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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

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No. 25-357

_____

S.L.
Petitioner Below, Petitioner,

V.

A.C.,
Respondent Below, Respondent.

Appeal from the Intermediate Court of Appeals
No. 24-ICA-334
(Family Court of Wayne County, Civil Action No. FC-50-2019-D-44)

AFFIRMED AND REMANDED, IN PART, WITH INSTRUCTIONS

Submitted: October 21, 2026
Filed: November 13, 2026

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CHIEF JUSTICE BUNN delivered the Opinion of the Court.

SYLLABUS BY THE COURT

1. "On appeal of a final order of a family court from the Intermediate Court of Appeals of West Virginia, the Supreme Court of Appeals of West Virginia shall review the findings of fact made by the family court for clear error, and the family court's application of law to the facts for an abuse of discretion. The Supreme Court of Appeals shall review questions of law de novo." Syllabus Point 3, *Christopher P. v. Amanda C.*, 250 W. Va. 53, 902 S.E.2d 185 (2024).

2. "Questions relating to . . . custody of the children are within the sound discretion of the court and its action with respect to such matters will not be disturbed on appeal unless it clearly appears that such discretion has been abused." Syllabus, in part, *Nichols v. Nichols*, 160 W. Va. 514, 236 S.E.2d 36 (1977).

3. """A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the [family] court's account of the evidence is plausible in light of the record viewed in its entirety." Syl. Pt. 1, in part, *In re Tiffany Marie S.*, 196 W. Va. 223,

470 S.E.2d 177 (1996).' Syl. Pt. 3, *Estate of Bossio v. Bossio*, 237 W. Va. 130, 785 S.E.2d 836 (2016)." Syllabus Point 2, *Cowger v. Cowger*, 240 W. Va. 301, 810 S.E.2d 921 (2018).

4. "'Under the clearly erroneous standard, if the findings of fact and the inferences drawn by a family [court judge] are supported by substantial evidence, such findings and inferences may not be overturned even if a [reviewing] court may be inclined to make different findings or draw contrary inferences.' Syl. Pt. 3, *Stephen L.H. v. Sherry L.H.*, 195 W. Va. 384, 465 S.E.2d 841 (1995) [(*superseded by statute on other grounds)*]." Syllabus Point 3, *Cowger v. Cowger*, 240 W. Va. 301, 810 S.E.2d 921 (2018) (first alteration in *Cowger*).

BUNN, Chief Justice:

The question raised in this appeal is whether the family court erred in finding, by a preponderance of the evidence, that S.L. ("Father") sexually abused his child, B.L.[1] As a result of this finding, the family court gave sole custody of B.L. to A.C. ("Mother") with no visitation to Father. We find that there was no clear error or abuse of discretion by the family court and affirm the Intermediate Court of Appeals decision affirming the family court's order. *See S[.]L. v. A[.]C.*, No. 24-ICA-334, 2025 WL 1249607 (W. Va. Ct. App. Apr. 29, 2025) (memorandum decision). However, we recognize, sua sponte, that the family court failed to follow Rule 48 of the Rules of Practice and Procedure for Family Court relating to its mandatory duty to "immediately report the suspected abuse or neglect" to West Virginia Child Protective Services ("CPS") and the circuit court, so we remand, in part, with instructions to comply with the Rule's requirements.

[1] In cases involving sensitive facts, including those regarding abuse of children, we generally use initials, rather than full first or last names, to refer to the parties. *See In re Z.S.-1*, 249 W. Va. 14, 17 n.1, 893 S.E.2d 621, 624 n.1 (2023) (collecting cases); *see also* W. Va. R. App. P. 40(e) (restricting use of personal identifiers in cases involving children). While this appeal arises from a family court custody case, rather than an appeal arising from an abuse and neglect petition filed pursuant to Chapter 49 of the West Virginia Code, it nonetheless involves sensitive sexual abuse findings by the family court.

I.

FACTUAL AND PROCEDURAL HISTORY

At the time of Mother and Father's divorce in March 2019, Mother lived in Wayne County, West Virginia, while Father lived in Botetourt County, Virginia. Their agreed final order of divorce referenced a 2018 agreed parenting plan specifying that B.L., then approximately one-and-a-half years old, would spend three nights every two weeks with Father.

