

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

***In re* A.M. and P.C.**

No. 23-548 (Lewis County CC-21-2023-JA-6 and CC-21-2023-JA-7)

MEMORANDUM DECISION

Petitioner Father D.C.¹ appeals the Circuit Court of Lewis County’s September 6, 2023, order terminating his parental rights to the children, arguing that the circuit court erroneously adjudicated him as an abusing parent.² 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 June 7, 2023, adjudicatory order and September 6, 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 January 2023, the DHS filed a petition alleging that the petitioner physically abused the children after the petitioner’s three stepchildren, R.M., B.M., and T.W., reported to school personnel that the petitioner regularly whipped them with his hands and a belt.³ The petition stated that eight-month-old A.M. did not live in the petitioner’s home, while one-month-old P.C. and the stepchildren resided with the petitioner. In March 2023, the DHS filed an amended petition that recounted the stepchildren’s Child Advocacy Center (“CAC”) interviews wherein they disclosed additional physical abuse at the hands of the petitioner, sexual abuse by the petitioner, and the petitioner’s drug use. B.M. disclosed that the petitioner would pinch the baby, P.C., when he was crying.

¹ The petitioner appears by counsel G. Phillip Davis. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Melissa T. Roman 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 stepchildren are not at issue; however, their disclosures are relevant to this appeal.

In May 2023, the circuit court held an adjudicatory hearing, at which witnesses testified to the stepchildren’s various disclosures, injuries, and bruises. Notably, one witness testified that A.M. did not live in the petitioner’s home, but with her nonabusing mother. The petitioner admitted that he made the stepchildren do wall-sits for up to thirty minutes at a time, claimed that the physical abuse alleged by the children was simply corporal punishment, and denied all other allegations of abuse. The petitioner also admitted to using methamphetamine and marijuana in and around the home. Photographs of the stepchildren’s bruises were entered into evidence. In its June 2023 adjudicatory order, the court found that the petitioner physically abused the children by whipping them with his hands and objects, punching them, and employing military style punishments such as forced running and wall-sits. The court further found that the children’s CAC interviews corroborated the evidence presented at the adjudicatory hearing and that the petitioner “sexually abused, at minimum, T.W.” Thus, the court adjudicated the petitioner of abusing and neglecting the children. Critical to the resolution of this appeal is that the circuit court’s adjudicatory order makes no findings explaining how A.M., who did not live in the home, was abused or neglected by the petitioner. Furthermore, the transcript shows that the court did not make any findings on the record regarding how A.M. was abused or neglected.

Given that the petitioner substantively challenges only his adjudication, it is sufficient to note that the petitioner’s parental rights to A.M. and P.C. were terminated following a dispositional hearing in August 2023. It is from the dispositional order that the petitioner appeals.⁴

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). Before this Court, the petitioner assigns error to the circuit court’s termination of his parental rights, but the substance of his argument addresses only his purportedly erroneous adjudication of abusing and neglecting the children. However, we must first address the circuit court’s adjudication of A.M. As we have explained, “[f]or a circuit court to have jurisdiction over a child in an abuse and neglect case, the child must be an ‘abused child’ or a ‘neglected child’ . . . 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); *see also M.H. v. C.H.*, 242 W. Va. 307, 311–12, 835 S.E.2d 171, 175–76

⁴ A.M.’s nonabusing mother’s parental rights remain intact, and A.M.’s permanency plan is to remain with her mother. P.C.’s mother’s parental rights were terminated, and P.C.’s permanency plan is adoption in the current placement.

(2019) (stating that “it is well established that the issue of subject matter jurisdiction can be raised at any time, even sua sponte by this Court”) (internal alteration and quotation omitted). Here, the petition described the petitioner’s conduct towards the children living in the home but made no allegations that the petitioner either abused⁵ or neglected⁶ A.M., who lived with her nonabusing mother. At adjudication, the evidence solely concerned the children residing in the home, and the court found that the petitioner physically abused the stepchildren, but it failed to make any specific findings as to how A.M. was abused or neglected. Thus, the court lacked an evidentiary basis upon which to adjudicate the petitioner in regard to A.M. and, as a result, lacked jurisdiction to proceed to disposition of A.M. As such, the circuit court’s adjudicatory and dispositional orders must be vacated in regard to A.M.

However, we discern no error in the circuit court’s adjudication of the petitioner as to P.C., as that child lived in the home and was subjected to the petitioner’s behaviors. Turning to the petitioner’s incredibly brief argument that the court erroneously adjudicated him as an abusing parent, we first note that pursuant to West Virginia Code § 49-4-601(i), “[a]t 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 [or] neglecting.” The statute further requires that “[t]he findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence.” *Id.* The clear and convincing standard is “intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases.” *Cramer v. W. Va. Dep’t of Highways*, 180 W. Va. 97, 99 n.1, 375 S.E.2d 568, 570 n.1 (1988). As set forth above, the evidence overwhelmingly supports the petitioner’s adjudication for physically abusing the children in the home—including P.C.—and sexually abusing T.W. *See* Syl Pt. 2, in part, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995) (discussing that under West Virginia Code § 49-1-201, physical and/or sexual abuse to one child can be imputed to other children in the home). Several witnesses testified to the children’s detailed disclosures of the petitioner’s abuse, and corroborating evidence of their injuries was admitted into evidence. To support his argument, the petitioner merely asserts that the court’s findings that he subjected the children to physical and sexual abuse were “contrary to [his] direct testimony while under oath.”⁷ However, the court was free to disregard the petitioner’s testimony,

⁵ An abused child is, in relevant part, “[a] child whose health or welfare is being harmed or threatened by: 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.*” W. Va. Code § 49-1-201 (emphasis added).

⁶ A neglected child is, in relevant part, one “[w]hose 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.” *Id.*

⁷ The petitioner baldly asserts in a single sentence that the only evidence offered by the DHS was “based entirely on out-of-court statements.” However, the petitioner does not identify these “out-of-court statements” and fails to cite to any authority to support his argument. *See State v. Larry A.H.*, 230 W. Va. 709, 716, 742 S.E.2d 125, 132 (2013) (“The decisions of this Court are quite clear. ‘Although we liberally construe briefs in determining issues presented for review,

especially in light of the other evidence establishing his abusive conduct, and we decline to disturb this determination on appeal. *See Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997) (“A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations.”). As such, the petitioner is entitled to no relief with regard to P.C.⁸

For the foregoing reasons, we affirm, in part, and vacate, in part, the circuit court’s June 7, 2023, adjudicatory order and its September 6, 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.M. met the statutory definition of an abused or neglected child.⁹ *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.

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

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

issues . . . mentioned only in passing but [that] are not supported with pertinent authority, are not considered on appeal.’ *State v. LaRock*, 196 W.Va. 294, 302, 470 S.E.2d 613, 621 (1996).”).

⁸ The petitioner also contends that the circuit court erroneously terminated his parental rights and should have granted him a less restrictive disposition. However, he offers no substantive argument on these issues and, instead, circularly asserts that termination was inappropriate because his adjudication as an abusing parent was erroneous. Having determined that the petitioner’s adjudication as to P.C. was proper, the petitioner cannot be entitled to any relief predicated entirely upon that alleged error.

⁹ The dispositional order contains provisions relating to P.C., children that are not at issue here, and other adult respondents. Those portions of the order remain in full force and effect as it relates to these parties.