STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

***In re* O.S.**

No. 25-370 (Mercer County CC-28-2024-JA-257)

MEMORANDUM DECISION

The petitioner, C.S.,[1] appeals the May 31, 2025 order from the Circuit Court of Mercer County denying her requests to be designated as a psychological parent of O.S. and for visitation.[2] The petitioner argues on appeal that the circuit court erred by (1) misapplying the law regarding a psychological parent and (2) denying her the designation of a psychological parent and visitation with O.S. Both the West Virginia Department of Human Services ("DHS") and the child's guardian ad litem ("guardian") contend that the circuit court did not err. This case satisfies the "limited circumstances" requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure, and a memorandum decision is appropriate to vacate, in part, the circuit court's order and remand the matter for further proceedings consistent with this decision.

Several years prior to these proceedings, O.S.'s biological parents shared custody of the child.[3] However, around 2022 the child began to live full time in the father's home. During this time, the petitioner, the father's long-term partner, also lived in the home. On October 9, 2024, due to the father's declining health and resulting hospitalization, O.S.'s biological brother petitioned the Family Court of Mercer County and obtained temporary legal guardianship over O.S. The petitioner opposed the guardianship and requested that the family court appoint her O.S.'s guardian instead. Later that month, the father passed away. The family court held a contested

[1] In cases involving sensitive facts, we use initials, rather than the parties' full names. *See generally* W. Va. R. App. P. 40(e) (restricting use of personal identifiers in cases involving children).

[2] The petitioner is represented by counsel Bobby J. Erickson. Counsel for the West Virginia Department of Human Services are Attorney General John B. McCuskey and Assistant Solicitor General S. Hallie Hovey-Murray. The child is represented by her guardian ad litem, counsel P. Michael Magann.

[3] The record is unclear as to the details of the custody arrangement. However, at some point the mother's parental rights to O.S. were terminated due to abandonment.

guardianship hearing and, due to concerns about substance abuse, ordered both the petitioner and the child's brother to submit to drug testing. The brother tested positive for oxycodone and the petitioner tested positive for THC and methadone. Accordingly, the family court submitted a referral to Child Protective Services ("CPS") and a CPS worker filed a petition to obtain emergency custody of O.S. The CPS worker observed that both parties "present[ed] as being under the influence of substances." In November 2024, the DHS filed an abuse and neglect petition reiterating the facts detailed above and alleging that the child's welfare was harmed or threatened by both the brother's and the petitioner's substance abuse.

During a January 2025 status hearing,[4] the circuit court advised that the child had been placed with the maternal grandparents. At that time, the petitioner informed the court that she was seeking to be designated as a psychological parent and opposed O.S.'s permanent placement with the maternal grandparents.[5] On May 28, 2025, the circuit court held a contested permanency hearing during which it also considered the petitioner's claim that she was a psychological parent to O.S. The petitioner testified that prior to the father's passing, the petitioner had been in a relationship with him for approximately eight years, and the two had been engaged. She stated that she lived with the father for many years and had known O.S. since O.S. was approximately three years old.[6] The petitioner further testified that she helped the father care for O.S. for at least three years and that the father frequently left the petitioner alone with O.S. Specifically, the petitioner asserted that she helped O.S. with her academics; played with her daily; provided emotional and psychological support, especially in helping the child process her mother's absence due to substance abuse; showered, fed, and clothed the child; attended the child's medical and dental appointments; attended church with her; and bought various items for her. The petitioner stated that she loved and treated O.S. as if she were her own child and developed a strong relationship with her with the father's consent and encouragement. She highlighted that the DHS had previously designated her as a safety resource to provide around-the-clock supervision of O.S.

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[4] The record on appeal is limited to the issue raised regarding whether the petitioner is a psychological parent to O.S., and if so, whether the petitioner should receive visitation. Accordingly, the record is unclear as to what occurred regarding the abuse and neglect petition. We limit our review to only the issue raised.