On July 22, 2021, Mother, on B.L.'s behalf, filed a petition for a domestic violence protection order ("DVPO") in Wayne County Magistrate Court against Father. The petition alleged that the child, then three years old, disclosed sexual abuse by Father first to Mother and again during a Child Advocacy Center ("CAC") interview.

The magistrate court granted the DVPO and on July 26, 2021, Mother filed a petition for modification of parenting time in family court, alleging that there was a substantial change in circumstances. The petition alleged that B.L. reported that her father put his finger "in her butt" to both Mother and the CAC, that the child arrived back from Father's home with injuries, and that the child begged not to visit Father. In a family court hearing memorialized in an August 19, 2021 order, the parties agreed to dismiss the domestic violence petition. The court further ordered that Father have no visitation or contact with B.L. until further court order and provided that "[e]ven though there are

allegations of abuse, because there are no findings of abuse at this point and there is a protective parent, it is not proper to refer this case to [c]ircuit [c]ourt at this time" and that it intended to "retain jurisdiction." On September 1, 2021, the court appointed B.L. a guardian ad litem ("GAL").

Following B.L.'s disclosures, Virginia's Botetourt County Department of Social Services ("BCDSS") opened an investigation into the allegations against Father. On September 9, 2021, Father was interviewed in relation to the investigation. Less than a week later, on September 14, 2021, the BCDSS informed Father that it had "determined the complaint to be Unfounded, as a review of the facts did not show a preponderance of the evidence that abuse occurred."

B.L.'s play therapist, who B.L. began seeing after the CAC interview, made a referral to the BCDSS in November 2021 based upon B.L.'s continued disclosures. By December 1, 2021, the BCDSS again determined that the allegations were "unfounded."[2]

[2] In late November 2021, Mother filed a complaint with the Virginia Office of the Children's Ombudsman ("OCO"), which investigates complaints "with respect to children who have been alleged to have been abused[.]" Mother's complaint alleged that the BCDSS did not conduct a complete investigation, that the BCDSS refused to provide her with a copy of the report, and that "there appear[ed] to be bias within BCDSS." The OCO concluded its investigation in May 2022. After observing the first forensic interview of B.L., the OCO agreed with the BCDSS that it "was not conducted properly and yielded no useful information upon which a finding of abuse could be made." Still, the OCO determined that the investigation resulting from the referral by B.L.'s therapist "did not meet the requirements of Virginia law or [the Virginia Department of Social Services]

The agency indicated that this outcome was "largely due to a decision not to allow the child to be interviewed again."

Memorialized in a January 11, 2022 order, the parties agreed that a final order was appropriate while the allegations against Father were investigated and until Father petitioned the court to reinitiate custody proceedings. The agreed order determined that no contact between Father and B.L. was "appropriate[.]" Mother remained the primary residential parent, with Father having no visitation and no contact with B.L. They also agreed that if Father reinitiated custody proceedings, Mother would retain the burden of proof "to prove her case."

In March 2022, the therapist made another referral to Virginia regarding B.L. being sexually abused.[3] B.L. participated in a second forensic interview in April 2022 at

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policy." The BCDSS did not speak with or review the records of either the therapist or law enforcement. Second, the OCO also found that the BCDSS concluded that the therapist's referral was unfounded "based solely on the mother's objection to subjecting the child to a second forensic interview" and recognized that the BCDSS "did not request or review" the therapist's records or recordings by law enforcement. Finally, the OCO determined that the BCDSS did not properly respond to Mother's record request. Although the OCO did not find "overt signs of bias," it acknowledged that there were multiple connections between BCDSS staff and Father's employment at a camp. OCO further noted that the therapist had made another referral, and that "report and ensuing investigation was transferred to another local department of social services to avoid the issue of bias, prejudice, or appearance of impropriety."

[3] While the therapist made this report to the BCDSS, the investigation was transferred to the Roanoke County Department of Social Services ("RCDSS"). *See* n.2.

Hope's Place in Ashland, Kentucky. During that interview, then-four-year-old B.L. disclosed that Father had peed on her, touched her "in a bad way[,]" and threatened to shoot her and Mother if she told anyone. In June 2022, the Virginia reviewing agency again found that the referral was unfounded.

In July 2022, Father filed a petition for modification of custody, seeking to reinitiate the custody determination pending before the family court before the January 2022 agreed order. He argued that the "allegations of abuse . . . have been determined by the appropriate State agencies to have been unfounded[,]" and that he was "no longer being investigated criminally regarding the . . . allegations." Mother opposed the petition, alleging that Father had failed to pay child support for six months, that the Virginia investigation was hampered by conflicts of interest, that two CAC interviews revealed that B.L. was sexually abused, and that B.L.'s therapist believed she was sexually abused.

In mid-2024, the family court held two hearings to address the petition for modification initially filed by Mother. The first hearing occurred in April 2024, where the GAL, the first CAC interviewer, three experts, and the child's therapist testified. [4] At the

[4] Portions of this testimony are summarized in footnote 7 of the ICA's memorandum decision. *S[.]L. v. A[.]C.*, No. 24-ICA-334, 2025 WL 1249607, at *2 n.7 (W. Va. Ct. App. Apr. 29, 2025) (memorandum decision). Also during this hearing, the family court discussed its duty under Rule 48 of the Rules of Practice and Procedure for Family Court, addressed more fully below.

last final hearing on June 5, 2024, Mother, paternal grandmother, and Father testified. The GAL recommended that there be no contact between B.L. and Father.

In the twenty-one-page final order, entered on July 23, 2024, the family court determined that Mother "shall remain primary residential parent and exclusive custodial caregiver" of B.L., as well as the "sole decision maker regarding day[-]to[-]day decision[s] and all major life decisions." It also concluded that Father would have "no parenting time until further order of the [c]ourt." The court recited the evidence and testimony over the two days of hearings, including that of the parties' experts. The family court recognized at the outset that the Virginia investigations determined that the abuse allegations were "unfounded" and that the criminal investigation into Father was closed. The court also recited parts of the CAC interviews of B.L., including the following regarding her first interview:

> During the interview [B.L.] disclosed "daddy hits me;" daddy put his finger in her butt "more than once." [B.L.] stated that "daddy put his finger in my doll's butt" and when asked if anyone has ever done anything like that to her she said "yes" "her real daddy." She disclosed that daddy gets poop on his fingers when his finger is in her butt.

The order noted that Father "objects to this finding and contends that the child did not make a disclosure of sexual abuse by her father" during the first CAC interview. The court recited quotes from B.L.'s second CAC interview, including that she said that Father peed on her, threatened to shoot her and Mother if she told, and that he touched her between her legs

when she was on a bed. The court also noted Father's contention that, based on the expert testimony presented, "the second interview . . . should not be given any weight."

In considering the testimony of B.L.'s therapist, the family court specifically found her testimony credible and recited that the therapist testified about B.L.'s multiple disclosures about her father, including that B.L. told the therapist that Father would "stick his finger up my butt[,]" and that he threatened to "shoot me if I talk." The order recited that the therapist testified that at one point, B.L. played "freeze and close your eyes" in the therapist's office, while "one Barbie was lying down and the other Barbie was fondling her private parts." B.L. "disclosed 'she plays freeze with her daddy.'" The court noted that the therapist testified that the child "exhibited no signs of coaching and that her emotional/physical responses were consistent with her verbal disclosures." The family court further noted that B.L. disclosed to the GAL that "she has accidents when she thinks about her real daddy who lives in Virginia and that he put his finger on her bottom (and she pointed to the front)."

The family court found that, following the March 2019 divorce order, which referenced the agreed parenting plan, a substantial change in circumstances occurred as B.L. "returned to her mother from her father's parenting time on multiple occasions with physical injuries" and "made consistent disclosures of sexual abuse by [Father] in two separate forensic interviews as well as multiple times in therapy." In awarding Mother

exclusive custody of B.L., the court's findings included that (1) a preponderance of the evidence indicated that Father sexually assaulted and/or sexually abused B.L.; (2) the continuance of the 2018 parenting plan providing Father with parenting time would be "detrimental and harmful" to B.L. due to the possibility of additional "sexual abuse at the hands of [Father]"; (3) the 50-50 custody presumption had been rebutted "because [B.L.] has been sexually assaulted and/or sexually abused by [Father]"; and (4) Mother should be awarded exclusive custody to protect B.L., taking into account the child's best interest. Accordingly, the family court awarded Mother sole custodial and decision-making responsibility over B.L. and denied Father any parenting time.

