STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 14, 2024

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

***In re* I.S.**

No. 23-332 (Wirt County CC-53-2021-JA-21)

MEMORANDUM DECISION

Petitioners, J.S.-1 and J.S.-2,[1] wife and husband respectively, appeal the May 8, 2023, dispositional order of the Circuit Court of Wirt County, finding that the respondent mother, A.C., did not abandon her child, I.S., and is not an abusive or neglectful parent.[2] The order also terminated the guardianship of I.S. that had been granted to the petitioners and placed I.S. back in A.C.'s custody, but afforded the petitioners twice monthly weekend visitation with I.S.

In this appeal, the petitioners contend that the circuit court erred by failing to hold an adjudicatory hearing; failing to make sufficient findings to dissolve their guardianship of I.S.; and finding that A.C. successfully completed her pre-adjudicatory improvement period. A.C. cross-assigns error to the circuit court's grant of visitation to the petitioners. Upon review, we affirm the circuit court finding that A.C. successfully completed her pre-

[1] The petitioners are represented by Jeremy B. Cooper, Esq. Eric K. Powell, Esq., is the attorney for the respondent mother, A.C., and Keith White, Esq., represents the respondent father, A.S. Attorney General Patrick Morrisey, Esq., Assistant Solicitor General Spencer J. Davenport, Esq., and Assistant Attorney General Katherine A. Campbell, Esq., appear on behalf of the West Virginia Department of Human Services. Jessica E. Myers, Esq., is the guardian ad litem.

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 to protect the identities of the juveniles involved in this case. *See* W. Va. R. App. P. 40(e). We also use numerical designations for the petitioners because they have the same initials.

adjudicatory improvement period and that she did not abandon, abuse, or neglect I.S. In addition, we affirm the circuit court's termination of the petitioners' guardianship of I.S. as it was void ab initio. Because A.C. is a fit parent, we reverse that portion of the May 8, 2023, order granting the petitioners visitation with I.S. and remand this case to the circuit court for entry of an order providing that any further visitation between the petitioners and I.S. is at the sole discretion of I.S.'s custodial parent(s) and dismissing this case from its docket. This case satisfies the limited circumstances requirement of Rule 21(d) of the Rules of Appellate Procedure for resolution by memorandum decision.

This abuse and neglect proceeding commenced on March 3, 2021, when the petitioners filed a petition against A.C. and A.S., the respondent father,[3] alleging that they abused, neglected, and/or abandoned I.S.[4] According to the petitioners, A.C. and I.S. began living with them in June 2019, after A.C. and A.S., got into a fight during which A.S. tried to "choke" A.C. and take I.S away from her. Although there is no biological or family relationship between the petitioners and I.S., the petitioners maintain that they became I.S.'s primary caretakers because A.C. frequently left their home and did not return until several days later. The petitioners state that A.C. stopped residing with them on August 19, 2019, and took I.S. with her. After not seeing I.S. for a few weeks, J.S.-1 filed an emergency petition for guardianship in the Family Court of Wood County. On September

[3] Although A.S. was named as a respondent in the abuse and neglect petition, no rulings were made below pertaining to A.S. A.S. filed a brief in this appeal in support of A.C.

[4] *See* W. Va. Code § 49-4-601(a) (2019) (authorizing the filing of an abuse and neglect petition by "the [DHS] or a reputable person" upon belief that a child is neglected or abused). We note that this is the second case docketed this term of court wherein the abuse and neglect petition was filed by a "reputable person" pursuant to this statute. In *In re D.H., M.H., and J.S.*, ___ W. Va. ___, ___ S.E.2d ___ (No. 23-416 Nov. 13, 2024), we recognized that although a "reputable person" may file an abuse and neglect petition, DHS is responsible for prosecuting the case. *See also* syl. pt. 5, *In re B.C.*, 233 W. Va. 130, 755 S.E.2d 664 (2014) ("While a civil abuse and neglect action pursuant to W.Va.Code § [49-4-601 (2019)] may be initiated by either the West Virginia Department of [Human Services] or "a reputable person," the action is pursued solely on behalf of the State of West Virginia in its role as *parens patriae*."). As discussed herein, this case was pursued solely by the petitioners because DHS, upon investigation, determined that there was no basis for the filing of the petition. However, DHS implemented a case plan for the respondent mother and provided appropriate services during her pre-adjudicatory improvement period. We decline to find error here as a result of DHS's refusal to prosecute the claim because the petitioners have not argued that DHS did not fulfill its role and because the evidence in the record supports the circuit court's finding that A.C. did not abuse, neglect, or abandon I.S.

