STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
November 9, 2026
released at 3:00 p.m.
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

***In re* M.F.**

No. 25-720 and No. 25-725 (Kanawha County CC-20-2021-JA-291)

MEMORANDUM DECISION

In these consolidated appeals relating to the custody of the child, M.F.III,[1] the child's maternal aunt, S.M., maternal grandmother, E.M., and paternal grandparents, M.F.I and J.F., all contest the Circuit Court of Kanawha County's order placing the child in the joint custody of the maternal aunt and the paternal grandparents.[2] S.M. and E.M. separately challenge the purportedly inequitable processes used in reaching that joint custody decision, which they contend afforded the paternal grandparents a greater level of participation. Upon review, we conclude that the circuit court erred in imposing a joint custody arrangement on the facts before it, and because this case satisfies the "limited circumstances" requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure, a memorandum decision is appropriate to reverse and remand the matter for further proceedings consistent with this decision.

The underlying abuse and neglect case was initiated in May 2021 after M.F.II fatally stabbed M.F.III's mother.[3] M.F.III, then around five months old, was placed with S.M., his

[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). As we have done in prior cases involving these individuals who share the initials M.F., for ease of reference we refer to the paternal grandfather as M.F.I, the child's father as M.F.II, and the child at issue in these proceedings as M.F.III.

[2] Petitioner E.M. is represented by counsel Michael Taylor and Hannah Tothe. Petitioner S.M. is represented by counsel Timothy Bradford. M.F.-1 and J.F. are represented by counsel Brandon Gray and Matthew Bradford. Counsel for the DHS are Attorney General John B. McCuskey and Assistant Solicitor General Hallie Hovey-Murray. The child is represented by his guardian ad litem, counsel Sharon Childers.

[3] This Court previously affirmed the termination of the biological father's parental rights. *See In re M.F.-1*, No. 22-929, 2024 WL 1193570, at *3 (W. Va. Mar. 20, 2024) (memorandum decision).

maternal aunt. The paternal grandparents initially lived in Baltimore, Maryland, but owned a home in Charleston, West Virginia; they began residing in the Charleston home around September 2021 because of the underlying proceedings. The paternal grandparents filed several motions to intervene in the proceedings pending a paternity test, first seeking grandparent visitation and/or placement, and later seeking to adopt M.F.III. The circuit court denied those motions to intervene, and we upheld the denial of those motions, but remanded for the circuit court to direct the Department of Human Services ("DHS") to conduct a home study regarding the paternal grandparents' suitability as an adoptive placement consistent with West Virginia Code § 49-4-114(a)(3).[4] *In re M.F.*, 250 W. Va. 338, 902 S.E.2d 887 (2024). We further directed the circuit court to conduct a "best interests analysis to determine the permanent placement that would best promote M.F.III's welfare" after completion of the home study. *Id.* at 345, 902 S.E.2d at 894.

After remand, the paternal grandparents satisfactorily completed the home study to be considered as an adoptive placement for M.F.III. S.M. and E.M. separately filed motions to intervene, and the paternal grandparents filed a new motion to intervene. All of these motions were denied by the circuit court because the court wanted "everybody on the same playing field." After we remanded the case, the circuit court held its first hearing regarding permanent placement on September 6, 2024, and conducted several subsequent hearings that culminated in a final, two-day evidentiary hearing in late June of 2025.

During those various hearings, the circuit court heard evidence about the suitability of the grandparents' home and their relationship with M.F.III, which generally reflected that the grandparents' home was suitable, that M.F.III had a bedroom there, and felt comfortable around his paternal grandparents.[5]

The paternal grandparents testified to their relationship with M.F.II, explaining that they visit him in prison several times per month and they or family members talked to him on the phone

---

[4] West Virginia Code § 49-4-114(a)(3) provides:

> For purposes of any placement of a child for adoption by the department, the department shall first consider the suitability and willingness of any known grandparent or grandparents to adopt the child. *Once grandparents who are interested in adopting the child have been identified, the department shall conduct a home study evaluation, including home visits and individual interviews by a licensed social worker.* If the department determines, based on the home study evaluation, that the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered the placement of the child prior to the consideration of any other prospective adoptive parents.

(emphasis added).

[5] Visitation with the paternal grandparents was facilitated as part of M.F.III's sibling visitation with his half-siblings through their biological mother, N.C.-F. Of note, M.F.III's half-siblings are permitted contact with M.F.II, but the circuit court ordered that there be no post-termination contact between M.F.II and M.F.III.

nearly every day. The paternal grandmother admitted that she had spoken with M.F.II on jail calls about confidential matters relating to the custody dispute and otherwise kept him apprised of court dates; she also admitted she had sent pictures of M.F.III to him, believing at the time that it was not improper. The paternal grandmother testified that keeping M.F.III separated from M.F.II didn't seem difficult at this point. But when pushed on cross-examination that the ease of separation was due in large part to M.F.II's imprisonment, the paternal grandmother testified that upon M.F.II's release, they would keep M.F.II separated from family functions and support him from a distance. However, she still planned to permit him to move into a separate home that they owned and had discussed that M.F.I would live there with M.F.II. The paternal grandmother testified that she would abide by the rules of the court relative to contact, that M.F.II knew he would not be permitted to have contact with M.F. III, and her son had "always abided by rules of law."

Concerning S.M. and the maternal side of the family, the paternal grandmother testified that she would be cooperative with visitations and work together for M.F.III's best interests. However, she later admitted that, when discussing the case with M.F.II, she described S.M. as sounding "crazy" when testifying. The paternal grandmother continued her testimony with respect to the relationship between the maternal and paternal sides of the family, "Have you heard some of the names she has called me? . . . I would have never done what they've done and just kicked us out. I mean they – everybody has just fought and fought and fought and fought to not let us even have visitation." Nevertheless, she testified that the families needed to get along and had to start somewhere. Finally, the paternal grandmother testified that she believed that transitioning M.F.III to her home with visitation with S.M. was the appropriate placement decision and that M.F.III was resilient enough to transition into that arrangement given his age.

The paternal grandfather, M.F.I, testified as well. When asked if he would allow M.F.II to have contact with M.F.III, he responded, "I don't think it – it's going to happen. I don't think it will happen. We follow the rules. [M.F.II] follows the rules. . . . He's not impulsive." On cross-examination, the paternal grandfather was pressed on that point as it pertained to M.F.II's criminal conduct:

> Q. [M.F.I], I think your testimony earlier was that your family follows rules – follows the rules. And does –
> A. Try to.
> Q. – that include your son, [M.F.II]?
> A. That does include my son, [M.F.II]. [M.F.II] has been better at it than the other two.
> Q. Okay. But [M.F.II] – I hate to say it – [M.F.II] wasn't following the rules when he murdered [M.F.III's mother], was he?
> A. I wasn't there.
> Q. You know he was convicted of that crime?
> A. I absolutely do.

S.M. testified and explained that she had been the child's caregiver since he was five months old, that he called her "mom" and that he identified himself as the "twin" to S.M.'s

biological child of the same age. She testified that M.F.III was enrolled in preschool while she worked as a nurse practitioner, and that her line of work focusing on psychological care had proven helpful in addressing M.F.III's behavioral issues and developmental delays. S.M. stated that M.F.III, while not in school, was in the care of maternal relatives, and, specifically, that he spent one day per week with E.M. S.M. testified that she believed M.F.III deserved a relationship with his grandparents—both E.M. and the paternal grandparents—and that she would ultimately comply with any visitation the court put into place to maintain those relationships, believing that "it's important for him to have as much family as he can have." However, she testified that she had significant concerns over unsupervised visits with the paternal grandparents' given their continued support of the child's father, M.F.II, that she believed required some oversight of their interactions with M.F.III. S.M. testified that M.F.II's impending release from prison and the grandparents' intention to continue supporting him called into question the paternal grandparents' ability to help M.F.III navigate the trauma he had experienced as they sought to maintain both relationships. S.M. also testified that she believed M.F.III's continued contact with his siblings was important and that she intended to encourage it. However, she noted that M.F.III had difficulty adjusting to changes in routine resulting from visitation with the paternal side of the family and the dysregulation often resulted in behavioral issues.

The circuit court also heard the testimony of the DHS adoption specialist, who advocated for permanent placement with S.M. The adoption specialist testified to the paternal grandparents' home study, finding their home "perfectly appropriate" and explaining that they cared about M.F.III, and seemed to be "good, friendly people." However, the adoption specialist expressed concern that the paternal grandparents "didn't feel as though [M.F.II] had done anything terribly wrong" in stabbing the child's mother because they had spoken about M.F.II as "more of a wronged party" who was "kind of defending himself" and "very much . . . had their own take on the whole situation." Finally, the adoption specialist testified that the primary concern with the paternal grandparents receiving permanent placement of the child was that the DHS did not trust that the paternal grandparents would keep M.F.III sequestered from exposure or relationship with M.F.II, particularly in view of the no-contact order issued in the proceedings terminating M.F.II's parental rights.

The lead teacher at M.F.III's preschool testified that M.F.III's behavioral issues at school seemed to follow a pattern after visits with his siblings and paternal grandparents, noting that M.F.III does not do well with change and requires consistency. She further testified that she and S.M. talked almost daily to maintain consistent messaging about managing his behaviors. The court also heard testimony from various members of the maternal and paternal sides of the family, whose testimony the circuit court considered for purposes of details surrounding M.F.III's care to date, his particular needs and progress, and extended family infrastructure.

Following testimony, S.M. and the paternal grandparents advocated for permanent placement in their respective homes, while E.M. asserted that permanent placement with S.M. was in M.F.III's best interests. However, E.M. argued that if the court were to determine otherwise, she wished to exert her rights under the grandparent preference statute, West Virginia Code § 49-4-114, discussed below. The DHS maintained throughout the proceedings after remand that the paternal grandparents' home was not a suitable placement for M.F.III based on their ongoing

relationship with M.F.II, deeming the contact between M.F.II and M.F.III "inevitabl[e]" and "detrimental." Because S.M. had been M.F.III's "day-to-day mother" and that placement outside of her care would "effectively be the second loss of a mother in his lifetime[,]" the DHS asked the court to leave M.F.III in her custody. The child's guardian ad litem similarly proposed that S.M. was the appropriate permanent placement for M.F.III. The DHS did not oppose visitation with the paternal grandparents, nor did the guardian ad litem, but the latter requested that any visitation be supervised by N.C.-F. consistent with the court's prior orders.

After thoroughly recounting the evidence considered, the circuit court outlined that the case began under exigent circumstances and that M.F.III had been placed with S.M. as a close relative at the time. The circuit court further outlined that the paternal grandparents had not been considered for placement as early as they should have been as demonstrated by the late-conducted home study required by this Court on remand. However, the circuit court noted that, in this respect, the conditions existing at the present time should guide its determination regarding an appropriate permanent placement. The circuit court found that both the maternal and paternal families were "close-knit and supportive of the child" and had passed home studies. It further found that M.F.III undoubtedly had a close bond and attachment with S.M. and that to remove him from her care would be "traumatic," but that the child also had a bond with the paternal grandparents and would benefit from a "closer attachment" to them. Weighing these competing interests, the circuit court entered an order for joint legal and physical custody whereby S.M. and the paternal grandparents would share parental decision-making authority. The circuit court directed S.M. and the paternal grandparents to participate in mediation to work out a shared permanent placement schedule and transition plan. However, S.M. and the paternal grandparents were unable to come to an agreement on a shared custody arrangement, prompting the circuit court to create a parenting plan to govern the permanent placement. That order designated S.M. as legal custodian in odd years and the paternal grandparents as legal custodians in even years, but with shared decision making for any major decision for the child including education, medical care, religious matters, childcare, and extracurriculars to be discussed and confirmed by a mobile application designed to facilitate communication in these types of circumstances. The order indicated that the court would entertain a request for relief if the parties could not agree as to these matters so long as they first submitted to mediation. Finally, the circuit court ordered the parties to participate in counseling. These appeals followed.

This Court recently clarified that our appellate review of orders arising from abuse and neglect proceedings is guided by three different 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 part, *In re K.S.*, 253 W. Va. 154, 930 S.E.2d 400 (2026).

Procedurally, we first assess the scope of the issues currently before us. E.M. and S.M. both challenge their level of participation relative to the paternal grandparents who they contend were effectively granted the intervenor party status that they were denied. As such, the arguments posed by E.M. and S.M. in this respect are grounded in the denial of their motions to intervene. As

non-parties, their appeal is "limited to their role in the proceedings below [where they] requested, but were denied, intervenor status." *In re H.W.*, 247 W. Va. 109, 120, 875 S.E.2d 247, 258 (2022). But neither E.M. nor S.M. timely appealed the denial of their motions to intervene even though they are immediately appealable orders. *In re G.S.*, 244 W. Va. 614, 618, 855 S.E.2d 922, 926 (2021) ("an order denying a motion to intervene in an abuse and neglect matter is a final appealable order with respect to the moving party."); *see also In re P.F.*, 243 W. Va. 569, 573 n.4, 848 S.E.2d 826, 830 n.4 (2020).[6] Beginning from the premise that S.M. and E.M. are classified as non-parties as a result of their failure to timely appeal the denial of their motion to intervene, we next observe that generally a non-party does not have a right (or standing) to challenge permanent placement. *See In re O.D.*, No. 24-712, 2026 WL 1363196, at *2 (W. Va. May 15, 2026) (memorandum decision) (dismissing foster parents' challenge to permanent placement decision for lack of standing as non-party). However, unlike the circumstances in *O.D.*, S.M. and the paternal grandparents were both vested with rights to the child by virtue of the circuit court's order granting them joint legal and physical custody of M.F.III. *See Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 94, 576 S.E.2d 807, 821 (2002) ("[S]tanding is defined as '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.'") (quoting Black's Law Dictionary 1413 (7th ed. 1999)). Accordingly, because S.M. and the paternal grandparents have a legally protected interest at stake by virtue of the circuit court's order, we consider only the portion of S.M.'s appeal contesting the permanent placement decision as opposed to her arguments denying her party status and similarly analyze the paternal grandparents' cross-assigned error contesting the same joint custody award wherein both seek sole custody of M.F.III.[7]

Turning to the crux of the issue underlying each of these appeals—custody of M.F.III, and more narrowly, *joint* custody of M.F.III—we first observe that the custodial decision was an unusual one insofar as it arises out of an abuse and neglect proceeding and permanent placement seemingly contemplates a singular permanent placement. *See*, *e.g.*, *In re J.P.*, 243 W. Va. 394, 399–400, 844 S.E.2d 165, 170–71 (2020) ("[T]his Court is faced with a situation where multiple families are fighting for the opportunity to provide J.P. with a safe, secure, and loving home. . . . yet only one family can prevail under the law. . . . we are once again faced with a situation in which we are litigating a child's placement 'only because too many people love this little boy.'") (quoting *In re Clifford K.*, 217 W. Va. 625, 646, 619 S.E.2d 138, 159 (2005)). In this vein, we have stated, "the precedent of this Court supports the proposition that children are entitled to permanency to

[6] While the record before us certainly suggests that the paternal grandparents' counsel more *actively* participated in the proceedings, S.M. and E.M. have not directed us to any instance in the proceedings below where counsel for S.M. or E.M. asked for and was denied any right of participation afforded to the paternal grandparents. We further observe that the DHS and the guardian ad litem advocated for placement with S.M. throughout the entirety of the proceedings and have developed a thorough record of their respective positions for our review.

