IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

No. 25-425

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In Re A.S., R.S.-1, and L.S.

Appeal from the Circuit Court of Brooke County
The Honorable Jason A. Cuomo, Judge
Case Nos. CC-05-2023-JA-24,
CC-05-2023-JA-25, and CC-05-2023-JA-28

VACATED AND
REMANDED WITH DIRECTIONS

Submitted: September 22, 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. "Whenever a circuit court modifies the initial disposition of an abuse and neglect case pursuant to West Virginia Code § 49-4-606, the court must satisfy the procedural requirements that apply to the new manner of disposition according to West Virginia Code § 49-4-604 and this Court's rules." Syllabus Point 6, *In re P.F.*, 253 W. Va. 121, 929 S.E.2d 712 (2026).

3. "Where it appears from the record that the process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes for the disposition of cases involving children adjudicated to be abused or neglected has been substantially disregarded or frustrated, the resulting order of disposition will be vacated and the case remanded for compliance with that process and entry of an appropriate dispositional order." Syllabus Point 5, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001).

KIRKPATRICK, Justice:

The petitioner mother, J.P., and petitioner father, R.S.-2, jointly appeal the May 27, 2025, order of the Circuit Court of Brooke County, which granted the guardian ad litem's motion to modify a previously-granted "Disposition 5" and terminated the petitioners' parental rights to the children R.S.-1 and L.S.[1] The petitioners allege that procedural irregularities and notice deficiencies after the court ordered the initial disposition, pursuant to West Virginia Code § 49-4-604(c)(5) (2020),[2] violated their rights and affected their participation in the case. Additionally, the petitioners argue, and the Department of Human Services ("DHS") and guardian ad litem concede, that the circuit court erred in terminating the petitioners' parental rights without addressing the statutory findings required for termination of parental rights under West Virginia Code § 49-4-604(c)(6).

After our review of the parties' briefs and oral arguments, the appendix record, and the pertinent legal authority, we find that the process established by statute and this Court's rules regarding the disposition of child abuse and neglect matters was substantially disregarded and frustrated by the circuit court. The court functionally

[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). Further, because one of the children and the petitioner-father share the same initials, we refer to them as R.S.-1 and R.S.-2, respectively.

[2] West Virginia Code § 49-4-604 was amended in 2026, but the 2020 version of the statute applied at the time of the proceedings below.

excludeed the petitioners, who retained parental rights, from post-dispositional proceedings and then, terminated their parental rights without following the necessary dispositional procedures. Accordingly, we vacate the circuit court's order granting the guardian ad litem's motion to modify disposition and terminating the petitioners' parental rights and remand this matter to the circuit court for further proceedings consistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

In the spring of 2023, the children were removed from the home,[3] and the DHS filed a petition alleging truancy, deplorable living conditions, physical abuse of the child R.S.-1, and that both petitioners had been charged with felony child abuse resulting in injury. Following an unsuccessful preadjudicatory improvement period, an amended petition was filed. Thereafter, the petitioners filed written stipulations to allegations in the amended petition, and on that basis, the circuit court found the petitioners to be abusive and neglectful parents at the adjudicatory hearing in October 2023. In December 2023, the court granted the petitioners post-adjudicatory improvement periods, but afterwards, the petitioners ceased communicating with their counsel, screened positive for cocaine three times, did not comply with requirements of their improvement plans, and failed to appear

[3] Five children were removed from the petitioners' home. Because the oldest child turned eighteen in January 2025, that child is not at issue in this appeal. Additionally, because E.S. turned eighteen in January 2026, that child was dismissed from this appeal. The initial disposition has not been modified with respect to A.S., who remains in residential treatment. This appeal only involves the two children, R.S.-1 and L.S.

for a status hearing in February 2024. Therefore, the court terminated the petitioners' improvement periods and set the case for disposition.