Father appealed the family court's order to the ICA, where he argued that the family court clearly erred by finding by a preponderance of the evidence that he sexually abused B.L.[5] The ICA rejected this contention, finding that the record "reflect[ed] that [B.L.] consistently disclosed detailed acts of sexual abuse to Mother, during two separate forensic interviews, and to her play therapist." *S[.]L.*, 2025 WL 1249607, at *3. The ICA also acknowledged that the GAL "opined that the evidence presented was more than substantial to support a finding of sexual abuse by a preponderance of the evidence." *Id*. The ICA recognized that the family court made its determination "after hearing testimony from multiple witnesses, reviewing exhibits that reflected the alleged abuse, and hearing

[5] Father's second assignment of error before the ICA regarded the testimony of Mother's expert. *S[.]L.*, 2025 WL 1249607, at *4. He does not raise that argument here, and we do not address it.

the GAL's recommendation[.]" *Id.* The ICA then determined that Father "fail[ed] to establish that the family court's finding is erroneous or an abuse of discretion." *Id.* Father now appeals.

II.

STANDARD OF REVIEW

Because this appeal concerns both factual findings and the weight of the evidence supporting certain conclusions, we examine the family court's findings of fact for clear error and consider whether it abused its discretion in applying the law to the facts:

> On appeal of a final order of a family court from the Intermediate Court of Appeals of West Virginia, the Supreme Court of Appeals of West Virginia shall review the findings of fact made by the family court for clear error, and the family court's application of law to the facts for an abuse of discretion. The Supreme Court of Appeals shall review questions of law de novo.

Syl. Pt. 3, *Christopher P. v. Amanda C.*, 250 W. Va. 53, 902 S.E.2d 185 (2024). We have also explained that, "[q]uestions relating to . . . custody of the children are within the sound discretion of the court and its action with respect to such matters will not be disturbed on appeal unless it clearly appears that such discretion has been abused." Syl., in part, *Nichols v. Nichols*, 160 W. Va. 514, 236 S.E.2d 36 (1977).

III.

DISCUSSION

Before this Court, Father contends that the family court's conclusion—that Father sexually abused B.L.—is not supported by the preponderance of the evidence.[6] Father asserts that the record does not support the family court's finding and that "[t]he only probative evidence" of whether Father sexually abused B.L. in the record was the child's first CAC interview. Still, he contends that the interview did not actually reveal that the child disclosed that Father "put his finger in her butt[,]" but that "the child simply describes her Father wiping her and getting poop on him and using a wipe to get it off." In his appeal, Father also contends that (1) the child protective services agencies in Virginia repeatedly found the allegations to be unfounded; (2) no medical doctor, psychologist, or psychiatrist found evidence that B.L. was sexually abused and no medical doctor found she was physically abused; (3) experts discounted the therapy because play therapy "is

[6] Both when requesting Rule 20 argument under the West Virginia Rules of Appellate Procedure and at the conclusion of his brief, Father's brief raises the concern that his constitutional right to parent his child has been, essentially, terminated using a preponderance of the evidence standard rather than the standards provided for when parental rights are terminated pursuant to Chapter 49 of the West Virginia Code, which regards, in part, abuse and neglect proceedings. However, Father fails to provide any legal authority or analysis for his argument and does not show if or when he raised this issue to the family court. We will not consider these arguments on appeal. *State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996) ("Although we liberally construe briefs in determining issues presented for review, issues which are not raised, and those mentioned only in passing but are not supported with pertinent authority, are not considered on appeal.").

suggestive"; (4) he cooperated with the investigations, and (5) an expert said the second CAC interview was without value.