[7] We note that, although E.M. failed to timely appeal the denial of her motion to intervene, insofar as she advocated for S.M.'s full custody of M.F.III below and on appeal, her arguments are fairly represented in our analysis of S.M.'s arguments. We leave for another day whether E.M. has separably vindicable rights under the grandparent preference statute sufficient to confer standing to challenge a permanent placement decision absent party status.

the greatest degree possible." *In re Isaiah A.*, 228 W. Va. 176, 182, 718 S.E.2d 775, 781 (2010). We have also displayed a strong preference for permanent placements that will result in adoption for the general stability it offers children who have already suffered the upheaval of abuse and neglect proceedings resulting in the termination of the rights of their biological parent(s). *State v. Michael M.*, 202 W. Va. 350, 358, 504 S.E.2d 177, 185 (1998); *see also id.* at Syl. Pt. 2 ("Where parental rights have been terminated pursuant to *W. Va. Code* § 49-6-5(a)(6) [1996], and it is necessary to remove the abused and/or neglected child from his or her family, an adoptive home is the preferred permanent out-of-home placement of the child."). We thus first consider the propriety of a joint custody award under the circumstances of this case.

This Court has previously evaluated a factually similar scenario where the child's biological father killed the biological mother and the circuit court enforced a joint custody arrangement when the paternal and maternal grandparents both initially sought sole custody: "Although the circuit court attempted to solve the custody dispute by making the maternal and paternal grandparents work together for the benefit of the child, the award of joint custody to the maternal and paternal grandparents was clearly an error." *Kenneth B. v. Elmer Jimmy S.*, 184 W. Va. 49, 53, 399 S.E.2d 192, 196 (1990). The error there was derived from the parties' inability to truly cooperate as co-parents in the best interests of the child because the families had been "scarred by the tragedy." *Id.* The two sides of the family refused to even visit the child in the other home, the paternal side was found to have deliberately interfered with the maternal side's visitation, and multiple contempt proceedings followed. *Id.* at 53–54, 399 S.E.2d at 196–97.

While the record in this case indicates that the paternal grandparents and maternal aunt have a marginally better relationship than the parties in *Kenneth B.*, at least as evidenced by their testimony that they were not opposed to visitation with the other and the concession that the relationship served M.F.III's best interests, we find the joint custody arrangement employed here similarly unworkable under the circumstances. While the goal of giving M.F.III the benefit of connection with both sides of his family is a laudable one, joint custody in this factual context is fraught with volatility and invites these already-discordant individuals to jockey for decision-making authority. It similarly places M.F.III in the unstable position of having multiple decisionmakers for long term or important decisions, homes with different sets of rules on a day-to-day basis, and not only the potential, but the very high likelihood that he will be forced into more conflict if his custodians disagree on either front. A joint custody arrangement in the case of divorcing biological parents is difficult to fashion under the best of circumstances; this case does not involve divorced biological parents and these are far from the best of circumstances. Not only do abuse and neglect proceedings form the backdrop, but one parent has slain the other. The paternal grandparents perceive that the maternal side has interfered with their ability to form a relationship with M.F.III, while the maternal side perceives that the paternal grandparents support their son's version of events in relation to the killing of M.F.III's mother. It is clear from the record before us that the best interests of M.F.III cannot be served by a joint custody arrangement that places the child so directly in the crossfire of animosity. We therefore conclude that the circuit court abused its discretion in entering a permanent placement order granting the paternal grandparents and S.M. joint custody of M.F.III.

Having concluded that sole custody with either the paternal grandparents or S.M. serves M.F.III's best interests, we next conclude that the circuit court has already implicitly determined that S.M. is the appropriate sole custodian for M.F.III. In *In re Elizabeth F.*, this Court explained that "adoption by a child's grandparents is permitted only if such adoptive placement serves the child's best interests" and, "[i]f, upon a thorough review of the entire record, the circuit court believes that a grandparental adoption is not in the subject child's best interests, it is not obligated to prefer the grandparents over another, alternative placement that does serve the child's best interests." 225 W. Va. 780, 787, 696 S.E.2d 296, 303 (2010). The circuit court's order is thorough in its delineation of the grandparent preference case law, noting multiple times, consistent with our precedent, that the preference is not absolute. Cognizant of that case law, in awarding custody to *both* the paternal grandparents and S.M., it is apparent that the circuit court tacitly determined that the grandparent preference for adoption had been overcome by the child's best interest in remaining in the care and custody of S.M. at least half of the time.