The petitioners appeared for the dispositional hearing held in May 2024, at which time the DHS and the guardian ad litem moved for termination of the petitioners' parental rights, pursuant to West Virginia Code § 49-4-604(c)(6). However, based on representations that the children desired to be reunified with the petitioners, the court found that it was not in the best interests of the children to terminate the petitioners' parental rights. Therefore, the court ordered what it referred to as a "Disposition 5," pursuant to West Virginia Code § 49-4-604(c)(5), placing the children in the temporary care, custody, and control of the DHS, but granting the petitioners one visit per week by phone or video (referred to herein as the "initial disposition").[4] At the conclusion of the hearing, the court announced that it would hold the next hearing, virtually, on June 12, 2024, at 11:15 a.m.[5]

The court did not dismiss the petitioners or relieve their counsel at the dispositional hearing or in the initial dispositional order. Nevertheless, counsel for the petitioners believed that "when the [c]ourt issued a Disposition 5, that [their] services were no longer required[.]" Additionally, the DHS case worker did not notify the petitioners or

[4] The May 2024 dispositional decision involved the children A.S., R.S.-1, and L.S. However, the modification of disposition at issue in this appeal only involves the children R.S.-1 and L.S.

[5] The date and time of the hearing were also included in the dispositional order, but that order was not entered or distributed to the parties until December 2024.

their counsel of multi-disciplinary team ("MDT") meetings held after the initial disposition because she "believed that the case was over with the Disposition 5 with regard to the [petitioners]," and she "did not believe they had a right to attend those MDT meetings."[6]

Petitioners and their counsel failed to appear for the next four permanency review hearings. The first such hearing, which was set at the conclusion of the dispositional hearing, was held virtually in June 2024. At that time, it was reported that the supervised phone and video calls between the petitioners and the children were "going well." The order from the June hearing noticed the next permanency review hearing for August 7, 2024, but the order was not entered until August 6, 2024.

Notice of the August 7, 2024, hearing was electronically mailed to counsel for the petitioners the day prior to the hearing, on August 6, 2024. Neither petitioners' counsel nor the petitioners appeared. At that time, it was reported that the children R.S.-1 and L.S. were in a new foster placement that was interested in adopting them. The guardian ad litem moved for visitation between the children and the petitioners to be "tapered off"

[6] It was not until the hearing on May 22, 2024, that counsel for the petitioners and the DHS case worker advised the court of their misunderstanding regarding the necessity of the petitioners' involvement after the initial disposition. It is unclear from the record whether the circuit court believed that the petitioners and their counsel needed to be present for the permanency review hearings. Transcripts of the permanency review hearings are not included in the appendix, and there is no indication in the record or in the orders from those hearings whether any attempt was made to contact the petitioners or their counsel regarding their absence. Additionally, the orders from the permanency review hearings include no mention that the petitioners or their counsel failed to appear, despite the fact that pre-disposition orders, such as the "February 23, 2024 Status Hearing Order," expressly noted when the petitioners were not present.

because the visits were not in the children's best interests. The court granted the guardian ad litem's request and ordered visitation to be "tapered off" in the discretion of the guardian ad litem.[7] The order from that hearing was entered promptly and included notification of the next hearing on November 6, 2024.

On October 2, 2024, the Brooke County Circuit Clerk removed counsel for the petitioner R.S.-2 from the electronic case file, without notation as to why and without a court order directing the Clerk to do so. As a result, counsel for R.S.-2 received no further notices or filings in the case, and notices were thereafter mailed directly to the last known address for R.S.-2. Counsel for the petitioner J.P. was never removed as counsel from the electronic case file and continued to receive electronic filings and notices.

The third permanency review hearing was held in November 2024. Although notice of the hearing had been electronically mailed to counsel for both petitioners in August 2024, neither the petitioners nor their counsel appeared. At that time, the court again ordered that the guardian ad litem "shall hold discretion of visits and calls for the minor children." The order entered following that hearing set the date and time for the next hearing in February 2025, but due to R.S.-2's counsel being removed from the electronic

[7] The DHS case worker later testified that she never notified the petitioners, following the August 2024 hearing, that the court had ordered their visitation to be "tapered off."

case file, it was only sent to counsel for J.P. and mailed directly to the last known address for R.S.-2.

The petitioners' video visitations with R.S.-1 and L.S. began tapering off in August 2024 and ultimately ceased in November 2024. Thereafter, the petitioners "repeatedly" texted their case worker regarding visitation, but she did not respond other than to direct them to discuss the matter with their attorneys. Also in November 2024, the petitioners sought to modify disposition by going to the circuit clerk's office. However, petitioner R.S.-2 was advised by the circuit clerk that he did not have an attorney listed, so he attempted, unsuccessfully, to hire another attorney.

On February 6, 2025, the guardian ad litem filed a motion to modify disposition, asking the circuit court to terminate the petitioners' parental rights to R.S.-1 and L.S. In support of the motion, the guardian ad litem argued that the petitioners had not sought to modify their disposition or to regain custody of the children; the children had been placed out of the home in excess of twenty-three months; and the children were thriving in their current placement and expressed the desire to be adopted by their current placement.

The fourth permanency review hearing at which the petitioners and their counsel failed to appear was held in February 2025. At that hearing, the guardian ad litem outlined his motion to modify disposition, and the court "informed all parties that [c]ounsel of record for the [petitioners, J.P. and R.S.-2] would need to be reappointed to address said

Motion to Reconsider the Disposition 5 Agreement." Therefore, the court "reappointed" counsel for J.P. and R.S.-2 "for purposes of addressing the Motion to Modify Disposition 5 Agreement," and set a hearing on the guardian ad litem's motion to modify.

Having been "reappointed" and notified of the pending motion, counsel for the petitioners and the petitioners appeared for the next hearing in April 2025. The petitioners represented that they had not received notice of any of the hearings since the dispositional hearing in May 2024.[8] The court acknowledged that, pursuant to West Virginia Code § 49-4-601(h) (2019),[9] the petitioners were entitled to notice and a meaningful opportunity to be heard at the permanency review hearings. Therefore, the hearing was reset to revisit the permanency and visitation discussed in August 2024, in order to give the petitioners a meaningful opportunity to be heard on those issues.

At the next hearing, on May 15, 2025, counsel for the petitioners presented arguments about the petitioners not receiving notice of either the permanency review hearings or the termination of their visitation with the children, R.S.-1 and L.S. Petitioners' counsel indicated a belief that they had been "removed from [their] duties" at the initial dispositional hearing, and the court, likewise, indicated that, as a result of the "disposition

[8] Testimony during the April 17, 2025, hearing also revealed that in July 2024, R.S.-2 told the DHS case worker that "[w]e've done everything you guys have asked," and that "I want my kids back." However, the worker did not respond.

[9] West Virginia Code § 49-4-601 was amended, effective July 2025. Therefore, at the time of the hearing in April 2025, the applicable version of the statute was enacted in 2019.

5[,] . . . the parties [were] sort of dismissed." The court acknowledged that it was "a problem" that the petitioners did not receive notice of their post-dispositional visitation being "tapered off." Therefore, the court took evidence and heard arguments regarding the visitation and, ultimately, reinstated the petitioners' visitation. The matter was reset for consideration of the guardian ad litem's motion to modify disposition.

On May 21, 2025, the petitioners filed a joint motion to modify disposition to regain custody of their children.[10] On May 22, 2025, the circuit court conducted an evidentiary hearing on the conflicting motions to modify disposition. No decision was stated on the record, but on May 27, 2025, the court entered its "Order Granting GAL's *Motion to Modify Disposition 5 Order*," which granted the guardian ad litem's motion and terminated the petitioners' parental rights. In that order, the court explained its reasoning as follows:

> the GAL and the State have demonstrated by clear and convincing evidence that a material change of circumstances in R.S.[-1] and L.S.'s lives has occurred since the Disposition 5 hearing in May of 2024, **AND** the modification is in their best interest in that: (1) **neither** child **now** wants to be reunited with the [petitioners]; (2) both children have significantly bonded with the current foster family for nearly a year, making vast improvements in school, extra-curricular activities, physical and mental health, and communication skills in general; (3) both children are flourishing in their current environment and now have desire to remain with the foster family and be adopted by them.