Father's argument regarding the family court's conclusion requires a two-part analysis. First, we review the family court's factual findings for clear error. Syl. Pt. 3, *Christopher P.*, 250 W. Va. 53, 902 S.E.2d 185. Then, we consider whether the family court abused its discretion when it found by a preponderance of the evidence that sexual abuse occurred. *See id.* Upon review, we affirm the family court's determination. Finally, we address the family court's failure to comply with Rule 48.

A. The family court's factual findings regarding sexual assault were not clearly erroneous

Regarding whether a factual finding is clearly erroneous, the Court has explained that it may not substitute its judgment for the family court's, but instead considers whether the family court's findings are plausible in light of the entire record:

> A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the [family] court's account of the evidence is plausible in light of the record viewed in its entirety.

Syl. Pt. 2, *Cowger v. Cowger*, 240 W. Va. 301, 810 S.E.2d 921 (2018) (quoting Syl. Pt. 1, in part, *In re Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996), and Syl. Pt. 3,

Estate of Bossio v. Bossio, 237 W. Va. 130, 785 S.E.2d 836 (2016)). Similarly, "[u]nder the clearly erroneous standard, if the findings of fact and the inferences drawn by a family [court judge] are supported by substantial evidence, such findings and inferences may not be overturned even if a [reviewing] court may be inclined to make different findings or draw contrary inferences." Syl. Pt. 3, *Cowger v. Cowger*, 240 W. Va. 301, 810 S.E.2d 921 (2018) (quoting Syl. Pt. 3, *Stephen L.H. v. Sherry L.H.*, 195 W. Va. 384, 465 S.E.2d 841 (1995), *superseded by statute on other grounds*) (first alteration in *Cowger*).

We also rely on the witness credibility determinations made by the family court, as an appellate court "cannot assess witness credibility through a record." *Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997). The family court, as 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." *Id.* As the Court recently explained, in undertaking our review, this Court "do[es] not reweigh the evidence or make credibility determinations." *In re D.S.*, 251 W. Va. 466, 472, 914 S.E.2d 701, 707 (2025). The family court, in hearing the testimony and observing the witnesses, is best equipped to make such determinations, while we are limited to reviewing a cold record on appeal.[7] As

[7] *See State v. Vilela*, 238 W. Va. 11, 25, 792 S.E.2d 22, 36 (2016) (considering, in a criminal case, the sufficiency of the evidence and noting that credibility determinations are for the factfinder). The *Vilela* Court observed that "[o]ur review, conducted on a cold record, is not a tool to replace the finding of the [finder of fact] with our own judgment." *Id.*

the *In re D.S.* Court explained, "it is not our role on appeal to retry the case or substitute our judgment as to credibility based on hearing transcripts[,]" even with the recordings in the appendix. *Id.* at 473, 914 S.E.2d 708. Here, the family court "viewed the demeanor and the attitude of the parties and witnesses firsthand and was in the best position to assess the circumstances surrounding this contentious custody dispute." *Id.*

In its order, after describing in detail the evidence put forth by the parties and specifically finding that the therapist who recounted B.L.'s detailed descriptions of abuse was credible, the family court made several specific findings of fact. It found that B.L. "returned to her mother from her father's parenting time on multiple occasions with physical injuries and that she has also made disclosures of sexual abuse by her father in two separate forensic interviews as well as multiple times in therapy." The court then found "by a preponderance of the evidence" that Father "sexually assaulted and/or sexually abused" B.L., citing West Virginia Code §§ 61-8B-1 et seq. and §§ 61-8D-1 et seq. The court also found that continuing the agreed parenting plan would be "detrimental and harmful to the child in that the [c] ourt believes she would be subjected to sexual abuse at the hands of her father[.]"

Particularly in light of the family court's credibility findings and detailed recitation of the evidence in its twenty-one page order, we agree with the ICA's conclusion that "Father's arguments fail to establish that the family court's finding is erroneous[,]"

much less clearly erroneous. *See S[.]L.*, 2025 WL 1249607, at *3. The family court made its determination that Father sexually abused the child "after hearing testimony from multiple witnesses, reviewing exhibits that reflected the alleged abuse, and hearing the GAL's recommendation[.]" *Id*. We thus decline to disturb the family court's finding that Father sexually abused the child, as the family court did not clearly err in its factual findings.

