

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

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

**B.R.,
Petitioner Below, Petitioner**

v.) No. 24-275 (ICA No.22-ICA-202)

**West Virginia Department of Human
Services, Bureau for Children and
Families, and Child Protective Services,
Respondents Below, Respondents**

MEMORANDUM DECISION

Petitioner B.R.¹ appeals the memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”), affirming the order of the Circuit Court of Kanawha County that granted the respondents’ motion for summary judgment on the basis of qualified immunity.² *See B.R. v. W. Va. Dep’t of Health & Hum. Res.*, No. 22-ICA-202, 2024 WL 493259 (W. Va. Ct. App. Feb. 8, 2024) (memorandum decision). The petitioner argues that the ICA erred in affirming the circuit court’s order granting the motion of Respondents West Virginia Department of Human Services,³ Bureau for Children and Families, and Child Protective Services because a factual issue remains as to whether the respondents conducted thorough investigations into referrals regarding potential child abuse or neglect. The petitioner also argues that she pled a particularized right. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision summarily affirming the ICA’s decision is appropriate. *See W. Va. R. App. P. 21(c)*.

The petitioner filed this action asserting a claim of negligence against the respondents based on her allegations that the respondents failed to comply with their duty to keep her safe, to timely and adequately respond to all referrals of alleged child abuse or neglect, and to adequately

¹ We use initials where necessary to protect the identities of those involved in this case. *See W. Va. R. App. P. 40*.

² The petitioner is represented by counsel Christopher T. Pritt. The respondents are represented by counsel Julie Meeks Greco.

³ 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 this action, the agency is now the Department of Human Services.

train and supervise their employees.⁴ The petitioner also asserted that the respondents violated clearly established law because she contends that they did not perform a thorough investigation into referrals of alleged child abuse or neglect as required by West Virginia Code § 49-6A-9(b) (2008),⁵ which provides, in part:

[e]ach local child protective services office shall . . . [u]pon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child's environment. As a part of this response, within fourteen days there shall be a face-to-face interview with the child or children and the development of a protection plan, if necessary for the safety or health of the child, which may involve law-enforcement officers or the court[.]

She also generally identified a violation by the respondents of the “best interest of the child doctrine” and “clearly established West Virginia constitutional, statutory, and legal rights of which a reasonable person would have known” as part of her claim that the respondents violated a clearly established law. The petitioner contended that as a result of the respondents’ actions, she endured sexual assault, rape, and abuse.

The respondents filed a motion to dismiss asserting that they were entitled to qualified immunity, which was granted by the circuit court. On appeal, we reversed and remanded for further proceedings because the petitioner identified a specific statute as the clearly established law allegedly violated, which precluded an application of qualified immunity at the initial pleading stage. *See B.R. v. W. Va. Dep’t of Health & Hum. Res.*, No. 18-1141, 2020 WL 6043852 (W. Va. Oct. 13, 2020) (memorandum decision). On remand, after discovery was conducted, the respondents filed a motion for summary judgment arguing that they were entitled to qualified immunity because the petitioner’s claims relate to discretionary functions performed within the scope of the respondents’ employees’ employment and the record demonstrates that the respondents did not violate West Virginia Code § 49-6A-9.

On September 26, 2022, the circuit court entered an order granting the respondents’ motion for summary judgment. In its order, the circuit court determined that the referrals of alleged child abuse or neglect were thoroughly investigated by the respondents’ employees in compliance with West Virginia Code § 49-6A-9. The court also concluded that investigations involved discretionary functions and that there is no specific method an employee must utilize to investigate allegations of child abuse or neglect. For these reasons, the court concluded that the petitioner’s claim that the investigations were insufficient was without merit. The court also determined that the petitioner

⁴ Previously, the petitioner filed a complaint for negligence against the respondents that was dismissed without prejudice. *See B.R. v. W. Va. Dep’t of Health & Hum. Res.*, No. 17-0564, 2018 WL 2192480 (W. Va. May 14, 2018) (memorandum decision).

⁵ Although the petitioner pled a violation of West Virginia Code § 49-2-802, the parties agree, and we previously noted in *B.R. v. West Virginia Department of Health & Human Resources*, No. 18-1141, 2020 WL 6043852 (W. Va. Oct. 13, 2020) (memorandum decision), that the applicable version of the code is West Virginia Code § 49-6A-9 (eff. March 6, 2008, to May 16, 2015).

failed to establish any evidence indicating fraudulent, malicious, or oppressive conduct by the respondents or negligent training and supervision by the respondents of their employees. In addition, the court concluded that the “best interests of the child doctrine” was inapplicable and did not rise to the level of a violation of a clearly established right to defeat qualified immunity. Lastly, the court found that the petitioner’s general assertion that the acts or omissions of the respondents were in violation of “constitutional, statutory and legal rights of which a reasonable person would have known” did not satisfy the heightened pleading requirement necessary to overcome qualified immunity.

The petitioner appealed to the ICA, which affirmed the circuit court’s order granting summary judgment to the respondents. *B.R. v. W. Va. Dep’t of Health & Hum. Res.*, No. 22-ICA-202, 2024 WL 493259, at *3 (W. Va. Ct. App. Feb. 8, 2024) (memorandum decision). The ICA agreed with the circuit court that the investigative process requires the exercise of discretion and concluded that the record reflected that the respondents complied with the statute. The ICA also concluded that employees of the respondents were acting within the scope of their employment in making discretionary judgments. The petitioner appeals.

On appeal to this Court, the petitioner contends the ICA erred in not allowing this action to proceed to a jury trial because whether thorough investigations were conducted involved a factual issue and because she pled a particularized right. We apply a de novo standard of review to an ICA decision from a circuit court’s entry of summary judgment. Syl. Pt. 1, *Moorhead v. W. Va. Army Nat’l Guard*, 251 W. Va. 600, 915 S.E.2d 378 (2025). Here, upon consideration of the record and briefs, we conclude there is no reversible error based on the assignments of error presented to this Court, and we agree that the allegations against the respondents are barred by qualified immunity. *See W. Va. Reg’l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014) (discussing the application of qualified immunity for the discretionary acts of public officials absent violation of clearly established laws of which a reasonable official would have known); *Crouch v. Gillispie*, 240 W. Va. 229, 236, 809 S.E.2d 699, 706 (2018) (stating “there is no specific method that” one “must use to investigate a home situation”). Accordingly, we summarily affirm.

Affirmed.

ISSUED: August 25, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan