

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re L.H.

No. 23-662 (Hampshire County CC-14-2021-JA-84)

MEMORANDUM DECISION

Petitioner Father A.R.¹ appeals the Circuit Court of Hampshire County’s October 13, 2023, order terminating his parental rights to L.H.,² arguing that the circuit court erred by failing to properly establish jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), West Virginia Code §§ 48-20-101 to -404, and adjudicating him as a neglecting parent. 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.

The proceedings below were initiated after the mother, a West Virginia resident, gave birth to the child in July 2021 at a hospital in Cumberland, Maryland. The mother and child both tested positive for multiple illegal substances, including methamphetamine. On July 12, 2021, the court ratified the DHS’s temporary emergency custody before the child was discharged from the hospital. The following day, the DHS filed an abuse and neglect petition based on the mother’s prenatal drug use. In the petition, the DHS stated that the mother lived in Paw Paw, West Virginia, and the alleged nonabusing father, R.W., lived in Piedmont, West Virginia.

At a hearing in October 2021, the court adjudicated the mother based upon her stipulation to using drugs while pregnant; however, it did not conduct a jurisdictional analysis under the

¹ The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgoda. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Julie H. Frazer appears as the child’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).

UCCJEA. Ten months later, in August 2022, the DHS filed a second amended petition³ that named the petitioner as a potential father. The second amended petition also alleged that the petitioner was incarcerated in Ohio, was not eligible for parole until May 2025, and neither had contact with nor provided financial support for the child since his birth. In December 2022, a paternity test confirmed the petitioner as the child's father, and the DHS filed a third amended petition reflecting the confirmation.

The court held an adjudicatory hearing in April 2023. The petitioner was unable to appear due to scheduling difficulties with his correctional facility, but he was represented by counsel. A DHS case worker testified that the petitioner failed to provide the child with any physical, emotional, or financial support. The court then continued the hearing to allow the petitioner to participate. In June 2023, the parties reconvened for the adjudicatory hearing.⁴ The case worker further testified that the petitioner had been incarcerated in Ohio since March 2021, was serving three sentences for two counts of illegal conveyance to a detention facility and one count of drug trafficking, and was expected to be released from incarceration in 2025. The case worker also testified that the petitioner was indicted by a West Virginia grand jury in October 2022 on charges of first-degree robbery, assault during the commission of a felony, and conspiracy. The case worker stated that, in April 2023, the petitioner pled guilty to unlawful assault and conspiracy pursuant to a plea agreement but that he had not yet received his sentence. The DHS introduced several exhibits concerning the petitioner's charges, convictions, and sentence details. Next, the petitioner testified to his extensive criminal history, including crimes for which he was convicted in West Virginia, and explained that he and the mother were never in a relationship; that he had not communicated with her since October 2020; and that he was unaware that the mother had been pregnant or that she had possibly given birth to his child. He further explained that he was first made aware of the child in August 2022 when he was served with the second amended petition. The petitioner added that he was never informed of the results of his paternity test and learned he was the child's father right before the hearing. The petitioner admitted that his incarceration prohibited him from caring for the child but claimed that his family was willing to take care of the child until he was released.

At the conclusion of the hearing, the court determined that the petitioner had "refused or failed or had the inability . . . because he [was] incarcerated to supply the child with, clothing, shelter, supervision, medical care, or education," had not provided any child support, and had made no effort to contact the child despite knowing since August 2022 that he was possibly the child's father. In the subsequently issued adjudicatory order, the circuit court explained that the petitioner "had a duty to know that he had a child" and that "the ultimate form of neglect is not even knowing that your child exists." The court concluded that the child was abused and/or neglected because

³ An amended petition was filed in December 2021 adding allegations of abandonment against R.W., who was subsequently dismissed from the case after a paternity test confirmed he was not the child's father.

