

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

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

In re J.M.

No. 25-779 (Berkeley County CC-02-2025-JA-15)

MEMORANDUM DECISION

Petitioner Mother M.J.¹ appeals the Circuit Court of Berkeley County’s October 20, 2025, order terminating her parental rights to J.M., arguing that the circuit court erred by appointing the lawyer who filed the instant abuse and neglect petition to serve as the guardian ad litem for J.M. This lawyer had also served as the guardian ad litem for this child in prior proceedings.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 January 2025, the guardian ad litem filed an abuse and neglect petition alleging that J.M.’s parents abandoned the child and failed to provide food, clothing, shelter, supervision, medical care, and education. Specifically, the guardian ad litem outlined a substantial history of Child Protective Service (“CPS”) referrals involving the family dating back to 2017. These referrals described the parents’ substance abuse and deplorable housing conditions, in addition to J.M.’s unkempt or unclean appearance, lack of medical care, and truancy. Eventually, in 2019, the Circuit Court of Berkeley County granted J.M.’s aunt guardianship over the child, but in 2022, the aunt relinquished her guardianship rights. J.M. was then placed in various foster homes due to behavioral issues. Ultimately, the child’s current foster parents expressed their desire to adopt J.M., leading the guardian ad litem to file the instant petition.

In January 2025, the circuit court appointed the guardian ad litem to represent J.M. in these proceedings and set the matter for a status hearing. The resulting order from the status hearing held in February 2025 further stated that “[t]he [guardian ad litem] and the [DHS] filed the petition in this case seeking termination of the respondent parent’s [sic] parental rights.” At the adjudicatory hearing in April 2025, the petitioner failed to appear but was represented by counsel. The guardian ad litem called J.M.’s aunt, who testified about the background of the guardianship proceedings, her reasons for the relinquishment, and the lack of contact the parents had with J.M. throughout the

¹ The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgoda. Counsel William Prentice Young appears as the child’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).

years. The DHS then called a CPS worker who testified about the ongoing history of the parents' lack of care and contact with J.M. Ultimately, the court found, by clear and convincing evidence, that the parents had abandoned and failed to provide for J.M. Thus, the court adjudicated both parents as abusing and/or neglecting parents based on such grounds.

Prior to the dispositional hearing, the DHS filed disclosures pursuant to Rule 30 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings, explaining that it was seeking termination of the parents' parental rights and planned to offer testimony supporting its recommendation. At the dispositional hearing in July 2025, the DHS called multiple witnesses including the foster mother and two CPS workers. These witnesses testified to the parents' lack of care, contact, and bond with J.M. The CPS workers further explained that in the interest of J.M.'s well-being and because of the parents' little to no participation in the case as well as their abandonment of the child, it was seeking termination of the parents' parental rights. Ultimately, the court found that there was no reasonable likelihood that the parents could substantially correct the conditions of abuse and/or neglect in the near future. Considering the child's need for stability and the continuity of care and caretakers, the court further found that termination was necessary for J.M.'s welfare. Thus, the circuit court terminated both parents' parental rights to the child.³ 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 argues only that the circuit court erred in allowing the lawyer who filed the abuse and neglect petition to also represent J.M. as guardian ad litem. The petitioner asserts that the guardian ad litem acted as a separate party of interest when he filed the instant petition, that essentially being the prosecuting entity of these proceedings, and thus, could not represent the child as well. We disagree. West Virginia Code § 49-4-601(a) allows either the DHS or a "reputable person" to file an abuse and neglect petition. Here, the petitioner concedes that the guardian ad litem was a "reputable person" under the statute and takes no issue with this designation. This statute further states that "[u]nder no circumstances may the same attorney represent the child and the other party or parties," involved in the case. *Id.* at § 49-4-601(f)(4). We have explained that

while "a reputable person" may *initiate* an abuse and neglect action under [West Virginia Code § 49-4-601(a)], it does not mean that the reputable person has any stake in the action or that the action is being pursued on behalf of the reputable person as the party in interest. Instead, our cases make clear that an abuse and neglect action is prosecuted on behalf of one party, and only one party: the State of West Virginia, in its role as *parens patriae*.

In re B.C., 233 W. Va. 130, 137, 755 S.E.2d 664, 671 (2014); *see also In re D.H.*, 252 W. Va. 290, 298-300, 922 S.E.2d 290, 298-300 (2024) (emphasizing the State's role as *parens patriae* in affirming the circuit court's order that the DHS join the abuse and neglect petition which was filed

³ The permanency plan for J.M. is adoption in the current placement.

by a reputable person); *In re B.C.* at 138, 755 S.E.2d at 672 (“Upon the filing of the abuse and neglect petition, it was the State of West Virginia who became the prosecuting party in interest.”). Therefore, despite the petitioner’s contentions otherwise, by filing the petition, this did not render the guardian ad litem a separate party in interest. The record before us further shows that the DHS fulfilled its role in prosecuting the action, and the petitioner does not argue otherwise on appeal. Accordingly, we conclude that the circuit court did not err in appointing the guardian ad litem for the instant petition.⁴

For the foregoing reasons, we find no error in the decision of the circuit court and affirm the circuit court’s October 20, 2025, dispositional order.

Affirmed.

ISSUED: September 22, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice H. L. Kirkpatrick
Justice James W. Flanigan

DISQUALIFIED:

Justice Charles S. Trump IV

⁴ We acknowledge that this issue was not raised below but nevertheless find no error.