

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

**FILED
November 4, 2025**

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

***In re* L.G., A.G.-1, M.G., and N.G.**

No. 24-14 (Wood County CC-54-2021-JA-217, CC-54-2021-JA-218, CC-54-2021-JA-219, and CC-54-2021-JA-220)

MEMORANDUM DECISION

Petitioner Mother A.G.-2.¹ appeals the Circuit Court of Wood County’s November 30, 2023, order terminating her custodial rights to L.G., A.G.-1, M.G., and N.G., arguing that the evidence at adjudication did not support the court’s finding that the children were abused and neglected.² Alternatively, she argues that termination of her custodial rights was in error because the court should have granted her a post-adjudicatory or post-dispositional improvement period. Finally, she asserts that the court erred in denying her motion for leave to hire an expert witness to evaluate the children. Upon consideration of the parties’ written and oral arguments, the appendix record, and the applicable law, we find that the orders at issue lack adequate findings of fact and conclusions of law to permit meaningful appellate review. Accordingly, we vacate the court’s adjudicatory and dispositional orders and its order denying an expert evaluation, and we remand this case for further proceedings consistent with this decision.

The petitioner and the children’s father were embroiled in divorce proceedings before the filing of the abuse and neglect petition that initiated the proceedings that are the subject of this

¹ The petitioner appears by counsel J. Morgan Leach. The West Virginia Department of Human Services appears by 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 Justin M. Raber 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). Because one of the children and the petitioner share the same initials, we refer to them as A.G.-1 and A.G.-2, respectively. Finally, since the filing of this appeal, L.G. has reached the age of majority, so she is no longer subject to these proceedings.

appeal. The family court appointed a guardian ad litem (“guardian”) for the children during the divorce proceedings, and in October 2021, the guardian filed an abuse and neglect petition naming the petitioner and the children’s father as respondents. Although the appendix record contains little information about the filing of and the proceedings on the initial petition, it is clear that the petitioner was granted and successfully completed a pre-adjudicatory improvement period, the children were returned to her custody, she was dismissed,³ and the father was the focus of the ongoing proceedings.

Then, in April 2023, the DHS filed an amended petition containing new allegations against the petitioner. The DHS detailed that the petitioner learned that the father’s girlfriend, J.C., was present during a visitation between N.G. and the father. According to N.G., hearing this information angered the petitioner and caused her to “pull[] her arm back with a fist like she was going to hit” N.G. The DHS alleged that the petitioner then directed N.G. and M.G. to the petitioner’s vehicle, and the petitioner drove to the father’s house, which he shares with J.C. The petitioner allegedly “destroyed potted flowers” at the father’s house, “backed her [vehicle] into [the father’s] tree,” retrieved a piece of bark that was knocked from the tree, and took pictures of the inside of his home. The petitioner also “yelled at” N.G. and M.G. and told M.G. “to go wipe [the petitioner’s] fingerprints off” the front door of the father’s home. N.G. and M.G. said that the petitioner “scared” them.

The DHS further alleged that the petitioner offered to get the children doughnuts after returning home from the father’s house. This time, A.G.-1 joined N.G. and M.G. in the petitioner’s vehicle. En route to the doughnut shop, the petitioner turned around and drove toward the father’s house, though A.G.-1 and M.G. reportedly “begged her” not to return. The petitioner insisted she “wanted to fix the flowers,” but she did not stop at the father’s house because as they approached, they could see that J.C., the police, and Child Protective Services were already there. The amended petition concluded that the petitioner “was not being appropriately protective of the children and put the children in harm’s way when she went to the home of the . . . [f]ather, damaged property, and took pictures of the inside of his home.”

Before the adjudicatory hearing, the DHS filed a motion to permit the use of videotaped forensic interviews of A.G.-1, M.G., and N.G. The petitioner opposed that motion, asserting that the interviews were hearsay, lacked trustworthiness, and were not more probative than other evidence. The petitioner also moved for leave to hire an expert witness to evaluate the children. She claimed a “factual dispute as to the accuracy and reliability of the disclosures by the minor children” in their interviews, and she argued that an expert evaluation was necessary “to put forth a full and fair defense in this matter.”

³ The appendix record contains no dispositional or other order dismissing the petitioner from the initial proceedings; however, the CASA noted in a report that she was “dismissed from the original petition.”

The parties appeared for an adjudicatory hearing on July 11, 2023, and August 31, 2023.⁴ Through the testimony of the forensic interviewer, the children's forensic interviews were "receive[d] and lodge[d] . . . as evidence in this case," but the circuit court did not admit them at that time due to the pendency of the motions concerning the children's interviews.