[10] A copy of the petitioners' motion to modify disposition is not included in the appendix.

> In contrast, the Court **FINDS** [petitioners] have failed to demonstrate by clear and convincing evidence that they have made a material change in their own circumstances and that its [sic] in the best interests of their children to return them to their care, custody, and control. . . .
>
> . . . Detriment to the [petitioners] is not the standard by which this Court is to determine the instant *Motion*. It is whether it is in the best interest of the children to grant or deny the *Motion*.
>
> Despite receiving notice of their duties to move the Court to modify their Disposition 5, despite receiving notice of each of the hearings that have occurred since the Disposition 5, the [petitioners] have failed to both move this Court to modify their disposition and to appear at any of the hearings in nearly the past year. During this time, L.S. and R.S.[-1] have significantly bonded with their foster family and have thrived in said environment. The [petitioners'] belated claim, without corroboration, that their house is now habitable and that [petitioner R.S.-2] is "drug-free" based upon incomplete records the V [sic], is neither clear nor convincing to this Court and certainly not in their children's best interest to change the Disposition 5 to "reunification."
>
> **ACCORDINGLY**, this Court does hereby **GRANT** the GAL's *Motion to Modify Disposition* and hereby **TERMINATES** the parental rights of both [petitioners] as to R.S.[-1] and L.S.

The petitioners jointly appeal the termination of their parental rights.[11]

[11] The Notice of Appeal was filed jointly, listing counsel for both petitioners. Likewise, the accompanying motion to file out of time was signed by both counsel for R.S.-2 and J.P. However, the petitioners' brief, reply, and supplemental brief are only signed by counsel for R.S.-2, and only counsel for R.S.-2 appeared at oral argument, at which time she advised the Court that counsel for J.P. did not participate in the briefing.

II. STANDARD OF REVIEW

We recently synthesized the standards applicable to our review of circuit court orders in abuse and neglect proceedings as follows:

> 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 these standards of review in mind, we turn to the parties' arguments.

III. DISCUSSION

On appeal, the petitioners state seven assignments of error, all alleging errors occurring after the initial disposition.[12] They argue that the procedural irregularities and

[12] Our consideration of the petitioners' arguments was hindered by the inaccurate citations to case law, statutes, and rules within the petitioners' brief, including a fabricated syllabus point and fictional quotations. Other courts have found similar anomalies indicative of the use of generative artificial intelligence ("AI") to draft court submissions.

On June 14, 2024, the West Virginia Lawyer Disciplinary Board issued Legal Ethics Opinion 24-01, specifically addressing the use of AI by members of the Bar and stating that "[l]awyers have a duty to make sure the work product produced by AI is accurate and complete. The failure to do so can lead to violations of the lawyer's duties of competence (Rule 1.1 [of the Rules of Professional Conduct]), . . . candor to the tribunal (Rule 3.3), and truthfulness to others (Rule 4.1)." That opinion further notes that under

Rules 5.1 and 5.3, lawyers have an ethical obligation to supervise lawyers and nonlawyers who aid in the provisions of legal services – "whether human or not." A copy of Legal Ethics Opinions 24-01 is publicly available on the Office of Disciplinary Counsel's website at https://wvodc.org/Legal-Ethics-Opinion (last visited November 12, 2026), and members of the Bar are encouraged to review it.

