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

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* B.N.**

No. 24-477 (Kanawha County CC-20-2023-JA-144)

MEMORANDUM DECISION

Petitioner Grandmother L.N.[1] appeals the Circuit Court of Kanawha County's July 1, 2024, order dismissing the underlying abuse and neglect matter and granting her visitation with the child, arguing that the circuit court erred in granting her an insufficient and impractical visitation schedule.[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 a petition in May 2023 naming the child's father, K.H., as a respondent following his arrest on charges of domestic battery and possession of a controlled substance. The petitioner, who is the child's maternal grandmother, filed a motion to intervene in June 2023, in which she acknowledged that the child was placed in the father's custody upon the mother's death in 2022. The circuit court denied the petitioner's motion following a hearing in July 2023 but permitted her counsel to monitor the proceedings. The father was adjudicated as an abusing and/or neglecting parent in October 2023 and was granted a post-adjudicatory improvement period. Throughout the proceedings, the petitioner served as a relative caregiver for the child, who was placed in her home shortly after removal.

In March 2024, the circuit court found that the father had successfully completed his improvement period and should be reunified with the child. The court also ordered that the father and the petitioner each submit "parenting plans" outlining a proposed visitation schedule for the

[1] The petitioner is self-represented. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Andrew T. Waight. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Matthew Smith appears as the child's guardian ad litem ("guardian").

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).

petitioner and the child. In May 2024, the petitioner filed a "Grandparent Visitation Plan," requesting visitation every other weekend, on all holidays during odd years, and for one full week each month during the summer. The father proposed that the petitioner have the right of first refusal for visitation whenever he worked out of town, with one week of additional visitation each summer. The court considered the parties' plans at a hearing in May 2024. The guardian recommended the father's plan, as "the father works out of town enough that the [petitioner] will . . . see the child quite often." The guardian specifically "[did not] recommend . . . [setting] a schedule where [visitation is] every other weekend." The DHS concurred with the guardian. The father argued that, while it was in the child's best interest to continue to see the petitioner, her proposed schedule "portrayed [her] as the mother" and infringed upon his parental rights. The petitioner stressed her significant involvement in the child's life as well as their bond, and noted that granting her visitation would also facilitate continued sibling contact because the child's biological half-sibling resided with her.

In its subsequent written order dismissing the abuse and neglect matter, the court, "[b]elieving it to be in the best interest of the [r]espondent [c]hild," returned the child to the father's physical and legal custody and granted the petitioner—whom it referred to as "the proposed intervenor"—visitation with the child one week per summer with additional visitation at the father's discretion. The court also granted the petitioner the right of first refusal to care for the child whenever the father traveled out of town for work. It is from this "Dismissal 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). Before this Court, the petitioner argues that the circuit court erred in granting her an "insufficient and impractical visitation schedule, despite her significant role in [the child's] life." We do not agree. First, we note the posture of this case. The petitioner did *not* file a motion for grandparent visitation pursuant to West Virginia Code § 48-10-301. *See also* W. Va. Code § 48-10-402(d) ("[W]hen an abuse or neglect proceeding involving the child . . . is pending before the circuit court, . . . the motion . . . [for grandparent visitation] shall be filed and heard in the circuit court."); Syl. Pt. 2, *Alyssa R. v. Nicholas H.*, 233 W. Va. 746, 760 S.E.2d 560 (2014) ("The Grandparent Visitation Act, W. Va. Code § 48-10-101, *et seq*. [2001], is the exclusive means through which a grandparent may seek visitation with a grandchild." (quoting Syl. Pt. 1, *In re Hunter H.*, 231 W. Va. 118, 744 S.E.2d 228 (2013))).[3] Rather, the petitioner submitted a proposed visitation schedule upon the circuit court's request, as the young child—two years old at the time—had been placed in her care during the abuse and neglect proceedings and was being reunited with the father. As we have explained, "[a] child has a right to continued association with individuals with whom he has formed a close emotional bond, including foster parents, provided that . . . such continued contact is in the best interests of the child." Syl. Pt. 11, in part, *In re Jonathan G.*, 198 W. Va. 716, 482 S.E.2d 893 (1996); *see also*

[3] Given that the matter of visitation was *not* before the circuit court on the petitioner's motion pursuant to West Virginia Code § 48-10-301, the petitioner's arguments regarding the court's consideration—or lack thereof—of the thirteen factors set forth in West Virginia Code § 48-10-502 is misplaced, as the Legislature set forth these factors for courts to consider "[i]n making a determination on [such] a motion."

