

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

***In re* L.T. and M.T.**

No. 25-853 (Berkeley County CC-02-2024-JA-290 and CC-02-2024-JA-291)

MEMORANDUM DECISION

Petitioner Father F.T.¹ appeals the Circuit Court of Berkeley County’s November 24, 2025, order terminating his parental rights to L.T. and M.T., arguing that the circuit court erred by adjudicating him as an abusing parent in the absence of clear and convincing 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.

In November 2024, the DHS filed a petition alleging that the petitioner abused and neglected L.T. and M.T. by abusing drugs in their presence, engaging in domestic violence with their mother and stepsiblings, and failing to provide adequate food, clothing, shelter, medical care, education, and supervision.³ Further, the DHS alleged that the petitioner failed to protect his stepdaughter from being sexually abused by a houseguest. The DHS filed an amended petition in February 2025 detailing L.T.’s disclosures during a Child Advocacy Center (“CAC”) interview. The child stated that the petitioner and her mother argued frequently. M.T. also underwent a CAC interview during which she disclosed that the home was dirty and lacked electricity, her mother’s “random friends” would visit and stay over, her mother was on drugs, the food in the home was spoiled, she feared the petitioner and he once threw a shoe at her, and that both parents abused prescription medication.

The petitioner’s stepchildren underwent CAC interviews as well, including then-fifteen-year-old F.M.-B., who stated that the mother and the petitioner used drugs, that there was drug paraphernalia in the home, that two adults were “renting” rooms in their home, that F.M.-B. was involved in a physical altercation with the petitioner because the petitioner was attempting to sell

¹ The petitioner appears by counsel Barry P. Beck. The West Virginia Department of Human Services (“DHS”) appears by Attorney General John B. McCuskey and Assistant Attorney General Lee Niezgoda. Counsel Debbie Flowers Payne 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 petition also included allegations regarding the petitioner’s stepchildren—G.S., F.M.-B., and K.M.-B.—who are not at issue here. However, their disclosures are relevant to this appeal. The petition further included allegations against other adult respondents.

F.M.-B.'s cell phone in order to buy drugs, and that the home lacked food, working bathrooms, laundry detergent, and other hygiene items. F.M.-B. explained that due to the adults' drug use, he took on the role of a parent at age fourteen by feeding and caring for his siblings. The child explained that his mother began abusing prescription medication in 2019 but eventually switched to fentanyl. The child lastly disclosed that one of his mother's drug dealers, J.H., sexually abused his sister K.M.-B. In then-fourteen-year-old K.M.-B.'s CAC interview, she disclosed that the petitioner asked her to allow J.H. to sleep in her room and that J.H. sexually abused her on multiple occasions. K.M.-B. reported that the petitioner and the mother commented that it would be "cute" if J.H., an adult, and K.M.-B. would enter into a relationship and marry. K.M.-B. further disclosed that the petitioner and the mother engaged in domestic violence and used cocaine. Lastly, the child disclosed that there was no working toilet in the home, no electricity, no working refrigerator or stove, and that when there was food in the home, it was expired.

In April 2025, the circuit court held an adjudicatory hearing where the petitioner testified that he used fentanyl daily while the children resided in the home. The petitioner admitted that there were periods when there was no electricity in the home but blamed the children for leaving lights on or the refrigerator open. The petitioner disputed the children's disclosures in their CAC interviews but admitted to allowing J.H. to stay "a few days" in the home. The petitioner testified that he never thought that J.H. would "molest[his] stepdaughter." At the continued adjudicatory hearing in June 2025, the petitioner denied allowing or asking J.H. to sleep in K.M.-B.'s room. Based upon this testimony, the court expressed its intention to conduct an interview with K.M.-B. pursuant to Rule 8 of the Rules of Procedure for Child Abuse and Neglect Proceedings and informed the parties about the topics to be covered therein. The court recessed and conducted a Rule 8 interview with K.M.-B. Thereafter, the court noted that K.M.-B. disclosed in both her CAC and Rule 8 interviews that the parents obtained free drugs from J.H. during the same period when the petitioner asked K.M.-B. to allow J.H. to sleep in her room. In the resulting adjudicatory order, the court found that the petitioner utilized K.M.-B. to obtain drugs. The court concluded that the petitioner and the mother abused substances to the detriment of their parenting ability and neglected the children both physically and emotionally due to the deplorable condition of the home and their failure to provide for the children's needs. The court further found that the petitioner knowingly permitted J.H. to sexually abuse K.M.-B. when she was thirteen years old, constituting aggravated circumstances.

