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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* D.R.**

No. 24-326 (Randolph County CC-42-2021-JA-39)

MEMORANDUM DECISION

Petitioner Father C.R.[1] appeals the Circuit Court of Randolph County's May 8, 2024, order terminating his parental rights to D.R., arguing that the evidence was insufficient to support his adjudication.[2] 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 DHS filed its original petition in May 2021. Initially, the DHS alleged that the petitioner abused and neglected the child by virtue of his substance abuse, among other issues. The petitioner later stipulated to neglect and several other issues at an adjudicatory hearing in July 2021.

The matter came on for disposition in March 2022, at which time the court heard extensive testimony about the petitioner's physical, emotional, and sexual abuse of D.R. and D.H., another child in the home who is not at issue in this appeal. Specifically, the children's foster mother testified to recent disclosures from both children that the petitioner hit them, among other things.[3] D.R. also indicated that the petitioner touched his penis. The foster mother further testified that the

[1] The petitioner appears by counsel Gregory R. Tingler. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Kristen E. Ross. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Heather M. Weese 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] At the time the court heard testimony about these disclosures, D.R. was five years old and D.H. was eight years old.

children displayed sexually inappropriate behavior and other signs of abuse while in her care, such as D.R. soiling himself and appearing "shut down and worried" when a doctor had to remove his pants during an examination. In fact, D.R. told the foster mother that he did not want anyone, including the doctor, to touch his private area anymore. D.R. also expressed a fear of the dark while trying to sleep because he said that was when the petitioner would touch him inappropriately. A DHS worker corroborated the foster mother's testimony about physical abuse, as she explained that the children made similar disclosures to her. Specifically, the children described various forms of physical abuse by the petitioner, including being forced to hold an electric fence until they urinated. Both witnesses also testified to disclosures of emotional abuse, such as the petitioner forcing the children to destroy their toys. Finally, the petitioner testified and, among other things, denied all allegations of physical, emotional, and sexual abuse, while his girlfriend testified and similarly stated that she had not witnessed any abuse.

Ultimately, the circuit court terminated the petitioner's parental rights. However, on appeal, we vacated the termination, in part, upon the circuit court's failure to make certain findings required by statute and our prior holdings. *See In re D.R.*, No. 22-0348, 2023 WL 1798623, at *2-3 (W. Va. Feb. 7, 2023) (memorandum decision). Relevant to the resolution of this appeal, we also noted that termination of the petitioner's parental rights was based upon the evidence of the children's disclosures of physical, emotional, and sexual abuse that had not been the basis of the petitioner's adjudication. *Id.* at *1. We further directed that, "[u]pon remand, if the DHHR wishes to base its argument that termination is proper because of these disclosures, it must first amend the petition and obtain an adjudication of petitioner upon clear and convincing evidence, as required by West Virginia Code § 49-4-601." *Id.* at *3 n.8.

On remand, after obtaining leave, the DHS filed an amended petition in July 2023 that included allegations that the petitioner physically, emotionally, and sexually abused D.R. and the other child living in the home. Thereafter, the circuit court granted the petitioner's motion for an expert witness to assess the children's trauma and other related issues.

In February 2024, the court held an adjudicatory hearing and granted the petitioner's motion to take judicial notice of the extensive testimony surrounding the children's disclosures at the prior dispositional hearing. The court also admitted into evidence both children's recorded Child Advocacy Center ("CAC") interviews. The petitioner testified and again denied all physical, emotional, and sexual abuse. Additionally, the petitioner recanted some of his earlier stipulations, such as exposing the children to inappropriate individuals. This included the petitioner's mother, with whom the children resided during his incarceration. Despite asserting that his mother was an appropriate caregiver, the petitioner admitted that his father conceived two children with his half-sister. The first child was conceived when the half-sister was fifteen years old and lived with the petitioner's mother. According to the court, the petitioner minimized this conduct by claiming that his father did not sexually abuse his half-sister, was not biologically related to her, and did not "hold her down and rape her." The petitioner was unable to articulate any failure by his mother to protect the half-sister and indicated that she would continue to be his primary source of support.