19, 2019, the same day the emergency petition was filed, an ex parte temporary guardianship order was granted by the family court. That order provided:

> 1. Petitioner, [J.S.-1], shall have temporary guardianship of the minor child, [I.S.], born November 13, 2018. Said minor child's mother and father, [A.C. and A.S.], shall have no parenting time until further order of this court.
>
> 2. The Petitioner alleges neglect of said minor child while in the mother's care. The Petitioner also alleges the father has a significant history of substance abuse, with concerns of current usage. Said minor child is protected from the father by a Domestic Violence Protective Order, issued in Wirt County, West Virginia, which expires December 30, 2019.

Upon the granting of the guardianship order, the Parkersburg police located I.S. at her maternal grandmother's home, removed her, and took her to J.S.-1.[5] Although parenting time was initially denied, on September 27, 2019, the family court granted A.C. supervised visitation with I.S. It does not appear that visitation was ever granted to A.S.

The guardianship remained in place for the next year and half with A.C. continuing to visit I.S. as permitted by the family court.[6] The petitioners then filed their abuse and neglect petition in the Circuit Court of Wood County alleging that A.C. had failed to appropriately care for I.S. and that A.S. had abandoned her. In addition to the allegations of abuse and neglect, they asserted:

---

[5] The petitioners alleged in the abuse and neglect petition that when I.S. was brought to J.S.-1, she "was dirty, she smelled bad, her nails and feet were disgusting. Her bottle had black around the ring of it . . . She had scratches that appeared to be from a dog on her. She was very congested[.]"

[6] The abuse and neglect petition characterizes A.C.'s visitation with I.S. as "erratic." It appears that at some juncture, the family court afforded A.C. overnight visitation with I.S. but that ceased in June 2020, when petitioners alleged that I.S. "began exhibiting strange behaviors after overnight visits including crying if Petitioner tried to change her or take her clothes off and rubbing a doll between her legs in a manner that Petitioners had not observed before." DHS investigated and the child was examined by medical providers. It appears that the petitioners thought that I.S may have been sexually abused by a family member of A.C. However, no sexual abuse of the child was substantiated. Nonetheless, thereafter, A.C.'s visitation with I.S. was supervised by a third-party provider at A.C.'s expense.

> Whereas the Family Court lacks authority to provide permanency for the above-named children,[7] the Petitioners pray that this Court will assert jurisdiction over the above-named children, hold a hearing in this matter, and take all necessary action that will lead to permanency and stability with within their current placements.

(Footnote added). A hearing was held on March 31, 2021, at which time the circuit court found that venue was not proper in Wood County because the petitioners and I.S. were residing in Wirt County.[8] Accordingly, the court ordered that the case be transferred to the Circuit Court of Wirt County, but the order was not actually entered until August 30, 2021.

After the case was transferred to Wirt County, no further action was taken until the petitioners filed an amended petition in February 2022, which, for the most part, contained the same allegations as in their prior petition. The only additional allegation was that A.C. had not visited I.S. since April 2021. In March 2022, a hearing was held to address a motion for visitation filed by A.C. Although DHS visited A.C.'s home and found it appropriate and indicated that it did not believe an abuse and neglect petition should have ever been filed, A.C.'s motion for visitation was held in abeyance. A subsequent motion made by A.C. to dismiss the petition was denied at an April 2022 hearing, as was her motion for visitation.

At a May 2022 hearing, the parties informed the circuit court that they had agreed to A.C. being granted a pre-adjudicatory improvement period. After the hearing, a July 12, 2022, order was entered providing that "the preadjudicatory improvement period [was] to begin upon entry of an order setting forth the terms and conditions for the improvement period[.]" Although such an order was never entered, DHS submitted a report at an August 2022 hearing that contained the terms of the pre-adjudicatory improvement period, which included drug screening, completing parenting and adult life skills courses, attending supervised visitation with I.S., and maintaining suitable housing. The report indicated that A.C. was complying with all of the terms.

At a September 2022 hearing, A.C. requested unsupervised overnight visitation to begin transitioning I.S. back into her care given her continued success during her

[7] In addition to I.S., the petition named A.C.'s other two children—her older child, L.W., who was in the custody of her father, K.W., and her newborn child, B.C., who was in A.C.'s custody—as parties. However, by order entered on May 5, 2022, L.W. and B.C. were dismissed from the case, and, therefore, they are not parties in this appeal.

