IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
November 12, 2026
released at 3:00 p.m.
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

TYLER FERNANDES,
Appellant Below, Petitioner

v.) No. 26-ICA-93 (Bd. of Review Case No. 25-BOR-2872)

WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES, BUREAU FOR SOCIAL SERVICES,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Tyler Fernandes appeals the January 30, 2026, decision of the West Virginia Office of Inspector General Board of Review ("Board"). The Board upheld Respondent West Virginia Department of Human Services, Bureau for Social Services' ("WVDHS") substantiation of an Institutional Investigation Unit ("IIU") finding of maltreatment (physical abuse) against Mr. Fernandes. WVDHS filed a response in support of the Board's decision, to which Mr. Fernandes replied.[1]

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). After considering the oral and written arguments of counsel, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the Board's January 30, 2026, decision is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

At all times relevant hereto, Mr. Fernandes was employed as a correctional officer at the Gene Spadaro Juvenile Center ("Spadaro").[2] While working at Spadaro, Mr. Fernandes was involved in a verbal and physical altercation ("incident") with a juvenile

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[1]Mr. Fernandes is represented by Matthew Bradford, Esq. WVDHS is represented by Attorney General John B. McCuskey, Esq., and Assistant Attorney General Angela M. Alexander, Esq.

[2]The record reflects that Mr. Fernandes was employed as a correctional officer at Spadaro for only four months prior to the incident at issue in this matter, with no prior experience in corrections.

resident identified as C.B. (17).[3] The incident occurred on the morning of January 22, 2025, after C.B. was directed to return from the Spadaro dayroom to Unit A (where C.B. resided), as C.B. was reportedly disruptive and refused instructions. Once he arrived in Unit A, C.B. was placed in his room by Mr. Fernandes.

C.B. recalled that once he was placed in his room, he asked Mr. Fernandes if he could speak with the officer in charge, the Spadaro therapist, or one of the sergeants on duty. Per C.B., Mr. Fernandes "responded to each request, insinuating he had spoken with that person, but they had refused to talk to" C.B. Thereafter, C.B. began kicking and hitting the door to his room, in an alleged effort to "get someone's attention." C.B. then started taunting Mr. Fernandes by saying, "you won't come in here without assistance," and calling Mr. Fernandes derogatory names. In response, Mr. Fernandes used profane language towards C.B., who then challenged Mr. Fernandes to "say those things to his face."

Mr. Fernandes then ordered the remaining residents of Unit A (H.N. (17), S.G. (17), D.H. (16), J.P. (16), and B.L. (15)) to their respective rooms. Once all the residents were secured in their rooms, Mr. Fernandes opened the door to C.B.'s room and entered the room alone (without assistance of other officers). Upon entry to C.B.'s room, C.B. asked Mr. Fernandes, "What's up?", to which Mr. Fernandes replied, "Who's not going to say things to your face now?[.]" C.B. described that Mr. Fernandes "advanced on him[,]" which he perceived as threatening and made comments to him that caused C.B. to believe Mr. Fernandes "intended to fight him."[4] As a result of his perceptions, C.B. struck Mr. Fernandes, who tackled C.B. to the floor as the two "traded punches."[5] It was reported that Mr. Fernandes said a combination of the following to C.B. during the incident, "Who is a bi[**]h now?", "What's up now pu[**]y?", and "Who is the pu[**]y now?" Ultimately, the incident between Mr. Fernandes and C.B. was broken up by other officers.[6]

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[3]Consistent with our practice in cases with sensitive facts, we use initials where necessary to protect the identities of the juveniles involved in this case. *See In Re K.H.*, 235 W. Va. 254, 256 n.1, 773 S.E.2d 20, 22 n.1 (2015).

[4]In its investigation report, IIU notes that video footage of the incident shows Mr. Fernandes "advancing into [C.B.]'s room, with [C.B.] moving back toward the back right corner of the room, out of camera view."

[5]There is no dispute that C.B. threw the first punch in his physical altercation with Mr. Fernandes.

[6]No criminal charges were filed against Mr. Fernandes related to this incident. While no report from the West Virginia Division of Corrections and Rehabilitation ("WVDCR") is included in the appendix, the record references that Mr. Fernandes was not cited for use of excessive force by the WVDCR following this incident.

As a result of the incident, C.B. sustained a nosebleed, black eye, several abrasions, and a hematoma. Mr. Fernandes sustained an injury to his left eye. Immediately following the incident, C.B.'s injuries were evaluated by a medical professional and C.B. met with a therapist. C.B. reported to the therapist that, during the incident, he was struck and placed into a chokehold by Mr. Fernandes.[7] Given C.B.'s admission, the therapist made a mandatory report to the WVDHS of the alleged abuse of C.B. at the hands of Mr. Fernandes.

On January 23, 2025, WVDHS' IIU, in response to the child abuse allegation involving C.B. and Mr. Fernandes, began a comprehensive investigation of the reported abuse.[8] Ultimately, by report dated August 6, 2025, the IIU concluded that a finding of maltreatment (physical abuse) was substantiated against Mr. Fernandes arising from the January 22, 2025, incident. Specifically, the IIU noted that

> [i]nterviews with [the other juvenile residents of Unit A], produced corroborated evidence of the growing tension between [Mr.] Fernande[s] and [C.B.] prior to [Mr.] Fernande[s] entering [C.B.]'s room alone, as well as comments allegedly made by [Mr.] Fernande[s] indicated the intent to fight [C.B.] upon entry of [C.B.'s] room . . . [Mr.] Fernande[s] denied entering the room with the intent to fight [C.B.] . . . [Mr.] Fernande[s] explained that he thought he could calm [C.B.] down . . . Due to [Mr.] Fernande[s] securing the rest of the juvenile residents into their room[s] and entering [C.B.'s] room during a time when [Mr.] Fernande[s] and [C.B.] were engaged in an argument, that a use of force occurred due to this action with [C.B.] having

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[7]We note that the medical professional who examined C.B. following the incident found no injuries consistent with choking, either by hand around the throat or an arm around the neck.

[8]Following the incident, because of C.B.'s physical injuries, the WVDHS reported the incident to the West Virginia State Police ("WVSP") for investigation. The appendix does not include any report related to the investigation undertaken by the West Virginia State Police, but we note that Mr. Fernandes was not criminally charged as a result of this incident. However, C.B. was criminally charged for his involvement in the incident.

Mr. Fernandes argues that the evidence of the WVSP and WVDCR's investigatory findings should be controlling or, at the very least, was material evidence to suggest that his conduct was not abusive. We disagree. As Mr. Fernandes acknowledges, determinations by other entities (such as the WVDCR and the WVSP) "do not mechanically control the Board's decision." Here the Board addressed the reported findings of the WVDCR and the WVSP and noted that "simply because other investigative agencies did not find liability of [Mr. Fernandes] under their controlling authority and rules, does not preclude [WVDHS] from making maltreatment determinations under its controlling authority."

injuries and five residents corroborating statements, that a finding of maltreatment [physical abuse] is substantiated.

Mr. Fernandes was advised of the IIU's findings and substantiation of abuse by letter dated August 14, 2025. Thereafter, Mr. Fernandes appealed the substantiation to the WVDHS Board, by completion of a form titled *Request for Removal of CPS or APS Findings and Hearing Request Form*. An administrative hearing was held before the Board's Administrative Law Judge ("ALJ") on December 8, 2025. At the hearing, IIU Supervisor Matthew Cutright testified on behalf of the WVDHS. Mr. Fernandes offered testimony on his own behalf and also presented the testimony of Spadaro Superintendent Ricky Scarbro, Jr.