[5] In closing argument, the petitioner's counsel indicated that the petitioner was seeking only visitation at that point:

> [The petitioner], through discussing this matter with her, she's not asking for custody of the child. Her main pressing goal is the best interest of the child. For that she believes contact with her would be the most valuable thing that she can offer to the child. . . . Your Honor, seeing that she should be appropriately deemed the psychological parent, [the petitioner], would be appropriate for visitation and we believe that at best, she would only ask for maybe a weekend a month. Nothing so substantial as to interfere with the child's regular life[.]

[6] O.S. was seven years old at the time of the January 2025 status hearing.

while the child was in the father's care.[7] The petitioner stated that when the brother obtained temporary guardianship in October 2024, the child was removed from her care. Regarding her methadone usage, the petitioner stated that she participated in a medication-assisted substance abuse treatment program for the last seven years and was set to graduate soon. She further reiterated that she had a methadone prescription, as well as a valid medical cannabis card. Lastly, in response to a concern raised by the guardian, the petitioner confirmed that, for a few days during the underlying proceedings, due to having surgery and needing help with the recovery process, she had stayed at O.S.'s uncle's house, who was a convicted sex offender. She noted that this arrangement only lasted for a couple of days and that she never brought any children around him.

Next, O.S.'s brother testified that he lived with the father and the petitioner when the father had custody of O.S. from the middle of 2022 to the beginning of 2024. During his testimony, the brother stated that his father had several girlfriends and was not engaged to the petitioner. The brother further indicated that O.S. had been around these other women. When questioned why he had initially petitioned for a guardianship, he explained that when the father was dying, the maternal grandmother had told him that O.S. "needed to be with either [one] of us, cause [the petitioner] ha[d] no right" to be O.S.'s guardian. Finally, the brother opposed the petitioner as a permanent placement for O.S.

The maternal grandmother testified that she was foster care certified and had been consistently involved in O.S.'s life since her birth and frequently cared for her, except for two years when the mother had denied her contact with O.S. The grandmother indicated that the child stated that the grandmother was her "favorite person" and that the child feared the petitioner, although the grandmother conceded that there was no evidence to corroborate the latter claim. The grandmother also testified that while in the petitioner's care, O.S. had missed several days of school.

Lastly, a DHS worker testified that the child had expressed a preference to stay with the maternal grandmother and her husband rather than the petitioner and had only requested visitation with her brother. During closing argument, the petitioner, by counsel, proffered that she was not requesting permanent placement of the child but rather wished to be granted visitation as she believed she had proven she was the child's psychological parent.

During the hearing, the circuit court found that the petitioner was not a psychological parent to O.S., and it was therefore precluded from granting the petitioner visitation rights. In reaching this decision, the court explained that to qualify as a psychological parent, the legal parent must have consented and encouraged the relationship. The court further stated that such relationship must "not [be] intended to be temporary and the case law hints that it needs to be recent and ongoing." The court found that "[w]hile there was a period of time that [the petitioner] was in this child's life," the relationship ceased in October 2024—approximately seven months prior. The

[7] The DHS enacted this safety plan following an incident in March 2023, where the father had been arrested while O.S. was in his care. The safety plan provided that the petitioner was to supervise O.S. while in the care of her father.

court found that "there [was] no ongoing relationship with this child or a recent relationship with this child" upon which to deem the petitioner a psychological parent. In the subsequent written order, the court reiterated that it had "analyzed the definition of psychological parent"; that the relationship between the individual and the child "need[ed] to be recent and ongoing"; and that the petitioner did not satisfy this definition. The court, therefore, denied the petitioner any visitation with O.S., and further found that the child should remain with the maternal grandmother and her husband and that adoption was the appropriate permanency plan.

As we have recently held,

> [t]his 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). The petitioner asserts that by misapplying and misinterpreting the law regarding a psychological parent, the circuit court erred in finding that the petitioner is not psychological parent and in denying her visitation with the child.