Because the petitioner challenges only his adjudication, it is sufficient to note that the circuit court held a dispositional hearing in July 2025. In the resulting dispositional order, the court explicitly found that K.M.-B. was truthful and credible during her Rule 8 interview and terminated the petitioner's parental rights to L.T. and M.T.⁴ It is from the dispositional order that the petitioner 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 are reviewed for clear

⁴ The mother was awarded an improvement period, and L.T. and M.T.'s permanency plan is reunification with her. The court also terminated the petitioner's custodial and guardianship rights to his minor stepchildren K.M.-B. and F.M.-B., which he does not challenge on appeal.

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 that the circuit court erred by adjudicating him based upon K.M.-B.'s disclosures of sexual abuse and in the absence of clear and convincing evidence.⁵ Regarding the evidentiary burden at adjudication, West Virginia Code § 49-4-601(i) requires the court to "make a determination . . . as to whether the child is abused or neglected and whether the [parent] is abusing [or] neglecting," with the further requirement that "[t]he findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence." "[T]he clear and convincing standard is 'intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases.'" *In re F.S.*, 233 W. Va. 538, 546, 759 S.E.2d 769, 777 (2014) (quoting *Cramer v. W. Va. Dep't of Highways*, 180 W. Va. 97, 99 n.1, 375 S.E.2d 568, 570 n.1 (1988)). In challenging the evidence upon which he was adjudicated, the petitioner repeatedly asserts that K.M.-B.'s credibility should be questioned because of "inconsistencies" in her CAC interview and her Rule 8 interview and explicitly asks this Court to second guess the circuit court's credibility determinations. We will not. *See Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997) ("A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations."). Critically, we note that "a child who resides in a home where physical or sexual abuse of another child took place, even if that . . . child was not a direct victim, still meets the definition of an abused child [under West Virginia Code § 49-1-201] because that child is at risk of abuse." *In re H.B.*, 252 W. Va. 350, 359, 922 S.E.2d 350, 358 (2025). Given that the circuit court heard ample evidence of K.M.-B.'s sexual abuse in the home where all the children resided, it is clear that the court did not err in adjudicating the petitioner in regard to L.T. and M.T.⁶ Accordingly, he is entitled to no relief.

⁵ Additionally, the petitioner argues that the circuit court violated his right to due process because it substantially disregarded and frustrated the Rules of Procedure for Child Abuse and Neglect Proceedings by failing to comply with Rule 8(b) when conducting K.M.-B.'s interview. He contends that the court did not find that the presence of the parties' attorneys would be "especially intimidating" and that he was deprived of the opportunity to submit interview questions and topics. *See W. Va. R. P. Child Abuse & Neglect Procs.* 8(b). However, the petitioner concedes that he failed to object and asks this Court to find plain error. We decline to do so. "'Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.'" *Shaffer v. Acme Limestone Co., Inc.*, 206 W.Va. 333, 349 n.20, 524 S.E.2d 688, 704 n.20 (1999)." *Noble v. W. Va. Dep't of Motor Vehicles*, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009). Accordingly, we will not consider the petitioner's argument in this regard.

The petitioner also briefly argues that termination of his rights was error because it was based upon his erroneous adjudication. Given that we perceive no error in his adjudication, we decline to address his argument in this regard.

⁶ Moreover, the petitioner does not dispute his adjudication for abusing substances and failing to provide for the children's needs.

For the foregoing reasons, we find no error in the decision of the circuit court, and its November 24, 2025, order is hereby affirmed.

Affirmed.

ISSUED: October 14, 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