

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

In re D.C., L.C.-1, and M.C.

No. 25-679 (Berkeley County CC-02-2024-JA-205, CC-02-2024-JA-207, and CC-02-2024-JA-208)

MEMORANDUM DECISION

Petitioner Father L.C.-2¹ appeals the Circuit Court of Berkeley County’s September 9, 2025, order terminating his parental rights to D.C., L.C.-1, and M.C., arguing that the court adjudicated him and terminated his parental rights based on insufficient evidence.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 June 2024 alleging that the petitioner sexually abused D.C. on two separate occasions when she was twelve years old.³ According to the petition, D.C. reported that she woke up to the petitioner touching her genitals under her underwear in October 2023 while she was staying at her grandmother’s house. Additionally, D.C. reported that she again woke up to the petitioner touching her genitals in February 2024 while staying at her paternal uncle’s house, and when she jumped out of bed to call her mother, the petitioner took her phone away and said that “if she told, he would go to jail and kill himself.”

The circuit court convened the adjudicatory hearing in December 2024. A forensic interviewer testified, as an expert, that she conducted a Child Advocacy Center (“CAC”) interview with D.C., who disclosed the two instances of sexual abuse described in the petition. The CAC interviewer stated that D.C.’s statements were credible, consistent, and did not appear to be coached. The court admitted a recording of D.C.’s CAC interview into the record. The petitioner testified and wholly denied the allegations of sexual abuse, claiming that D.C. fabricated the allegations so that she “could do whatever she wants” because the petitioner had strict rules. The

¹ The petitioner appears by counsel Patrick Kratovil. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General A. Tyler Reseter. Counsel Tracy Weese appears as D.C.’s guardian ad litem. Counsel Daja K. Elliot appears as L.C.-1 and M.C.’s guardian ad litem.

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 L.C.-1 and L.C.-2, respectively.

³ The petition concerned an additional child who is not at issue on appeal.

petitioner then claimed that D.C. had inappropriate sexual relationships with grown men, dressed inappropriately, and was sexually active at eleven years old. The petitioner stated that he had a large amount of documented evidence supporting his claims regarding D.C., which he discovered after D.C. made the allegations of sexual abuse against him. Therefore, the court continued the adjudicatory hearing to allow discovery of the petitioner's reported evidence. In April 2025, the circuit court conducted an in-camera interview with D.C., who recounted the two instances of sexual abuse by the petitioner consistently with the allegations in the petition and the CAC interviewer's testimony.

In May 2025, the circuit court reconvened the adjudicatory hearing. L.C.-1 and M.C.'s mother, C.C., testified that she and the petitioner were married from 2019 until October 2024 and that D.C. resided in the home with the petitioner, C.C., L.C.-1. and M.C. approximately every other week. Further, C.C. testified that she and the petitioner separated several times during the marriage but resided together with the children from October 2023 until a few days before the reported incident of sexual abuse in February 2024. Next, Dr. Bridget Magnetti testified, as an expert, that she conducted a forensic interview with D.C. during which the child provided detailed descriptions of two instances of sexual abuse by the petitioner, that D.C.'s statements were consistent with those of a child who had been sexually abused, and that there was no indication that D.C.'s statements during the interview were deceptive. Dr. Magnetti further testified that, although D.C. did not disclose any sexual behavior with others, such behavior would not be inconsistent with a history of sexual abuse as many children who have been sexually abused are more likely to "act out" sexually. The petitioner again testified that D.C. fabricated the allegations against him. To support his assertion, the petitioner entered one screenshot of a purported conversation between D.C. and a man, wherein D.C. complained about the petitioner taking her phone and agreed to send a sexually explicit photo. Additionally, the petitioner entered a screenshot of an internet search for "how to keep up a lie." Finally, D.C.'s mother, D.W., testified that after the reported incident of sexual abuse in February 2024, D.C. had frequent nightmares about the petitioner. D.W. also testified that, shortly thereafter, D.C. began self-harming by cutting her arms and attempted suicide in December 2024. At the conclusion of the adjudicatory hearing, the circuit court found that D.C.'s allegations were credible and consistent and that the petitioner's testimony was not credible. The court also found Dr. Magnetti's testimony to be credible and compelling. Therefore, the court found that the evidence established that the petitioner knowingly and intentionally sexually abused D.C. and that she was an abused and neglected child. Additionally, because L.C.-1 and M.C. were children who resided in the home during the abuse, they were also abused and neglected children. The court also found that this case was one of aggravated circumstances and that the DHS was relieved of its duty to make reasonable efforts to preserve the family. Accordingly, the court adjudicated the petitioner as an abusive and neglectful parent to all three children.