[8] *See* West Virginia Code § 49-4-601 (providing abuse and neglect petition is to be brought "in the county in which the child resides").

improvement period. The DHS and guardian ad litem agreed, but the petitioners objected. Subsequently, the petitioners filed a motion objecting to A.C.'s pre-adjudicatory improvement period and a custody transition period, stating that they did not understand why their prior counsel[9] had advised them to agree to the same and explaining that it was their understanding that a hearing to determine custody would be held regardless of whether A.C. was afforded the pre-adjudicatory improvement period.

Evidentiary hearings followed in November and December 2022. At those hearings, evidence was presented regarding A.C.'s compliance with the terms of her pre-adjudicatory improvement period. The circuit court also allowed the petitioners to produce evidence concerning the allegations of abuse and neglect they made in their petition. Regarding A.C.'s compliance with her case plan, DHS informed the court that A.C. had successfully completed her improvement period and the third-party visitation provider testified that A.C. had attended all visits within the last five months and had interacted well with I.S. and thus, reunification was recommended.[10] A therapist who had been providing reunification therapy to A.C. and I.S. also recommended that the child be placed back in her mother's custody, testifying that A.C. has strong parenting skills and there is a strong parent-child bond. Notably, the therapist recommended a period of no contact between I.S. and the petitioners to allow I.S. to fully transition back into her mother's custody.

Thereafter, the circuit court entered its May 8, 2023, dispositional order, finding that A.C. had successfully completed her pre-adjudicatory improvement period. The court further found that the petitioners had failed to establish by clear and convincing evidence that A.C. abandoned I.S. and concluded that she was not an abusing or neglecting parent. The order also terminated the petitioners' guardianship of I.S. and returned legal and physical custody of I.S. to A.C. Yet, the court found it was in I.S.'s best interests to have visitation with the petitioners and ordered that visitation occur the first and third weekends of every month beginning on Friday at 5:00 p.m. and ending on Sunday at 5:00 p.m. Upon entry of the circuit court's order, the petitioners filed their appeal with this Court.

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). As noted above, the petitioners assert three assignments of error. In addition, A.C. cross assigns error to the

[9] The petitioners have been represented by three different attorneys.

[10] Based on the testimony from the third-party visitation provider, the circuit court found that the lack of visitation by A.C. that was alleged in the amended abuse and neglect petition was not the fault of A.C., but rather occurred because the petitioners' then attorney advised the third-party visitation supervisor that the visits had to be stopped because they were going to be filing an abuse and neglect petition against A.C.

circuit court's grant of twice monthly visitation with I.S. to the petitioners. We address each error below, separately.

Petitioners first contend that the circuit court erred by failing to hold an adjudicatory hearing. Relying upon Rule 25 of West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings, they argue that a hearing is required regardless of the outcome of a pre-adjudicatory improvement period. Rule 25 provides:

> When a child is placed in the temporary custody of the Department or a responsible person pursuant to W. Va. Code § 49-4-602, the final adjudicatory hearing shall commence within thirty (30) days of the temporary custody order entered following the preliminary hearing and must be given priority on the docket unless a preadjudicatory improvement period has been ordered. In all other cases, the final adjudicatory hearing shall commence within thirty (30) days of the filing of the petition or, if a pre adjudicatory improvement period has been ordered, as soon as possible, but no later than thirty (30) days, after the conclusion of such preadjudicatory improvement period. Where a respondent has been served, no order adjudicating that such respondent has abused or neglected the child concerned until the time for answer for such respondent has expired and, if the answer is timely served, the respondent has been afforded at least 20 days from the date the answer was filed to prepare for adjudication or has waived such opportunity to prepare. The final adjudicatory hearing shall be conducted in accordance with the provisions of W. Va. Code § 49-4-601(i).

According to the petitioners, while the circuit court held a series of hearings, none were noticed as an adjudicatory hearing. They maintain that an adjudicatory hearing was required by Rule 25, regardless of whether A.C. successfully completed her pre-adjudicatory improvement period.