Next, the court heard from Delaina Szafraniec, the expert witness who evaluated D.R. for trauma and conducted a clinical mental health evaluation of the petitioner. According to Ms. Szafraniec, the petitioner's generational trauma caused him to view the various abuses in his life

as "normal" and be unable to recall specific traumatic events. This resulted in the petitioner's inability to recognize unsafe situations, such as leaving the child with his mother. Finally, the court heard testimony from a DHS worker who had taken over the case from the prior worker. According to the worker's testimony, the prior worker handled the majority of the case. The worker indicated that it was her first day back from maternity leave and she had not reviewed the case file. The petitioner asked the worker if she would sign the same amended petition again, and the worker stated that she would not. However, on cross-examination, the worker indicated that she had never viewed the children's recorded CAC interviews and again stressed that she had not reviewed all of the case file for some time. Upon questioning by counsel for the DHS as to whether she was still confident in saying that she would not have signed the amended petition that day, the witness responded, "I don't know." The witness further testified that she was not the worker who conducted the investigation into the allegations at issue and stated that she was unsure whether she was sufficiently prepared to testify. That said, the witness confirmed that the information was true and accurate when she filed the amended petition and that the amended petition "did need filed" because the allegations were "absolutely concerning." She further clarified that her statement about not signing the amended petition was based on her being uncomfortable with not having been the individual that conducted the investigation, not because the information contained therein was untrue or inaccurate. Finally, the DHS worker confirmed that the children made extensive disclosures of abuse to their foster mother.

Based on the evidence, the court found that both the children's foster mother and the original DHS worker testified to the children's detailed disclosures of abuse by the petitioner, with the disclosures being consistent when made to each of those individuals. Specifically, the court found that the evidence established that the petitioner struck the children, forced them to hold an electric fence, forced them to destroy their belongings, and touched D.R. inappropriately. The evidence further demonstrated that the children made similar disclosures to a foster care agency worker. Additionally, the court noted the demeanor of D.H. during his CAC interview, as he "shut[] down, tr[ied] to avoid, and bec[ame] unwilling to go into detail about his abuse . . . due to his stated embarrassment, other than to state that [the petitioner] is 'bad' and did 'bad things.'" Further, Ms. Szafraniec testified to observing this behavior, which corroborated testimony from the foster mother and a DHS worker about the child's significant change in demeanor when confronted with these allegations. The court also noted that the petitioner's testimony demonstrated "a significant lack of self-awareness of [his own] generational abuse and trauma and how [D.R.] would need protected from it." Stressing the inappropriateness of the petitioner's father's conduct with the petitioner's half-sister, the court found that the petitioner was unable to articulate any issue with this conduct. As to the new DHS worker who took over the case and testified to the filing of the amended petition, the court stressed that she confirmed that "the amended petition was a competent and accurate assessment of the case at the time she signed it." The court "recognize[d] the hesitancy and uncertainty displayed" during her testimony, but attributed it to "her inexperience and lack of preparedness for testimony," given that she was called not by counsel for the DHS but by the petitioner. The court concluded that "her testimony [had] no negative impact on the credibility of the overall evidence of abuse and neglect" presented to the court. Ultimately, the court concluded that the DHS established, by clear and convincing evidence, that the petitioner physically, emotionally, and sexually abused D.R. Given that the resolution of the petitioner's appeal turns entirely upon his adjudication, it is sufficient to note that

the circuit court terminated the petitioner's parental rights following a dispositional hearing in April 2024.[4] The petitioner appeals from the dispositional order.

