

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

*In re J.M.*

No. 23-485 (Jackson County CC-18-2021-JA-7)

**MEMORANDUM DECISION**

Petitioners L.R. and J.R.,<sup>1</sup> intervenors and foster parents below, appeal the Circuit Court of Jackson County’s July 21, 2023, order denying their motion for reconsideration and restoring custody of J.M. to his biological parents, arguing that the circuit court erred by denying them the opportunity to present evidence at the earlier dispositional hearing, failing to rule that the child was in a placement for fifteen of the most recent twenty-two months, and removing the child with no transition or visitation.<sup>2</sup> Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court’s order is appropriate. *See W. Va. R. App. P. 21.*

In January 2021, the DHS filed a petition alleging that the child’s parents used drugs to the detriment of their parenting abilities.<sup>3</sup> The child was removed from the parents’ care and placed with the petitioners, who served as a temporary foster placement throughout the proceedings. In May 2021, the parents were adjudicated of abusing and neglecting the child due to their drug use and were later granted post-adjudicatory improvement periods. In December 2021, the DHS moved to terminate the parents’ improvement periods and parental rights due to their failure to substantially comply with services. In January 2022, both parents moved for extensions of their improvement periods, and in March 2022, the circuit court granted both parents three-month

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<sup>1</sup> The petitioners appear by counsel Ancil G. Ramey. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Solicitor General Caleb A. Seckman. Counsel Ryan M. Ruth appears as the child’s guardian ad litem (“guardian”). Respondent Mother K.M. appears by counsel Sandra K. Bullman.

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 petition also involved other children who are not at issue here.

extensions, noting that they had been substantially compliant. Then, at an April 2022 review hearing, the court found that the parents had successfully completed their post-adjudicatory improvement periods.

In February 2022, the petitioners moved to intervene and two months later submitted an amended motion to intervene. In June 2022, the petitioners were granted intervenor status. After multiple continuances to allow the parents to undergo bonding assessments, the circuit court held a dispositional hearing in February 2023, at which the court concluded that a full evidentiary hearing on the child's placement was unnecessary given that the parents had successfully completed their improvement periods and, as the child's natural parents, were entitled to resume custody of the child. In its March 1, 2023, dispositional order, the court ordered that the child be transitioned back to his biological parents and adopted the transition plan created by the parties at a multidisciplinary treatment team ("MDT") meeting that included multiple psychologists and the petitioners.<sup>4</sup> *See* W. Va. Code § 49-4-604(c)(3) (permitting a court, as a dispositional decision, to "[r]eturn the child to his or her own home under supervision of the department). It must be stressed that the petitioners failed to appeal from the circuit court's March 1, 2023, dispositional order.

On March 15, 2023, the petitioners filed a motion for reconsideration in which they sought reversal of the March 1, 2023, dispositional order. The petitioners argued that placement of the child with the parents was improper and asserted that the child's best interests would be better served in their custody. Alternatively, the petitioners sought a stay of the transfer of custody and reinstatement of "the previous terms and conditions pending the [petitioners'] timely appeal" of the dispositional order. In May 2023, the parties convened for a status hearing on the transition and to address the petitioners' motion for reconsideration. The DHS alleged that the petitioners delayed the transition plan by taking the child on a vacation and disallowing the parents from picking up the child while he was ill. In its July 21, 2023, order, the court denied the petitioners' motion, found that the transition plan was complete, and ordered that the physical custody of the child be restored to the parents. It is from the July 21, 2023, order that the petitioners appeal.

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). At the outset, we must first address the petitioners' failure to appeal from the circuit court's March 1, 2023, dispositional order that returned the child to the parents' custody under the DHS's supervision pursuant to West Virginia Code § 49-4-604(c)(3). Rule 49<sup>5</sup> of the West Virginia Rules of Procedure for Child Abuse and Neglect

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<sup>4</sup> As the parents' rights remained intact, the permanency plan is reunification with the parents.

<sup>5</sup> Rule 49 states, in relevant part, that "[w]ithin thirty (30) days of entry of the order being appealed, the petitioner shall file a notice of appeal" and

[a]n appeal must be perfected within sixty (60) days of entry of the order being appealed. The circuit court from which the appeal is taken or the Supreme Court of Appeals may, for good cause shown, by order entered of record, extend such period, not to exceed a total extension of two months, if the notice of appeal was properly and timely filed by the party seeking the appeal.