During the December 8, 2025, hearing, Mr. Fernandes agreed that the IIU investigation findings did not "accurately" depict his position, that the IIU came to "incorrect conclusions" and relied upon a "lot of factual inaccuracies." In support of the WVDHS, Supervisor Cutright testified that based upon the consistency of the statements of the other residents of Unit A with the statement of C.B., "that Mr. Fernandes said some inappropriate or spiteful things" to C.B. before and during the incident, which "corroborate that maybe this incident wasn't a fluke . . . [but] was kind of . . . a setup. And the fact that [Mr. Fernandes] went into the [room] of somebody he already knew was agitated without getting assistance." While Supervisor Cutright agreed that opening a room door to talk to a resident is not abuse, he clarified that the active abuse in the instant case occurred when Mr. Fernandes did not "seek any additional staff to help him and . . . entered the [room] with a knowingly agitated juvenile, which resulted in a restraint and [physical] injur[y]" to C.B.

Mr. Fernandes admitted that he opened the door and entered C.B.'s room without the assistance of other officers, but claims that he did so to prevent C.B. from hurting himself, as C.B. was beating his head on the wall. While Supervisor Cutright acknowledged that there were reports of C.B. banging his head off the door and kicking the door immediately before the incident, that if C.B. "was engaging in self-injurious behavior, it would be more appropriate . . . to have a nurse come over before" Mr. Fernandes opened C.B.'s door. Moreover, the IIU concluded that C.B.'s actions immediately before the incident (banging on his door) were not "so graphic or so severe" that Mr. Fernandes' immediate intervention was necessary.

During his testimony, Mr. Fernandes denied making any statements to C.B. prior to the incident, aside from directing C.B. to stop resisting. Additionally, Mr. Fernandes denied that C.B. asked for a counselor or some other Spadaro facility professional prior to Mr. Fernandes' entry into C.B.'s room. This denial is in express contradiction to Mr. Fernandes' prior statement to the IIU, wherein he advised that C.B. requested to speak to various staff prior to his entry into C.B.'s room. Further, Mr. Fernandes' denial is in direct contravention

of the statement of C.B. and the other residents of Unit A, who each recalled that C.B. asked to speak to others prior to Mr. Fernandes entering his room.

Mr. Scarbro was the last witness to testify at the administrative hearing and stated that he did not believe there was any malicious intent by Mr. Fernandes and that Mr. Fernandes did not violate any of the Spadaro policies or do anything wrong. As to whether a second officer is required to respond to an agitated juvenile, Mr. Scarbro testified that a second officer is not required; however, he offered that "[t]his [incident] is a good example of exactly why you need two [officers] and don't cowboy up."

By decision dated January 30, 2026, the Board upheld the substantiation of abuse against Mr. Fernandes. Specifically, the Board concluded that WVDHS proved "by a preponderance of evidence" that Mr. Fernandes knowingly and intentionally inflicted physical injury on Spadaro resident C.B. The Board determined that the evidence did not support Mr. Fernandes' assertions. Rather, the Board concluded that the evidence revealed that Mr. Fernandes "verbally and profanely instigated C.B., failed to contact staff professionals, did not request officer assistance prior to entry, and did not act with immediacy."[9] The Board also found no corroborating evidence that C.B. was in fact hitting his head on the door as alleged by Mr. Fernandes, and noted that neither the other juvenile residents of Unit A nor C.B. indicated that C.B. was hitting his head against the door (but was banging on the door with his hands and feet). Mr. Fernandes' instant appeal of the Board's January 30, 2026, decision followed.

Our governing standard of review for a contested case from the Board is as follows:

> The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision, or order are: (1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority or jurisdiction of the agency; (3) Made upon unlawful procedures; (4) Affected by other error of law; (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

[9]As to immediacy, the Board found that Mr. Fernandes "unhurriedly took a minute and a half to place the other residents in their rooms before going to C.B.'s room. [Mr. Fernandes]' failure to act with immediacy or to request assistance indicates that his intention was not stopping C.B.'s alleged self-injurious behaviors."