In response, A.C. asserts that the circuit court held adjudicatory hearings on March 28, November 22, and December 12, 2022, allowing the petitioners to present evidence to support their allegations of abuse and neglect while also considering testimony regarding A.C.'s compliance with the terms of her pre-adjudicatory improvement period. A.C. contends that the petitioners were given wide latitude to present evidence to support the allegations made in their abuse and neglect petition. Therefore, she maintains that the requirements of Rule 25 were satisfied.

This Court has held that where an improvement period is granted prior to adjudication, "[i]n making a determination of whether a child is an abused and/or neglected child as defined in W.Va.Code § [49-1-201 (2018)], a court must consider evidence of a parent's progress, or lack thereof, during the pre-adjudication improvement period." Syl. pt. 2, in part, *State v. Julie G.*, 201 W. Va. 764, 500 S.E.2d 877 (1977). Having carefully reviewed the record, we find that the circuit court did just that by considering A.C.'s progress in her improvement period in determining that I.S. was not an abused, neglected, or abandoned child. The record reflects that, not only did the circuit court hear testimony from DHS regarding A.C.'s compliance with the terms of her pre-adjudicatory improvement period, it also heard testimony from J.S.-1 regarding the circumstances under which she gained custody of I.S. and the allegations made in the abuse and neglect petition regarding I.S.'s hygiene at the time she was placed in the petitioners' home. In addition, the record shows that the circuit court made findings pursuant to West Virginia Code § 49-4-601(i) (2019)[11] as required by Rule 25. Ultimately, the circuit court found that "there is no clear and convincing evidence that the Respondent Mother, [A.C.], abandoned the child, [I.S.]" and "[A.C.] is not an abusive and neglectful parent." Given these findings, there is no merit to the petitioners' claim that the circuit court did not hold an adjudicatory hearing and comply with the requirements of Rule 25.

The petitioners next contend that the circuit court failed to make sufficient findings to dissolve their guardianship of I.S. They contend that for the circuit court to dissolve the guardianship, it was required to find that leaving the petitioners' home was in the best interests of I.S. They rely upon West Virginia Code § 44-10-3(j) (2013), which provides: "For a petition to revoke or terminate a guardianship filed by a parent, the burden of proof is on the moving party to show by a preponderance of the evidence that there has been a material change of circumstances and that a revocation or termination is in the child's best interest." The petitioners argue that the circuit court made no meaningful determination of what was in I.S.'s best interests, and therefore, this case must be remanded to the circuit court to make that decision.

---

[11] West Virginia Code § 49-4-601(i) provides:

> *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.

Conversely, A.C. argues that the guardianship was void ab initio. A.C. maintains that the family court did not have jurisdiction to enter the ex parte guardianship order in the first instance because it was based on allegations of abuse and neglect. She relies upon Rule 13 of the West Virginia Rules for Minor Guardianship Proceedings[12] and this Court's holding in syllabus point 2 of *M.H. v. C.H.*, 242 W. Va. 307, 835 S.E.2d 171 (2019), which provides:

> "Rule 48a(a) of the West Virginia Rules of Practice and Procedure for Family Court requires that if a family court presiding over a petition for infant guardianship brought pursuant to W. Va. Code § 44-10-3 learns that the basis for the petition, in whole or in part, is an allegation of child abuse and neglect as defined by W. Va. Code [§ 49-1-201], then the family court is required to remove the petition to circuit court[.]" Syl. Pt. 3, in part, *In re Guardianship of K.W.*, 240 W. Va. 501, 813 S.E.2d 154 (2018).

Upon review, we agree with A.C.'s contention that the guardianship granted to the petitioners by the family court was void ab initio. This Court was presented with a similar situation in *M.H.* In that case, we explained:

> [T]he family court was confronted with a minor guardianship petition based "in whole or part" on "an allegation of child abuse and neglect as defined in W. Va. Code § 49-2-201[.]" . . . Accordingly, the family court had no jurisdiction to act on the minor guardianship petition.
>
> Indeed, under the circumstances of this case, the family court had no jurisdiction to even appoint a *temporary* guardian for the child. . . When the family court received the minor

[12] Rule 13 of the West Virginia Rules for Minor Guardianship Proceedings provides, in pertinent part:

> (a) *Removal by Family Court to Circuit Court of Minor Guardianship Cases Involving Child Abuse and Neglect.* If a family court learns that the basis, in whole or part, of a petition for minor guardianship brought pursuant to W.Va. Code § 44-10-3, is an allegation of child abuse and neglect as defined in W.Va. Code § 49-1-201, then the family court before whom the guardianship proceeding is pending shall remove the case to the circuit court for hearing.

