FILED
November 24, 2026
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

***In re* Z.M., R.M., and G.M.**

No. 25-447 (Webster County CC-51-2024-JA-14, CC-51-2024-JA-15, and CC-51-2024-JA-16)

MEMORANDUM DECISION

Petitioner Father A.M.[1] appeals the Circuit Court of Webster County's June 4, 2025, order terminating his parental rights to Z.M., R.M., and G.M., arguing that the court erred in terminating his parental rights upon insufficient evidence.[2] Upon our review, we determine that oral argument is unnecessary and that a memorandum decision vacating the circuit court's April 29, 2024, adjudicatory order; vacating its June 4, 2025, dispositional 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.

The proceedings below initially concerned other children who are not at issue on appeal.[3] On February 16, 2024, the DHS filed a second amended petition including the subject children and alleging, broadly, that the petitioner and the mother failed to provide adequate housing due to the condition of the home. However, the petition was contradictory, as it alleged that on February 7, 2024, "[t]he home [wa]s somewhat cluttered and unkempt *but not unacceptably dirty*." (Emphasis added). The petition further alleged that on February 13, 2024, "[t]he home [wa]s somewhat cluttered and unkempt" and that the DHS instructed the petitioner "that the home must be cleaned up or the children could be removed." Finally, the petition alleged that on February 16, 2024, the DHS observed that "[t]he home ha[d] been cleaned up."[4] Although the children were placed in the

[1] The petitioner appears by counsel Daniel K. Armstrong. The West Virginia Department of Human Services ("DHS") appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Heather L. Olcott. Counsel Mackenzie A. Holdren appears as the children's guardian ad litem.

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

[3] This includes two of the petitioner's biological children. However, on appeal, the petitioner is clear that he is not challenging the termination of his rights to these two other children.

[4] The second amended petition included several other allegations against the petitioner. However, because the circuit court's adjudicatory order was clear that the petitioner was adjudicated solely for the conditions of the home, those allegations are not recounted here.

DHS's legal custody, the circuit court permitted them to remain in the parents' physical custody at this time.[5]

At an April 2024 adjudicatory hearing, a Child Protective Services ("CPS") worker testified that when she initially visited the home it "was pretty messy."[6] However, when she "went back the following week . . . the home was much better" as the parents "had gotten everything picked up and put away." According to the CPS worker, the home "remained . . . in pretty decent condition." Upon questioning from the circuit court, the CPS worker claimed that when she first visited the home, it was not "fit, apt, and suitable," but counsel for the mother objected to this testimony on the grounds that the petition included no such allegation. The court sustained the objection, noting that the petition did not "use the words, fit, apt, and suitable." Ultimately, the court adjudicated the petitioner for failing to provide the children with appropriate housing. The court recognized that the home was cleaned by the DHS's third visit but concluded that adjudication was appropriate because it had been unfit upon a prior inspection, as that was the "condition at the time of the filing of the petition" and "substantive corrective action" did not "absolve" the petitioner. The court also "impute[d] an adverse inference" against the petitioner because he did not testify. The court was clear in its order that the petitioner was adjudicated *solely* upon the home's condition.

Given that the resolution of this appeal turns on the circuit court's erroneous adjudication of the petitioner, it is unnecessary to recount the lengthy procedural history following this hearing. Instead, it is sufficient to note that the circuit court terminated the petitioner's parental rights following a final dispositional hearing in May 2025.[7] It is from the dispositional order that the petitioner appeals.

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court's substantive rulings for abuse of discretion, factual findings for clear error, and issues of law de novo. Syl. Pt. 1, *In re K.S.*, 253 W. Va. 154, 930 S.E.2d 400 (2026). Before this Court, the petitioner argues that it was error to terminate his parental rights. Without fully addressing his arguments, we nonetheless agree that termination was in error given the circuit court's erroneous adjudication of the petitioner for the condition of the family's home.

Specifically, our review of the appendix record does not reveal sufficient evidence that the home was in a condition that constituted neglect. *See* W. Va. Code § 49-4-601(i) (requiring that

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[5] The children remained in the parents' custody throughout the proceedings until their eventual removal shortly before the final dispositional hearing.

[6] According to the record, the CPS worker who testified at adjudication was not the worker who first investigated the petitioner's home. However, the CPS worker indicated that she "did take over part of that investigation" and observed and photographed the home. The CPS worker who first investigated the home was not available to appear at the adjudicatory hearing.

