IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2023 Term

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 22-733

In Re N. W.

Appeal from the Circuit Court of Nicholas County
The Honorable Stephen O. Callaghan, Judge
Case No. CC-34-2021-JA-133

DISMISSED

AND

No. 22-734

In Re N. W.

Appeal from the Circuit Court of Nicholas County
The Honorable Stephen O. Callaghan, Judge
Case No. CC-34-2021-JA-133

AFFIRMED

Submitted: October 18, 2023
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Joseph M. Mosko, Esq.
Summersville, West Virginia
Attorney for Petitioner D. H.

John C. Anderson, II, Esq.
Lewisburg, West Virginia
Attorney for Petitioner D. W.

Patrick Morrisey, Esq.
Attorney General
Andrew T. Waight, Esq.
Assistant Attorney General
Charleston, West Virginia
Attorneys for West Virginia
Department of Health and Human
Resources

Taylor Graham, Esq.
THE LAW OFFICE OF TAYLOR GRAHAM
Summersville, West Virginia
Guardian ad Litem for N. W.

JUSTICE WOOTON delivered the Opinion of the Court.

SYLLABUS BY THE COURT

1. "'When this Court reviews challenges to the findings and conclusions of the circuit court, a two-prong deferential standard of review is applied. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard.' Syl., *McCormick v. Allstate Ins. Co*., 197 W. Va. 415, 475 S.E.2d 507 (1996)." Syl. Pt. 1, *In re S. W*., 236 W. Va. 309, 779 S.E.2d 577 (2015).

2. "Subject matter jurisdiction does not exist over claims that are not ripe for adjudication." Syl. Pt. 3, *State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 239 W. Va. 338, 801 S.E.2d 216 (2017).

3. "As a general rule the least restrictive alternative regarding parental rights to custody of a child under W. Va. Code, 49-6-5 (1977) will be employed; however, courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened, and this is particularly applicable to children under the age of three years who are more susceptible to illness, need consistent close interaction with fully committed adults, and are likely to have their emotional and physical development retarded by numerous placements." Syl. Pt. 1, *In re R. J. M*., 164 W. Va. 496, 266 S.E.2d 114 (1980).

WOOTON, Justice:

In these consolidated abuse and neglect appeals, petitioner mother D. H. [1] ("petitioner mother") appeals the Circuit Court of Nicholas County's denial of post-termination visitation by challenging the "no contact" provision of its August 29, 2022, dispositional order. Petitioner father D. W. ("petitioner father") appeals only the circuit court's termination of his parental rights to infant N. W., as also set forth in the August 29, 2022, order.

With respect to petitioner mother, the circuit court concluded that any perceived benefit to post-termination visitation between N. W. and petitioners was purely speculative and declined to disturb the "no contact" provision of the dispositional order. As to petitioner father, the circuit court concluded that petitioner father's poor parenting prognosis, severe substance abuse issues, and failure to benefit from services demonstrated there was no reasonable likelihood the underlying conditions of abuse and neglect could be substantially corrected, and accordingly terminated his parental rights. Respondent West Virginia Department of Health and Human Resources ("DHHR") argues in support of the circuit court's termination of parental rights and maintains that issues involving post-termination visitation have been rendered moot by the intervening adoption of N. W. The

[1] Because this case involves minors and sensitive matters, we follow our longstanding practice of using initials to refer to the children and the pertinent parties. *See* W. Va. R. App. P. 40(e); *State v. Edward Charles L.*, 183 W. Va. 641, 645 n.1, 398 S.E.2d 123, 127 n.1 (1990).

guardian ad litem likewise argues in support of the termination of parental rights but agrees with petitioner mother's position that the "no contact" provision violates applicable law.

Upon careful review of the briefs, the appendix record, the arguments of the parties, and the applicable legal authority, we find that petitioner mother's appeal presents an issue that is not ripe; therefore, we lack jurisdiction and must dismiss the appeal. As to petitioner father, we find no error in the circuit court's termination of his parental rights and therefore affirm.