West Virginia Code § 29A-5-4(g) (2021); *accord* W. Va. Code § 16B-2-2(c) (2024) (designating West Virginia Code § 29A-5-4 as governing the standard of review for Board appeals). "The 'clearly wrong' and the 'arbitrary and capricious' standards of review are deferential ones which presume an [administrative] agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." Syl. Pt. 2, *Antero Res. Corp. v. Steager*, 244 W. Va. 81, 851 S.E.2d 527 (2020) (citing Syl. Pt. 3, *In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)). Further, it is soundly established that on appeal, "[a]n appellate court does not reweigh the evidence[.]" *State v. Thompson*, 220 W. Va. 246, 254, 647 S.E.2d 526, 534 (2007) (per curiam); *Coles v. Century Aluminum of W. Va.*, No. 23-ICA-81, 2023 WL 7202966, at *2 (W. Va. Ct. App. Nov. 1, 2023) (memorandum decision) (noting that an appellate court will not reweigh the evidence presented below on appeal).

On appeal, Mr. Fernandes raises four assignments of error, which each, in essence, challenge the sufficiency of the evidence and the credibility determinations made by the Board. Due to the similarity of the assignments of error, we will address them together.[10]

In his first and fourth assignments of error, Mr. Fernandes argues that the Board misapplied the statutory definition of "abused child" under West Virginia Code § 49-1-201 (2018),[11] when it substantiated the abuse finding against Mr. Fernandes. West Virginia Code § 49-1-201(1)(A) defines "abused child" to mean "(1) A child whose health or welfare is being harmed or threatened by: (A) A . . . custodian who knowingly or intentionally inflicts, . . . physical injury or mental or emotional injury upon the child . . ." Further, this Code section defines child abuse and/or neglect to mean "any act or omission that creates an abused child . . . as those terms are defined in this section."

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[10]In his first assignment of error, Mr. Fernandes argues that the Board erred as a matter of law in upholding the substantiation of physical abuse based on alleged deficiencies in following Spadaro procedures rather than reliable evidence that Mr. Fernandes knowingly or intentionally inflicted injury outside lawful control or self-defense. In the second assignment of error, Mr. Fernandes contends that the Board improperly substituted speculation for evidence in finding intent based on pre-incident conduct. As to his third assignment of error, Mr. Fernandes suggests that the Board's decision is arbitrary and capricious because it disregards material undisputed findings and imposes an abuse based on hindsight. Lastly, in his fourth assignment of error, Mr. Fernandes argues that the Board misapplied the statutory definition of abuse under West Virginia Code § 49-1-201, when it found substantiation of abuse.

[11]West Virginia Code § 49-1-201 was amended by the West Virginia Legislature in 2025 (effective July 11, 2025). However, we note that the 2025 amendments did not amend any of the definitions cited and relied upon by Mr. Fernandes on appeal.

Mr. Fernandes argues that the Board erred in finding a substantiation of child abuse because West Virginia Code § 49-1-201 requires "more than poor judgment or procedural missteps[,]" inferring that the substantiation was upheld merely due to his alleged failure to follow Spadaro procedures. Additionally, Mr. Fernandes contends that his actions did not rise to the level of intentional or knowing infliction of injury, required by West Virginia Code § 49-1-201.

Similarly in assignments of error two and three, Mr. Fernandes challenges the Board's consideration of what he terms "speculative" evidence (unhurried nature of Mr. Fernandes returning other residents to their room before entering C.B.'s room and Mr. Fernandes' alleged profanity) and suggests that the Board's decision is arbitrary and capricious as the record does not support the Board's substantiation. As to each of Mr. Fernandes' arguments, we disagree.