[7] The mother's rights were also terminated. The permanency plan for the children is adoption in their current placements.

adjudicatory findings be based on clear and convincing evidence); *In re F.S.*, 233 W. Va. 538, 546, 759 S.E.2d 769, 777 (2014) ("[T]he clear and convincing standard is 'intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases.'" (quoting *Cramer v. W. Va. Dep't of Highways*, 180 W. Va. 97, 99 n.1, 375 S.E.2d 568, 570 n.1 (1988))). It is true that failure to provide adequate housing can constitute neglect of a child. *See* W. Va. Code § 49-1-201 (defining "[n]eglected child," in part, as one "[w]hose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent . . . to supply the child with necessary . . . shelter"). However, the petition at issue alleged three visits to the petitioner's home. On the first visit, the DHS alleged that the home was *acceptable*; on the second visit, the DHS alleged that the home was *somewhat* cluttered and unkempt and advised the petitioner that the children *could* be removed if the home was not cleaned; on the third visit, the DHS alleged that the home had been cleaned. At adjudication, the CPS worker testified consistently with the information contained in the petition, including that the home had been cleaned *before* the petition's filing. Critically, the court sustained an objection to the only testimony from the CPS worker that attempted to classify the home as unsuitable. As such, it is unclear what basis the circuit court had to find that the petitioner neglected the children as a result of the home's condition.

Instead, the circuit court seemed primarily concerned with the requirement in West Virginia Code § 49-4-601(i) that adjudication "must be based upon conditions existing at the time of the filing of the petition." While accurate, the circuit court's application of this requirement was flawed, as the court conflated the time of the petition's filing with the DHS's earliest visits to the petitioner's home.[8] Critically, the court discounted evidence that, upon additional visits conducted *prior to the petition's filing*, the home was *not* in an unsuitable condition. In discussing the requirement that a circuit court make findings "as to whether such child is abused or neglected," we have explained that "[t]hese findings shall not be set aside . . . unless clearly erroneous." Syl. Pt. 1, in part, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011). We elaborated that "[a] finding is clearly erroneous when . . . the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id*. Here, we are convinced that the petitioner's adjudication was such a mistake.[9]

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[8] The court's reasoning on this issue is not entirely clear from the record. It is worth stressing yet again that the DHS's petition alleged that upon first inspection, the DHS found the home to be acceptable. As such, it is confusing that the court seemed to choose the second of the DHS's three visits as the exact point that constituted the time of the petition's filing.

[9] We further note that the circuit court "impute[d] an adverse inference" against the petitioner because he did not testify. This appears to be in reference to this Court's following direction:

> Because the purpose of an abuse and neglect proceeding is remedial, where the parent or guardian fails to respond to probative evidence offered against him/her during the course of an abuse and neglect proceeding, a lower court may properly consider that individual's silence as affirmative evidence of that individual's culpability.

Because adjudication was in error, we similarly conclude that termination of the petitioner's parental rights was inappropriate and vacation of both orders is required. *See* Syl. Pt. 3, *In re R.M.*, 252 W. Va. 422, 923 S.E.2d 352 (2025) (holding that an appropriate adjudicatory determination "is a prerequisite to further continuation of the case" (quoting Syl. Pt. 1, *State v. T.C.*, 172 W. Va. 47, 303 S.E.2d 685 (1983))); Syl. Pt. 3, *In re Emily G.*, 224 W. Va. 390, 686 S.E.2d 41 (2009) ("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 [alleged] to be abused or neglected has been substantially disregarded or frustrated, the resulting order . . . will be vacated and the case remanded for compliance with that process and entry of an appropriate . . . order." (quoting Syl. Pt. 5, in part, *In re Edward B.*, 210 W. Va. 621, 558 S.E.2d 620 (2001))).

For the foregoing reasons, we vacate the circuit court's April 29, 2024, adjudicatory order; vacate its June 4, 2025, dispositional order; and remand this matter to the circuit court for further proceedings consistent with this decision and the applicable rules and statutes.[10] The Clerk is hereby directed to issue the mandate contemporaneously herewith.

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

Syl. Pt. 2, *W. Va. Dep't of Health & Hum. Res. ex rel. Wright v. Doris S.*, 197 W. Va. 489, 475 S.E.2d 865 (1996). However, such consideration is inappropriate where, as here, the DHS offered *no* probative evidence of abuse or neglect. As such, it was error for the court to rely on the petitioner's silence in adjudicating him under the specific facts of this case.

[10] We note that the April 29, 2024, adjudicatory order contains rulings regarding additional adult respondents and other of the petitioner's biological children, none of whom are at issue in this appeal. Similarly, the June 4, 2025, dispositional order contains rulings regarding the petitioner's other biological children. Our vacation of both orders applies only to those portions concerning the petitioner and the children subject to this appeal. Further, nothing in this decision bars the DHS from filing a new petition or seeking leave to file an amended petition upon any abuse or neglect that has occurred and is ongoing, including any change in the petitioner's ability to provide the children with appropriate housing.