I. FACTS AND PROCEDURAL HISTORY

On December 10, 2021, DHHR filed an abuse and neglect petition against petitioners after their four-month-old infant, N. W., was diagnosed with failure to thrive at a walk-in pediatrician visit, resulting in her immediate referral to the emergency room due to malnourishment. From the time of her birth until the walk-in pediatrician visit, N. W. had missed multiple doctors' appointments and dropped below the first percentile for growth;[2] the nurse practitioner who examined N. W. opined that she believed N. W. would die if not removed from the home. Neither petitioner appeared to understand the seriousness of N. W.'s condition and claimed lack of transportation for the missed

[2] Medical conditions preventing N. W. from normal growth were ruled out during her emergency room visit.

pediatrician visits. Petitioners admitted to abuse of marijuana and other substances but refused to drug screen.

By order entered April 20, 2022, the circuit court adjudicated petitioners abusive and neglectful. Although hearing transcripts are not contained in the appendix record, the adjudicatory order reflects that testimony consistent with the allegations in the petition was adduced over the course of two hearings. In response to the allegations, petitioner mother apparently testified that she believed N. W. was of normal weight and that she was advised by medical professionals that N. W.'s formula had caused her kidneys and liver to shut down, which claim the circuit court found to be "bizarre" and "irrational." Petitioner father admitted that he should have taken N. W. to the doctor more often and that she was not properly fed because petitioners were "ill-equipped or ill-informed to raise a child"; he further admitted to alcohol, marijuana, and methamphetamine abuse. Petitioners were therefore adjudicated abusive and neglectful for their failure to provide basic nutrition and healthcare to N. W., thereby endangering her life.

The record reflects that both petitioners moved for post-adjudicatory improvement periods, although neither their motions nor a transcript of the hearing on the motions is contained in the appendix record. In its June 22, 2022, order denying the improvement periods, the circuit court relied primarily on the results of petitioners' psychological evaluations, as testified to by their evaluator, licensed psychologist Dr. Megan Green. Dr. Green diagnosed petitioner father with severe alcohol, cannabis, and

stimulant use disorders; she noted the "significant" potential for relapse notwithstanding any potential treatment because he had been using those substances nearly half of his life. Petitioner mother was likewise diagnosed with alcohol and opioid use disorders, which were in remission, along with severe cannabis and stimulant use disorders. In addition, she was diagnosed with several mental health disorders and a mild intellectual disability, resulting in her inability to read beyond a third-grade level.

The circuit court's order details that petitioner mother was unable to describe her own parenting failures upon inquiry by the court,[3] and Dr. Green confirmed that petitioner mother was unable to grasp the significance of the fact that she had virtually allowed N. W. to starve. Dr. Green further testified that even very low functioning parents are capable of meeting basic nutritional needs and that, by contrast, petitioners were unable to do so. Both petitioners were given "very poor" prognoses for achieving minimally adequate parenting. The circuit court found that not only did petitioners fail to acknowledge the abuse/neglect problems, they were "unable to even recognize" those problems or "their own starving child." As a result, the court concluded that petitioners failed to establish sufficient grounds to warrant an improvement period and that an improvement period was not otherwise in N. W.'s best interests.

[3] The only evidence of this is a brief exchange quoted in the order where petitioner mother was asked what issue caused Child Protective Services ("CPS") to become involved and she replied "parenting." When asked if she could elaborate, she replied, "Um . . . I'm not sure." The order notes there was "a long pause" before she replied.

As is the case with the adjudicatory hearing and the hearing on petitioners' motion for improvement periods, the appendix record contains no transcript from the dispositional hearing. Nonetheless, the record reflects that a dispositional hearing was held on August 24, 2022, where the circuit court apparently heard testimony from a CPS supervisor who testified that she provided petitioner mother with a robotic baby designed to test her caretaking abilities. She explained that the robotic baby was placed on the "easy" setting but petitioner "failed miserably"; she testified that had the robotic baby been a real baby, it would have died. The CPS supervisor further testified that petitioner father was provided parenting and adult life skills training but did not "grasp" the material.

As a result of this testimony and the cumulative testimony throughout the proceedings, the circuit court concluded that there was "no reasonable likelihood the conditions of abuse or neglect can be substantially corrected" and, in its August 29, 2022, dispositional order, terminated petitioners' parental rights. *See* W. Va. Code § 49-4-604(c)(6) (2020). In the order, the circuit court denied post-termination visitation and included the following "no contact" provision:

> 13. **No contact**: It is Ordered that [petitioners] shall have no contact, direct or indirect, with the infant respondent(s) and *no* party, foster placement, foster parent, custodian, *adoptive parent or adoptive placement shall permit any such contact.*

(Emphasis added).