B. The evidence considered by the family court met the preponderance of the evidence threshold

Father also argues that the evidence considered by the family court and used in finding that he sexually abused B.L. did not satisfy the preponderance of the evidence standard.[8] This argument also fails and the family court did not abuse its discretion in making that finding.

As we have stated in other contexts, "'[p]reponderance of the evidence' is defined as that degree of evidence that is of greater weight or more convincing than the

[8] The issues before the family court were the allocation of custody and decision-making; no party contests the use of the preponderance of the evidence standard by the family court. *See* W. Va. Code § 48-9-102a (regarding the presumption for equal custodial allocation that may be rebutted "by a preponderance of the evidence"); § 48-9-209(f) (listing factors a court must consider when determining whether the presumption is rebutted); *see also* § 48-9-206(d) (requiring that the court's determination regarding the "allocation of custodial responsibility" be written and "include specific findings of fact and conclusions of law supporting the determination").

evidence which is offered in opposition to it; that is, evidence which as a whole shows the fact to be proved to be more probable than not." *Frazier v. Gaither*, 248 W. Va. 420, 425, 888 S.E.2d 920, 925 (2023) (quoting *Suhr v. Okorn*, 83 S.W.3d 119, 121 (Mo. Ct. App. 2002) (quotations and citation omitted)).[9]

As outlined above, multiple witnesses as well as the child's CAC interviews provided evidence, and the family court did not abuse its discretion in ascertaining that the "fact to be proved"—that Father sexually abused B.L.—was "more probable than not." *See id.* The family court issued a detailed, lengthy order reciting the evidence it considered and explaining the myriad ways it arrived at its conclusion. Father's contention that the first

[9] Both Father and the GAL quote this standard from *Frazier v. Gaither* in their briefs. The *Frazier* Court also explained that

> preponderance of the evidence means that the party with that burden must prove its case by "greater weight." 2 Louis J. Palmer, Jr., *Handbook on Evidence for West Virginia Lawyers* § 1301.03[2], at 640 (7th ed. 2021). "This means merely that the party who has the burden of proof must produce evidence tending to show the truth of such facts that is more convincing . . . as worthy of belief, than that which is offered in opposition." *Id.* In other words, proof by a preponderance of the evidence contemplates evidence that weighs more heavily in favor of one side than the other; thus, the evidentiary scale is not balanced, but rather, tips at least slightly in favor of the party who bears the burden of proof. "'Where the evidence equally supports both sides, a party has not met its burden of proof'" by a preponderance of the evidence. *Darby v. Kanawha Cnty. Bd. of Educ.*, 227 W. Va. 525, 530, 711 S.E.2d 595, 600 (2011) (per curiam) (quoting hearing examiner's order).

248 W. Va. 420, 425, 888 S.E.2d 920, 925 (2023) (alterations in *Frazier*).

CAC interview was the *only* probative evidence is incorrect; the court did not rely solely on the child's first CAC interview, as other evidence was recited throughout its order. For these reasons, we decline to disturb the family court's proper exercise of its discretion.

C. The family court failed to properly follow Rule 48 of the West Virginia Rules of Practice and Procedure for Family Court

Upon review of the appellate record, however, we observe that the family court failed to comply with Rule 48 of the West Virginia Rules of Practice and Procedure for Family Court, despite recognizing the Rule's potential applicability. While we do not disturb the family court's conclusion regarding custody or its factual findings, due to the court's violation of the mandatory provisions of Rule 48, we remand this case to the family court for the limited purpose of compliance with the Rule.

Rule 48(a) provides that the family court "shall," if it "has reasonable cause to suspect any minor child involved in family court proceedings has been abused or neglected, . . . immediately report the suspected abuse or neglect" to CPS and the circuit court.[10] Rule 48(b) likewise requires the family court to submit a written referral to the

[10] In full, Rule 48(a) of the West Virginia Rules of Practice and Procedure for Family Court provides:

> *Reports by Family Court*. — If a family court has reasonable cause to suspect any minor child involved in family court proceedings has been abused or neglected, that family court shall immediately report the suspected abuse or neglect to the

county CPS office and send a copy of that referral to the appropriate circuit court judge and the prosecuting attorney. This written referral must "set forth the specific allegations or information that led to the family court's determination of reasonable cause to suspect that a child or children involved in family court proceedings has been abused or neglected." W. Va. R. Prac. & P. for Fam. Ct. 48(b).[11]

> state child protective services agency, under W. Va. Code §§ 49-2-802, 49-2-803, and the circuit court.