At their core, Mr. Fernandes' arguments ask this Court to reweigh the evidence, substitute its judgment for that of the Board, and reach a conclusion more favorable to him. We decline to do so. Like the petitioner in *Caitlin H. v. Patrick M.*, No. 25-ICA-407, 2026 WL 2279919 (W. Va. Ct. App. August 6, 2026) (memorandum decision), Mr. Fernandes misunderstands the role of an appellate court. As this Court noted in *Caitlin H.*, we review the Board's

> factual findings and ultimate disposition under the deferential standards outlined above, and critically, we do not reweigh evidence or make credibility determinations. *See State v. Guthrie*, 194 W. Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995) ("An appellate court may not decide the credibility of the witnesses or weigh evidence as that is the exclusive function and task of the trier of fact.").

Id. at *3.

In *Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997), the Supreme Court of Appeals of West Virginia ("SCAWV") determined that "[a] reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations." Moreover, in Syl. Pt. 1, *In Interest of Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996), the SCAWV held, in part, that "a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety."

In Syllabus Point 1, *Walker v. W. Va. Ethics Comm'n*, 201 W. Va. 108, 492 S.E.2d 167 (1997), the SCAWV referenced that it (as a reviewing court) "must evaluate the record of [the] agency's proceeding to determine whether there is evidence on the record as a

whole to support the agency's decision." If there is evidence to support the agency's decision, then this Court must affirm "regardless of whether the court would have reached a different conclusion on the same set of facts." *Id*., 201 W. Va. at 116, 492 S.E.2d at 175 (citations omitted).

Here, our review of the record establishes that there is substantial evidence in support of the Board's decision to uphold the WVDHS' substantiation of abuse. The testimony of C.B. and the other residents of Unit A corroborates and collectively establishes that Mr. Fernandes spoke directly, in an aggressive and derogatory manner, toward C.B. prior to and upon entering C.B.'s room without the assistance of other officers, and that C.B. requested to speak to a therapist or sergeant prior to Mr. Fernandes' entry into his room, but Mr. Fernandes ignored that request. Simply stated, the record reveals that Mr. Fernandes accepted C.B.'s taunting invitation to enter his room alone and verbally and physically confronted the agitated juvenile, resulting in a fight in which C.B. sustained physical injuries. We are unable to find that the Board was clearly wrong when it relied upon such facts to support the conclusion that Mr. Fernandes physically abused C.B.

Mr. Fernandes is critical of the Board's failure to find credibility in his hearing testimony (which differed from the statement he provided during the IIU investigation) that he did not speak to C.B. during the incident (except regarding restraints) and that C.B. did not request to speak to anyone else before Mr. Fernandes entered his room. The SCAWV has reasoned that "[e]ven where testimony is uncontroverted, a fact-finder is free to disregard such testimony if it finds the evidence self-serving, and not credible." *Mulugeta v. Misailidis*, 239 W. Va. 404, 409, 801 S.E.2d 282, 287 (2017). Here, the Board clearly found Mr. Fernandes' testimony less than credible, which it was entitled to do as the finder of fact.[12]

The Board, after a full and complete hearing, concluded that based upon the evidence in the record, the WVDHS proved by a preponderance of evidence that Mr. Fernandes "knowingly and intentionally inflicted physical injury" to C.B., and upheld the WVDHS' substantiation of abuse. The Board based its determination on the established facts that Mr. Fernandes "verbally and profanely instigated" C.B., that Mr. Fernandes failed to contact additional Spadaro personnel to assist in dealing with an agitated juvenile, and that Mr. Fernandes did not act with immediacy, but instead secured the other residents of Unit A before offering "aid" to C.B. Given the evidentiary support for the Board's findings, and given the clear and long-standing precedent of the SCAWV giving deference to credibility determinations made by the trier of fact, we find no error in the Board's January 30, 2026, decision. Accordingly, we affirm the Board's January 30, 2026, decision and the substantiation of maltreatment (physical abuse) against Mr. Fernandes.

[12]We note that in this matter, Mr. Fernandes' testimony was not unrefuted but actually conflicted with the testimony of other witnesses, including C.B. and the residents of Unit A.

Affirmed.

ISSUED: November 12, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge Charles O. Lorensen
Judge S. Ryan White