The dispositional order terminating petitioners' parental rights was entered on August 29, 2022, from which petitioners had thirty days to file a notice of appeal. *See* W. Va. R. App. P. 11(b); *see also* W. Va. Child Abuse and Neglect P. Rule 49. DHHR represents that the case was transferred to its Adoption Unit the day after the dispositional hearing and on September 22, 2022, N. W.'s paternal aunt and uncle filed a petition for adoption in the Circuit Court of Wirt County. Despite the fact the appeal period had not yet expired in the abuse/neglect proceedings,[4] on September 26, 2022, DHHR executed a "Release and Consent for Adoption." On September 28, 2022, each petitioner filed a timely notice of appeal with this Court.[5] On November 4, 2022, while the instant appeals were maturing, N. W. was adopted in the Circuit Court of Wirt County.

Notwithstanding its denial in the dispositional order, on September 14, 2022, petitioners apparently filed a joint motion for post-termination visitation; this motion is likewise not contained in the appendix record. On October 12, 2022, the circuit court held an evidentiary hearing on the motion and heard testimony from Dr. Santa Bartholomew, a pediatric expert. Dr. Bartholomew testified that generally it is "developmentally advantageous" for children to retain contact with their biological parents even after

[4] DHHR's brief states, without record support, that a CPS worker "notified the Adoption Unit" that the appeal period had not yet expired when she transferred it. DHHR concedes that the case should not have been transferred to its adoption unit until the appeal periods had expired, and represented that measures have been taken to prevent such a transfer from occurring in the future.

[5] *But see* discussion, *infra*, regarding compliance with West Virginia Rule of Appellate Procedure 11(b).

adoption, assuming the parents are sober and the relationship with the adoptive parents is not confrontational.

When questioned further about whether visitation in the brief period of time *pending* adoption would be of any real benefit to N. W., Dr. Bartholomew indicated it would be "minimal." In that regard, the circuit court attempted to clarify with counsel that petitioners were only seeking visitation during the time period pending N. W.'s adoption in accordance with her permanency plan. Petitioner mother's counsel responded that he was not seeking "any affirmative right to visitation for my client" and that "[t]he only relief that I am asking the Court to enter today is to not put that [visitation] restriction on the [adoptive parents]."[6] The guardian ad litem agreed with petitioner mother's position that

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[6] Counsel elaborated further:

> The orders that we enter all across the state is that, once termination occurs, there is to be no contact between any future placement, adoptive or otherwise. *The only relief that I am asking the Court to enter today is to not put that restriction on the [adoptive parents].* I am not –
>
> I want to be very, very clear. I have not asked the Court for any affirmative right to visitation for my client. . . .
>
> . . . .
>
> The only thing I'm asking is that, if [the adoptive parents] are satisfied that [petitioner mother] has dealt with her drug problem . . . .
>
> . . . .

(continued . . .)

any future contact between N. W. and petitioners should be left to the discretion of the adoptive parents. The court advised that it believed permitting contact between the child and her terminated parents "abrogate[s] the part of the statute that says that termination is a no contact" and it was "not going to change that part of the [dispositional] order."

On October 13, 2022, the court entered an order denying petitioners' motion for post-termination visitation, finding Dr. Bartholomew's testimony "entirely speculative" with regard to any such visitation. The court found that, given N. W.'s removal at four months of age and the fact that petitioners had effectively allowed her to starve during that time, she had no close emotional bond with them and visitation would be detrimental. Although the order denies the motion for post-termination visitation, it does not further address any restrictions on the adoptive parents as raised by petitioner mother's counsel.

Upon perfection of these appeals, we consolidated them for our review and consideration.

II. STANDARD OF REVIEW

As is well-established,

> *If they're satisfied that having [petitioners] come around and have that connection the child is in the child's best interests, I don't want a court order to hamper that.* That's the only thing I'm asking for.

(Emphasis added).

> "[w]hen this Court reviews challenges to the findings and conclusions of the circuit court, a two-prong deferential standard of review is applied. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard." Syl., *McCormick v. Allstate Ins. Co*., 197 W. Va. 415, 475 S.E.2d 507 (1996).

Syl. Pt. 1, *In re S. W*., 236 W. Va. 309, 779 S.E.2d 577 (2015). With these standards in mind, we proceed to the parties' arguments.