This Court has previously found that children have the "right to continued association with individuals with whom [the child] has formed a close emotional bond . . . provided that a determination is made that such continued contact is in the best interests of the child." Syl. Pt. 11, in part, *In re Jonathan G.*, 198 W. Va. 716, 482 S.E.2d 893 (1996), *holding modified on other grounds by State ex rel. C. H. v. Faircloth*, 240 W. Va. 729, 815 S.E.2d 540 (2018). *See also* Syl. Pt. 11, *In re Antonio R.A.*, 228 W. Va. 380, 719 S.E.2d 850 (2011) ("'Although custody of minor child should be with the natural parent absent proof of abandonment or some form of misconduct or neglect, the child may have a right to continued visitation rights with the stepparent or half-sibling.' Syl. Pt. 2, *Honaker v. Burnside*, 182 W. Va. 448, 388 S.E.2d 322 (1989)."). One of the individuals with whom a child has a continued right to association is a psychological parent. We have defined a psychological parent as:

> a person who, on a continuing day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills a child's psychological and physical needs for a parent and provides for the child's emotional and financial support. The psychological parent may be a biological, adoptive, or foster parent, or any other person. The resulting relationship between the psychological parent and the child must be of substantial, not temporary, duration and must have begun with the consent and encouragement of the child's legal parent or guardian.

Syl. Pt. 3, in part, *In re Clifford K.*, 217 W. Va. 625, 619 S.E.2d 138 (2005). In reaching this definition, we described the "most crucial components of the psychological parent concept" as follows:

> the formation of a significant relationship between a child and an adult, who may be, but is not required to be, related to the child biologically or adoptively; a substantial temporal duration of the relationship; the adult's assumption of caretaking duties for and provision of emotional and financial support to the child; and, most importantly, the fostering and encouragement of, and consent to, such relationship by the child's legal parent or guardian. Moreover, our prior decisions suggest that one may attain psychological parent status either while living in the same household as the child and his/her legal parent or guardian or while residing with the child in the absence of the child's legal parent or guardian.

Id. at 643-44, 619 S.E.2d at 156-57 (footnotes omitted). When this Court has found that a psychological parent relationship exists, "that person typically has resided in the child's household and interacted with the child on a daily basis." *In re Visitation & Custody of Senturi N.S.V.*, 221 W. Va. 159, 167, 652 S.E.2d 490, 498 (2007) (per curiam). In other words, a psychological parent "essentially serves as a second parent to a child and is a relationship to which the child's parent has consented." *Id.* Simply put, "[a]t the heart of the psychological parent cases is a recognition that children have a strong interest in maintaining the ties that connect them to adults who love and provide for them." *V.C. v. M.J.B.*, 748 A.2d 539, 550 (N.J. 2000).[8]

Here, the circuit court's order contained very little analysis regarding its conclusion that the petitioner is not O.S.'s psychological parent: "In regards to [the petitioner], the [c]ourt analyzed the definition of psychological parent. It needs to be recent and ongoing. It ceased October, 2024. The [c]ourt doesn't find she meets the definition of psychological parent. The [c]ourt can't grant visitation." During the hearing, the court gave a similarly lacking analysis: "While there was a period of time that [the petitioner] was in this child's life, that ceased in October of last year,

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[8] However, this Court has explained that there are limits to who can satisfy this definition of a psychological parent:

> [o]bviously, a child will hold in high esteem any person who looks after him/her, attends to his/her needs, and lavishes him/her with love, attention, and affection. However, simply caring for a child is not enough to bestow upon a care giver psychological parent status. Were this the law of the State, any person, from day care providers and babysitters to school teachers and family friends, who cares for a child on a regular basis and with whom the child has developed a relationship of trust could claim to be the child's psychological parent and seek an award of the child's custody to the exclusion of the child's parent. Clearly, this is not the result contemplated by this Court's prior holding[.]