Numerous other courts have addressed the increasing prevalence of AI-generated hallucinations and inaccuracies in appellate briefs, imposing a wide range of sanctions including monetary sanctions, attorney-fee awards, brief-striking, appeal dismissal, and referral to state bar disciplinary authorities. *See, e.g.*, *Williams v. Honl*, 591 P.3d 278 (Or. App. 2026) (striking appellate brief, allowing 28 days to file new brief, and awarding attorney's fees to respondent); *Tov Realty, LLC v. Suarez*, 360 A.3d 1062 (Conn. 2026) (requiring additional continuing legal education and donations to state bar institute to support efforts to provide instruction regarding role of generative AI); *Prososki v. Regan*, 32 N.W.3d 593 (Neb. 2026) (striking appellant's brief, dismissing appeal, referring to disciplinary counsel); *Garner v. Kadince, Inc.,* 571 P.3d 812 (Utah App. 2025) (awarding attorney fees to respondents, refund to the attorney's client, and ordering $1,000 donation to non-profit); *In re Baby Boy*, 271 N.E.3d 524 (Ill. App. 4th 2025) (requiring attorney to disgorge payment received for work on the appeal and to pay additional $1,000 sanction); *Kruse v. Karlen*, 692 S.W.3d 43 (Mo. Ct. App. 2024) (dismissing appeal and awarding $10,000 in damages for frivolous appeal). We remind all members of the legal profession that they remain personally responsible for verifying the accuracy of every citation, quotation, and statement of law submitted to the Court.

In conclusion, and consistent with Legal Ethics Opinion 24-01, we do not reject the use of technology in the legal profession. Instead, we caution members of the Bar that

> [t]o ethically use generative AI in the practice of law—which we do not dispute can be helpful if done properly and carefully—a lawyer must "ensure that the legal propositions and authority generated are trustworthy." *ByoPlanet Int'l, LLC v. Johansson*, 792 F. Supp. 3d 1341, 1347 (S.D. Fla. 2025). Failure to do so "abdicate[s] one's duty, waste[s] legal resources, and lower[s] the public's respect for the legal profession and judicial proceedings." *Id.*

Fletcher v. Experian Info. Sols., Inc., 168 F.4th 231, 235 (5th Cir. 2026).

In light of these concerns, and consistent with this Court's practice, we find it necessary to refer this matter to the Office of Disciplinary Counsel for review. *See* Syl.

lack of adequate notice of the proceedings after the initial disposition violated their due process rights, the right to counsel, and the children's right to continued association, as well as impeded their ability to pursue reunification with the children and seek modification of disposition in their favor. The DHS and the guardian ad litem initially responded that the petitioners received adequate notice of all but one permanency review hearing, that the petitioners were not prejudiced by any alleged procedural deficiencies, that the petitioners were given due process in the modification proceedings, and that the circuit court did not err in terminating the petitioners' parental rights, pursuant to the modification of disposition.

After completion of the briefing on appeal, we decided *In re P.F.*, 253 W. Va. 121, 929 S.E.2d 712 (2026), in which we addressed both lack of notice of post-dispositional proceedings to parents retaining parental rights and termination of parental rights through a modification of disposition. In that case, the petitioner parents voluntarily relinquished their custodial rights to the children, and the children were placed in a

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Pt. 8, *Gum v. Dudley*, 202 W. Va. 477, 505 S.E.2d 391 (1997) ("When this Court believes a case before it presents the appearance of conduct that does not comport with the West Virginia Rules of Professional Conduct (RPC), we will comply with Rule 8.3(a) of the RPC and Canon 3D(2) of the Code of Judicial Conduct, and refer the matter to the Office of Disciplinary Counsel for its review and appropriate action."); *Bing v. Lumber and Things, Inc.*, No. 18-0691, 2019 WL 4257089, at *4 (W. Va. Sept. 9, 2019) (memorandum decision) (same). Accordingly, we direct the Clerk of the Supreme Court of Appeals to transmit a certified copy of this Opinion to the Office of Disciplinary Counsel. To be clear, by making this referral we express no opinion as to whether disciplinary proceedings ultimately should be initiated or how such proceedings should be resolved. It is for the Office of Disciplinary Counsel to determine whether, and/or how, to proceed after it has reviewed this matter.