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). Before this Court, the petitioner raises a single assignment of error attacking the circuit court's conclusion that the evidence was sufficient to establish, under a clear and convincing standard, that he abused D.R.[5] At the outset, we must stress that, other than a standard of review, the petitioner cites to no authority governing adjudication in abuse and neglect proceedings and, therefore, also fails to present any argument applying that authority. This is in violation of Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure, which requires that a "brief must contain an argument clearly exhibiting the points of . . . law presented" and "cit[e] the authorities relied on." Additionally, in an Administrative Order entered December 10, 2012, Re: Filings That Do Not Comply With the Rules of Appellate Procedure, the Court specifically noted that "[b]riefs that lack citation of authority [or] fail to structure an argument applying applicable law" and "[b]riefs with arguments that do not contain a citation to legal authority to support the argument presented" are not in compliance with this Court's rules. In that order, the Court went on to instruct that "all of the requirements of the Rules must be strictly observed by litigants" because "[t]he Rules are not mere procedural niceties; they set forth a structured method to permit litigants and this Court to carefully review each case." In ordering that all litigants before this Court must comply with the Rules of Appellate Procedure, the Court cautioned that "[p]ursuant to Rule 10(j), failure to file a compliant brief 'may result in the Supreme

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[4] The mother's parental rights were also terminated. The permanency plan for the child is adoption in the current placement.

[5] In support of this assignment of error, the petitioner also asserts that the DHS should not have been permitted to file an amended petition. The petitioner claims that the new allegations of abuse were contested at the prior dispositional hearing, but this assertion is without merit. As we found in the prior appeal, those allegations were not included in a petition and did not form the basis for the petitioner's adjudication. *See In re D.R.*, No. 22-0348, 2023 WL 1798623, at *4 (W. Va. Feb. 7, 2023) (memorandum decision). Further, as noted above, we explicitly stated that amendment of the petition on remand was permissible, which was in accordance with Rule 19(b) of the Rules of Procedure for Child Abuse and Neglect Proceedings. That rule provides as follows:

> If new allegations arise after the final adjudicatory hearing, the allegations should be included in an amended petition rather than in a separate petition in a new civil action, and the final adjudicatory hearing shall be re-opened for the purpose of hearing evidence on the new allegations in the amended petition.

As the circuit court re-opened the adjudicatory hearing in compliance with this rule, the petitioner is entitled to no relief in this regard.

We further note that the petitioner raises no challenge to his July 2021 adjudication for neglecting the children upon his stipulation.

Court refusing to consider the case, denying argument to the derelict party, dismissing the case from the docket, or imposing such other sanctions as the Court may deem appropriate.'"

Despite the petitioner's failure to comply with this Court's rules, we nonetheless turn to the issue of adjudication. Specifically, allegations of abuse "must be . . . proven by clear and convincing evidence." W. Va. Code § 49-4-601(i); *see also* Syl. Pt. 3, *In re B.L.-1*, 251 W. Va. 92, 909 S.E.2d 127 (2024) ("W. Va. Code, [§ 49-4-601(i)], requires the State Department of [Human Services], in a child abuse or neglect case, to prove 'conditions existing at the time of the filing of the petition . . . by clear and convincing [evidence].'" (quoting Syl. Pt. 1, *In re S.C.*, 168 W. Va. 366, 284 S.E.2d 867 (1981))). In regard to this burden, we have explained that "'clear and convincing' is the measure or degree of proof that will produce in the mind of the factfinder a firm belief or conviction as to the allegations sought to be established." *In re F.S.*, 233 W. Va. 538, 546, 759 S.E.2d 769, 777 (2014) (quoting *Brown v. Gobble*, 196 W. Va. 559, 564, 474 S.E.2d 489, 494 (1996)). In advancing his argument, the petitioner places extreme emphasis on the lack of physical evidence of abuse and the fact that he was never prosecuted criminally. However, the petitioner ignores the fact that D.R. made repeated disclosures that the petitioner touched him inappropriately. Further, the child demonstrated fear of the circumstances under which he indicated the abuse occurred; displayed fear of a doctor who had to remove his pants during an examination; presented with problems soiling himself in the absence of any physical explanation; and displayed sexual behavior inappropriate for his age. In regard to the conditions of emotional and physical abuse, the child similarly made consistent disclosures to multiple individuals about these acts and acted out physically in ways he stated that he learned from the petitioner. Simply put, the petitioner's arguments in this regard are lacking when compared to the extensive evidence introduced below.

