

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

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

***In re* P.F. and M.W.**

No. 25-762 (Mercer County CC-28-2025-JA-25 and CC-28-2025-JA-26)

MEMORANDUM DECISION

Petitioner Father D.W.¹ appeals the Circuit Court of Mercer County’s October 20, 2025, order terminating his parental, custodial, and guardianship rights to P.F. and M.W., arguing that the circuit court erred in terminating his rights while his appeal of his related criminal conviction was pending.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.

In February 2025, the mother, by counsel, filed an abuse and neglect petition alleging, in relevant part, that the petitioner was convicted of sexually abusing P.F., that he received a sentence of 35 to 120 years of incarceration, and that M.W. resided in the home when the abuse occurred.³ At the adjudicatory hearing in July 2025, the DHS presented the certified orders of the petitioner’s conviction and resulting sentence, which the circuit court admitted into evidence. The mother also testified that the petitioner, herself, and both children lived together in the same home when the petitioner sexually abused P.F. After conferring with the petitioner, his counsel declined to cross-examine the mother. The petitioner then testified and presented multiple documents, which the circuit court admitted into evidence, related to a prior 2020 family court case where the mother sought (and was granted) primary custody of M.W. due to the allegations that the petitioner sexually abused the child’s half-sibling, P.F. The petitioner used this evidence to argue that he maintained a strong relationship with M.W., demonstrated by the family court’s grant of supervised visitation with M.W. despite the petitioner being charged with sexually abusing P.F. at that time. During closing arguments, the petitioner’s counsel informed the circuit court that the

¹ The petitioner appears by counsel Bobby J. Erickson. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Andrew T. Waight. Counsel Malorie N. Estep-Morgan appears as the children’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).

³ The petitioner is not P.F.’s biological father, though he exercised custodial rights over the child. Further, the mother specifically alleged that the petitioner was convicted of two counts of sexual abuse by a parent, guardian, or custodian; first-degree sexual assault; first-degree sexual abuse; and attempt to commit first-degree sexual abuse. In April 2025, the DHS joined the petition.

petitioner had appealed his criminal conviction to this Court and argued that because no ruling had yet been issued, a decision on the abuse and neglect matter was inappropriate as his conviction was not final. Ultimately, the circuit court found that there was clear and convincing evidence that the petitioner sexually abused P.F. while M.W. was in the same home, that the children were abused by the threat the petitioner posed due to his sexual abuse of a child in the home, and that aggravated circumstances existed. Thus, the circuit court adjudicated the petitioner as an abusing parent of both children.

At the dispositional hearing in October 2025, upon the petitioner's counsel's request, the circuit court incorporated the evidence and testimony presented at the adjudicatory hearing and took judicial notice of the petitioner's pending criminal appeal. A DHS worker testified that the DHS sought termination of the petitioner's rights, and the petitioner's counsel cross-examined the worker. The petitioner declined to testify and presented no further evidence. During closing arguments, the petitioner's counsel again requested that the circuit court abstain from entering a decision on the abuse and neglect matter until the pending criminal appeal was resolved. The circuit court declined and proceeded to find that there was clear and convincing evidence of "egregious" child sexual abuse. In highlighting the existence of aggravated circumstances, which relieved the DHS of its duty to make reasonable efforts to reunify the family, the circuit court found that termination was necessary for the children's best interests. Accordingly, the circuit court terminated the petitioner's respective parental, custodial, and guardianship rights to both children.⁴ It is from this 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 substantive rulings for abuse of discretion, factual findings 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). Before this Court, the petitioner raises only one assignment of error, in which he asserts that his pending criminal appeal inhibited his right to a meaningful opportunity to be heard. In essence, the petitioner argues that he could not properly defend against the DHS's allegations because there was a possibility that his conviction for related criminal conduct (his sexual abuse of P.F.) would be overturned on appeal to this Court. We disagree. "Under no circumstance shall a civil child abuse and neglect proceeding be delayed pending the . . . resolution of any other proceeding, including, but not limited to, criminal proceedings." W. Va. R. P. Child Abuse & Neglect Proc. 5; *see also* Syl. Pt. 4, in part, *In re Isaiah A.*, 228 W. Va. 176, 718 S.E.2d 775 (2010) ("Child abuse and neglect cases must be recognized as being among the highest priority for the court's attention.") (internal quotations and citation omitted). As such, the petitioner's pending appeal of his criminal conviction did not preclude the circuit court from proceeding to adjudication or disposition. While the petitioner is correct that he maintains a right to a meaningful opportunity to be heard, the record indicates that this right was not violated during the underlying proceedings as the petitioner freely exercised his right to testify, offering testimony at adjudication, cross-examined witnesses, and presented evidence. *See* W. Va. Code § 49-4-601(h) ("[T]he party or parties having . . . parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses."). To the extent the petitioner argues that the circuit court failed to adequately consider

⁴ Permanency has been achieved as the children remain with the nonabusing mother.

his pending criminal appeal, this assertion is meritless as the record clearly shows that the circuit court was informed and even took judicial notice of such circumstances as requested by the petitioner's own counsel. Accordingly, we conclude that the circuit court did not err.

For the foregoing reasons, we find no error in the decision of the circuit court, and its October 20, 2025, 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