

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re A.B., L.E., and J.B.

No. 24-484 (Wood County CC-54-2023-JA-124, CC-54-2022-JA-241, and CC-54-2022-JA-242)

MEMORANDUM DECISION

Petitioner Mother S.B.¹ appeals the Circuit Court of Wood County’s August 21, 2024, order terminating her parental rights to A.B., L.E., and J.B., arguing that the circuit court erred in terminating her rights as it lacked jurisdiction to proceed to disposition.² Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming, in part, and vacating, in part, the court’s August 21, 2024, 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.

The DHS filed its initial petition in August 2022, alleging that the petitioner failed to provide L.E. and J.B. with safe and appropriate living conditions and that she abused alcohol to the extent that her parenting skills were impaired. The DHS alleged, among other concerns, that Child Protective Services (“CPS”) workers found food and trash throughout the home, holes in the ceilings and walls, and excessive clutter in the home’s only shower and in one child’s bed. The children’s babysitter reported that she was “terrified” for the children to be at the petitioner’s residence.

The court held an adjudicatory hearing in October 2022. The petitioner testified that she had reviewed the petition with counsel and agreed that L.E. and J.B. were neglected children

¹ The petitioner appears by counsel Eric K. Powell. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Wyclif S. Farquharson. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Counsel Michel D. Farnsworth Jr. appears as the children’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).

“within the meaning of the West Virginia code.” Specifically, the petitioner stipulated that she failed to provide safe and appropriate living conditions, given the unsanitary state of her home, which “was trashed.” The petitioner also admitted that she abused alcohol, which impaired her parenting skills.³ She testified that she wanted to participate in an improvement period to address her substance abuse issues and to develop parenting and adult life skills so that she could be a protective caregiver. The circuit court accepted the petitioner’s stipulation to the allegations contained in the petition and, based on her admissions, adjudicated her as a neglectful parent and L.E. and J.B. as neglected children. The court granted the petitioner a post-adjudicatory improvement period, the terms of which included drug screening and maintaining sobriety, participating in parenting and life skills classes, obtaining safe and stable housing, submitting to a parental fitness evaluation, and completing inpatient or intensive outpatient substance abuse treatment.

The results of the petitioner’s parental fitness evaluation were admitted into evidence at a hearing in February 2023. The evaluator stated that the petitioner “did not acknowledge an alcohol use disorder” nor “concerns associated with general neglect and the condition of the home.” The evaluator concluded that the petitioner’s prognosis to attain minimally adequate parenting was “guarded, largely due to an apparent lack of appropriate attachment in the parent-child relationship.”

In May 2023, the petitioner gave birth to A.B., who was removed directly from the hospital and placed into the DHS’s custody. The DHS then filed an amended petition to include the child, noting that the petitioner was currently participating in an improvement period and engaging in “services to address her substance abuse and appropriate housing,” but that the conditions leading to the initial petition had not yet been substantially corrected. At a subsequent hearing in June 2023, the court asked whether A.B. should “automatically” become part of the case, and then—upon the parties’ assent—“dispense[d] with a formal adjudication since [the petitioner] [had] already been adjudicated for the other two children and [A.B.] [was] in the same or similar situation.” In its subsequent written order dated July 14, 2023, the court stated that “no additional adjudication [was] needed regarding the addition of the new child . . . due to the fact that the improvement period is going well.”

The court held a review hearing in August 2023. Prior to the hearing, the court admitted into evidence a DHS report that noted the petitioner’s noncompliance with services. The petitioner had missed several drug screens, attended therapy sessions but would “barely talk[] to her therapist,” and had not participated in her treatment center’s intensive outpatient program. The court set the matter for disposition. The petitioner filed a motion for a post-dispositional improvement period, which the court granted in September 2023 under the same terms and conditions as her post-adjudicatory improvement period. At another review hearing in November 2023, the DHS informed the court that the petitioner was demonstrating some improvement, but that the petitioner’s parenting services provider was concerned about her inability to manage the “three children under the age of three independently and in a nurturing manner” during visits