The petitioner testified that she believed J.C.'s presence during the father's visitation with N.G. was in violation of a personal safety order that had been entered, so she contacted the father, who informed her that the personal safety order had been dismissed. The petitioner said she began having an "anxiety attack" and decided to go to the father's house to obtain a copy of the dismissal order and speak with J.C., though she said she had "calmed down" by the time she instructed N.G. and M.G. to get into her vehicle.

The petitioner explained that, at the father's house, she "slipped into a flowerpot of succulents" while walking to the front door of the house. A succulent became stuck in her hand, which she brushed off onto the ground before continuing to the door and knocking. She got no response, so she returned to her vehicle to leave. As she backed up, she "accidentally backed into a tree." She asked M.G. to pick up the bark knocked from the tree because she "didn't want to be accused of making the tree bigger damage than it was." (Verbatim.) The petitioner further explained that she took pictures of the exterior of the house because she "didn't want to be accused of stealing something," and she testified that she asked M.G. to make sure she left no dirt on the father's front door while knocking. Finally, the petitioner denied that A.G.-1 "begged her" not to return to the father's house on their way to get doughnuts; instead, she said that A.G.-1 asked her not to go but also wanted her to "make things right." The petitioner decided that placing the succulent back into the pot was the "right thing to do," but she did not stop to repot the succulent because the police called, and she agreed to meet them at the doughnut shop. The officer issued the petitioner a citation for striking a fixture (the tree), to which she ultimately pled guilty.

J.C. testified that she saw "skid[]marks," "tire tracks in the gravel of [the] driveway," "thrown or scattered" flowers, bark "removed from the tree," and dirt and scratches on her front door.

At the close of the adjudicatory hearing, the circuit court denied the petitioner's motion for leave to hire an expert to evaluate the children, finding that evaluations would not be useful "as to the issues in this case." Having held its review of the children's forensic interviews "in abeyance" pending its ruling on the outstanding motions regarding those interviews, the court stated its intention to review them. The court recounted that it had heard two versions, one "a minor incident, [the other] a major incident." Thus, the court deduced that "everything—a lot of it rests on the [forensic] interviews."

In the circuit court's October 19, 2023, adjudicatory order, the court found that the petitioner "destroyed potted flowers" at the father's house, hit a tree in the father's yard with her vehicle, had M.G. wipe her fingerprints from the door, was cited for striking a fixture, and pled

⁴ By this time, the father had successfully completed an improvement period, and the circuit court had dismissed the amended petition against him and ordered that legal and physical custody of the children be returned to him.

guilty to that charge. The court also found that N.G. and M.G. “were afraid while in the car with the [petitioner] and this was taking place” and that the petitioner “was not appropriately protective of her children and put the children in harm’s way when she went to the home of the . . . [f]ather, damaged his property and backed into a tree with her car.” The court additionally found that the forensic interviews of M.G., N.G., and A.G.-1 “were credible.” As a result, the court concluded that the children were abused and neglected and that “such abuse and neglect was at the hands of the [petitioner].”

Following adjudication, the petitioner moved for a post-adjudicatory improvement period; alternatively, she sought a post-dispositional improvement period. At disposition, the petitioner testified in support of her motion for an improvement period. The circuit court noted that the case had “been going on for two years,” though it acknowledged that this was mostly attributable to the father’s conduct at the beginning of the proceedings. It also stated that the children’s “forensic interviews were especially concerning showing how much the children were affected by the [petitioner’s] behaviors,” so it denied the petitioner’s motion for an improvement period. The court also terminated her custodial rights, finding that continuation in her home was not in the children’s best interests, that the DHS had made reasonable efforts to reunify the family, and that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future. The court memorialized its findings in its November 30, 2023, dispositional order, from which 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). As stated above, the petitioner first argues that the evidence at adjudication did not support a finding that she abused and neglected the children. Because we find that the court’s adjudicatory order was deficient, we are unable to undertake a meaningful review of this issue.

Rule 27 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings requires that “[a]t the conclusion of the adjudicatory hearing, the court shall make findings of fact and conclusions of law, in writing or on the record, as to whether the child is abused and/or neglected in accordance with W. Va. Code § 49-4-601(i).” West Virginia Code § 49-4-601(i) likewise requires, in relevant part, that

[a]t the conclusion of the adjudicatory hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether the child is abused or neglected and whether the respondent is abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the order of the court.