> guardianship petition, the only thing the family court could lawfully do was to "remove the case to the circuit court for hearing."
>
> . . . .
>
> Because the family court had no jurisdiction to appoint the Great-Grandparents as temporary or permanent guardians of the child, the family court's July 6, 2017 emergency order and its October 10, 2017 final order are void[.]

M.H., 242 W. Va. at 313-14, 835 S.E.2d 177-78 (footnotes and additional citations omitted). The same is true here. The ex parte guardianship order that was granted to the petitioners was based on allegations that A.C. and A.S. had abused, neglected, and/or abandoned I.S. The family court was required to immediately transfer the matter to the circuit court. Because the family court was without jurisdiction to issue the ex parte guardianship order, the guardianship granted to the petitioners was void ab initio. Therefore, we find no error in the circuit court's termination of the petitioners' guardianship of I.S. in the dispositional order. *See* syl. pt. 2, *Adkins v. Gatson,* 218 W. Va. 332, 624 S.E.2d 769 (2005) ("'This Court may, on appeal, affirm the judgment of the lower court when it appears that such judgment is correct on any legal ground disclosed by the record, regardless of the ground, reason or theory assigned by the lower court as the basis for its judgment." Syllabus point 3, *Barnett v. Wolfolk*, 149 W.Va. 246, 140 S.E.2d 466 (1965).").

Finally, the petitioners contend that the circuit court erred when it determined that A.C. successfully completed her improvement period. The petitioners do not challenge the circuit court's finding that A.C. complied with the case plan as formulated by DHS, but rather argue that there was "no meeting of the minds" as to what the terms of A.C.'s improvement period would be and what exactly would occur if she was successful. They further contend that there was no valid pre-adjudicatory improvement period because the circuit court's July 12, 2022, order indicated that the pre-adjudicatory period would begin upon entry of a subsequent court order setting forth the terms and conditions of the improvement period and no such order was ever entered.

In response, A.C. asserts that the circuit court did not err in finding that she successfully completed her pre-adjudicatory improvement period because DHS formulated a case plan, and the terms and conditions thereof were attached to the DHS reports dated July 8, 2022, August 26, 2022, and September 30, 2022. Furthermore, the parties unanimously agreed to the pre-adjudicatory improvement period as is evident from the transcript of the May 5, 2022, hearing. A.C. maintains that the petitioners were fully informed as to the terms of her pre-adjudicatory improvement period and are now simply seeking to avoid the consequences of their own decision.

Upon careful review of the record, we find that the parties agreed to a pre-adjudicatory improvement period for A.C. at the May 5, 2022, hearing. At that time, the petitioners then attorney advised the circuit court,

> To resolve the abuse and neglect case, our goal would be that—our expectation is we can resolve it through a preadjudicatory improvement period, which the MDT can discuss terms . . . The MDT can meet and develop further terms as necessary but then at the end of that, it's always [A.C.'s] prerogative to file a motion to terminate the guardianship, which she could do at that point in time, and the Court could rule on that at the time, at the end of the improvement period, and hopefully there would be some information developed during the improvement period that would help ruling on that issue.

It is clear from this exchange that the parties did in fact agree to the pre-adjudicatory improvement period for A.C. The record also shows that DHS subsequently formulated a case plan, provided services to A.C., and presented evidence to the circuit court of A.C.'s success in satisfying the terms of her improvement period. Accordingly, we find no merit to the petitioners' claim that the circuit court erred in finding that A.C. successfully completed her pre-adjudicatory improvement period.

Having found no merit to any of the petitioners' arguments, we now consider A.C.'s cross assignment of error. She contends that the circuit court abused its discretion by granting petitioners visitation with I.S. A.C. argues that the circuit court improperly discounted the expert testimony below that indicated that I.S. had an unhealthy attachment to the petitioners and ignored the recommendation that visitation cease for at least three to six months with further evaluation at the end of that period as to whether it should continue.[13]

Upon review, we find that there is no legal basis to afford visitation with I.S. to the petitioners given the circuit court's determination that A.C. is a fit parent. This Court has long made clear that,

> In the law concerning custody of minor children, no rule is more firmly established than that the right of a natural parent

[13] The record shows that one month after the circuit court entered its disposition order, it suspended visitation between the petitioners and I.S., but the reason for doing so was not set forth in the order. At oral argument and through status updates, this Court was advised that visitation between the petitioners and I.S. resumed and is ongoing.