⁴ At some point following the April 2023 hearing, the petitioner was extradited to West Virginia for pending criminal charges in Monongalia County, and he was able to appear in person.

the petitioner “refused, failed, or was unable to emotionally, physically, or financially support his child.” As a result, the court adjudicated the petitioner as a neglecting parent.

The court held a dispositional hearing in September 2023. However, because the petitioner only substantively challenges the court’s jurisdiction over the child and his adjudication as a neglecting parent, it is sufficient to note that the circuit court terminated his parental rights upon finding that there was no reasonable likelihood that the conditions of neglect could be corrected in the near future and that the child’s best interests necessitated termination of his parental rights.⁵ It is from the 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). Before this Court, the petitioner first argues that the circuit court erred by failing to determine whether it had jurisdiction over the child pursuant to the UCCJEA. It is well-established 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 preside over an abuse and neglect case, a circuit court must satisfy one of four jurisdictional bases 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 jurisdiction’; and 4) ‘default’ jurisdiction.” *In re Z.H.*, 245 W. Va. 456, 464, 859 S.E.2d 399, 407 (2021) (citation omitted). “These 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.” *In re K.R.*, 229 W. Va. 733, 740, 735 S.E.2d 882, 889 (2012). As the circuit court failed to conduct a jurisdictional analysis, we will exercise our de novo review to determine whether the circuit court properly exercised subject matter jurisdiction over the case.⁶

The petitioner correctly contends that the child has no “home state” for purposes of the UCCJEA. *See* W. Va. Code § 48-20-102(g) (defining “home state,” in relevant part, as “the state in which the child lived from birth with” a parent or a person acting as a parent “[i]n the case of a child less than six months of age”). “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

⁵ The mother’s parental rights were also terminated. The permanency plan for the child is adoption in his current placement.

⁶ 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.

proceeding, and the child is absent from this state but a parent or person acting as a parent continues to live in this state.”⁷ *In re Z.H.*, 245 W. Va. 456, at 859 S.E.2d at 407 (quoting W. Va. Code § 49-20-201(a)(1)). Here, the child was born in Maryland, and the DHS filed the abuse and neglect petition commencing the proceedings before the child was discharged from the Maryland hospital. Thus, the child had not lived in West Virginia with either parent for any period of time. Therefore, West Virginia is not the child’s home state for purposes of the UCCJEA. *See id.* at 465, 859 S.E.2d at 408 (explaining that the circumstances before a child’s birth are not relevant to the determination of home state jurisdiction). However, Maryland is also not the child’s home state. In *In re Z.H.*, we held that “[a] newborn child’s hospital stay incident to birth is insufficient to confer home state subject matter jurisdiction pursuant to West Virginia Code §§ 48-20-102(g) (2001) and 48-20-201(a)(1) (2001).” *Id.* at 456, 859 S.E.2d at 402, Syl. Pt. 8. Because neither West Virginia, Maryland, nor any other state has home state jurisdiction over the child, the next possible source of jurisdiction is “significant connection jurisdiction.”

West Virginia Code § 48-20-201(a)(2) provides, in relevant part, that a court has “significant connection jurisdiction” if “[t]he child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and . . . [s]ubstantial evidence is available in this state concerning the child’s care, protection, training and personal relationships[.]” The petitioner concedes that the mother had a significant connection to West Virginia other than mere physical presence. However, he argues that the record contains no evidence of the child’s connection to West Virginia outside of his gestation. We disagree. In *In re Z.H.*, this Court concluded that Z.H. “ha[d] a significant connection to Virginia through his parents” because “Virginia [was] where his parents reside[d] and [was] where he was injured by [his mother’s] prenatal drug use. If this abuse and neglect proceeding had not been initiated in West Virginia, Z.H.’s parents would have taken him home to Virginia.” 245 W. Va. at 470, 859 S.E.2d at 413. Similarly, here, the record reflects that the child’s mother resided in West Virginia before and after the child’s birth, and she stipulated to abusing drugs while pregnant. The record demonstrates that the child was injured by his mother’s prenatal drug use in West Virginia, and, absent commencement of the abuse and neglect proceedings, he would have returned home to West Virginia with his mother. As such, the child and his mother have a significant connection to West Virginia.