West Virginia Code § 49-1-201 defines “abused child,” “neglected child,” and “abusing parent.” The circuit court’s adjudicatory order, though concluding that the children “are abused and neglected” and indicating that the children’s disclosures during their forensic interviews were dispositive of that determination, contains no findings describing the children’s disclosures during

their forensic interviews⁵ or tying those disclosures to the definitions of “abused child,” “neglected child,” and “abusing parent.” The court’s order also lacks explanation of how the findings that it did make—i.e., that the petitioner drove to the father’s house, damaged his property, and hit a tree—rendered the children abused or neglected and the petitioner an abusing parent under the applicable definitions.

The significance of the children’s forensic interviews to the determinations made by the circuit court is readily apparent from the order and the record presented. Before it reviewed the children’s interviews, the court was of the mind that the case was nothing more than a contested divorce that should have remained in family court. It later remarked that it had two irreconcilable versions of events before it and that its adjudication determination “rests on” the children’s forensic interviews. After adjudication, the court expressed its concern over the content of the children’s interviews. And, yet, save for the lone finding that the forensic interviews were “credible,” the adjudicatory order contains no findings of fact or conclusions of law relative to the children’s disclosures in those interviews. That empty credibility finding does not cure the deficiencies in the court’s order, despite the DHS’s and guardian’s protestations otherwise. Rule 27 and West Virginia Code § 49-4-601(i) required the court to make findings of fact as to the children’s disclosures, particularly where, as was evidently the case here, their disclosures were determinative. Those authorities also required the court to make conclusions of law as to how the disclosures established abuse and neglect.⁶

The Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes “are stated in mandatory terms and vest carefully described and circumscribed discretion in our courts, intended to protect the due process rights of the parents as well as the rights of the innocent children.” *In re Edward B.*, 210 W. Va. 621, 632, 558 S.E.2d 620, 631 (2001). They also serve the practical purpose of “provid[ing] the necessary framework for appellate review of a circuit court’s action.” *Id.* So,

[w]here it appears from the record that the process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes for the disposition of cases involving children adjudicated to be abused or neglected has been substantially disregarded or frustrated, the resulting order of disposition will

⁵ The forensic interviews were not part of the appendix record; however, this would not have been problematic on appeal if the findings related to the children’s disclosures were explained in the court’s order.

⁶ Given the lack of *any* foundation for the circuit court’s credibility finding, we save for another day consideration of whether and to what extent a court’s credibility determination of video evidence that this Court, too, can watch (if provided) is entitled to deference. *See, e.g., In re A.H.*, No. M2022-01066-COA-R3-JV, 2023 WL 4284968, at *8 (Tenn. Ct. App. June 30, 2023) (“When findings are based on documentary evidence [such as a video recording], an appellate court’s ability to assess credibility and to weigh the evidence is the same as the trial court’s [ability].” (quoting *Kelly v. Kelly*, 445 S.W.3d 685, 693 (Tenn. 2014))).

be vacated and the case remanded for compliance with that process and entry of an appropriate dispositional order.^[7]

Id. at 624, 558 S.E.2d at 623, Syl. Pt. 5. And because we cannot on this record determine whether adjudication was proper (or whether the court’s credibility determinations are supported by the record), and “proper adjudication is a prerequisite to disposition,” the court’s dispositional order must also be vacated.⁸ *In re C.F.*, 250 W. Va. 664, 671, 907 S.E.2d 176, 183 (2024).

Finally, this same inadequacy of findings and conclusions precludes our review of the order denying the petitioner’s motion for an expert evaluation. It is true that circuit courts, as the triers of fact in abuse and neglect proceedings, have “broad discretion to determine” what is necessary to inform their findings of fact. *In re D.H.*, --- W. Va. ---, --- S.E.2d ---, 2024 WL 4763258, at *10 (2024). But without knowing what the children disclosed during their interviews, it is impossible for the Court to evaluate the soundness of the court’s determination that evaluations of the children would not be useful “as to the issues in this case.” Accordingly, the court’s order denying the petitioner’s motion for an expert evaluation is vacated.

For the foregoing reasons, the November 30, 2023, dispositional order terminating the petitioner’s custodial rights, the October 19, 2023, adjudicatory order, and the October 2, 2023, order denying the petitioner’s motion for an expert evaluation are vacated and the matter remanded with direction for the circuit court to enter an adjudicatory order containing adequate factual findings and conclusions of law and for further proceedings consistent with the applicable statutes and rules. The Clerk is hereby directed to issue the mandate contemporaneously with this decision.

Vacated and remanded.

ISSUED: November 4, 2025

⁷ Although we were addressing a dispositional order in *In re Edward B.*, the reasoning and required outcome are equally applicable to adjudicatory orders. *See, e.g., In re G.N.*, No. 22-0312, 2023 WL 3973447, at *3 (W. Va. June 13, 2023) (memorandum decision).