It is apparent from the record and the circuit court's findings that it had concern with M.F.II's relationship with the paternal grandparents but ultimately determined that *due to M.F.II's incarceration* he had no access to the grandparents' home, similarly emphasizing that "the Court is assured that the terminated father will not be physically present in, or near, the [paternal grandparents'] home while incarcerated and contact, other than by phone, is impossible." The court took note of the DHS and guardian ad litem's concerns that post-release contact was inevitable, but found the concerns "too speculative and remote in time to outweigh the benefits the child will reap from being further connected to his paternal grandparents by having a substantial amount of time in their care now and in the foreseeable future." In view of the circuit court's decision to award joint custody, it relegates this danger to speculation at least until M.F.II's release in an apparent attempt to give *some* effect to the grandparent preference statute as discussed more fully below.

However, the circuit court's otherwise thorough order fails to address that the concern with the paternal grandparents was not imputing M.F.II's behavior but their propensity for excusing and minimizing it to M.F.III's later detriment, which has direct bearing on their ability to navigate M.F.III's trauma and their inclination to keep him separated from M.F.II. The paternal grandparents' testimony and the testimony of the adoption specialist relative to her conversations with them are both indicative that, while they agree M.F.II did something wrong, they are equivocal in their assignment of blame. They continue to view him as a "rule follower" and as someone who would be unequivocally willing to follow the court's ruling relative to contact with M.F.III—someone who they believe not to be impulsive despite his conviction for voluntary manslaughter.

The record does not support the paternal grandparents as the appropriate *sole* permanent placement for M.F.III. The circuit court indicated that it was assuaged that the grandparents would maintain their relationship with M.F.II separate and apart from M.F.III and outlined that its concerns about contact with M.F.II were further quelled by the joint custody arrangement. But in the absence of a second custodian for M.F.III and where M.F.II's release is now imminent, we cannot conclude that the record will support the paternal grandparents as the appropriate permanent placement for M.F.III. Acknowledging that the paternal grandparents are not personally

responsible for M.F.II's conduct, their continued relationship with him, the imminent nature of his release, and the circumstances that brought about the underlying proceedings are inescapable considerations. The undisputed record reflects near-daily contact between the paternal grandparents and M.F.II, that they have *and intend to continue* to support him in that manner, including by permitting him to reside in a home that they own—the same home in which M.F.II killed M.F.III's mother—and for the paternal grandfather to live with him for a time post-release until he can get back on his feet. To conclude that the paternal grandparents are able to simultaneously maintain that level of contact and support whilst also having sole custody of M.F.III and to shield him from every such interaction with M.F.II as required by the circuit court's no-contact order is practically and logically untenable, particularly considering that their ability to do so is premised in large part on M.F.II's ability to "follow the rules" upon release.

Based on the record before us and the circuit court's findings, we conclude that the circuit court found that the grandparent preference for adoption was clearly overcome or the circuit court would not have entered a joint custody award in favor of S.M., who, as noted by the circuit court, enjoys no statutory preferential treatment. The paternal grandparents argue that the circuit court specifically failed to give any effect to the statutory preference for grandparent adoption[8] as required in *In re J.P.*, where this Court was faced with deciding placement between two suitable placements—grandparents on one hand and foster parents on the other. 243 W. Va. 394, 844 S.E.2d 165.