subsidized legal guardianship. *Id.* at __, 929 S.E.2d at 717. The court dismissed the parents and relieved their counsel of further representation duties. *Id.* As a result, when the guardianship failed, the court held a permanency hearing for which the dismissed parents received no notice. *Id.* Subsequently, the court reappointed the parents' counsel and set the matter for hearing on pending motions to modify disposition. *Id.* Although the parents' re-appointed counsel were present for the hearing, the parents failed to appear and their attorneys proffered that they had been unable to reach their clients following reappointment. Nevertheless, the court heard and granted the DHS's motion to modify disposition, finding by clear and convincing evidence that there had been a change in circumstances and that modification of disposition and termination of the parents' parental rights was in the children's best interest. *Id.* at __, 929 S.E.2d at 718. On appeal, we found that the circuit court erred in dismissing the parents as parties to the case while they still retained parental rights and in terminating the parents' parental rights without following the necessary dispositional procedures. *Id.* at __, 929 S.E.2d at 716.

As the issues raised in *In re P.F.* bear similarity to those involved in the present appeal, we ordered the parties to submit concurrent supplemental briefing to address the decision in *In re P.F.* In their supplemental brief, the petitioners argue that *In re P.F.* is controlling and addresses the impropriety of "functionally excluding" parents who retain parental rights and the requirement that any modification of disposition must satisfy the procedural requirements of the new disposition under West Virginia Code § 49-4-604. Therefore, the petitioners state that application of *In re P.F.* "requires vacatur."

Based on *In re P.F.*, the DHS and the guardian ad litem now concede, in their supplemental briefs, that the termination of the petitioners' parental rights must be vacated and the matter remanded for the circuit court to address the statutory findings required for termination of parental rights under West Virginia Code § 49-4-604(c)(6). However, the parties disagree regarding the occurrence of any errors in notice or procedure following the initial disposition and prior to the modification hearing. The DHS acknowledges that, pursuant to *In re P.F.*, the "confusion about [petitioners'] roles and rights in post-disposition proceedings warrants a remand." The guardian ad litem, on the other hand, maintains a consistent position in both his original and supplemental brief that the petitioners received adequate notice of permanency hearings for which they willfully failed to appear. The guardian ad litem distinguishes *In re P.F.*, noting that, in this case, the petitioners were not dismissed, their counsel was not relieved, and they were afforded a meaningful opportunity to be heard prior to termination of their parental rights.

Therefore, we address the petitioners' assignments of error in two parts.[13] First, we consider the proceedings that took place after the initial disposition; and second, we address the court's termination of the petitioners' parental rights.

[13] Although the petitioners raise numerous assignments of error, their arguments "can be fairly construed to fall into two distinct categories of alleged error," *Tudor's Biscuit World of Am. v. Critchley*, 229 W. Va. 396, 402, 729 S.E.2d 231, 237 (2012): first, related to alleged procedural defects and notice deficiencies arising after the initial disposition, and second, related to the termination of the petitioners' parental rights. Therefore, we consolidate and consider the assignments of error accordingly. *See id.*; *see*

A. Proceedings After Initial Disposition

Following the initial, contested dispositional hearing, the circuit court found the children's best interests would be served by ordering disposition pursuant to West Virginia Code § 49-4-604(c)(5), placing the children in the care, custody, and control of the DHS. As such, the petitioners retained their parental rights to the children. Therefore, the petitioners were entitled to notice and "a meaningful opportunity to be heard" at all further proceedings in the matter until permanency was achieved. W. Va. Code § 49-4-601(h) ("[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, including the opportunity to testify and to present and cross-examine witnesses."); *In re H.M.*, 251 W. Va. 333, 340, 912 S.E.2d 885, 892 (2025) ("only parents whose parental rights are terminated are excluded from participating in the permanent placement review hearings that follow disposition and that are required until permanency for the child is achieved"). As we noted in *In re P.F.*, the statutory requirement of § 49-4-601(h) "safeguards parental due process rights guaranteed by both the United States and West Virginia Constitutions." *Id.* at __, 929 S.E.2d at 720. For this reason, we held in that case that "a circuit court may not dismiss a parent as a party to an abuse and

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also, e.g., *In re A.P.-1*, 241 W. Va. 688, 692, 827 S.E.2d 830, 834 (2019) (consolidating duplicative assignments of error).

neglect case if he or she retains any parental rights to a subject child." *In re P.F.*, 253 W. Va. 121, 929 S.E.2d 712, Syl. Pt. 4.