Proceedings and Rule 11<sup>6</sup> of the West Virginia Rules of Appellate Procedure provide that a notice of appeal from an order in an abuse and neglect proceeding must be filed within thirty days and the appeal must be perfected within sixty days. These rules permit this period to be extended by two months if a party files a timely notice of appeal, and a motion demonstrating good cause for such an extension, neither of which the petitioners filed in this matter. Critically, “[t]he filing of any motion to modify an order shall not toll the time for appeal.” W. Va. R. Proc. for Child Abuse and Neglect Proc. 49; *see, e.g.*, Syl. Pt. 5, in part, *In re S.L.*, 243 W. Va. 559, 848 S.E.2d 634 (2020) (holding that the filing of certain post-termination motions “does not extend the timeframe in which to appeal a final disposition order entered in an abuse and neglect matter.”). With these standards in mind, we note that if the petitioners sought to challenge any rulings in the March 1, 2023, dispositional order, the notice of appeal should have been filed by March 31, 2023, and the appeal should have been perfected by April 30, 2023. However, the petitioners’ notice of appeal was received by this Court on August 14, 2023—roughly four months *after* the deadline to perfect an appeal from the dispositional order had expired. Notably, the petitioners acknowledged their ability to appeal from the final dispositional order in their motion for reconsideration wherein they stated: “the [petitioners] respectfully request that [the court] stay its [March 1, 2023,] Order and reinstate the previous terms and conditions pending the [petitioners’] timely appeal.” As such, we find that the petitioners’ appeal in regard to the dispositional order was untimely and they waived any arguments alleging error in the rulings memorialized therein, including the circuit court’s evidentiary rulings at the final dispositional hearing and the issue of permanent placement of the child. *See In re B.W.*, 244 W. Va. 535, 539, 854 S.E.2d 897, 901 (2021) (finding that by failing to appeal from the final dispositional order, the petitioners waived any arguments relating to the perceived deficiencies in that order and noting that a less restrictive disposition than termination of parental rights “is still a disposition”).

Moreover, we refuse to address any ruling from the court’s order denying the petitioners’ motion for reconsideration that was simply an attempt by the petitioners to relitigate disposition, given that there is no basis for such motions in abuse and neglect proceedings. In their motion for reconsideration, the petitioners claimed that the circuit court had jurisdiction to reconsider its dispositional rulings under Rules 54(b) or, alternatively, 59(e) of the West Virginia Rules of Civil Procedure. However, neither of these rules apply to abuse and neglect proceedings. *See* W. Va. R. Civ. P. 81(a)(7) (“Rules 5(b), 5(e) and 80 apply, but the other rules do not apply, to juvenile proceedings brought under the provisions of chapter 49 . . . of the West Virginia Code.”). Accordingly, the petitioners’ motion for reconsideration was improper, and the circuit court should

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<sup>6</sup> Rule 11 states, in relevant part, that “[w]ithin thirty days of entry of the judgment being appealed, the petitioner shall file the notice of appeal” and

an appeal in an abuse and neglect case must be perfected within sixty days of the date the judgment being appealed was entered . . . however, that the circuit court from which the appeal is taken or the Supreme Court may, for good cause shown, by order entered of record, extend such period, not to exceed a total extension of two months, if the notice of appeal was properly and timely filed by the party seeking the appeal.

not have considered it. For purposes of this appeal, the scope of our review is limited by the improper consideration of this motion. Further compounding the issue is the fact that almost none of the petitioners' arguments on appeal address the contents of the July 21, 2023, order. Instead, the petitioners spend almost the entirety of their brief addressing the court's actions and decisions at disposition. We decline to consider the petitioners' arguments not only because they failed to timely appeal the earlier dispositional order, but also because the petitioners lacked a basis to attempt to relitigate disposition.<sup>7</sup>

Turning to the lone assignment of error that is properly before this Court, the petitioners assert that the circuit court erred by "immediately removing" the child from their care.<sup>8</sup> This is simply not the case, as the court's final dispositional order contains a transition plan that was drafted during an MDT meeting at which the petitioners and multiple psychologists were present. To support their claim, the petitioners reference the transcript from the May 5, 2023, review hearing, alleging that the guardian stated, "there really wasn't a transition process." However, this is a gross misrepresentation of the record, as the guardian was describing periods of time where the *petitioners* failed to comply with the transition plan. The guardian's statement was that "[t]hree weeks kind of gets taken off of it where there really wasn't a transition process" due to the petitioners' noncompliance. The petitioners' assertion that the child was "immediately removed" has no merit, as the record contains a detailed transition plan that included the child undergoing extended overnight stays in the parents' home. Moreover, the petitioners were noncompliant with that transition plan. Thus, we find no error in the circuit court's implementation of the transition plan, which led to the child's gradual return to his parents.

For the foregoing reasons, we find no error in the decision of the circuit court, and its July 21, 2023, order is hereby affirmed.

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<sup>7</sup> This includes the petitioners' assertion that the circuit court failed to rule that the child was removed more than fifteen months before the DHS sought reunification. This argument is predicated on West Virginia Code § 49-4-605(a)(1), which requires the DHS to "file or join in a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights" when "a child has been in foster care for 15 of the most recent 22 months." Critically, in their motion for reconsideration, the petitioners expressly asserted that the child had been in their care in excess of fifteen months *prior to* the February 2023 dispositional hearing, yet they failed to address this statute with the circuit court until *after* the court ruled that the parents corrected the conditions of abuse and neglect and were entitled to the child's return to their custody. Further, the petitioners' supportive arguments relate to their bond with the child and the child's permanent placement—matters that were properly decided at disposition. In short, the petitioners' arguments about the circuit court's failure to make a ruling concerning the child's extended placement in their care—which, we note, the statute in question does *not* require—again attempt to relitigate disposition, and, for the same reasons set forth above, we decline to consider these arguments.

<sup>8</sup> While this assignment of error predominately relates to the transition plan in the court's March 1, 2023, dispositional order, we address it due to its attenuated relation to the July 21, 2023, order from which the petitioners have appealed.

Affirmed.

**ISSUED:** November 6, 2024

**CONCURRED IN BY:**

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