Furthermore, substantial evidence concerning the child’s care, protection, training, and personal relationships is available in West Virginia. The basis of the initial abuse and neglect petition was the mother’s drug use, and nearly all of the evidence related to her drug use is in West Virginia. According to the record, the mother had a history of drug use in West Virginia, completed family treatment court here, and received substance abuse treatment here prior to the child’s birth—all of which is pertinent to ascertaining the child’s care and protection. *See id.* at 469, 859 S.E.2d at 412 (concluding that evidence of the mother’s prenatal drug use was evidence of Z.H.’s care and protection because her prenatal drug use was one of the allegations of abuse and neglect). The record also indicates that West Virginia has evidence related to the petitioner’s criminal history and incarceration as he pled guilty to multiple felonies during the pendency of the case that

⁷ “Commencement” is defined as “the filing of the first pleading in a proceeding.” W. Va. Code § 48-20-102(e).

he committed in West Virginia. Thus, we conclude that a West Virginia court has significant connection jurisdiction over the child's abuse and neglect case. As such, the circuit court properly exercised subject matter jurisdiction over the child.

Next, the petitioner argues that the court erred in adjudicating him as a neglecting parent based on financial neglect because "not providing financial support is not the standard for neglect."⁸ However, in Syl. Pt. 3, *In re B.P.*, 249 W. Va. 274, 895 S.E.2d 129 (2023), we held that "[a] parent's absence from a child's life because of incarceration that results in the inability of the parent to provide necessary food, clothing, shelter, medical care, education, or supervision is a form of neglect under the definition of 'neglected child' set forth in West Virginia Code § 49-1-201 (2018)." (Emphasis added); *see also* W. Va. Code § 49-1-201 (defining "neglected child," in relevant part, as a child "[w]ho is presently without necessary food, clothing, shelter, medical care, education, or supervision because of the disappearance or absence of the child's parent"). Here, the DHS presented undisputed evidence that the petitioner had been incarcerated for the entirety of the child's life, never had contact with the child, and never provided for any of the child's basic needs. Moreover, the evidence established that the petitioner was serving three sentences for trafficking Suboxone at his correctional facility—a drug the child tested positive for at birth; pled guilty to assault during the pendency of the case; and was not expected to be released for at least another two years. As such, the circuit court had a sufficient basis upon which to find that the child was neglected, and we discern no error in the circuit court's adjudication of the petitioner as a neglecting parent based on his failure to provide for or support the child due to his incarceration.⁹

Finally, the petitioner argues that the circuit court erred in terminating his parental rights because he was not properly adjudicated. As we discern no error in the court's adjudication of the petitioner, he is entitled to no relief. Circuit courts are permitted to terminate parental rights upon finding that "there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child," and we see no error in the court's findings upon our review of the record here. *See* W. Va. Code § 49-4-604(c)(6).

For the foregoing reasons, the circuit court's October 13, 2023, order is hereby affirmed.

Affirmed.

⁸ The petitioner also argues that the circuit court erred in adjudicating him as a neglecting parent because the record did not support a finding that he abandoned the child. However, the record shows that the petitioner was not adjudicated based on abandonment. Rather, he was adjudicated because his incarceration prevented him from providing for the child's basic needs. Thus, the petitioner is entitled to no relief in this regard.

⁹ While the circuit court made findings sufficient to support its adjudication of the petitioner as neglectful based on his incarceration, we are once again compelled to address the court's finding that "the ultimate form of neglect is not even knowing that your child exists." As we noted in *In re B.P.*, "[s]uch a finding is not supported by the definition of 'neglected child' set forth in West Virginia Code § 49-1-201 and it is also patently false." 249 W. Va. at 282 n.5, 895 S.E.2d at 137 n.5.

ISSUED: June 26, 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