Unlike the circumstances in *In re P.F.*, the circuit court, here, did not dismiss the petitioners or relieve their counsel following the initial disposition. Nevertheless, as acknowledged by the DHS in its supplemental brief, "there was pervasive confusion about the role of [the p]etitioners and whether their attorneys continued to represent them in post-disposition proceedings." At the hearing on May 15, 2025, the petitioners' counsel indicated a belief that they had been "removed from [their] duties" at the initial dispositional hearing, and the court, likewise, indicated that, as a result of the "disposition 5[,] . . . the parties [were] sort of dismissed." Again, on May 22, 2025, counsel for the petitioners admitted to the court that they believed their services were no longer required after entry of the "Disposition 5," and the DHS case worker similarly acknowledged that she did not notify the petitioners of MDT meetings after the initial disposition because she believed the "case was over with . . . regard to the [petitioners]." Likewise, when the guardian ad litem filed the motion for modification, the court found it necessary to "reappoint" counsel for the petitioners, indicating a belief that counsel had been relieved from their duties.

Although notices of the permanency review hearings may have been electronically delivered to counsel or directly to the petitioners, the petitioners argue that the "practical effect of the circuit court's [ ] actions was the functional equivalent of dismissal." We agree. The record, here, demonstrates that, even though the petitioners

retained their parental rights, after the initial disposition, they were regarded by their counsel, the DHS, and possibly even the court as having been dismissed; and they did not receive adequate notice of permanency review hearings, MDT meetings, and other important developments in their case.

Accordingly, we conclude that the circuit court clearly erred in finding in its May 27, 2025, order that the petitioners "receiv[ed] notice of each of the hearings that have occurred since the Disposition 5" but still "failed to both move this Court to modify their disposition and to appear at any of the hearings in nearly the past year." The record contradicts the order's implication of willful non-appearance. Therefore, the court abused its discretion to the extent that the court relied upon this clearly erroneous finding as a basis for terminating the petitioners' parental rights.

B. Termination of Parental Rights

On May 22, 2025, the circuit court conducted a lengthy, contested, evidentiary hearing on the competing motions to modify the initial disposition.[14] In its May 27, 2025, order, the circuit court applied the correct standard for modification of disposition, pursuant to West Virginia Code § 49-4-606(a) (2015),[15] finding that the

[14] Unlike the petitioners in *In re P.F.,* the petitioners, here, appeared in person and by counsel, had notice and a meaningful opportunity to be heard at the modification hearing at which their parental rights were terminated.

[15] West Virginia Code § 49-4-606(a) provides, in relevant part, that:

guardian ad litem demonstrated, by clear and convincing evidence, that there had been a material change in circumstances and that modification was in the best interest of the children R.S.-1 and L.S. Based on those findings, however, the circuit court proceeded to modify the initial disposition to a disposition under West Virginia Code § 49-4-604(c)(6), terminating the petitioners' parental rights. The parties agree that this was in error.

We recently set forth a new syllabus point in *In re P.F.*, holding that:

> Whenever a circuit court modifies the initial disposition of an abuse and neglect case pursuant to West Virginia Code § 49-4-606, the court must satisfy the procedural requirements that apply to the new manner of disposition according to West Virginia Code § 49-4-604 and this Court's rules.