> 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.

Syl. Pt. 1, *In re Willis*, 157 W. Va. 225, 207 S.E.2d 129 (1973). As this Court has observed,

> The Due Process Clauses of Article III, Section 10 of the Constitution of West Virginia and of the Fourteenth Amendment of the Constitution of the United States protect the fundamental right of parents to make decisions concerning the care, custody, and control of their children.

Syl. Pt. 3, *Lindsie D.L. v. Richard W.S.*, 214 W. Va. 750, 591 S.E.2d 308 (2003). Consequently, "there is a presumption that fit parents act in the best interests of their children." *Id.* at 751, 591 S.E.2d at 309, syl. pt. 4. Moreover,

> [in] light of the fundamental liberty interest that parents have in the care of their children, governmental intrusion into the family is warranted only in exceptional circumstances. The statutory bases for court interference with the parents' right to custody and control of their children are limited and specific. *See e.g.*, W.Va.Code § 48-9-206 [(2022)] (custody and visitation rights between parents in a divorce); W.Va.Code § 48-10-301 [(2006)] (grandparents' visitation); W.Va.Code § [49-4-705 (2024)] (taking a juvenile offender into custody before adjudication in certain enumerated circumstances); W.Va.Code § [49-4-602 (2015)] (taking an allegedly neglected and/or abused child into temporary custody); W.Va.Code § [61-8D-10 (2016)] (care of child upon parent's conviction for contributing to the child's delinquency) and W.Va.Code § [49-4-604(c)(6) (2020)] (termination of parental rights when child has been adjudicated neglected and/or abused).

Lindsie D.L., 214 W. Va. at 755, n.5, 591 S.E.2d at 313, n.5.

Notwithstanding the above, we have recognized that there are certain instances where a child has formed a relationship with an individual such that the child's best interests warrants continued contact. *See Honaker v. Burnside*, 182 W. Va. 448, 452, 388 S.E.2d 322, 326 (1989) (explaining "[t]he best interests of the child concept with regard to visitation emerges from the reality that 'the modern child is considered a person, not a sub-

person over whom the parent has an absolute and irrevocable possessory right, [because] the child has rights'" and "[t]ermination of visitation with individuals to whom the child was close would contribute to instability rather than provide stability"). Yet, "[t]he law does not recognize and this Court will not sanction any relationship which produces mutual affection between a child and its temporary custodian and which leads to the annulment of a suitable parent's natural right to the care, custody and control of his child." *Whiteman v. Robinson*, 145 W. Va. 685, 696, 116 S.E.2d 691, 697 (1960).

In this case, the circuit court was presented with unrefuted evidence that the relationship between J.S.-1 and I.S. was having a detrimental effect on the child. In that regard, I.S.'s therapist testified:

> When [J.S.-1's] name comes up and no one had mentioned [J.S.-1], she has—it has come up spontaneously in the sessions, [I.S.] becomes anxious and under any direct questioning I've mentioned [I.S] shuts down. We call it she goes quiet. And those are the things that concern me about the relationship with [J.S.-1] and [I.S].

The therapist further testified that I.S. disclosed that J.S.-1 "got angry because she didn't call her mommy." The therapist also testified that she was concerned about [I.S.] meeting developmental milestones because when J.S.-1 had custody of I.S. she refused to separate from her, only allowing I.S. to stay with J.S.-1's parents for brief periods. She also indicated that J.S.-1 had made allegations of abuse and neglect against A.C. in I.S.'s presence.

Given the evidence outlined above and having carefully considered the entire record in this case, we find that the evidence does not support the circuit court's conclusion that visitation between the petitioners and I.S. was in the child's best interests. Therefore, the circuit court erred when it granted twice monthly weekend visitation with I.S. to the petitioners in contravention of A.C.'s constitutional right to make decisions concerning her child. Accordingly, we reverse the circuit court's May 8, 2023, order only insofar as it grants visitation to the petitioners, and we remand this case to the circuit court for entry of an order providing that any continued visitation between the petitioners and I.S. is at the sole discretion of I.S.'s custodial parent(s) and dismissing this case from the court's docket. The Clerk of this Court is hereby directed to issue the mandate contemporaneously with this memorandum decision.

Affirmed, in part, Reversed, in part, and Remanded with Directions.

ISSUED: November 14, 2024

CONCURRED IN BY:

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