

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

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

In re H.C.

No. 24-424 (Preston County CC-39-2019-JA-3)

MEMORANDUM DECISION

Petitioner Father S.C.¹ appeals the Circuit Court of Preston County’s June 18, 2024, order denying his motion for visitation, arguing that the circuit court erred by refusing to grant him visitation with H.C.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 proceedings giving rise to this appeal began in January 2019 when the DHS filed a petition³ alleging that the petitioner abused and neglected the child by abusing controlled substances, exposing the child to domestic violence, and failing to provide for the child’s basic needs due to the petitioner’s incarceration. The circuit court adjudicated the petitioner as an abusing and neglecting parent after he stipulated to the allegations against him. At a dispositional hearing in April 2019, the petitioner signed a waiver of guardianship to allow the child to be eligible for a subsidized legal guardianship with her current placement.⁴ In December 2020, the court granted permanent legal guardianship of the child to her guardians.

¹ The petitioner appears by counsel John C. Rogers. 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 Clarissa M. Banks 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).*

³ The proceedings below included children and adult respondents who are not at issue on appeal.

⁴ The child’s mother received a disposition under West Virginia Code § 49-4-604(c)(5).

Two years later, in April 2021, the petitioner was released from incarceration and filed a motion for visitation with the child. The court held multiple evidentiary hearings between June 2021 and November 2023 on the petitioner's motion, during which the court heard testimony from the child's therapist and admitted her therapy notes and reports as evidence. The therapist testified that the petitioner was cooperative during visits and participated in family therapy sessions, but the child was reluctant to attend visits with the petitioner, regressed after visits with him, stated that she wanted no contact with him, and consistently expressed her desire to remain with her guardians. She explained that, despite years of therapy, the child was unable to process the trauma that she experienced while in the petitioner's care and was "emotionally conflicted and noticeably triggered regarding [her] trauma of Domestic Violence and chaos." The therapist opined that the then-eight-year-old child had the intellectual capacity and maturity to understand and make decisions concerning her custody. Further, the therapist's records indicated that the child experienced "increased anxiety, moodiness and crying, oppositional/defiant with verbal aggression [with a sibling] and also with others while awaiting the time for the visit." However, the petitioner introduced evidence demonstrating that he was compliant with the terms of his probation, consistently tested negative for drugs, maintained employment, fixed up his home, and stopped engaging in domestic violence. Finally, the court conducted three in camera interviews with the child over the course of the hearings, during which the child recounted her fears from living with the petitioner, explained that visiting her old home gave her nightmares and made her angry, and stated that she did not want to see or hear from the petitioner, and maintained her desire to remain with the guardians.

On June 18, 2024, the court entered an order denying the petitioner's motion for visitation. The court acknowledged that the petitioner had experienced a material change in circumstances given that he was released from incarceration and was compliant with the terms of his probation. However, the court found that the child "had experienced severe emotional and psychological trauma while she was living with [the petitioner] . . . because of [the petitioner's] conduct and actions while engaging in criminal activity." The court explained that the child "still suffers from this trauma and ha[d] clearly expressed her concerns and wishes to the Court." As such, the court denied the petitioner's motion for visitation. It is from this order that the petitioner appeals.⁵

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 argues that the circuit court erred by denying his motion for visitation because he "had demonstrated a material change in circumstances that would warrant modification."⁶ We disagree. Recently, in *In re H.M.*, we explained that

⁵ The permanency plan for the child is to remain in her current legal guardianship.

⁶ In support of this argument, the petitioner incorrectly relies on West Virginia Code § 49-4-606, which sets forth the requirements for modifying a dispositional order, and contends that the court "erred by failing to return the minor child, H.C., to his care, despite the material change in circumstances." However, the petitioner never filed a motion requesting modification of any order or requesting reunification with the child. West Virginia Code § 49-4-606(a) only permits circuit

[w]hen parental rights remain intact, but the child is not returned to the parent(s)' custody, continued visitation may still be granted because '[a] child has a right to continued association with individuals with whom [s]he has formed a close emotional bond . . . provided that a determination is made that such continued contact is in the best interests of the child.'

251 W. Va. 333, --, 912 S.E.2d 912, 892-93 (2025) (second alteration in original) (quoting Syl. Pt. 11, in part, *In re Jonathan G.*, 198 W. Va. 716, 482 S.E.2d 893 (1996)). It is important to remember that

[t]he guiding principle relied upon by this Court in recommending consideration of continued contact with a child is whether a strong emotional bond exists between the child and an individual *such that cessation in contact might be harmful to the child*, both in its transitory period of adjusting to a new custodial arrangement and in its long-term emotional development.

In re Jonathan G., 198 W. Va. at 735, 482 S.E.2d at 912 (emphasis added); *see also Honaker v. Burnside*, 182 W. Va. 448, 452, 388 S.E.2d 322, 325 (1989) ("Visitation . . . is aimed at fulfilling what many conceive to be a vital, or at least a wholesome contribution to the child's emotional well being by permitting partial continuation of an earlier established close relationship." (quoting *Looper v. McManus*, 581 P.2d 487, 488 (Okla. Civ. App. 1978))).

Here, the court made factual findings detailing the child's extensive trauma caused by the petitioner and observing the child's steadfast assertion that she did not want any contact with the petitioner. Furthermore, the record indicates that the child did not have a close emotional bond with the petitioner such that continued association was vital to her well-being. In fact, the record shows that visits with the petitioner harmed the child's well-being by causing her to suffer emotional and mental distress to the extent that she experienced skill regression and interpersonal conflicts. Thus, continued association with the petitioner was not in the child's best interest, and we discern no error in the court's denial of visitation.

For the foregoing reasons, the circuit court's June 18, 2024, order is hereby affirmed.

Affirmed.

ISSUED: September 10, 2025

courts to modify dispositional orders "[u]pon motion of a child, a child's parent or custodian or the department." Thus, to the extent that the petitioner argues the court erred in denying modification of the dispositional order, he is entitled to no relief.

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