abused and neglected the children. As we explained above in relation to the procedural delays in this case, Grandmother is not entitled to relief at this stage because she did not seek extraordinary relief from this Court when the circuit court failed to rule on her requests for expedited relief and the circuit court has since addressed her request for visitation. With respect to Grandmother's additional contention that she is currently being deprived of visitation with the children, we note that the Rule 11 update<sup>16</sup> she filed with this Court indicates that she currently enjoys visitation with the majority of the children. However, we note that the DHS and the children's GAL have determined that Grandmother should not visit with certain of the children because continued visitation is not in those children's best interests. As we often reiterate,

the child's best interests must be the primary standard by which we determine her rights to continued contact with other significant figures in her life. Clearly, these interests are interests of the child and not of the parent. Visitation is, to be sure, a benefit to the adult who is granted visitation rights with a child. But it is not the adult's benefit about which the courts are concerned. It is the benefit of the child that is vital.

*In re K.H.*, 235 W. Va. 254, 263, 773 S.E.2d 20, 29 (2015) (internal quotations, citations, and footnotes omitted). Here, the DHS and the GAL explained in their respective Rule 11

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<sup>16</sup> See W. Va. R. App. P. 11(j) (requiring provision of status updates prior to oral argument in child abuse and neglect cases).

updates that visitation between Grandmother and at least one child has been suspended due to Grandmother's inappropriate comments to the child and the child's negative behaviors following those visits. Therefore, it appears that the current visitation schedules have been adapted to serve the best interests of each of the children involved in this case. As such, we find that the circuit court did not err in approving the current visitation arrangement, and we decline to disturb it.

Lastly, Grandmother contends that the circuit court erred by imposing a "de facto disposition" when it opined in its adjudicatory order that it "cannot envision a scenario where the children are returned to the Respondent Grandmother in any custodial fashion." As we explained with respect to our resolution of the psychological parent issue, above, any discussion or consideration of dispositional decisions, real or de facto, is premature at this stage of the proceedings given that Grandmother's appeal is from the circuit court's adjudicatory order, not a dispositional order. Because the scope of the circuit court's inquiry at the adjudicatory phase is limited to a determination of whether the children are abused and/or neglected and whether the respondent adult is responsible for such abuse and/or neglect, any consideration of the children's ultimate placement is not ripe for consideration in the current procedural posture. Therefore, we find that Grandmother is not entitled to relief regarding these issues.

**IV.**

**CONCLUSION**

For the foregoing reasons, we affirm the March 22, 2023 order of the Circuit Court of Barbour County. We further direct the Clerk of this Court to issue the mandate contemporaneously with this opinion.

Affirmed.