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

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* A.D.-1, L.D., and M.D.**

No. 25-445 (Putnam County CC-40-2024-JA-79, CC-40-2024-JA-80, and CC-40-2024-JA-81)

MEMORANDUM DECISION

Petitioner Father A.D.-2[1] appeals the Circuit Court of Putnam County's June 26, 2025, order denying him equal custodial allocation of A.D.-1, L.D., and M.D. and dismissing the case, arguing that the circuit court erred by failing to consider required statutory factors when determining custodial allocation.[2] Upon our review, we determine that oral argument is unnecessary and that a memorandum decision vacating the circuit court's June 26, 2025, order and remanding the matter is appropriate in accordance with the "limited circumstances" requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

In 2016, after their divorce, the petitioner and the mother were granted shared 50-50 custody of their three children, A.D.-1, L.D., and M.D. However, in June 2024, Child Protective Services ("CPS") received a referral indicating that then-sixteen-year-old A.D.-1 had disclosed sexual abuse by her maternal grandmother and that the mother was allegedly aware of the claimed abuse. The child later revealed to her therapist that no sexual abuse had occurred and admitted to a CPS worker that she fabricated the abuse to help the petitioner obtain full custody of her. Upon investigation, a CPS worker substantiated findings that the petitioner engaged in emotional abuse and maltreatment of A.D.-1 by using the child to create false narratives of abuse. The CPS worker further noted the animosity between the parents, their inability to coparent, and their refusal to participate in high-conflict counseling. Additionally, the CPS worker stated that the petitioner had voluntarily suspended his parenting time with M.D. and L.D. due to "tension and arguments" when the children were in his home. As a result, CPS implemented an in-home safety plan, which included various services such as parenting classes for the petitioner and therapy for both the children and parents.

[1] The petitioner appears by counsel Brenden D. Long. The West Virginia Department of Human Services ("DHS") appears by counsel Attorney General John B. McCuskey and Assistant Attorney General James Wegman. Respondent Mother A.F. appears by counsel Richard J. Lindroth. Counsel Maggie Kuhl appears as the children's guardian ad litem ("guardian").

[2] We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e). Additionally, because one of the children and the petitioner share initials, we use numbers to differentiate them.

In August 2024, the mother filed a petition for a domestic violence protective order ("DVPO") against the petitioner on behalf of all three children, alleging that the petitioner was the subject of an ongoing criminal child sexual abuse investigation involving A.D.-1 and that law enforcement intended to test the petitioner's DNA. Accordingly, the mother was granted temporary emergency custody of the children. In September 2024, the DHS filed the instant petition alleging that the petitioner had abused the children based on the above-mentioned allegations, among other things. The DHS also alleged that the petitioner subjected the children to emotional abuse and that his actions harmed and/or threatened the children's physical and/or mental health. No allegations against the mother were included in the petition. Thereafter, law enforcement closed its criminal investigation of the sexual abuse allegations against the petitioner based on DNA testing results and the petitioner moved to dismiss the petition.[3] The petitioner denied all of the allegations contained in the petition, including that he had persuaded A.D.-1 to make a false report of sexual abuse.

In October 2024, the circuit court held an adjudicatory hearing during which the petitioner was granted a preadjudicatory improvement period without objection. The court ordered the petitioner to continue with services and participate in reunification therapy. At a review hearing in April 2025, the court found that the petitioner successfully completed his preadjudicatory improvement period, as evidenced by DHS reports confirming his compliance with services, including adult life skills and individualized parenting classes; individual and reunification therapy; and weekly, two-hour supervised visitation with A.D.-1.[4] Afterwards, the petitioner filed a proposed parenting plan requesting shared 50-50 custody of A.D.-1 specifically.[5] In response, the mother filed a motion and proposed parenting plan seeking to limit the petitioner's parenting time with A.D.-1 to two hours of supervised visitation per week. The petitioner then filed a motion requesting that the court conduct an in camera interview of A.D.-1, outside the presence of the parents and their counsel, to determine the child's wishes regarding custodial allocation.

At an evidentiary hearing in May 2025, the court first addressed the petitioner's motion for an in camera interview of A.D.-1. The DHS objected to an in camera interview, arguing that the guardian and the child's therapist (who was available to testify) could speak to the child's wishes. The guardian informed the court that A.D.-1 desired her parents to have shared 50-50 custody of her but expressed concerns that the child's mental health suffered as she continued to be the center of the parents' custody dispute. The court ultimately determined that due to the emotional complexity of the case and the need to protect A.D.-1 from further emotional stress, there was no benefit that an in camera interview could provide that would outweigh the potential harm to the child, as other evidence of the child's wishes was readily available. Accordingly, the court denied the petitioner's motion, finding that an in camera interview was not in the child's best interest.

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[3] The court officially dismissed the DVPO action at a hearing in February 2025.

[4] The record reflects that the other two children often chose not to participate in supervised visitation with the petitioner despite being allowed contact with him.

[5] The motion did not mention the other two children.