The paternal grandparents essentially cite *In re J.P.* for the proposition that if the grandparents pass a home study they are considered a suitable home for purposes of the statute and as a result they are the appropriate placement even despite a purportedly DHS-created bond between the child and another caregiver. But that argument espouses the incorrect view of the grandparent preference as absolute when we have cautioned otherwise, explaining, "the preference

---

[8] As noted above, the grandparent preference statute, West Virginia Code § 49-4-113(a)(3) provides:

> For purposes of any placement of a child for adoption by the department, the department shall first consider the suitability and willingness of any known grandparent or grandparents to adopt the child. Once grandparents who are interested in adopting the child have been identified, the department shall conduct a home study evaluation, including home visits and individual interviews by a licensed social worker. If the department determines, based on the home study evaluation, that the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered the placement of the child prior to the consideration of any other prospective adoptive parents. A circuit judge may determine the placement of a child for adoption by a grandparent or grandparents is in the best interest of the child without the grandparent or grandparents completing or passing a home study evaluation.

is just that—a preference. It is not absolute . . . . the child's best interest remains paramount." *In re K.E.*, 240 W. Va. 220, 225, 809 S.E.2d 531, 536 (2018). An underlying best interests analysis is required even where the grandparent preference statute is at play:

> West Virginia Code § [49-4-114(a)(3) (2024)] provides for grandparent preference in determining adoptive placement for a child where parental rights have been terminated and also incorporates a best interests analysis within that determination by including the requirement that the [DHS] find that the grandparents would be suitable adoptive parents prior to granting custody to the grandparents. The statute contemplates that placement with grandparents is presumptively in the best interests of the child, and the preference for grandparent placement may be overcome only where the record reviewed in its entirety establishes that such placement is not in the best interests of the child.

Syl. Pt. 4, *Napoleon S. v. Walker*, 217 W. Va. 254, 617 S.E.2d (2005). "[T]he grandparent preference must be considered in conjunction with [this Court's] long standing jurisprudence that 'the primary goal in cases involving abuse and neglect . . . must be the health and welfare of the child[.]'" *In re Hunter H.*, 227 W. Va. 699, 703, 715 S.E.2d 397, 401 (2011) (quoting Syl. Pt. 3, in part, *In re Katie S.*, 198 W.Va. 79, 479 S.E.2d 589 (1996)).

Despite the paternal grandparents' reliance on *In re J.P.*, the circumstances presented here differ significantly from that case. First, S.M. is not a foster parent—she is not a familial stranger to the child, but a close relative who was present, available, and willing to take custody of M.F.III on the night his mother was killed.[9] Similarly, the bond between M.F.III and S.M. is not DHS-manufactured in the way suggested by the paternal grandparents and is not solely the product of the DHS failing to conduct a home study. S.M. has been his caretaker throughout these proceedings that have now spanned six years, and while the paternal grandparents' interest in the proceedings and in visitation was noted very early on, we have previously observed that their interest was initially premised on a paternity test and that they did not express a desire to *adopt* M.F.III until much later. *In re M.F.*, 250 W. Va. at 343, 902 S.E.2d at 892. As we have explained, "[r]egardless of who is responsible for the delay in this case, the child is the unfortunate victim." *Dep't. of Hum. Servs. v. La Rea Ann C.L.*, 175 W. Va. 330, 337 n.8, 332 S.E.2d 632, 638 n.8 (1985).

Moreover, unlike the court in *In re J.P.* where the circuit court had not given any effect or weight to the grandparent preference, the circuit court here completed an exhaustive review and measured consideration of the grandparent preference in arriving at its decision to award joint custody. 243 W. Va. at 402, 844 S.E.2d at 173. That is, when conducting the best interest analysis for M.F.III based on all the circumstances, the circuit court implicitly concluded that adoption by

[9] In *In re J.P.* this Court emphasized the difference between familial and non-familial placements in the long-term best interests of a child in reaching the conclusion that, all things on balance, the grandparent preference tips the scales. *Id.* at 404, 844 S.E.2d at 175 (noting the guardian ad litem recommendation that placement with the foster family provided short term benefits but ran contrary to long-term attachments within the family unit).