⁸ Because we are vacating the circuit court’s adjudicatory and dispositional orders, we need not address the petitioner’s alternative argument that the circuit court erred by denying her an improvement period. If the petitioner is adjudicated as an abusing parent upon remand, she would need to file a new motion seeking an improvement period. But should it become necessary for the court to entertain a motion for an improvement period on remand, we caution the court against holding any passage of time not attributable to the petitioner against her. *See State ex rel. L.D. v. Cohee*, 247 W. Va. 695, 701, 885 S.E.2d 633, 639 (2022) (finding that a procedural delay caused by the court “cannot work to the detriment of the persons seeking custody of the child”).

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

TRUMP, Justice, concurring.

I fully agree with the memorandum decision issued in this case. I write separately, however, to underscore a more fundamental concern apparent to me from the record – the April 26, 2023, amended petition initiating the proceedings against the petitioner does not, in my opinion, satisfy the statutory pleading requirements necessary to initiate a case alleging child abuse or neglect.¹ This Court has long held that “[t]he State’s right to intervene is predicated upon its initial showing that there has been child abuse or neglect, which constitutes unfitness on the part of the parents to continue, either temporarily or permanently, in their custodial role.” *State v. T.C.*, 172 W. Va. 47, 51, 303 S.E.2d 685, 690 (1983).

West Virginia Code § 49-4-601(b) requires, in relevant part, that a petition “shall allege specific conduct including time and place [and] *how the conduct comes within the statutory definition of neglect or abuse with references thereto.*” (emphasis added). The specificity requirement is not a mere formality. It serves to ensure that parents are given fair notice of the allegations against them and that the circuit court proceeds only upon a petition that properly pleads child abuse or neglect.

In my opinion, the amended petition here does not allege facts that, if true, would bring the children within the statutory definitions of “abused child[ren]” or “neglected child[ren]” set forth in West Virginia Code § 49-1-201. That section defines “abused child[ren]” as those “whose health or welfare is being harmed or threatened by [a] parent . . . who knowingly or intentionally inflicts [or] attempts to inflict . . . physical injury or mental or emotional injury upon the child or another child in the home.” It defines “neglected child[ren]” as those “whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child[ren]’s parent . . . to supply [basic necessities of care].” Even taken as true, I cannot see anything in the allegations against the petitioner in the amended petition that meets these definitions.

Moreover, the statute defines “imminent danger to the physical well-being of the child[ren]” as “an emergency situation in which the welfare or the life of the child[ren] are] threatened” by a list of conditions that “threaten the health, life, or safety of any child in the home[.]” An allegation of “imminent danger,” ratified by a circuit court, warrants the children’s immediate removal from the home pursuant to West Virginia Code § 49-4-303 or 49-4-602(c).

¹ None of the parties raised this argument in the circuit court or before this Court.

Measured against these definitions, the allegations set forth in the amended petition are wholly conclusory. The amended petition does not identify how the petitioner's conduct in the single incident described therein constituted either abuse or neglect of the two children who were in the vehicle at the time.² The amended petition also fails to set forth facts from which the existence of an imminent danger could be inferred. As a result, I believe that the amended petition fails to state a statutory basis for adjudication pursuant to West Virginia Code § 49-4-601(b) and (i), and I do not believe the circuit court should have proceeded upon it.

We have long and consistently reminded circuit courts of their obligation to comply with the statutory specificity requirements applicable to orders in abuse and neglect cases.³ The DHS, too, should be mindful of its similar obligation in its pleadings and submissions. I write separately to emphasize that for a parent properly to be made a respondent in an abuse and neglect proceeding, the petition must meet the statutory threshold of specificity and must allege facts that, at the time of filing, constitute abuse or neglect as those terms are defined by law.

² Here, two of the four children at issue in this case were not even in the vehicle at the time of the incident that gave rise to the amended petition and, as noted in the principal decision, the court's adjudicatory order does not explain at all how those children were abused or neglected by the occurrence or how they were placed in an imminent danger by it. Similarly, and contrary to the statutory requirements discussed herein, the DHS's amended petition offers no such explanation.

³ See, e.g., *In re C.E.*, 251 W. Va. 342, 913 S.E.2d 366 (2025); *In re J.W.*, No. 23-712, 2025 WL 1262342 (W. Va. May 1, 2025) (memorandum decision); *In re Z.S.-1*, 249 W. Va. 14, 893 S.E.2d 621 (2023); *In re D.P.*, 245 W. Va. 791, 865 S.E.2d 812 (2021); *In re S.L.*, 243 W. Va. 559, 848 S.E.2d 634 (2020); *In re Lilith H.*, 231 W. Va. 170, 744 S.E.2d 280 (2013); *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001).