³ The petitioner notes that the court relied on her written stipulation when questioning her at the adjudicatory hearing, but this document was not filed with the court nor included in the petitioner’s appendix record.

without becoming overwhelmed. At a subsequent hearing in January 2024, the court extended the improvement period upon the DHS's motion, based on the petitioner's continued improvement. However, the DHS's corresponding written report, which was admitted into evidence, noted that the petitioner was not participating in therapy, intensive outpatient treatment, or inpatient rehabilitation. The court held a final review hearing in March 2024, at which time the DHS stated that the petitioner was not progressing and that the parenting services provider continued to have serious concerns about her ability to supervise the children.

The court held a dispositional hearing in June 2024, at which time it admitted into evidence a report from the court appointed special advocate ("CASA") dated May 6, 2024, and a DHS report dated June 10, 2024. The petitioner failed to appear but was represented by counsel. The petitioner's counsel moved for a continuance to allow him to reestablish communication with the petitioner and discuss the DHS report and the CASA report with her. The DHS objected, and the court denied the continuance, noting that, per the reports, the petitioner had "dropped out" and "told a service provider that she was giving up or discontinuing her efforts." The DHS moved to terminate the petitioner's parental rights because she had not participated in any services, including visits with the children, since March 2024. According to a CPS worker who visited the petitioner's home in March 2024, the petitioner would not allow the worker inside, admitted that she had relapsed, and stated that she intended to relinquish her rights and that the "children would be better off staying where they were and being adopted." The CPS worker attempted to reach out to the petitioner again in June 2024, but the petitioner did not respond to the worker's text message and the petitioner's phone line had been disconnected.

Ultimately, the court found that the petitioner had received services since October 2022, but "for whatever reason, about three months ago decided to forgo any other proceedings and did not continue in her services and [had] not seen the children since . . . [March 2024]." The court therefore concluded that the petitioner did not successfully complete her improvement period, as she had failed to meaningfully participate and was non-compliant with services. On this basis, the court determined that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future. The court also considered the children's need for continuity of care and caretakers, as well as the amount of time required for the children to be integrated into a stable and permanent home environment and determined that termination was necessary for the children's welfare. The court then terminated the petitioner's parental rights to A.B., L.E., and J.B.⁴ It is from this dispositional order that the petitioner now 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 asserts that the circuit court erred by terminating her parental rights to A.B. because the court did not first adjudicate A.B. as an abused or neglected child. We agree. As we have explained, "[i]n child abuse and neglect cases, the adjudicatory process is a jurisdictional prerequisite." *In re Z.S.-I*, 249 W. Va. 14, 20, 893 S.E.2d 621, 627 (2023). For a circuit court to exercise jurisdiction, it must find,

⁴ A.B.'s and J.B.'s fathers' rights were also terminated; the permanency plan for the children is adoption in the current placement. The permanency plan for L.E. is to remain in the care of her nonabusing father.