The Rule references the court's statutory duty to report pursuant to West Virginia Code § 49-2-803, which requires, in relevant part, that:

> Any . . . family court judge . . . who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault . . . shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Human Services. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint.

[11] In full, Rule 48(b) of the Rules of Practice and Procedure for Family Court provides:

At the conclusion of the April 2024 hearing, where the family court heard from witnesses concerning the petition to modify custody, the court discussed with the parties' attorneys and the GAL whether the court was required to make a referral to CPS and to the circuit court pursuant to Rule 48. The court stated that "any time there [are] allegations of abuse and/or neglect that come through court, I, of course, am supposed to do a referral or an overlap to CPS here in Wayne County and the circuit court." The court then noted that "the issue is these allegations . . . would also be the same exact issues that were already investigated, but . . . in a different jurisdiction," and inquired with the parties as to their position on Rule 48. Mother's counsel was not sure if reporting would matter, as the allegations had already been reported in Virginia and the report would be "duplicative," while Father's counsel posited that West Virginia would lack jurisdiction to investigate the claims there. Father's counsel further contended that any investigation would be moved to Virginia, which investigation already occurred. The GAL contemplated that if the matter were referred to West Virginia CPS, the child was already safe and not in

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> *Written Referrals*. — In addition to any oral communication made by the family court to the state child protective services agency pursuant to subdivision (a), the family court shall forthwith prepare and submit a written referral to the agency office in the county where the family court proceeding is pending and, at the same time, transmit copies of the referral to the appropriate circuit court in that county, as determined by the chief judge, and to the prosecuting attorney. Such written referral shall set forth the specific allegations or information that led to the family court's determination of reasonable cause to suspect that a child or children involved in family court proceedings has been abused or neglected.

danger, although she did believe that CPS could investigate. After hearing from these attorneys, the family court decided that it would "move forward" without making a referral pursuant to Rule 48.

Certainly, the family court recognized its duty under Rule 48 and also conferred with counsel and the GAL as to whether it needed to comply with the referral requirement. Still, it appears from the joint appendix that the family court never complied with its Rule 48 duties. Rule 48's requirements are mandatory and make no distinction as to *where* the suspected abuse or neglect has occurred. Even if the abuse or neglect is suspected to have occurred outside of this State, the information must be submitted as required once the threshold "reasonable cause" for suspicion is met.

Here, while we affirm the family court's ultimate determination, we remand, with instructions, for the family court to comply with its mandatory duties under Rule 48.[12] This remand is limited and does not affect the family court's custody order on appeal here.

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[12] Pursuant to Rule 48(d) of the Rules of Practice and Procedure for Family Court, even when a family court has reasonable cause to suspect child abuse or neglect and makes the required referrals to the CPS and the circuit court, the family court retains jurisdiction to decide the allocation of parental custody and decision-making unless and until an abuse and neglect petition is filed:

> ***Jurisdiction of Proceedings***. — The family court shall retain full jurisdiction of proceedings until an abuse or neglect petition is filed. If an abuse or neglect petition is filed and the family court has entered an order regarding the allocation of custodial and decision-making responsibility between the parents, orders

IV.

CONCLUSION

For the reasons explained above, we affirm the ICA's memorandum decision affirming the order of the family court and remand the case, in part, for the limited purpose of the family court to comply with Rule 48 of the Rules of Practice and Procedure for Family Court.

Affirmed and remanded, in part, with instructions.

> of the circuit court shall supersede and take precedence over any order of the family court regarding the allocation of custodial and decision-making responsibility between the parents. If the family court has not entered an order for the allocation of custodial and decision-making responsibility between the parents, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making responsibility between the parents and defer to the orders of the circuit court.