In re P. F., 253 W. Va. at ___, 929 S.E.2d at 712, Syl. Pt. 6. As in *In re P.F.*, "the court[, here,] focused exclusively on the procedures required to modify the initial disposition." *Id.* at ___, 929 S.E.2d at 722. In doing so, the court failed to "satisfy the procedural requirements that apply to the new manner of disposition according to West Virginia Code § 49-4-604 and this Court's rules." *Id.* at ___, 929 S.E.2d at 712, Syl. Pt. 6, in part.

> Upon motion . . . alleging a change of circumstances requiring a different disposition, the court shall conduct a hearing pursuant to section six hundred four of this article and may modify a dispositional order if the court finds by clear and convincing evidence a material change of circumstances and that the modification is in the child's best interests. . . .

Specifically, the circuit court failed to address the requirements of West Virginia Code § 49-4-604(c)(6),[16] which require a finding "that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near

[16] In order to terminate parental rights, West Virginia Code § 49-4-604(c)(6) requires that:

> Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. . . .
>
> In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state:
>
> (i) That continuation in the home is not in the best interest of the child and why;
>
> (ii) Why reunification is not in the best interests of the child;
>
> (iii) Whether or not the department made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home, or that the emergency situation made those efforts unreasonable or impossible; and
>
> (iv) Whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof, including a description of what efforts were made or that those efforts were unreasonable due to specific circumstances.

future"[17] and that termination is "necessary for the welfare of the child[ren]." The petitioners' due process rights require that the DHS prove these facts by "clear, cogent and convincing proof." *See Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982) (holding that "[b]efore a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence."); Syl. Pt. 6, *In re Willis*, 157 W. Va. 225, 207 S.E.2d 129 (1973) ("The standard of proof required to support a court order limiting or terminating parental rights to the custody of minor children is clear, cogent and convincing proof."); *see also, e.g.*, *In re K.V.*, 251 W. Va. 418, 426, 914 S.E.2d 517, 525 (2025) (vacating dispositional order terminating parental rights where court impermissibly shifted burden of proof onto petitioner mother); *In re K.L.*, 233 W. Va. 547, 553, 759 S.E.2d 778, 784 (2014) (finding circuit court "violated the petitioner's constitutional due process rights when it shifted the burden to her to show a change in circumstances"). Additionally, Rules 35 and 36 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings required the court to hold a hearing to address the issues specified by West Virginia Code § 49-4-604(c)(6) and to enter a written dispositional order including the required findings of fact and conclusions of law.

[17] West Virginia Code § 49-4-604(d) explains that the phrase "'[n]o reasonable likelihood that conditions of neglect or abuse can be substantially corrected' means that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help." That subsection includes a non-exclusive list of circumstances where those conditions exist.

It is undisputed that the circuit court failed to comply with these requirements when entering the modification order terminating the petitioners' parental rights. As we have held:

> [w]here it appears from the record that the process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes for the disposition of cases involving children adjudicated to be abused or neglected has been substantially disregarded or frustrated, the resulting order of disposition will be vacated and the case remanded for compliance with that process and entry of an appropriate dispositional order.

Syl. Pt. 5, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001). Here, the circuit court's failure to satisfy the procedural requirements for termination of parental rights under West Virginia Code § 49-4-604(c)(6) substantially disregarded and frustrated the dispositional process and violated our recent holding in Syllabus Point 6 of *In re P.F.*

Accordingly, we conclude that the circuit court erred in modifying disposition and terminating the petitioners' parental rights, and the order, entered on May 27, 2025, must, therefore, be vacated and remanded. On remand, the court shall conduct further proceedings, if deemed necessary, to "satisfy the procedural requirements that apply to the new manner of disposition according West Virginia Code § 49-4-604 and this Court's rules."

IV. CONCLUSION

For the reasons discussed above, the circuit court's May 27, 2025, order granting the guardian ad litem's motion to modify disposition and terminating the

petitioners' parental rights is hereby vacated, and this matter is remanded to the circuit court to conduct further proceedings consistent with this Opinion. The Clerk is directed to issue the mandate contemporaneously with this Opinion.

Vacated and Remanded with Directions.

Mandate issued forthwith.