In re Visitation & Custody of Senturi N.S.V., 221 W. Va. at 168, 652 S.E.2d at 499.

through no fault of [the petitioner]. I mean, I'm not going to fault her for that, but that relationship ceased to exist. So, there has been no ongoing relationship with this child or a recent relationship." Despite acknowledging portions of this Court's definition of a psychological parent, the circuit court appeared to focus solely on whether the relationship between the petitioner and O.S. was "recent and ongoing." In doing so, the circuit court failed to appropriately consider whether the petitioner's relationship with O.S. satisfied this Court's multi-factored definition of a psychological parent. Further exacerbating this issue, the circuit court failed to make any credibility findings concerning the conflicting testimony of the petitioner's involvement in the child's life.[9] Ultimately, it is clear from the record that the court failed to make necessary findings regarding the credibility of the witnesses and misconstrued this Court's definition of a psychological parent.

On remand, should the circuit court determine that the petitioner is a psychological parent based on the standard set forth above, it must also determine whether to allow visitation.[10] *Cf. In re Clifford K.*, 217 W. Va. at 644, 619 S.E.2d at 157 ("[W]e also wish to make it abundantly clear that the mere existence of a psychological parent relationship, in and of itself, does not automatically permit the psychological parent to intervene in a proceeding to determine a child's custody pursuant to W. Va. Code § 48-9-103(b)."). Specifically, the circuit court must determine whether visitation with the petitioner is within O.S.'s best interest:

> [u]ndoubtedly, [the child's] best interests must be the primary standard by which we determine [the child's] rights to continued contact with other significant figures in [the child's] life. Clearly, these interests are interests of the child and not of the parent. Visitation is, to be sure, a benefit to the adult who is granted visitation rights with a child. But it is not the adult's benefit about which the courts are concerned. It is the benefit of the child that is vital. Visitation is not solely for the benefit of the adult visitor but is aimed at fulfilling what many conceive to be a vital, or at least a wholesome contribution to the child's emotional well being by permitting partial continuation of an earlier established close relationship.

Honaker, 182 W.Va. at 452, 388 S.E.2d at 325 (quotations, citations, and footnotes omitted). In *Honaker*, this Court also explained:

> The best interests of the child concept with regard to visitation emerges from the reality that [t]he modern child is considered a person, not a sub-person over whom the parent has an absolute and irrevocable possessory right. The child has rights. . . . Another concern is the need for stability in the child's life. . . .

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[9] Furthermore, the circuit court found that there was no recent or ongoing relationship since October 2024. This determination is concerning because the circuit court noted that the petitioner's relationship with O.S. ceased in October 2024 "through no fault of [the petitioner]."

[10] Given the lack of necessary factual findings by the circuit court, this Court is not in a position to determine whether the petitioner satisfies the definition of a psychological parent.

> [T]ermination of visitation with individuals to whom the child was close would contribute to instability rather than provide stability.

Id., 388 S.E.2d at 326 (alterations in original) (quotations, citations, and footnotes omitted). *Cf. In re Clifford K.*, 217 W. Va. at 646, 619 S.E.2d at 159 ("Having established Tina B.'s relationship to the subject child, we next must determine whether her status as a psychological parent entitles her to intervene in proceedings seeking a determination of his custody."). Accordingly, we vacate, in part,[11] the circuit court's May 31, 2025 order denying the petitioner the designation as a psychological parent of O.S. and for visitation and remand for further proceedings consistent with this decision. The Clerk is directed to issue the mandate contemporaneously therewith.

Vacated, in part, and remanded.

ISSUED: November 10, 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

[11] The circuit court's May 31, 2025 order also made findings of fact and conclusions of law regarding O.S.'s permanent placement with O.S.'s maternal grandmother and her husband, as well as O.S.'s ability to maintain sibling contact with her brother. These findings and conclusions are not at issue in this appeal and we decline to disturb them.