In June 2025, the circuit court held a dispositional hearing. A case worker testified that the DHS recommended termination of the petitioner's parental rights to all of the children. The court found that the petitioner had not taken responsibility for the abuse and neglect of the children. Further, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that it was in the best interests of the children to terminate the petitioner's parental rights. Accordingly, the court terminated the

petitioner's parental rights to D.C., L.C.-1, and M.C. It is from this order that the petitioner appeals.⁴

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court's substantive rulings for abuse of discretion, factual findings are reviewed for clear error, and issues of law are reviewed de novo. Syl. Pt. 1, *In re K.S.*, -- W. Va. --, 930 S.E.2d 400 (2026). Further, the circuit court's findings "shall not be set aside by a reviewing court unless clearly erroneous. A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Syl. Pt. 1, in part, *In re Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996). Before this Court, the petitioner argues that the circuit court did not have sufficient evidence to find that he sexually abused D.C. West Virginia Code § 49-4-601(i) requires the circuit court, at adjudication, to determine "whether the child is abused . . . based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence." Further, "[t]he statute . . . does not specify any particular manner or mode of testimony or evidence by which the [DHS] is obligated to meet this burden." Syl. Pt. 3, in part, *In re F.S.*, 233 W. Va. 538, 759 S.E.2d 769 (2014) (quoting Syl. Pt. 3, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995)). In regard to this burden, we have explained that "[c]lear and convincing evidence means that more than a mere scintilla of evidence has been presented to establish the veracity of the allegations of abuse and/or neglect, but it does not impose as exacting an evidentiary burden as criminal proceedings which generally require proof beyond a reasonable doubt." *In re A.M.*, 243 W. Va. 593, 598, 849 S.E.2d 371, 376 (2020).

The evidence presented by the DHS included D.C.'s testimony to the court and her recorded interview statements concerning the petitioner's sexual abuse, which the court found consistent and credible. Additionally, the court heard testimony from the CAC interviewer and Dr. Magnetti who both stated that the child's allegations were consistent and credible. Based on this evidence, the court determined that clear and convincing evidence established that the petitioner sexually abused D.C. on two occasions. Although the petitioner argues that the court should have given more weight to his testimony and evidence than that of the other witnesses, the record shows that the court found that the petitioner's testimony lacked credibility and it afforded little, if any, weight to the evidence he submitted. We refuse to disturb these determinations on appeal. *See State v. Guthrie*, 194 W. Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995) ("An appellate court may not decide the credibility of witnesses or weigh evidence as that is the exclusive function and task of the trier of fact."); *see also In re D.S.*, 251 W. Va. 466, 472, 914 S.E.2d 701, 707 (2025) (stating that this Court will review a circuit court's decision under the applicable standards and will "not reweigh the evidence or make credibility determinations"). Based on the foregoing, we conclude that the circuit court did not err in finding that the petitioner abused and neglected the children.⁵

⁴ The permanency plan for the children is to remain in the sole custody of their respective nonabusing mothers.

⁵ Because L.C.-1 and M.C. lived in the home with D.C. and the petitioner during the abuse, L.C.-1 and M.C. are also abused children pursuant to West Virginia Code § 49-1-201. *See* Syl. Pt. 2, *In re Christina L.*, 194 W. Va. 446, 460 S.E.2d 692 (1995) (holding that when there is clear

We also conclude that the circuit court did not err in terminating the petitioner's parental rights. It is well established that "[t]ermination of parental rights . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood . . . that conditions of neglect or abuse can be substantially corrected." Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980)). West Virginia Code § 49-4-604(d) provides there is "[n]o reasonable likelihood that conditions of neglect or abuse can be substantially corrected" where the abusing parent has "sexually abused . . . the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems." Here, the record established that the petitioner sexually abused D.C. and that the degree of family stress and potential for further abuse was so great that it precluded the use of assistive resources. In addition, the circuit court found that termination was in the children's best interests, a finding the petitioner does not challenge on appeal. Circuit courts are permitted to terminate parental rights upon these findings. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit courts to terminate parental rights upon finding "no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child"). Thus, we decline to disturb the circuit court's decision.

For the foregoing reasons, we find no error in the decision of the circuit court, and its September 9, 2025, dispositional order is hereby affirmed.

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

and convincing evidence that a child has suffered physical or sexual abuse by a parent or custodian, another child residing in the home is considered an abused child under West Virginia Code § 49-1-201).