

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

In re K.G.

No. 25-855 (Berkeley County CC-02-2024-JA-123)

MEMORANDUM DECISION

Petitioner, the guardian ad litem for the child, K.G.,¹ appeals the Circuit Court of Berkeley County’s December 10, 2025, order denying the petitioner’s motion to permanently place K.G. in a subsidized guardianship with her grandmother and dismissing the abuse and neglect petition, arguing that the subsidized guardianship was in the child’s best interests.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 June 2024, the DHS filed a child abuse and neglect petition against the mother primarily alleging alcohol abuse. During the underlying proceedings, the DHS took custody of K.G. and placed the child with her grandmother. In August 2024, the mother indicated that she was prepared to offer a partial relinquishment of her parental rights. However, the guardian ad litem, acting upon the child’s wishes and opposition to such relinquishment, insisted that the mother instead participate in services under a preadjudicatory improvement period. It is uncontested that the mother successfully completed her improvement period and was never adjudicated as an abusive and/or neglectful parent. On November 18, 2025, the parties appeared for a final hearing regarding permanency for K.G. Although the mother remained a nonabusing parent, the petitioner requested the circuit court to permanently place K.G. in a subsidized legal guardianship with her grandmother. The petitioner argued that such placement was in K.G.’s best interest because she was settled in the grandmother’s home, wished to stay with her grandmother, the mother resided in a different school district, and subsidies would help support K.G. The mother agreed to this placement. However, the DHS objected to paying subsidies for the legal guardianship, arguing that it had fulfilled its duty to reunify the family by providing extensive services to the mother to successfully correct her abusive and/or neglectful conduct. The DHS argued that the abuse and neglect petition should be dismissed.

¹ Counsel Elizabeth L. Diehl appears as the child’s guardian ad litem. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Kristen E. Ross. The child’s mother, A.G., appears by counsel Jonathan T. O’Dell.

² We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

Ultimately, in an extensive order, the circuit court concluded that dismissal, rather than a subsidized legal guardianship, was appropriate under the circumstances. The circuit court emphasized that the mother was never adjudicated as an unfit parent, as she had successfully completed a preadjudicatory improvement period, and thus, she retained her full parental rights to the child. The circuit court noted that “[n]o party has presented evidence that [K.G.] would be in any danger or return[] to unsafe conditions with [the mother],” and the child had merely expressed her preference of living with the grandmother. In weighing the different dispositions available, the circuit court found that because there was no legal bar to reunification and there was little to no legal support to authorize a subsidized guardianship, dismissal of the instant petition was warranted and that this decision was consistent with the child’s best interests despite K.G.’s wishes otherwise. Accordingly, the circuit court denied the petitioner’s request for a subsidized guardianship for K.G., returned custody to the mother, and dismissed the abuse and neglect petition. Additionally, the circuit court emphasized that its order did not preclude the parties from allowing K.G. to continue to live with her grandmother and they could file a petition for guardianship. It is from this 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 for clear error, and issues of law 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 denying K.G. a subsidized guardianship with her grandmother as this was in the child’s best interests. However, the petitioner cites to no authority that would permit subsidization under these circumstances. Instead, the petitioner cites to West Virginia Code § 49-4-112(c), which states that the “[DHS] shall certify the child as eligible for a subsidy to obtain . . . a legal guardianship if it is in the best interest of the child.” Critically, the petitioner fails to engage with the remainder of that statute, as subsection (a) requires, in pertinent part, that for subsidies to be granted for a legal guardianship, “the children must be in special circumstances because one or more of the following conditions *inhibit* their . . . legal guardianship placement,” including that the child has a disability, is emotionally disturbed, is an older child, is part of a sibling group, or is a member of a racial or ethnic minority. W. Va. Code § 49-4-112(a) (emphasis added). Here, the petitioner failed to assert that any of the above conditions existed or inhibited the potential legal guardianship placement, making subsidized guardianship statutorily unavailable. Furthermore, although receiving subsidized payments from the DHS would surely aid any child, denial of such arrangement does not demonstrate that the circuit court failed to consider the child’s best interests as the petitioner contends. Rather, the record shows that the circuit court clearly considered the child’s best interests in deciding permanency for K.G. as it undertook substantial analysis concerning whether the child would face potential harm if returned to the mother’s care, the child’s relationship with her mother, and the fundamental importance of preserving such parent-child relationship.³ See Syl. Pt. 1, in part, *In re Willis*, 157 W. Va. 225, 207 S.E.2d 129 (1973) (“[N]o rule is more firmly established than that the right of a natural parent to the custody of his or her infant child . . . it is a fundamental personal liberty protected and guaranteed by the Due Process Clauses of the West Virginia and United States Constitutions.”). Notably, the mother was never adjudicated as an abusing and/or neglecting parent, as she successfully completed a preadjudicatory improvement period and retained her parental rights,

³ In circuit court, the mother supported subsidized guardianship with the grandmother, but on appeal she urges this Court to affirm the circuit court’s decision.

supporting the circuit court’s dismissal of the instant petition. *See In re K.B.-R*, No. 24-30, 2025 WL 1765531 at *7 (W. Va. June 26, 2025) (memorandum decision) (“Given the lack of adjudication as an unfit parent, [the father] had an inherent right to be reunified with the child.”); *In re State ex rel. L.D. v. Cohee*, 247 W. Va. 695, 701-02, 885 S.E.2d 633, 639-40 (2022) (finding error in the circuit court’s denial of reunification when the adjudicated parents successfully completed their improvement periods and no law barred reunification); W. Va. Code § 49-4-604(c) (outlining the list of dispositions in preferential order, with dismissal being first). Thus, merely because the circuit court’s decision was contrary to K.G.’s wishes, this does not demonstrate error, and the petitioner is not entitled to relief.⁴

For the foregoing reasons, we find no error in the decision of the circuit court, and its December 10, 2025, order is hereby affirmed.

Affirmed.

ISSUED: October 14, 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

⁴ In support of her argument, the petitioner also relies on West Virginia Code § 44-10-4, which permits a child “above the age of fourteen years” to “nominate his or her own guardian, who, if approved by the court, shall be appointed accordingly.” However, this statute is not applicable as no minor guardianship petition was filed under Chapter 44 of the West Virginia Code. Thus, the petitioner is not entitled to relief on this basis.