Syl. Pt. 2, *State ex rel. Treadway v. McCoy*, 189 W. Va. 210, 429 S.E.2d 492 (1993) ("The best interests of a child are served by preserving important relationships in that child's life."). We have further explained that a visitation plan should be "properly delineated," and not merely left to a parent's discretion, so that a parent may not hold that right "hostage." *See In re K.S.*, 246 W. Va. 517, 530-31, 874 S.E.2d 319, 332-33 (2022); *see also Matter of Brian D.*, 194 W. Va. 623, 638, 461 S.E.2d 129, 144 (1995) (directing the circuit court to "inquire into the relationship [the child] has formed with his foster parents and, if it is in his best interests, fashion a plan for continued association"). This is precisely what the circuit court did. While the court ordered that *additional* visitation could occur at the father's discretion, it granted the petitioner one week per summer with the child as well as the right of first refusal to care for the child whenever the father traveled out of town for work, which the record indicates occurred often. Because "[q]uestions relating to . . . custody of . . . children are within the sound discretion of the court[,] its action with respect to such matters will not be disturbed on appeal unless it clearly appears that such discretion has been abused." *See* Syl. Pt. 2, *In re G.G.*, 249 W. Va. 496, 896 S.E.2d 662 (2023) (quoting Syl., in part, *Nichols v. Nichols*, 160 W. Va. 514, 236 S.E.2d 36 (1977)). While the petitioner was not granted the visitation schedule that she desired, the circuit court did not abuse its discretion in permitting the child to visit her upon the terms it determined to be in the child's best interest. As such, the petitioner is not entitled to relief.[4]

Next, the petitioner argues that the circuit court lacked sufficient evidence to make an informed ruling regarding the child's best interests and care, as it failed to consider the purported inadequacy of the guardian's and DHS's investigations. Specifically, the petitioner avers that Child Protective Services did not fully investigate allegations of the father's "drug use and assault," which she does not specify further, though she admits "these serious concerns [were] raised during the proceedings." This argument lacks merit, as it appears that the allegations in question *were* investigated and led to the commencement of the proceedings below. The petitioner also takes issue with the guardian visiting the child at her home only twice during the eight months he was placed in her care. However, there is no rule governing the required number of visits a guardian must make. Ultimately, while the petitioner purports to challenge the terms of visitation, she instead, in essence, is challenging the court's disposition of reunification (stating, for example, that "the court placed [the child] in a situation where potential risks to his safety were overlooked"). Such a challenge is improper, as the court denied the petitioner intervenor status, thereby limiting the issues which she may challenge on appeal. *See In re H.W.*, 247 W. Va. 109,

[4] To the extent that the petitioner argues that the father has violated the terms of the circuit court's order regarding visitation, these allegations are improperly presented to this Court as it appears they were never presented to the circuit court. *See* W. Va. R. App. P. 10(c)(7) (requiring the petitioner's brief to include "citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal."). Similarly, the petitioner argues that the circuit court erred by failing to transfer jurisdiction to Mingo County, West Virginia, where she resides, but it does not appear from the record that any objection to venue was raised (by any party) to the circuit court below. *See id.* Regardless, venue was proper in Kanawha County, as it is undisputed that this is where the child and the father lived, as well as the location of the father's abusive and neglectful conduct. *See* W. Va. Code § 49-4-601(a) (stating that when the DHS files an abuse and neglect petition, venue is proper in the county where "the child resides," where the "custodial respondent or other named party abuser resides," or where the abuse or neglect occurred).

120, 875 S.E.2d 247, 258 (2002) (finding non-party foster parents' appeal of a court's disposition improper since "their ability to bring [an] . . . appeal [was] limited to their role in the proceedings below as foster parents who requested, but were denied, intervenor status" and "as non-parties they [did] not have standing to challenge the further rulings of the circuit court concerning the underlying abuse and neglect case"); *see also* Syl. Pt. 4, in part, *State ex rel. C.H. v. Faircloth*, 240 W. Va. 729, 815 S.E.2d 540 (2018) ("Foster parents who have been granted the right to intervene are entitled to all the rights and responsibilities of any other party to the action.").[5] Accordingly, as a non-party to the abuse and neglect proceedings below, the petitioner cannot properly challenge the circuit court's disposition placing the child with the father.

For the foregoing reasons, we find no error in the decision of the circuit court, and its July 1, 2024, order is affirmed.

Affirmed.

ISSUED: September 30, 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

[5] The petitioner raises a final assignment of error asserting that the circuit court erred in denying her access to transcripts of the abuse and neglect proceedings necessary for this appeal. This argument lacks merit for the same reasons outlined above, as the circuit court denied the petitioner intervenor status, a ruling she did not challenge below and does not challenge on appeal. Therefore, she was not a party to the confidential abuse and neglect proceedings and is not entitled to the transcripts. *See* W. Va. R. P. Child Abuse & Neglect Proc. 6a(b) ("All records and information maintained by the courts in child abuse and neglect proceedings shall be kept confidential."). We also note that the petitioner twice presented motions to this Court, in September 2024 and October 2024, respectively, attempting to obtain these transcripts, which we denied by order dated October 10, 2024.