The visitation supervisor then testified that visits between A.D.-1 and the petitioner went well, that the two shared a close bond, that A.D.-1 was mature, and that the child had stated her preference that her parents share equal custody of her multiple times. However, the child's therapist testified that she did not believe that A.D.-1 was "mentally stable enough to make choices about where she would live at this time." Specifically, the child's therapist pointed to several occasions where A.D.-1's expressed desire for a 50-50 parenting plan was premised on contradictory or false beliefs and that these discussions highlighted the child's unhealthy relationship with the petitioner. That witness also confirmed that A.D.-1 had disclosed that the petitioner told her to fabricate the sexual abuse allegations against her maternal grandmother and that the petitioner promised to take her on various trips and vacations if he received 50-50 custody of her. Further, the child's therapist testified that A.D.-1 exhibited a decline in her relationship with her siblings when participating in supervised visitation with the petitioner and recommended against a 50-50 custody arrangement to protect A.D.-1's well-being. The court proceeded to implement a parenting plan without undertaking analysis of the factors and considerations required by Chapter 48 of the West Virginia Code. Instead, the court ordered that the petitioner continue receiving only two hours of supervised visitation per week with A.D.-1 at the discretion of the child's therapist. The court further ordered that all three children remain in the legal and physical custody of the mother, denied the petitioner's proposed 50-50 parenting plan for A.D.-1, and dismissed the case. It is from this order that the petitioner now appeals.[6]

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court's substantive rulings for abuse of discretion, factual findings for clear error, and issues of law de novo. Syl. Pt. 1, *In re K.S.*, 253 W. Va. 154, 930 S.E.2d 400 (2026). Here, because the circuit court failed to make adequate findings of fact and conclusions of law to support its allocation of custodial and decision-making responsibilities for all three children, vacation of the June 26, 2025, order as it relates to that allocation is warranted. As we have explained, "when reunifying children subject to abuse and neglect proceedings with parents, guardians, or custodians who are no longer cohabitating at the close of the proceedings," circuit courts are "obligated to apply the factors and considerations set forth in West Virginia Code §§ 48-9-206 (2018) and -207 (2001) in allocating custodial and decision-making responsibilities." Syl. Pt. 5, in part, *In re T.M.*, 242 W. Va. 268, 835 S.E.2d 132 (2019). West Virginia Code § 48-9-206(d) clearly demands that after holding a final custodial allocation hearing, "[t]he court's order determining allocation of custodial responsibility shall be in writing, and include specific findings of fact and conclusions of law supporting the determination." *See also id.* § 48-9-207(b) (requiring the court to allocate decision-making responsibility at a final hearing and put its decision "in writing and include specific findings of fact supporting any determination that joint allocation of decision-making responsibility is not in the child's best interest"). Further, in allocating custodial and decision-making responsibility, the court is required to consider the rebuttable presumption of equal 50-50 allocation and whether such presumption is overcome by various factors outlined in West Virginia Code § 48-9-209. *See* W. Va. Code § 48-9-206(a); *id.* § 48-9-207(b).

We have underscored the necessity that a circuit court's order

[6] Permanency has been achieved as the children remain with their nonabusing mother.

> be sufficient to indicate the factual and legal basis for the [court]'s ultimate conclusion so as to facilitate a meaningful review of the issues presented. Where the lower tribunals fail to meet this standard—*i.e.* making only general, conclusory or inexact findings—we must vacate the judgment and remand the case for further findings and development.

Province v. Province, 196 W. Va. 473, 483, 473 S.E.2d 894, 904 (1996). Here, both the court's order and the record are devoid of sufficient findings of fact and conclusions of law to indicate that the court considered the various factors and limitations required by these statutes. As the petitioner correctly points out, this creates ambiguity as to what, if any, parenting time he is afforded with L.D. and M.D.[7] Critically, the absence of findings explaining the court's reasoning inhibits our ability to conduct a meaningful appellate review of the issue. *See id.* at 483, 473 S.E.2d at 904 (when a court fails to make sufficient findings, "any deference we might otherwise accord such a ruling will be nullified by the absence of a meaningful explanation"). Most concerning is the court's lack of analysis regarding the children's best interests, which is imperative to decisions involving children. *See Michael K.T. v. Tina L.T.*, 182 W. Va. 399, 405, 387 S.E.2d 866, 872 (1989) ("[T]he best interests of the child is the polar star by which decisions must be made which affect children."). Therefore, vacation of the circuit court's order allocating custodial and decision-making responsibility with respect to all three children is necessary.[8]

For the foregoing reasons, we vacate the circuit court's June 26, 2025, order as it relates to the circuit court's ultimate allocation of custodial and decision-making responsibility for all three children and remand the matter to the circuit court for further proceedings consistent with this decision. The Clerk is hereby instructed to issue the mandate forthwith.

Vacated and remanded.

ISSUED: November 24, 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

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[7] The DHS concedes that the circuit court's lack of findings regarding L.D. and M.D. constitutes error and urges this Court to remand the matter for entry of a sufficient order.

[8] Because we have vacated the circuit court's allocation decision and remand the matter, we decline to address the petitioner's assignment of error regarding the denial of his motion for an in camera interview of A.D.-1. On remand, the court may consider whether an in camera interview is warranted.