the paternal grandparents as his sole custodians was *not* in the child's best interests. Consistent with that conclusion, we agree that S.M. has been M.F.III's mother-figure and that to transition him out of the only home he has known for the last six years would be detrimental to his wellbeing, particularly in view of the maternal loss he has already suffered and that his best interests require the continuity and stability that S.M.'s home affords him. We have discussed that the tender years of a child's life pose a unique stability assessment:

> Recognizing that "'continuity of relationships, surroundings and environmental influence' during a child's first three years of life" is vitally important, this Court has "developed a policy that stable relationships should be preserved whenever feasible." *State ex rel. Treadway v. McCoy*, 189 W. Va. 210, 213, 429 S.E.2d 492, 495 (1993). In fact, we have specifically held that "[t]he best interests of a child are served by preserving important relationships in that child's life." *Id.* at 210, 429 S.E.2d at 492, syl. pt. 2[.]

In re G.G., 249 W. Va. at 505, 896 S.E.2d at 671 (footnote omitted). Though M.F.III is now beyond the first three years of life, a disruption after four and a half years in S.M.'s home as of the date of the circuit court's order has the potential to be even more damaging under these circumstances, a fact recognized by the circuit court as "traumatic" and afforded such significance that it ordered S.M. as joint custodian in spite of the grandparent preference."[I]f allegiance to a preferential placement does not promote the child['s] best interests, such preference must yield to the placement that is most beneficial to the child[]." *In re R.S.*, 244 W. Va. 564, 573-74, 855 S.E.2d 355, 364-65 (2021) (citation omitted). Accordingly, we conclude that based on the record before us, permanent placement in S.M.'s home is in M.F. III's best interest.

Still, the record demonstrates that the paternal grandparents' presence in M.F.III's life is a positive one. We merely recognize that they may have a substantial presence in his life without having joint custody. Prior to the entry of the circuit court's order establishing joint custody, neither the DHS, the guardian ad litem, nor S.M. objected to M.F.III's visitation with the paternal grandparents and the circuit court appropriately concluded that the continued relationship served M.F.III's best interests, provided they were able to abide by the no-contact order. We find, consistent with the above analysis, that a sole custodian will promote the stability needed to achieve true permanency and that visitation with the paternal grandparents similarly serves that stability:

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

Honaker v. Burnside, 182 W. Va. 448, 452, 388 S.E.2d 322, 326 (1989) (footnotes omitted). Accordingly, we reverse and remand the circuit court's September 29, 2025, order with instructions that the circuit court enter a permanent placement order placing legal and physical

custody of M.F.III with S.M. and to order visitation with the paternal grandparents in kind and frequency deemed appropriate by the circuit court to maintain those relationships within the confines of the no-contact order as between M.F.II and M.F.III.

Reversed and remanded with directions.

ISSUED: November 9, 2026

CONCURRED IN BY:

Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan

CONCURRING, in part, DISSENTING, in part:

Chief Justice C. Haley Bunn

BUNN, Chief Justice, concurring, in part, dissenting in part:

I agree with the majority's conclusion that the circuit court abused its discretion in awarding joint custody to S.M. and the paternal grandparents. However, I would have stopped there and remanded the case to the circuit court to determine whether S.M. or the paternal grandparents were the more appropriate permanent placement for M.F.III. I dissent to the majority's decision to step into the role of the circuit court to make the final determination regarding the child's permanent placement based on the cold record before us. Acknowledging that expedient disposition of the custody determination avoids further delay and affords M.F.III permanency now rather than later, I disagree with the majority's overreach into the role of the trial court, particularly where credibility issues are so prominent in the decision-making process. *See Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997) ("A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations[.]"). After concluding that a joint custody arrangement under these circumstances was improper and determining that a sole custodian served M.F.III's best interests, I would have stopped short of making that sole custody determination rather than engaging it at the appellate level based on inferences about the grandparent preference. *See, e.g.*, Syl. Pt. 5, *In re A.F.*, 251 W. Va. 785, 916 S.E.2d 627 (2025) (requiring detailed findings of fact and conclusions of law that the grandparent preference was overcome by the best interests of the child). Accordingly, I respectfully dissent, in part, from the majority decision.