

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

released at 3:00 p.m.
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In re T.L.-1, T.L.-2, H.L., and A.L.

No. 25-451 (Jefferson County Nos. CC-19-2024-JA-81, CC-19-2024-JA-82, CC-19-2024-JA-83, and CC-19-2024-JA-84)

MEMORANDUM DECISION

Petitioner Father M.L.¹ appeals the Circuit Court of Jefferson County's February 10, 2025, order adjudicating him as an abusive and neglectful parent of T.L.-1, T.L.-2, H.L., and A.L.,² and June 3, 2025, dispositional order terminating his parental rights as to those children. The petitioner argues that the circuit court erroneously adjudicated him while he was without counsel and further erred by denying his motion for a new adjudication and proceeding to disposition after the court appointed him counsel. Having reviewed the record, the applicable law, and the parties' arguments, we determine that the circuit court erred when it permitted the petitioner's appointed counsel to withdraw from representing the petitioner without first making a finding regarding the petitioner's eligibility for appointed counsel or obtaining a knowing and intelligent waiver of counsel. Accordingly, we vacate the February 10, 2025, adjudicatory order and subsequent June 3, 2025, dispositional order and remand this matter to the circuit court for further proceedings consistent with this decision.³

¹ The petitioner appears by counsel Patrick Kratovil. The West Virginia Department of Human Services appears by counsel Attorney General John B. McCuskey, Principal Deputy Solicitor General Holly J. Wilson, and Assistant Attorney General A. Tyler Reseter. Aimee N. Goddard appears as the guardian ad litem for T.L.-1. Catherine Bond Wallace appears as the guardian ad litem for T.L.-2, H.L., and A.L.

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 two children share the same initials, we use numbers to differentiate them.

³ We determine that a memorandum decision vacating the adjudicatory and dispositional orders is appropriate in the present circumstances. We further note that the case style contained in the adjudicatory and dispositional orders references only T.L.-1 and corresponding case number CC-19-2024-JA-81. An examination of those orders and the relevant hearing transcripts demonstrates that the circuit court intended its rulings at adjudication and disposition to apply to T.L.-1, T.L.-2, H.L., and A.L.; hence, the style of this memorandum decision reflects all four children and the corresponding cases in circuit court. We caution lower courts and counsel to style orders appropriately to ensure that rulings are recorded properly and to facilitate appellate review.

On August 26, 2024, the West Virginia Department of Health and Human Resources—predecessor to the West Virginia Department of Human Services (“the DHS”)—filed a petition against the petitioner and his then-girlfriend, R.T., relating to the petitioner’s four children: T.L.-1, T.L.-2, H.L., and A.L. The DHS alleged that the petitioner and the children’s mother (his ex-wife) argued in the driveway at the petitioner’s home while the children were being loaded into the mother’s car.⁴ It was alleged that the petitioner slapped the mother, who was then holding A.L., the youngest child. The mother allegedly fell to the ground and dropped A.L., bruising the child’s elbow. The DHS also alleged that the mother saw her primary care physician the following day, and that her medical records showed facial swelling and tenderness at various points on the left side of her body. The DHS alleged that some of the children stated they saw the petitioner hit the mother, but that the petitioner denied hitting the mother and R.T. denied witnessing any violence. In sum, the DHS alleged that the petitioner engaged in domestic violence in the presence of the children and physically abused A.L.; R.T. failed to take appropriate steps to protect the children; and the children were, therefore, abused and neglected.

The same day, August 26, 2024, the circuit court entered an emergency custody order removing the children from the physical and legal custody of the petitioner and R.T. and awarding temporary custody of the children to the mother.⁵ In that order, the circuit court also appointed Mary Binns-Davis, Esq., Assistant Public Defender, to represent the petitioner. The parties convened for the preliminary hearing on September 12, 2024. The petitioner moved to continue the preliminary hearing to permit him to prepare for a contested hearing. The DHS and the guardian ad litem did not object. The court granted the motion and set the preliminary hearing for October 10, 2024.

On October 4, 2024, Ms. Binns-Davis moved to withdraw as the petitioner’s counsel, asserting that because the petitioner was “a union worker at or near Dulles Airport with a top-secret government clearance,” he “ha[d] sufficient income to hire independent counsel for the present matter.” Ms. Binns-Davis represented that “[a]dditional factors . . . set forth in W.Va. Code § 29-21-16(e)^[6] would mandate” granting the motion to withdraw, such as the petitioner’s

⁴ The DHS did not specify the date of this argument in the petition, only the date on which a Child Protective Services Worker (“CPS”) interviewed three of the children (May 21, 2024) and the date on which DHS received a related referral (May 24, 2024). It was later established that the argument occurred on or about May 20, 2024.

⁵ It appears that the petitioner and the mother previously shared custody of the children fifty-fifty, and that the children often stayed at the petitioner’s house after school.

⁶ Nine factors are to “be considered in determining eligibility for legal representation made available” pursuant to Chapter 29, Article 21 (“Public Defender Services”) of the West Virginia Code. W. Va. Code § 29-21-16(e) (2019). These factors are:

(1) Current income prospects, taking into account seasonal variations in income;

fixed debts and obligations, age, and physical ability. Ms. Binns-Davis also represented that she had mailed and emailed a “Notification Certificate” to the petitioner as required by Rule 4.03 of the West Virginia Trial Court Rules, in which the petitioner was notified that he had the right to object “immediately” to the motion to withdraw. The circuit court granted Ms. Binns-Davis’s motion on October 5, 2024, for “good cause,” and directed the petitioner “to retain private counsel, if he so chooses, in this matter going forward.”

The parties convened on October 10, 2024, for the preliminary hearing. In the order entered following that hearing, the circuit court “noted that [the petitioner] did not have an attorney present due to his counsel’s motion to withdraw.”⁷ The petitioner requested a continuance to hire an attorney. The DHS did not object. The circuit court continued the preliminary hearing to

(2) Liquid assets, assets which may provide collateral to obtain funds to employ private counsel, and other assets which may be liquidated to provide funds to employ private counsel;

(3) Fixed debts and obligations, including federal, state, and local taxes, and medical expenses;

(4) Child care, transportation, and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) Whether the person seeking publicly funded legal representation has made reasonable and diligent efforts to obtain private legal representation, and the results of those efforts;

(7) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;

(8) Whether the person seeking publicly funded legal representation has posted a cash bond for bail or has obtained release on bond for bail through the services of a professional bondsman for compensation and the amount and source of the money provided for the bond;

(9) The consequences for the individual if legal assistance is denied.

W. Va. Code § 29-21-16(e)(1)–(9). In addition, subsection (e) of § 29-21-16 provides that, “[l]egal representation requested by the affiant may not be denied, in whole or part, unless the affiant can obtain legal representation without undue financial hardship.”

⁷ The hearing transcript suggests that the petitioner was unaware that his counsel had withdrawn as counsel. Upon receiving the order granting counsel’s motion to withdraw at the preliminary hearing, the petitioner stated, “I just got this today so I haven’t had a chance to do anything.”

November 14, 2024, but “cautioned [the petitioner] to pursue counsel immediately so that his attorney would be able to attend the next hearing.” The petitioner informed the circuit court that he had an ongoing criminal case and he “filled out the exact same information on that for court-appointed attorney and was approved.” The petitioner did not “see why [representation] was withdrawn this time.” The circuit court responded that “[t]here is a different scale.”

The parties reconvened on November 14, 2024, for the contested preliminary hearing. The order entered following that hearing reflects that,

The [c]ourt opened the proceedings with an inquiry of [the petitioner] about the absence of counsel to represent him, for which he had been granted a continuance at the prior hearing to obtain [counsel]. [The petitioner] told the [c]ourt that he needed court appointed counsel because he could not afford to hire counsel. The [c]ourt proceeded to view a Public Defender Services memorandum determining financial guidelines for eligibility for legal representation by appointed counsel. The [c]ourt read the memorandum into the record: An individual can establish indigency under statutory provisions by submitting an affidavit setting forth that the individual’s gross income is less than the amount in the tables: for one person household ([the petitioner’s] current status), \$15,950 annual salary. At the [c]ourt’s request, the bailiff provided him with the indigency guidelines information.

After the circuit court read the memorandum into the record, the petitioner acknowledged that, at the prior hearing, he “said there would be an attempt” to hire an attorney. The petitioner went on to state that, “I would have liked an attorney here but I just can’t afford it.”

The preliminary hearing proceeded with the petitioner representing himself. The petitioner testified,⁸ followed by R.T., a CPS worker, and the mother. In the order entered following the hearing, the circuit court found that the DHS had “reasonable cause to believe the children were in imminent danger when they placed the children with their mother and filed their Petition, and that there was no reasonable alternative than removal from [the petitioner’s] custody.” The court continued the children’s temporary placement with the mother.⁹

The adjudicatory hearing was held on January 23, 2025. All appeared by counsel, save for the petitioner. The circuit court explained to the assembled parties on the record that the petitioner had contacted the circuit clerk on January 22 and asked to continue the adjudicatory hearing. The petitioner represented that he had been injured at work and could not appear on January 23. The petitioner supplied a medical excuse, which the circuit court described as “questionable.” At the circuit court’s direction, the law clerk contacted the petitioner and told him to supply a more robust medical excuse and to file a proper motion to continue the adjudicatory hearing or appear at the

⁸ When called to testify, the petitioner stated, “I am a little confused, what is going on?”

⁹ The circuit court also dismissed R.T. from the case at this time.

next day's hearing virtually via Microsoft Teams.¹⁰ The petitioner responded to the law clerk via voicemail that he would attend the January 23 hearing briefly, although he would be on pain medication.¹¹ The petitioner closed the voicemail by stating that, "he would really appreciate if someone could work with me here because this is -- this isn't going to end well for either -- for anyone this way."

Having placed those events on the record, the circuit court proceeded to conduct the adjudicatory hearing.¹² The court heard testimony from a CASA supervisor, a CPS worker, and the mother, and took judicial notice of the petitioner's related criminal cases in magistrate court. At the close of the hearing, the circuit court found that the DHS had proved the salient allegations in the petition by clear and convincing evidence and adjudicated the petitioner as an abusive and neglectful parent, and the children as abused and neglected. The court scheduled the dispositional hearing for March 17, 2025.

On February 11, 2025, the circuit court entered an order appointing Patrick Kratovil, Esq., to represent the petitioner. On March 14, 2025, the petitioner, by counsel, moved to vacate the January adjudication and set a new hearing for a contested adjudication, explaining that the petitioner "did not have proper legal representation or advice until present counsel was appointed" in February 2025, and "[t]hat proceeding to [d]isposition after an [a]djudication in absentia and without counsel would likely create issues that would be more economically addressed by vacation of the [a]djudication and the setting of a contested [a]djudication, where" the petitioner could be present and represented by counsel.

The circuit court considered that motion during the March 17, 2025, hearing. The circuit court offered the petitioner "45 minutes right now if you have evidence that you want me to consider towards adjudication, you may call a witness. . . . [T]his is the opportunity to say is there anything that I haven't considered in already making my findings." The petitioner's counsel elicited testimony from the petitioner, who was then cross-examined by the other parties; however, the petitioner, by counsel, was not offered the opportunity to cross-examine the witnesses put forth by the DHS during the January 2025 adjudicatory hearing. The circuit court ultimately denied the petitioner's motion to vacate the adjudication, explaining:

With regard to the motion to vacate the adjudication and set a contested adjudication, I gave the opportunity today to hear whether or not there was additional information that the [c]ourt should consider in making the adjudication findings, and, frankly, the [petitioner] has not been truthful. He's been in flagrant violation of this [c]ourt's orders. I am not going to reopen an adjudication.

¹⁰ The law clerk provided the petitioner with a link to participate in the adjudicatory hearing via Teams, but the petitioner did not use the link to join the hearing.

¹¹ A record from the petitioner's visit to an urgent care practice on January 23, 2025, was later put before the circuit court. That record contradicted the petitioner's assertion that he was under the influence of prescription pain medication on that date.

¹² The court directed the bailiff to "call out" for the petitioner, to no response.

The circuit court conducted the dispositional hearing on May 27, 2025. A CPS worker, the petitioner, and the mother testified. The circuit court ultimately terminated the petitioner's parental rights to the children pursuant to West Virginia Code § 49-4-604(c)(6), based upon findings that there was no likelihood that the petitioner would comply with the terms of an improvement period and that there was no less restrictive alternative than termination of his parental rights. The court entered the dispositional order on June 3, 2025. The petitioner timely filed this appeal.

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 de novo. Syl. Pt. 1, *In re K.S.*, 253 W. Va. 154, 930 S.E.2d 400 (2026). The petitioner contends on appeal that the circuit court erroneously adjudicated him in the absence of counsel, and in spite of his motion to continue the adjudicatory hearing. The petitioner also argues that the circuit court erred when, after appointing him counsel, it denied his motion to vacate the adjudication and proceeded to terminate his parental rights pursuant to West Virginia Code § 49-4-604(c)(6). The guardian ad litem for T.L.-2, H.L., and A.L. agrees that the circuit court erred when it adjudicated the petitioner in the absence of counsel and without "making a meaningful determination that [the petitioner] did not qualify for [appointed counsel] or that he was knowingly and intelligently waiving one." The guardian ad litem for T.L.-1 concurs that the circuit court erred when it adjudicated the petitioner in the absence of counsel and requests that the adjudicatory and dispositional orders be vacated and the matter remanded for further proceedings.¹³ Finally, DHS agrees that the circuit court erred by proceeding to adjudication while the petitioner was not represented by counsel; however, the DHS asserts that that error was harmless and argues that this Court should affirm the circuit court's rulings.

In 1974, this Court held that, "[i]n child neglect proceedings which may result in the termination of parental rights to the custody of natural children, indigent parents are entitled to the assistance of counsel because of the requirements of the Due Process clauses of the West Virginia and United States Constitutions." Syl. Pt. 1, *State ex rel. Lemaster v. Oakley*, 157 W. Va. 590, 203 S.E.2d 140 (1974). Then, in *Matter of Lindsey C.*, we gave guidance to circuit courts to safeguard that right, guidance that was founded on a "presumption that the parent or parents and custodians entitled by law to be named in abuse and neglect petitions 'cannot pay for the services of counsel.'" *Id.*, 196 W. Va. 395, 408, 473 S.E.2d 110, 123 (1995). Building upon that foundation, this Court instructed circuit courts to proceed as follows:

¹³ Kelly N. Coly served as guardian ad litem for T.L.-1 earlier in this appeal and submitted the response brief on T.L.-1's behalf in October 2025. Ms. Coly argued that the circuit court did not err when it adjudicated the petitioner in absentia and without counsel, nor when it denied the petitioner's motion to vacate the adjudication and proceeded to terminate the petitioner's parental rights. The circuit court approved Ms. Goddard's substitution as T.L.-1's guardian ad litem in June 2026. During arguments before this Court in September 2026, Ms. Goddard stated that she disagreed with Ms. Coly's position and encouraged this Court to vacate the adjudicatory and dispositional orders and remand for further proceedings.

Circuit courts should appoint counsel for parents and custodians required to be named as respondents in abuse and neglect proceedings *incident to the filing of each abuse and neglect petition*. Upon the appearance of such persons before the court, evidence should be promptly taken, by affidavit and otherwise, to ascertain whether the parties for whom counsel has been appointed are or are not able to pay for counsel. In those cases in which the evidence rebuts the presumption of inability to pay as to one or more of the parents or custodians, the appointment of counsel for any such party should be promptly terminated upon the substitution of other counsel or the knowing, intelligent waiver of the right to counsel. Counsel appointed in these circumstances are entitled to compensation as permitted by law.

Id. at 395, 473 S.E.2d at 112, Syl. Pt. 8; *see also In Int. of Tiffany Marie S.*, 196 W. Va. 223, 232, 470 S.E.2d 177, 186 (1996) (“A circuit court has broad statutory and case authority to appoint counsel in child abuse and neglect cases.”). Thus, *Lindsey C.* obliges circuit courts to appoint counsel for adult respondents at the outset of an abuse and neglect proceeding. However, if evidence is later produced that “rebut[s] the presumption of the inability to pay” as to an adult respondent, then the circuit court may excuse that respondent’s appointed counsel from the representation, but not before (1) substitute counsel appears on behalf of the adult respondent, or (2) the adult respondent knowingly and intelligently waives the right to counsel. *See* Syl. Pt. 5, *In re S.M.*, 250 W. Va. 745, 908 S.E.2d 482 (2024) (“An indigent parent or custodial respondent in an abuse and neglect case has a right to appointed counsel at all stages of the proceedings, but he or she may elect to continue self-represented upon a knowing and intelligent waiver of the right to counsel.”).

West Virginia Code § 49-4-601(f) (2019)¹⁴ also relates to the right to counsel in child abuse and neglect proceedings. Subsection (f) of § 49-4-601 provides that,

(f) *Right to counsel.* --

(1) In any proceeding under this article, the child shall have counsel to represent his or her interests at all stages of the proceedings.

(2) The court’s initial order shall appoint counsel for the child and for any parent, guardian, custodian, or other person standing *in loco parentis* with the child if such person is without retained counsel.

(3) The court shall, at the initial hearing in the matter, determine whether persons other than the child for whom counsel has been appointed:

(A) Have retained counsel; and

¹⁴ The Legislature made substantial amendments to West Virginia Code § 49-4-601(f) in 2025. 2025 W. Va. Acts 470–71 (eff. July 6, 2025). We apply the prior version of the statute, which was in effect at the time of the circuit court’s rulings.

(B) Are financially able to retain counsel.

(4) A parent, guardian, custodian, or other person standing *in loco parentis* with the child who is alleged to have neglected or abused the child and who has not retained counsel and is financially unable to retain counsel beyond the initial hearing, shall be afforded appointed counsel at every stage of the proceedings.

....

(8) The court shall, *sua sponte* or upon motion, appoint counsel to any unrepresented party if, at any stage of the proceedings, the court determines doing so is necessary to satisfy the requirements of fundamental fairness.

Under subsection (f), the court is to appoint counsel for the child and the adult respondent in its initial order, in accord with *Lindsey C.* See W. Va. Code § 49-4-601(f)(2) (2019). At its initial hearing, the court must then determine whether those adult respondents have retained counsel and if they are financially able to do so. *Id.* § 49-4-601(f)(3) (2019). The court shall continue the appointed representation for an adult respondent beyond the initial hearing to “every stage of the proceedings” if the adult respondent has not retained an attorney and is financially unable to do so. *Id.* § 49-4-601(f)(4) (2019). Notwithstanding that limitation, the court retains the power to appoint counsel for an unrepresented party at any time if the court determines appointment of counsel “is necessary to satisfy the requirements of fundamental fairness.” *Id.* § 49-4-601(f)(8) (2019); *see also* W. Va. Code § 29-21-16(f) (“Legal representation requested by the affiant may not be denied, in whole or part, unless the affiant can obtain legal representation without undue financial hardship.”).