based upon the conditions existing at the time the petition was filed, that the child is “an ‘abused child’ or a ‘neglected child’ as those terms are defined in West Virginia Code § 49-1-201.” Syl. Pt. 2, in part, *In re B.V.*, 248 W. Va. 29, 886 S.E.2d 364 (2023) (quoting Syl. Pt. 8, *In re C.S. and B.S.*, 247 W. Va. 212, 875 S.E.2d 350 (2022)). Thus, “[a circuit] court must make specific factual findings explaining how each child’s health and welfare are being harmed or threatened by the allegedly abusive or neglectful conduct of the parties named in the petition.” Syl. Pt. 3, in part, *In re B.V.*, 248 W. Va. at 29, 886 S.E.2d at 366; *see also* W. Va. Code § 49-4-601(i) (“At the conclusion of the adjudicatory hearing, the court shall . . . make findings of fact and conclusions of law as to whether the child is abused and neglected and whether the respondent is abusing [and/or] neglecting.”). Here, the court made *no* factual findings whatsoever as to whether—or how—A.B. was abused or neglected, instead concluding that adjudicating the child was unnecessary. Accordingly, we find that the circuit court lacked jurisdiction to proceed to A.B.’s disposition, and to that extent, its dispositional order as it pertains to A.B. cannot stand. *See* Syl. Pt. 5, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001) (“Where it appears from the record that the process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes . . . has been substantially disregarded . . . , the resulting order of disposition will be vacated and the case remanded for compliance with that process.”); *see also In re Z.S.-I*, 249 W. Va. at 24, 893 S.E.2d at 631 (“Failure to render a proper adjudication deprives the court of jurisdiction to proceed to [disposition] . . . and is a clear violation of the established procedures governing [such] proceedings.”). We therefore vacate the circuit court’s dispositional order, in part, as it relates to A.B., and remand this matter for further proceedings, including the entry of an adjudicatory order setting out the requisite statutory findings as to whether A.B. meets the definition of an abused or neglected child.

Next, the petitioner asserts that the circuit court erred in terminating her parental rights to L.E. and J.B. because her stipulation at adjudication was insufficient to establish abuse and neglect. To properly adjudicate a parent based on a stipulation, we have held that Rule 26(a) of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings requires that the stipulation “include both ‘(1) [a]greed upon facts supporting court involvement regarding the respondent[’s] problems, conduct, or condition’ and ‘(2) [a] statement of respondent’s problems or deficiencies to be addressed at the final disposition.’” *In re Z.S.-I*, 249 W. Va. at 23, 893 S.E.2d at 630. Here, the petitioner’s stipulation fulfilled both requirements. Having first reviewed the petition with counsel, the petitioner admitted to neglecting L.E. and J.B.—specifically, by failing to provide them with safe and appropriate living conditions (as her home “was trashed”) and by abusing alcohol to the extent that her parenting skills were impaired. These admissions constituted agreed upon facts at the time the petition was filed, supporting the court’s involvement to address the underlying conditions of abuse and neglect. Next, the petitioner testified that she wished to participate in services through an improvement period to address her substance abuse and develop the skills needed to be a protective caregiver. Thus, her stipulation also set forth the problems (substance abuse) and deficiencies (current lack of skills needed to be an adequate caregiver) to be addressed at disposition. On appeal, the petitioner does not challenge that her stipulation was knowingly and voluntarily made. And while the petitioner argues that the court made its finding of neglect based solely upon her stipulation and that the DHS presented no other evidence to allow the court to make specific findings as to how the children’s welfare was threatened by the petitioner’s neglect, the petitioner’s decision to stipulate obviated this need. Accordingly, we conclude that the court did not err in accepting the petitioner’s stipulation and, on that basis, that

the court had sufficient evidence to adjudicate L.E. and J.B. as neglected children and the petitioner as a neglectful parent. Given the court's proper adjudication of L.E. and J.B., it was proper for the court to proceed to disposition as to these two children, and, ultimately, to terminate the petitioner's parental rights.⁵

The circuit court's August 21, 2024, order is therefore affirmed, in part, with respect to the termination of the petitioner's parental rights to L.E. and J.B. The order is vacated, in part, insofar as it terminates the petitioner's parental rights to A.B., and this case is remanded to the circuit court for further proceedings consistent with this decision.⁶ The clerk is hereby instructed to issue the mandate forthwith.

Affirmed, in part, vacated, in part, and remanded, with directions.

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

⁵ The petitioner raises no assignment of error challenging the circuit court's findings or reasoning in terminating her parental rights to L.E. and J.B. and merely asserts that the court lacked jurisdiction to proceed to disposition. Given that we find no error in the circuit court's adjudication with regard to these two children, the petitioner is entitled to no relief concerning the court's ultimate disposition.

⁶ This memorandum decision does not vacate the rulings in the court's August 21, 2024, order relating to other adult respondents.