

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* N.F. and A.F.**

No. 23-690 (Kanawha County 22-JA-392 and 22-JA-393)

MEMORANDUM DECISION

Petitioner Mother C.S.¹ appeals the Circuit Court of Kanawha County’s November 6, 2023, order terminating her parental rights to N.F. and A.F.,² arguing that the circuit court erred in failing to require the DHS to provide her remedial services, denying her motion for an improvement period, and terminating her parental rights. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision vacating the circuit court’s May 25, 2023, adjudicatory order and November 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 September 2022, the DHS filed a petition alleging that the petitioner abused and neglected the children by engaging in domestic violence in their presence and failing to provide them with necessary food, clothing, supervision, and housing. According to the petition, law enforcement responded to a domestic incident at a gas station in Charleston, West Virginia. The children’s father stated that the petitioner was hitting him while he was driving, and the petitioner claimed that the father was driving erratically and under the influence of drugs. The petitioner and the father were arrested. Notably, the petition further alleged that neither the petitioner nor the father “ha[d] resided in Kanawha County until recently” and had been staying at a “shelter” with the children. The petition also alleged that the petitioner’s parental rights to other children were

¹ The petitioner appears by counsel Jason S. Lord. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Deputy Attorney General Steven R. Compton. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Joseph A. Curia III 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).

previously terminated in Kentucky. In January 2023, the DHS filed an amended petition outlining the parents' extensive history with Child Protective Services in Kentucky.

After several continuances, an adjudicatory hearing was held in May 2023. The petitioner stipulated to the allegations of domestic violence with the father and her history of abuse and neglect cases in Kentucky that resulted in the termination of her parental rights to other children. Based on her stipulation, the court found that the children were abused and neglected and adjudicated the petitioner as an abusing and neglecting parent. Critically, however, the circuit court failed to determine whether it had jurisdiction over the case under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), West Virginia Code §§ 48-20-101 to 404.

A dispositional hearing was held in August 2023. The petitioner testified that she, the father, and the children moved from Kentucky to West Virginia in July 2022. She explained that they had been living at a "shelter" for "[a]bout a month, month and a half" when the petition was filed. As the resolution of the petitioner's appeal turns upon the circuit court's failure to properly establish jurisdiction, it is sufficient to note that the petitioner's parental rights to the children were terminated following a dispositional hearing.³ It is from the November 6, 2023, dispositional order that the petitioner appeals.

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). Furthermore, "[w]here the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a de novo standard of review." Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995). Although not raised as an assignment of error by the petitioner, we must address the circuit court's failure to properly establish jurisdiction over the child.⁴ See Syl. Pt. 2, *State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 239 W. Va. 338, 801 S.E.2d 216 (2017) ("This Court, on its own motion, will take notice of lack of jurisdiction at any time or at any stage of the litigation pending therein.") (quoting Syl. Pt. 2, *In re Boggs' Est.*, 135 W. Va. 288, 63 S.E.2d 497 (1951)). We have held that the UCCJEA "is a jurisdictional statute, and the requirements of the statute must be met for a court to have the power to adjudicate child custody disputes." Syl. Pt. 3, *In re A.T.-I*, 248 W. Va. 484, 889 S.E.2d 57 (2023) (quoting Syl. Pt. 6, *Rosen v. Rosen*, 222 W. Va. 402, 664 S.E.2d 743 (2008)).

To exercise initial jurisdiction over abuse and neglect proceedings that implicate the UCCJEA, "a court of this state must satisfy one of the four bases of jurisdiction set forth in [West Virginia Code § 48-20-201(a),]" which "have been aptly summarized as 1) 'home state' jurisdiction; 2) 'significant connection' jurisdiction; 3) 'jurisdiction because of declination of

³ The parental rights of the children's father were terminated below by separate order. The permanency plan for the children is adoption in their current placement.

⁴ It is unnecessary to address the petitioner's specific assignments of error, given our conclusion that vacation and remand are necessary on jurisdictional grounds, as more fully set forth herein.

jurisdiction’; and 4) ‘default’ jurisdiction.” *In re Z.H.*, 245 W. Va. 456, 464, 859 S.E.2d 399, 407 (2021) (citing *In re J.C.*, 242 W. Va. 165, 171, 832 S.E.2d 91, 97 (2019)). Importantly, “[t]hese jurisdictional bases do not operate alternatively to each other, but rather, in order of priority—reaching the next basis of jurisdiction only if the preceding basis does not resolve the jurisdictional issue.” *Id.* In *In re Z.H.*, this Court explained that “home state” jurisdiction is conferred upon a West Virginia court if West Virginia is the child’s home state “on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this state but a parent or person acting as a parent continues to live in this state.” *Id.* (quoting W. Va. Code § 49-20-201(a)(1)). Further, the term “home state”

means the state in which the child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding A period of temporary absence of any of the mentioned persons is part of the period.

Id. (quoting Syl. Pt. 3, *Rosen v. Rosen*, 222 W. Va. 402, 664 S.E.2d 743 (2008)). Here, the record indicates that the petitioner and the children were residents of Kentucky until sometime in July 2022—just two months before the abuse and neglect proceedings were commenced in West Virginia. Despite the family’s clear interstate contacts and uncertainty as to the children’s home state, the circuit court undertook no jurisdictional analysis in accordance with the UCCJEA.⁵ As there is nothing in the record indicating whether the circuit court found that the case satisfied any of the four jurisdictional bases available under the UCCJEA, we must vacate the circuit court’s adjudicatory and dispositional orders. We remand this case for the circuit court to undertake an appropriate review considering the provisions of the UCCJEA.

For the foregoing reasons, we vacate the circuit court’s May 25, 2023, adjudicatory order; vacate the November 6, 2023, dispositional order; and remand this matter to the circuit court for further proceedings consistent with this decision. The Clerk is directed to issue the mandate contemporaneously herewith.

Vacated and remanded.

ISSUED: March 19, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump, IV

⁵ We remind circuit courts that they “must be watchful for jurisdictional issues arising under the [UCCJEA] Even if not raised by a party, if there is any question regarding a lack of subject matter jurisdiction under the UCCJEA then the court should sua sponte address the issue as early in the proceeding as possible.” *In re Z.H.*, 245 W. Va. at 459, 859 S.E.2d at 402, Syl. Pt. 5, in part.