In fact, the petitioner essentially asks this Court to disregard contradictory evidence in favor of certain evidence that he believes is more critical to the resolution of this appeal.[6] However,

[6] The petitioner makes much of his claim that, at some point during the proceeding, the DHS offered him visits with the child. However, in support of this claim, the petitioner points to the report from his evaluation with Ms. Szafraniec. The report contains a summation of the petitioner's uncorroborated claim that he was offered "a plea agreement" that would permit him visitation with D.R. if he voluntarily relinquished his parental rights. Further, the petitioner points to one portion of a DHS worker's testimony at the final adjudicatory hearing, in which she stated that the petitioner was offered visits. However, when the petitioner later attempted to introduce evidence of the supposed offer of continued visits in exchange for a relinquishment of his rights during this same witness's testimony, the circuit court sustained an objection and excluded the evidence. Essentially, the petitioner's argument on this point is that the offering of visitation to a parent who has sexually abused their child would be in contradiction of the DHS's internal policies, which must demonstrate that he did not sexually abuse D.R. However, because the petitioner has failed to cite to any portion of the record demonstrating that the DHS offered him visits *after* the allegations of sexual abuse were known, his argument cannot stand. Moreover, even if the petitioner were able to establish that the DHS was not in strict compliance with its internal policies, this would have no bearing on the veracity of the allegations or the circuit court's conclusion that the applicable burden of proof was met. Accordingly, the petitioner's argument on this issue is without merit.

this argument "displays a fundamental misunderstanding of our role as a reviewing court. We . . . do not reweigh the evidence or make credibility determinations." *In re D.S.*, -- W. Va. --, --, 914 S.E.2d 701, 707 (2025). As such, the petitioner cannot be entitled to any relief upon arguments that ask this Court to reweigh the evidence. Further, the circuit court made a number of credibility determinations in regard to the evidence at issue. These credibility determinations extend beyond just the veracity of the children's disclosures. This includes the circuit court's credibility assessment of the second DHS worker, whose testimony the petitioner also relies heavily on in claiming that the new allegations from the amended petition lacked a factual basis. While the petitioner puts much stock in this witness's initial response that she would not have signed the amended petition at the time of the second adjudicatory hearing, the record demonstrates that the witness recanted this response upon further explanation and qualification. Ultimately, the circuit court attributed the initial response to several factors and concluded that it had no bearing on the truth of the allegations in the amended petition. We decline to disturb the circuit court's credibility determinations 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."). "Stated another way, '[t]he critical nature of unreviewable intangibles justify the deferential approach we accord findings by a circuit court.'" *In re I.J.*, No. 23-353, 2024 WL 4789972, at *6 (W. Va. Nov. 14, 2024) (memorandum decision) (quoting *State ex rel. Diva P. v. Kaufman*, 200 W. Va. 555, 562, 490 S.E.2d 642, 649 (1997), *superseded by statute as stated in State ex rel. S.W. v. Wilson*, 243 W. Va. 515, 845 S.E.2d 290 (2020)). Ultimately, we conclude that the circuit court did not err in finding that the evidence was sufficient to establish that the petitioner abused the children. Based on the foregoing, we are not left with "the definite and firm conviction that a mistake has been committed," and, because "the circuit court's account of the evidence is plausible in light of the record viewed in its entirety," we must affirm. *In re Cecil T.*, 228 W. Va. at 91, 717 S.E.2d at 875, Syl. Pt. 1, in part (quoting Syl. Pt. 1, *In re Tiffany Marie S.*, 196 W. Va. 223, 225, 470 S.E.2d 177, 179).

For the foregoing reasons, we find no error in the decision of the circuit court, and its May 8, 2024, order is hereby affirmed.

Affirmed.

ISSUED: September 10, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice C. Haley Bunn
Justice Charles S. Trump IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison