

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

No. 25-67

In Re K.J., K.W., and M.W.

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Appeal from the Circuit Court of Roane County
The Honorable R. Craig Tatterson, Judge
Case Nos. CC-44-2023-JA-101, CC-44-2023-JA-102,
CC-44-2023-JA-103, and CC-44-2022-JA-7

REVERSED AND REMANDED WITH INSTRUCTIONS

Submitted: September 10, 2026
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JUSTICE KIRKPATRICK delivered the Opinion of the Court.

SYLLABUS BY THE COURT

1. “This Court reviews the circuit court’s orders in abuse and neglect proceedings using the three following standards: (1) substantive rulings, such as whether the evidence supports a conclusion that a child has been abused or neglected or whether termination of parental rights is appropriate, are reviewed for abuse of discretion; (2) factual findings supporting substantive rulings are reviewed for clear error; and (3) to the extent review of the order implicates an issue of law or requires statutory interpretation, our review is de novo.” Syllabus Point 1, *In re K.S.*, 253 W. Va. 154, 930 S.E.2d 400 (2026).

2. “The due process of law guaranteed by the State and Federal Constitutions, when applied to procedure in the courts of the land, requires both notice and the right to be heard.” Syllabus Point 2, *Simpson v. Stanton*, 119 W. Va. 235, 193 S.E. 64 (1937).

KIRKPATRICK, Justice:

Despite the lack of any evidence that the petitioner mother, H.J., failed to supply her children with necessary food, clothing, shelter, supervision, medical care, or education, her children were removed from her custody, she was adjudicated to be a neglectful parent, and without granting any improvement period, the circuit court proceeded to disposition and terminated her custodial rights. The petitioner now appeals the December 30, 2024, order of the Circuit Court of Roane County, as amended, which terminated her custodial rights to the children K.J., K.W., and M.W.¹ The petitioner assigns error in every step of the abuse and neglect process beginning with the ratification of removal at the preliminary hearing and continuing through disposition. The West Virginia Department of Human Services (the “DHS”) supports affirmation of the circuit court’s orders, but the children’s guardian ad litem agrees with the petitioner as to the alleged errors below.

After our review of the parties’ briefs and oral arguments, the appendix record, and the pertinent legal authority, we find that the circuit court abused its discretion when it relied upon an unwarranted adverse inference of substance abuse as the basis for adjudicating the petitioner to be a neglectful parent, in the absence of any evidence that the child was “neglected,” as that term is defined in the Child Welfare Act, West Virginia Code

¹ We use initials to refer to the parties in this case because it involves minors and sensitive matters. *See* W. Va. R. App. P. 40(e).

§§ 49-1-101 to 49-13-4. Accordingly, we reverse the circuit court’s adjudicatory and dispositional orders, and we remand this case to the circuit court for dismissal of the petition, consistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

When this case commenced in December 2023, the petitioner was employed full-time with health insurance, owned a vehicle, rented her own home without assistance, and had sole custody of the children K.W. and M.W., whose father was deceased. The child K.J. was in the shared custody of the petitioner and the nonabusing father, T.G.² The DHS became involved after receiving a referral arising out of a criminal investigation of an unrelated individual, C.C.

In November 2023, Roane County Sheriff’s Deputy Tim Lanier arrested C.C. for possession with intent to deliver heroin, oxycodone, and alprazolam. During the

² The petitioner, T.G., and the child K.J. were previously involved in Roane County Case No. 22-JA-7. *See In re K.J.*, No. 23-230, 2023 WL 7018066 (W. Va. Oct. 25, 2023) (memorandum decision). Following the petitioner’s successful completion of family treatment court during that case, the circuit court accepted the petitioner’s proposed parenting plan for shared custody of K.J., and T.G. appealed. In October 2023, we vacated and remanded the circuit court’s custody order because the court failed to consider the required statutory factors for allocating custodial responsibility. *Id.* The status of that case on remand is unknown. The petition initiating the underlying cases alleged that K.J. was in the custody of T.G. pursuant to Case No. 22-JA-7, and at the preliminary hearing, the prosecuting attorney represented that Case No. 22-JA-7 was “technically still pending.” The circuit court’s orders include Case No. 22-JA-7, along with the 2023 case numbers; the briefing on appeal does as well; and we have no indication that Case No. 22-JA-7 has been dismissed or consolidated into Case No. 23-JA-101. Therefore, we retain the reference to Case No. 22-JA-7 in this appeal.

criminal investigation of C.C., officers obtained a search warrant for C.C.’s cell phone and found text messages³ between C.C. and the petitioner, in which the petitioner told C.C. that she would “probably buy a little if you got it” and then asked if C.C. “could . . . possibly drop [her] off a 20 this morning at work.” In another message, C.C. asked the petitioner if she had any “9mm ammo,” and the petitioner offered C.C. a box. Because Deputy Lanier was familiar with the petitioner’s prior abuse and neglect history, he sent screenshots of the text messages to the Roane County Prosecuting Attorney.

Based on the text messages, on December 13, 2023, a DHS worker, Terena Conrad, talked “briefly” to the petitioner. During that conversation, the petitioner admitted to smoking marijuana and purchasing or attempting to purchase marijuana from C.C. during the past few months. The petitioner also admitted that she had quit taking her depression medication. As a result, on that date, the DHS implemented a seven-day protection plan, placing K.W. and M.W. with the petitioner’s sister⁴ and placing K.J. with her nonabusing father, T.G. The petitioner requested to drug screen that day but was told that the Roane County Day Reporting Center (the “day reporting center”) was closed and

³ Throughout the proceedings below and briefing, the messages are referred to interchangeably as “text messages,” “Facebook messages,” and simply “messages.” For purposes of consistency, the messages are referred to in this opinion as text messages.

⁴ The petition indicates that K.W. and M.W. were placed with the petitioner’s sister. However, the remainder of the appendix record as well as the parties’ reports submitted pursuant to Rule 11(j) of the West Virginia Rules of Appellate Procedure indicate that K.W. and M.W. have been in the physical custody of their paternal grandparents throughout the case.

that the DHS would not accept results from a home-screen. On the following morning, December 14, 2023, the petitioner went to the day reporting center, drug screened, and screened negative for all substances. The petitioner screened again on December 18, 2023, and again screened negative for all substances.

Between implementing the seven-day protection plan and filing the petition, the DHS conducted no investigation. The DHS did not visit the petitioner's home, her children's daycare, or her children's pediatrician, and did not interview anyone or request any records from the daycare or pediatrician. Despite DHS policy that requires implementation of services during a protection plan, the DHS provided no services to H.J. other than the drug screens, which were all negative.

On December 20, 2023, the DHS filed the petition initiating the underlying case, alleging that the petitioner's substance abuse impaired her parenting to such a degree as to pose a risk of imminent danger to the children.⁵ Based on the verified petition, the circuit court entered its initial order, finding that "imminent danger to the Infant Respondents exists due to [the petitioner's] abuse of controlled substances impairing her parenting skills to a degree as to pose an imminent risk to the Infant Respondents." Accordingly, the court ordered the children M.W. and K.W. to be placed in the temporary

⁵ The Child Protective Services worker who verified the petition, Renee Means, never testified in this case but was present at the preliminary and adjudicatory hearings.

legal and physical custody of the DHS and the child K.J. to be placed in the temporary legal and physical custody of the nonabusing father, T.G.

On December 28, 2023, the circuit court held a contested preliminary hearing, which was the only evidentiary hearing in the case. The testimony from the preliminary hearing was used for purposes of adjudication and denial of the petitioner's motions for pre- and post-adjudicatory improvement periods. Three witnesses testified: the petitioner, Deputy Tim Lanier, and the DHS supervisor, Terena Conrad.

The petitioner testified first. She admitted to having been involved in prior abuse and neglect cases based on substance abuse, and to her past abuse of Suboxone, heroin, and methamphetamine. She also detailed her substance abuse treatment, including her successful completion of the family treatment court program in late 2022. The petitioner testified that she had not used methamphetamine or heroin since January 2022, and her counsel introduced the results from four drug screens the petitioner took at the day reporting center between implementation of the protection plan and the preliminary hearing, all of which were negative.

As to her text messages with C.C., the petitioner testified that she had known C.C. since childhood and stated that when she requested "a 20," she was asking for twenty dollars' worth of marijuana. The petitioner admitted to smoking marijuana "off and on" and to getting it from C.C. She stated that in June 2023 she stopped taking her depression medicine because she quit going to the doctor, so in August 2023 she "just picked up

smoking [marijuana]” on rare occasions — “probably five times within the past year.” The petitioner admitted that this use “goes against everything, treatment-wise, that [she] went over in the past years,” but she claimed that she had not relapsed, that she never used marijuana when her children were present, that she was always able to meet the children’s needs, and that it did not affect her ability to work. As evidenced by the negative drug screen results, the petitioner had not used marijuana at the time the children were removed. The petitioner stated that she moved in mid-November and that C.C. never came to her new residence. She further testified that she had nine millimeter ammunition because she has a nine-millimeter handgun and that “Brad” got her “lots” of nine millimeter ammunition years ago, so she gave a box to C.C. because she had plenty and she did not know he was a convicted felon.

Finally, the petitioner’s counsel elicited testimony that the petitioner is employed full-time, rents her home, pays rent without assistance, has working utilities and plenty of food, takes the children to daycare and pediatrician appointments, and that the children are happy, healthy, and well cared for. She further testified that if the DHS had obtained records from the children’s pediatrician or daycare, those records would have shown there was no indication of neglect.

The next witness was Roane County Sheriff’s Deputy Tim Lanier. Deputy Lanier testified regarding his arrest of C.C., finding the text messages between C.C. and the petitioner, and forwarding screenshots of the text messages to the prosecuting attorney. He testified that, at the time of his arrest, C.C. had multiple drugs in his possession but no

marijuana, although the car's smell of marijuana established the probable cause for officers to search C.C.'s vehicle. Deputy Lanier testified that, in his experience, "a 20" usually referred to heroin or methamphetamine and that it was uncommon to refer to marijuana that way. However, on cross-examination, he stated that the other text messages found on C.C.'s cell phone were asking for heroin or methamphetamine as "a gram," "two grams," or "a half."

The third and final witness at the preliminary hearing was Terena Conrad, the DHS supervisor responsible for the investigation of the petitioner. Ms. Conrad testified that her investigation consisted of a brief conversation with the petitioner, during which the petitioner admitted to purchasing marijuana from C.C., smoking marijuana for "just a few months," and to going off her depression medication. Ms. Conrad claimed that the DHS filed the petition "based off the - - the prior history, drug history she has, some concerns of the text - - contents of the text messages."

On cross-examination, Ms. Conrad testified that the temporary protection plan was implemented so that they could gather more information. However, she admitted that she went on vacation two days later, and the DHS conducted no further investigation prior to filing the petition. Ms. Conrad testified that "[t]he impending danger would be the admitted drug use," but she admitted that the petitioner was performing all parenting duties and had no drugs in her system at the time of removal. Critically, Ms. Conrad conceded that "[t]here were no present dangers" to the children at the time of removal and "nothing was present" between implementation of the safety-plan and filing the petition to indicate

that the petitioner was not properly parenting her children. Ms. Conrad could cite to no evidence to support any allegations against the petitioner, other than the petitioner's admission to smoking marijuana. She admitted that there was no evidence that the children did not have adequate shelter, food, proper supervision, or that they were not getting proper medical attention. In conclusion, Ms. Conrad confirmed that there was "not a single piece of evidence that indicate[d] that [the petitioner] wasn't providing the basic and secondary needs of these children and parenting appropriately."

At the conclusion of the preliminary hearing, the court found that imminent danger to the children existed at the time of the petition's filing, based on the petitioner "actively seeking controlled substances from . . . a known drug dealer," the presence of "some dispute about whether or not she was seeking marijuana or something harder," and "her history of three prior abuse and neglect cases going back nine years – three prior adjudications presents imminent danger to the children." The written order from the preliminary hearing concluded that:

the evidence presented established [the petitioner] was actively seeking controlled substance from a known drug user in the community. The Court FINDS said act constitutes a condition that threatens the health and safety of the Infant Respondents and thus establishes imminent danger at the time of the removal.

Following the preliminary hearing, the petitioner moved for a preadjudicatory improvement period, which the Court Appointed Special Advocate ("CASA") supported.

Thereafter, the guardian ad litem⁶ filed a motion asking the court to require the petitioner to undergo a hair follicle drug screen (hereinafter referred to as the guardian ad litem’s “motion for a hair follicle drug screen”), citing the petitioner’s history of substance abuse, her communication with C.C., and her recent negative drug screens; and arguing that the petitioner should be required to submit to a hair follicle screen because it would “show use of any controlled substances for approximately ninety (90) days preceding the test.” The petitioner filed a response to the guardian ad litem’s motion in which she objected to hair follicle screening prior to the court granting her a preadjudicatory improvement period. The circuit court never heard arguments nor ruled upon the motion for a hair follicle drug screen, and the court never ordered the petitioner to submit to a hair follicle screen.⁷ On the day prior to the adjudicatory hearing, T.G., the nonabusing father of K.J., moved the circuit court “to find the [petitioner’s] objection to submitting to a hair follicle test as affirmative evidence [of the petitioner’s culpability] for the purposes of adjudication.”

In June 2024, the circuit court conducted a motions and adjudicatory hearing. The parties presented no additional evidence, moving the court to consider the evidence

⁶ The guardian ad litem below was relieved of her representation duties at the dispositional hearing in November 2024, at which time the circuit court appointed the current guardian ad litem.

⁷ In February 2024, the petitioner filed a petition for a writ of prohibition with this Court seeking to prohibit enforcement of the children’s removal, docketed as Case No. 24-87. The circuit court granted a stay of the proceedings, pending the resolution of the petition. By summary order entered on May 13, 2024, this Court refused the petition.

and testimony heard at the preliminary hearing.⁸ The petitioner's counsel did represent, without objection, that the petitioner had provided dozens of negative drug screen results since the case began and had been participating in services for six months. The court took the pending motions and adjudication under advisement.

Following the hearing, the circuit court entered two separate orders. The court first denied the petitioner's motion for a preadjudicatory improvement period.⁹ Then, on July 17, 2024, the circuit court entered its adjudicatory order, adjudicating the petitioner to be a neglectful parent. The court's findings detailed the petitioner's prior adjudications, the evidence regarding the petitioner's text messages with C.C., and the petitioner's testimony concerning her use of marijuana and cessation of depression medication. The court also addressed the petitioner's objection to the guardian ad litem's motion for a hair follicle drug screen and granted T.G.'s motion asking the court to adopt an adverse inference against H.J., finding "that [the petitioner's] refusal to provide a hair follicle is evidence that she was not purchasing and using marijuana from [C.C.], but rather a more serious controlled substance." On this basis, the court adjudicated the petitioner to be neglectful, finding that her

⁸ At oral argument, counsel for the petitioner stated that she did not object to the circuit court relying on the testimony from the preliminary hearing because no evidence of abuse or neglect was presented at the preliminary hearing.

⁹ The denial of a preadjudicatory improvement period was based "on the severity of the allegations . . . and [the petitioner's] recent and continued involvement in abuse and neglect proceedings" and the court's conclusion that three months "would be insufficient for the [petitioner] to 'remedy these conditions to prevent future incidences.'"

continued drug use, after having been adjudicated as abusing and neglectful on three (3) separate occasions due to her drug abuse, and her conduct in actively seeking to purchase controlled substances from a known drug user in the community, while providing him with 9mm ammo, and in light of the Court's prior adverse inference as to the particular controlled substance [the petitioner] was seeking, threatens her children's well-being.

One day after entry of the adjudicatory order, the DHS filed a motion to terminate the petitioner's parental rights, arguing that the petitioner failed to acknowledge that her continued substance abuse constitutes neglect of her children. The petitioner countered with a motion for post-adjudicatory improvement period.

The circuit court convened a hearing on the pending motions in August 2024. The petitioner's counsel was prepared to present witnesses, but the parties agreed to submit the issue to the court on their arguments. The CASA representative supported the petitioner's motion for an improvement period, and the guardian ad litem did not object to an improvement period, noting that the children were "very bonded" with their mother and that the allegations in the petition are "minimal in light of her substance abuse history." The petitioner argued that, in the past six months, she had re-entered therapy, been taking her depression medication since the preliminary hearing,¹⁰ and was participating in services, visitation, and drug screening. Her representations were confirmed by the

¹⁰ The petitioner's uncontested representation that she resumed her depression medication is particularly relevant because, at the conclusion of the preliminary hearing, the circuit court advised the petitioner that "what happens in this case probably is going to depend on whether or not you're taking medication as prescribed by your physician."

prosecuting attorney, who informed the court that the petitioner “has done everything right since the filing of the petition. . . . If the court would give her a period of improvement, she is going to excel at it.” Nevertheless, the DHS argued that the court should deny the petitioner’s request for an improvement period and terminate her custodial rights. By Order entered in September 2024, the circuit court denied the petitioner’s motion for a post-adjudicatory improvement period, relying on the adverse inference adopted at adjudication that the petitioner was purchasing from C.C. and using “a more serious controlled substance” than marijuana.

The circuit court held a final dispositional hearing on November 21, 2024, and on December 30, 2024, the circuit court entered its dispositional order terminating the petitioner’s custodial rights. An amended dispositional order was entered on January 21, 2025.¹¹ We now consider the petitioner’s appeal of these orders and the proceedings below.

¹¹ At the dispositional hearing, the petitioner requested that she be permitted to voluntarily relinquish her custodial rights, while preserving her right to appeal. The DHS and guardian ad litem agreed to the relinquishment of custodial rights, but the CASA representative stated that she did not believe the petition should have ever been filed in the first place and that the petitioner should never have been adjudicated. The circuit court accepted the petitioner’s voluntary relinquishment, with the condition that the petitioner could challenge the proceedings on appeal.

The circuit court amended the dispositional order to clarify that “the relinquishment was conditional allowing [the petitioner] the right to appeal this matter and if successful said relinquishment would be null and void.” This “conditional” treatment of an adult respondent’s relinquishment of parental rights has no basis in statute, rules, or case law. Conditional guilty pleas are permitted by Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure, but nothing in the Child Welfare Act or the West Virginia Rules of Child Abuse and Neglect Procedure provides for a similar “conditional relinquishment.”

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II. STANDARD OF REVIEW

We recently established the following standard for reviewing circuit court orders in abuse and neglect proceedings:

This Court reviews the circuit court's orders in abuse and neglect proceedings using the three following standards: (1) substantive rulings, such as whether the evidence supports a conclusion that a child has been abused or neglected or whether termination of parental rights is appropriate, are reviewed for abuse of discretion; (2) factual findings supporting substantive rulings are reviewed for clear error; and (3) to the extent review of the order implicates an issue of law or requires statutory interpretation, our review is de novo.

Syl. Pt. 1, *In re K.S.*, 253 W. Va. 154, 930 S.E.2d 400 (2026). With this standard of review in mind, we turn to the parties' arguments.

III. DISCUSSION

The petitioner asserts seven assignments of error on appeal, alleging that the circuit court erred in every step of the proceedings below, from its "imminent danger" finding at the preliminary hearing through its dispositional order. The children's guardian ad litem also contends that the circuit court erred in ratifying removal, proceeding to adjudication, adjudicating the petitioner, denying the petitioner improvement periods, and

Once a court has accepted a respondent's relinquishment of rights, that disposition may only be modified pursuant to West Virginia Code § 49-4-606 (2015) and Rule 46 of the West Virginia Rules of Child Abuse and Neglect Procedure. Therefore, the appropriate procedure would have been an appeal of the adjudicatory order. *In re B.L.-I*, 251 W. Va. 92, 97 n.11, 909 S.E.2d 127, 132 n.11 (2024) ("West Virginia Code § 49-4-601(k) contemplates appeals from adjudicatory orders.").

terminating her custodial rights rather than dismissing the case at disposition. The DHS, however, argues in favor of affirmation. Upon our review, we find that the circuit court's dispositional and adjudicatory orders must be reversed because the court abused its discretion in adjudicating the petitioner to be a neglectful parent (a) in reliance on the unwarranted adverse inference of the petitioner's substance abuse and (b) in the absence of any evidence that the petitioner failed to supply the children with "necessary food, clothing, shelter, supervision, medical care, or education."

Therefore, we begin our analysis by revisiting the statute and rules applicable to the adjudicatory phase of an abuse and neglect proceeding. Specifically, West Virginia Code § 49-4-601(i) (2019)¹² provides:

Findings of the court. – Where relevant, the court shall consider the efforts of the department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether the child is abused or neglected and whether the respondent is abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the order of the court. *The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence.*

Id. (emphasis added); *see also* W. Va. R. P. Child Abuse & Neglect Proc. 27 (describing required findings and timing of adjudication order). This language requires a circuit court

¹² West Virginia Code § 49-4-601 was amended in 2025, after entry of the adjudicatory order in this case, but the amendments have no impact on this case or the statutory language at issue in this matter.

to make findings that a child is an “abused child” or a “neglected child,” as those terms are defined in West Virginia Code § 49-1-201(2018),¹³ based on the conditions existing at the time the DHS filed the abuse and neglect petition. Syl. Pt. 8, in part, *In re C.S.*, 247 W. Va. 212, 875 S.E.2d 350 (2022), *overruled on other grounds by In re R.M.*, 252 W. Va. 422, 923 S.E.2d 352 (2025). Findings that a child is an “abused child” or a “neglected child,” which must be supported by clear and convincing evidence, are a statutory prerequisite for the court to proceed to the dispositional phase of the case. *In re R.M.*, 252 W. Va. at 425, 923 S.E.2d at 355, Syl. Pt. 4, in part. Applying these guidelines, we address the circuit court’s adjudicatory findings.

A. Adverse Inference of Substance Abuse

The circuit court never granted the guardian ad litem’s motion for a hair follicle drug screen and never ordered the petitioner to submit to a hair follicle screen.¹⁴ The petitioner never refused a court-ordered drug screen. Nevertheless, in its adjudicatory order, the circuit court granted T.G.’s motion that the petitioner’s objection to a hair follicle screen be considered affirmative evidence of culpability for purposes of adjudication. In

¹³ West Virginia Code § 49-1-201 was amended in 2025, after entry of the adjudicatory order in this case, but the amendments have no impact on this case or the statutory language at issue in this matter.

¹⁴ Because the petitioner was never ordered to submit to a hair follicle drug screen, we do not address the petitioner’s assignment of error to the extent that she alleges a violation of her Fourth Amendment rights and a violation of West Virginia Code § 49-4-603 (2015), which provides for *court-ordered* medical and mental examinations.

doing so, the court made the unwarranted inferential leap that the petitioner's response to the guardian ad litem's motion for a hair follicle drug screen constituted affirmative evidence that she was attempting to purchase and using "a more serious controlled substance" than marijuana. The petitioner and the guardian ad litem argue that the court misapplied the adverse inference doctrine and abused its discretion in granting T.G.'s motion.¹⁵ We agree.

The DHS contends that the circuit court's "negative inference" finding was not clearly erroneous. In support of its position, the DHS explains the unstated assumptions necessary to connect the petitioner's written response to the guardian ad litem's motion for a hair follicle drug screen to the court's adverse inference that the petitioner abused controlled substances. The DHS rationalizes that the petitioner testified to only using marijuana and that the hair follicle screen would have proven if that were true, resolving the issue. Therefore, the DHS deduces that the petitioner's objection to the screen must mean that the screen would not have supported her testimony that she was only using and seeking marijuana; therefore, her communication with C.C. must have been in relation to obtaining some other controlled substance.¹⁶ What the DHS explains is a theory. Not

¹⁵ The petitioner's exact assignment of error alleges that the circuit court erred in finding that her objection to the guardian ad litem's motion for a hair follicle screen was "evidence of abuse and neglect." We re-frame the issue to more accurately reflect that the circuit court drew an adverse inference from her objection to the motion and then relied upon that unsupported inference in adjudicating her to be a neglectful parent.

¹⁶ The DHS also implies that the petitioner's text messages to C.C. could not have been asking for marijuana because C.C. did not have marijuana in his possession at

Continued . . .

evidence. This hypothesis does not justify an evidentiary finding of substance abuse, let alone one that serves as the basis for adjudication.

The reliance by the DHS and the circuit court on *West Virginia Department of Health & Human Resources ex rel. Wright v. Doris S.*, 197 W. Va. 489, 475 S.E.2d 865 (1996) for the adverse inference is misplaced. In *Doris S.*, the circuit court was presented “with clear and convincing, as well as unrefuted, evidence” that the adult respondent was present in the home when the child suffered fatal injuries, the respondent gave no information concerning the circumstances leading to the child’s death, and the medical examiner found that the child died from “shaken baby syndrome.” *Id.* at 498–99, 475 S.E.2d at 874–75. In the face of such evidence, the respondent refused to testify and presented no witnesses or any evidence on his behalf. The circuit court considered the adult respondent’s choice to remain silent as evidence of culpability. In affirming the circuit court’s termination of parental rights, this Court held that “where the parent or guardian fails to respond to probative evidence offered against him/her during the course of an abuse and neglect proceeding, a lower court may properly consider that individual’s

the time of his arrest. This assumption fails for three reasons. First, the petitioner’s text messages to C.C. were three to four days prior to his arrest. Second, Deputy Lanier testified that the other text messages on C.C.’s cell phone were asking for methamphetamine, but methamphetamine was not in C.C.’s possession at the time of arrest either. Third, C.C. was no stranger to the substance, because Deputy Lanier also testified that “the odor of marijuana [was] coming from [C.C.’s] vehicle” at the time of the traffic stop and from his “training, knowledge, and experience, someone had been smoking marijuana in that vehicle.”

silence as affirmative evidence of that individual's culpability." *Id.* at 492, 475 S.E.2d at 868, Syl. Pt. 2, in part.

Doris S. is inapplicable to the facts of this case because the petitioner did not remain silent, and no probative evidence was offered against her. Unlike the respondent in *Doris S.*, the petitioner testified, explained her communication with C.C., admitted to occasionally using marijuana, and submitted to numerous urine drug screens. Additionally, unlike the facts in *Doris S.*, no probative evidence that the petitioner used a controlled substance other than marijuana was offered against the petitioner for her to refute. On the contrary, by the time of the adjudicatory hearing, the petitioner had submitted to dozens of drug screens, all of which were negative for any controlled substances. The petitioner's objection to a motion for a hair follicle screen is in no way analogous to a respondent's refusal to testify, as in *Doris S.*

More concerning than the circuit court's misapplication of *Doris S.* is the court's adverse inference of culpability based on the petitioner's exercise of her procedural right to respond to the guardian ad litem's motion. Although the circuit court never ruled on the guardian ad litem's motion for a hair follicle drug screen, the court considered the petitioner's written objection to the motion as affirmative evidence of an otherwise unsupported fact. Drawing an adverse inference from the mere exercise of a procedural right, such as filing an objection or opposition to a motion, is constitutionally impermissible. Such a practice penalizes the exercise of a constitutional right, chills future

exercise of that right, and effectively denies the party a meaningful opportunity to be heard.

It is well established that “[t]he due process of law guaranteed by the State and Federal Constitutions, when applied to procedure in the courts of the land, requires both notice and the right to be heard.’ Syllabus Point 2, *Simpson v. Stanton*, 119 W. Va. 235, 193 S.E. 64 (1937).” Syl. Pt. 1, *Hattman v. Darnton*, 201 W. Va. 371, 497 S.E.2d 348 (1997). For purposes of child abuse and neglect proceedings, the Legislature codified the constitutional right of meaningful access to the courts in West Virginia Code § 49-4-601(h), which provides that “[i]n any proceeding pursuant to this article, the party or parties having custodial or other parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard.” W. Va. Code § 49-4-601(h), in part. As we have explained, “[b]oth our statutory and case law unequivocally require that parents, or any party having custodial or other parental rights and responsibilities, be afforded a meaningful opportunity to be heard.” *In re T.S.*, 241 W. Va. 559, 564, 827 S.E.2d 29, 34 (2019).

By objecting to a motion, an adult respondent such as the petitioner is not conceding the truth of the opposing party’s position; rather, she is exercising her right to be heard. When a court draws an adverse inference from an adult respondent’s exercise of this right, “[i]t [imposes] a penalty . . . for exercising a constitutional privilege. It cuts down on the privilege by making its assertion costly.” *Griffin v. California*, 380 U.S. 609, 614 (1965) (forbidding prosecutorial comment or instruction by court that defendant’s silence

is evidence of guilt because such an inference is an unconstitutional burden on the right not to testify). The respondent is then placed in an impossible position: either forgo the right to object (and the right to be heard) or exercise the right to object and suffer an adverse inference. This effectively nullifies the right to be heard.

For the foregoing reasons, we conclude that the circuit court abused its discretion when it granted T.G.'s motion and drew an adverse inference from the petitioner's exercise of her procedural right to respond to the guardian ad litem's motion for a hair follicle drug screen. Accordingly, the court clearly erred in making the factual finding that the petitioner was purchasing and using a "more serious controlled substance," based on this erroneous adverse inference. We next consider how this finding was used for purposes of adjudication.

B. Findings Necessary for Adjudication of Neglect

At the time of adjudication, the circuit court took no new evidence or testimony but, instead, relied on the testimony presented at the preliminary hearing, in addition to the clearly erroneous adverse inference that the petitioner was abusing a "more serious controlled substance." On this basis, the circuit court adjudicated the petitioner to be a "neglectful parent" and the children to be "neglected children," stating that the petitioner's

continued drug use, after having been adjudicated as abusing and neglectful on three (3) separate occasions due to her drug abuse, and her conduct in actively seeking to purchase controlled substances from a known drug user in the

community, while providing him with 9mm ammo, and in light of the Court's prior adverse inference as to the particular controlled substance [the petitioner] was seeking, threatens her children's well-being.

The circuit court cited no clear and convincing evidence that the children were "neglected," as that term is defined in West Virginia Code § 49-1-201, and no such evidence was presented or even alleged during the proceedings below.

A "neglected child" is statutorily defined as a child

[w]hose physical or mental health is harmed or threatened by a *present* refusal, failure or inability of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care, or education, when that refusal, failure, or inability is not due primarily to a lack of financial means on the part of the parent, guardian, or custodian.

W. Va. Code § 49-1-201, in part (emphasis added). The petitioner and the guardian ad litem accurately state that the circuit court's findings do not satisfy this statutory definition of a "neglected child" because the definition requires that the harm or threat of harm be the result of "a present refusal, failure or inability of the child's parent . . . to supply the child with necessary food, clothing, shelter, supervision, medical care, or education." *Id.* Without the erroneous adverse inference of substance abuse, the only evidence that the petitioner abused substances was her admission to occasionally smoking marijuana. However, her uncontroverted testimony was that she did not smoke in the presence of her children and, as evidenced by her negative drug screen results, she had not used marijuana at the time the petition was filed and did not use throughout the pendency of the case. No evidence was admitted, nor allegations made, that the petitioner's parenting was impaired.

Similarly, the petitioner’s prior adjudications and text messages with C.C. fail to establish, by clear and convincing evidence, that the children were “neglected” at the time the petition was filed. No evidence was presented that the petitioner refused, failed, or was unable “to supply the child[ren] with necessary food, clothing, shelter, supervision, medical care, or education.” *Id.* Accordingly, it was an abuse of discretion for the court to find that clear and convincing evidence proved that the children were neglected.

The DHS ignores the substance of the definition of a “neglected child” in its flawed argument that “[i]t is sufficient to prove that the children’s physical or mental health is *threatened* by Petitioner’s substance abuse.” Similarly, the circuit court erred in concluding that the children were neglected because the petitioner’s inferred abuse of some “more serious,” but unspecified, controlled substance “threaten[ed] her children’s well-being.”¹⁷ The circuit court and the DHS relied upon *In re S.C.*, 248 W. Va. 628, 634, 889 S.E.2d 710, 716 (2023), in which we found that “admitted, chronic, and pervasive methamphetamine abuse by a parent entrusted with physical custody of his child necessarily proves an inability to provide adequate supervision and threatens the child’s well-being within the meaning of West Virginia Code § 49-1-201.” However, our findings

¹⁷ We recognize the circuit court’s efforts to protect the children from chronic substance abuse, and we are mindful of the court’s concern with the petitioner’s substance abuse history, admitted use of marijuana, and continued communication with a known distributor of controlled substances. Nevertheless, “courts in abuse and neglect cases [are] limited by constitutional and statutory bounds,” *In re A.E.*, 253 W. Va. 11, 927 S.E.2d 447, 454 (2026), and when adjudicating respondents, circuit courts are limited by the statutory bounds of West Virginia Code § 49-4-601 and the definitions set forth in West Virginia Code § 49-1-201.

in *In re S.C.* arose out of judicially noticed adverse effects of methamphetamine use and what Justice Wooton described as “zeal to condemn an especially virulent problem.” *Id.* at 636, 889 S.E.2d at 718 (J. Wooton, dissenting). Indeed, *In re S.C.* involved a parent who admitted to chronically abusing methamphetamine while serving as his child’s physical custodian, and who failed to produce a negative drug screen result for six months after the child’s removal. To the contrary, absent the court’s erroneous adverse inference finding, the present case involves no allegation or evidence that the petitioner was using methamphetamine or any other “more serious controlled substance” at the time the petition was filed or at any time during the pendency of the case. Therefore, *In re S.C.* is inapplicable. The court’s finding that the petitioner’s conduct “threatens her children’s well-being” does not satisfy the statutory definition of “neglect” for purposes of adjudication and does not obviate the requirement that “neglect,” as defined in West Virginia Code § 49-1-201, be proven by clear and convincing evidence.¹⁸

In conclusion, the circuit court abused its discretion in adjudicating the petitioner to be a neglectful parent, in the absence of any evidence that the children were “neglected child[ren].” Without satisfying the statutory prerequisite of a proper adjudication, the circuit court further abused its discretion in proceeding to disposition and

¹⁸ Courts are cautioned against expanding the holding in *In re S.C.* to circumvent the necessity of finding, by clear and convincing evidence, that, at the time the petition was filed, the “child’s parent, guardian, or custodian [refused, failed, or was unable] to supply the child with necessary food, clothing, shelter, supervision, medical care, or education.” W. Va. Code § 49-1-201; *see also* W. Va. Code § 49-4-601(i).

terminating the petitioner's custodial rights. *See In re R.M.*, 252 W. Va. at 425, 923 S.E.2d at 355, Syl. Pts. 3, 4 (holding that the requirements of West Virginia Code § 49-4-601 are a statutory prerequisite for continuation of abuse and neglect case). Accordingly, the court's dispositional order must be reversed, the adjudicatory order reversed, and the matter remanded for dismissal of the petition.¹⁹

We are cognizant that, although the petitioner has maintained visitation with the children, for nearly three years, the children K.W. and M.W. have resided with their paternal grandparents, and K.J. has resided with her father, T.G. Therefore, on remand and as part of dismissal, the circuit court must exercise its discretion in fashioning terms of reunification, in conjunction with the multi-disciplinary treatment team. Additionally, the court shall forthwith set and conduct proceedings to establish an appropriate parenting plan regarding child K.J.

¹⁹ As this matter is being remanded for dismissal, based on the petitioner's adjudication, it is not necessary to address the petitioner's remaining assignments of error, which included: (1) whether the circuit court erred in finding imminent danger following the preliminary hearing; (2) whether the circuit court erred in finding probable cause of abuse and neglect based on the evidence presented at the preliminary hearing; (3) whether the circuit court erred in denying the petitioner's motion for a preadjudicatory improvement period; (4) whether the circuit court erred in denying the petitioner's motion for a post-adjudicatory improvement period; and (5) whether the circuit court erred in terminating the petitioner's custodial rights rather than dismissing the case at disposition.

IV. CONCLUSION

For the reasons discussed above, the circuit court's July 17, 2024, adjudicatory order is hereby reversed; the court's December 30, 2024, dispositional order, as amended on January 21, 2025, is hereby reversed; and this matter is remanded to the circuit court for further proceedings consistent with this opinion. The Clerk is directed to issue the mandate contemporaneously with this Opinion.

Reversed and Remanded with Directions.

Mandate issued forthwith.