Applying those authorities to the matter before us, we see that the procedure in circuit court did not comport with our instructions in *Lindsey C.* or the requirements of West Virginia Code § 49-4-601(f) (2019). While the circuit court appointed counsel for the petitioner in the Emergency Custody Order entered immediately after the petition was filed, the circuit court later permitted appointed counsel to withdraw from the representation before substitution of other counsel on the petitioner’s behalf or the petitioner knowingly, intelligently waiving his right to counsel. Thus, the circuit court violated Syllabus Point 8 of *Lindsey C.* by granting appointed counsel’s motion to withdraw precipitously. In addition, the circuit court allowed appointed counsel to withdraw purportedly for “good cause,” and not based on the court’s own determination that the petitioner had retained counsel or was financially able to do so, contrary to the plain language of § 49-4-601(f)(3) (2019). *See id.* (“The court shall, at the initial hearing in the matter, determine whether persons other than the child for whom counsel has been appointed: (A) Have retained counsel; and (B) Are financially able to retain counsel.”); *see also* Syl. Pt. 5, *State v. Gen. Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 107 S.E.2d 353 (1959) (“When a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute.”). Finally, at the contested preliminary hearing in November 2024, the petitioner expressed to the circuit court that he could not afford counsel and needed the court to appoint counsel to represent him. Despite the petitioner’s request, the circuit court did not undertake a determination of whether it was necessary to appoint counsel for the petitioner “to satisfy the

requirements of fundamental fairness.” W. Va. Code § 49-4-601(f)(8) (2019). For those reasons, the circuit court erred as a matter of law when it permitted appointed counsel to withdraw, initially, and then when it failed to consider the petitioner’s subsequent request for appointed counsel.

The DHS argues that those errors were harmless because the circuit court gave the petitioner an opportunity to provide additional evidence regarding adjudication during the March 17, 2025, hearing on the motion to vacate adjudication. We disagree. This Court has held that,

“Where 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 . . . will be vacated and the case remanded for compliance with that process and entry of an appropriate . . . order.” Syl. Pt. 5, in part, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001)

Syl. Pt. 8, *In re H.B.*, 252 W. Va. 350, 922 S.E.2d 350 (2025) (vacating adjudicatory and dispositional orders where the circuit court erroneously imputed medical neglect of one child to other children in the home, in substantial disregard of applicable statutes and rules regarding adjudication). As discussed above, the circuit court substantially disregarded key provisions in West Virginia Code § 49-4-601(f) (2019) and this Court’s instruction in Syllabus Point 8 of *Lindsey C.*, despite this Court having “made clear that in this type of civil case ‘the circuit court’s role is to ensure that litigants are adequately represented by counsel from the beginning to the end of the proceedings.’” *In re S.M.*, 250 W. Va. at 750, 908 S.E.2d at 487 (quoting *In Interest of Tiffany Marie S.*, 196 W. Va. at 232, 470 S.E.2d at 186). Consequently, the adjudicatory order—entered following a hearing at which the petitioner did not appear, either by counsel or in person—must be vacated, as well as the subsequent dispositional order. *See, e.g., In re A.L.*, No. 17-0573, 2018 WL 1251740, at *3 (W. Va. March 12, 2018) (memorandum decision) (vacating dispositional order where the circuit court allowed appointed counsel to withdraw before the respondent-parent had “an opportunity to retain new counsel before the circuit court proceeded with the dispositional hearing and there [was] no indication in the record that [the respondent parent] waived his right to counsel or agreed to continue pro se”).

For the foregoing reasons we vacate the circuit court’s February 10, 2025, adjudicatory order and June 3, 2025, dispositional order and remand this matter for further proceedings consistent with this decision. The Clerk is directed to issue the mandate contemporaneously with this memorandum decision.

Vacated and remanded.

ISSUED: October 28, 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