III. DISCUSSION

Petitioner mother, along with the guardian ad litem, maintains that the circuit court erred in prohibiting potential future contact with N. W. where her expert witness offered unrebutted testimony that a continued connection with biological parents is generally in a child's best interests and the court lacked evidence to conclude that such visitation would be harmful to N. W. Petitioner father argues that his parental rights were improperly terminated as he did not suffer the same intellectual deficits as petitioner mother and had ceased using drugs and alcohol. We will address each of their appeals in turn.

A. Petitioner Mother's Appeal (No. 22-733)

Before turning to the substance of petitioner mother's appeal, we find it prudent to first address an apparent procedural defect in her appeal—one which the Court has observed with troubling frequency. West Virginia Rule of Appellate Procedure 11(b) provides, in part:

> Within thirty days of entry of the judgment being appealed, the petitioner shall file the notice of appeal and the attachments required in the notice of appeal form contained in Appendix A of these Rules. The notice of appeal shall be filed in the Office of the Clerk of the Supreme Court. In addition to serving the notice of appeal in accordance with Rule 37, *the party appealing shall serve a copy of the notice of appeal,* including attachments, on all parties to the action in circuit court, *on the clerk of the circuit court from which the appeal is taken--which shall be made a part of the record in the circuit court*--and on each court reporter from whom a transcript is requested.

(Emphasis added); *see also* W. Va. Child Abuse and Neglect P. Rule 49 (requiring "service provided as prescribed by the Rules of Appellate Procedure" in accelerated appeals of abuse and neglect matters). While both petitioners timely filed their notice of appeal with this Court, the docket sheet reflects only *one* such notice was made part of the record below. Upon inquiry with the Circuit Clerk of Nicholas County, the Court determined that the notice of appeal made part of the record below was provided by petitioner father. Nonetheless, in petitioner mother's notice of appeal, her counsel certified that he properly served the circuit clerk below with the notice. Because DHHR did not raise this issue by way of motion or in its brief, the Court is without the benefit of the parties' factual or legal arguments concerning this ostensible procedural defect.

The importance of strict compliance with this aspect of Rule 11(b) is obvious. The service of the notice of appeal on the circuit court below and its inclusion in the record provide notice of the proceedings' lack of finality and alert the parties, DHHR, and the circuit court that adoption proceedings should not take place. *See* W. Va. Code § 49-4-604(c)(6)(C) ("No adoption of a child shall take place until all proceedings for termination

of parental rights under this article and appeals thereof are final."). This Court has admonished parties for failing to timely and properly pursue appellate rights in abuse and neglect matters. *See In re K. B.*, No. 21-0277, 2022 WL 1092826 (W. Va. April 12, 2022) (memorandum decision) (dismissing appeal where petitioner failed to file motion for enlargement of time within appeal period). In appropriate cases, we have dismissed appeals outright by order for failure to comply with Rule 11(b)'s service requirements—even where a notice of appeal was timely filed—where such failure has contributed to premature adoption proceedings. *See In re A. W. and S. W.*, No. 21-0516, Order (W. Va. May 5, 2022); *In re C. W., et al*, No. 22-0438, Order (W. Va. April 24, 2023); *In re T. W. and L. W.*, Nos. 22-0435 and 22-0438, Orders (W. Va. April 24, 2023).

However, in contrast to these cases, we cannot conclude that the premature adoption of N. W. is directly attributable to petitioner mother's ostensible lack of procedural compliance with Rule 11(b). In the cases dismissed by order, the adoptions ensued in the county in which the abuse and neglect proceedings were conducted; therefore, if the notices of appeal had been properly made part of the record, the adoption court would have had direct notice of the pendency of an appeal of the underlying parental rights. In the instant case, however, the adoption was commenced and finalized in the Circuit Court of Wirt County where the adoptive parents reside. Therefore, serving the notice of appeal on the Circuit Clerk of Nicholas County would not have alerted the adoption court to the lack of finality of the abuse and neglect proceedings. Accordingly, under the limited circumstances of this case and while not excusing her apparent lack of

compliance with our Rules, we decline to resolve petitioner mother's appeal on this basis. We nevertheless caution practitioners about the importance of strictly complying with this critical procedural requirement. [7]

We turn now to the merits of petitioner mother's appeal. Although broadly characterized as an appeal of the circuit court's denial of post-termination visitation, [8]

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[7] And while we strongly admonish litigants to strictly comply with this Court's procedural rules such as to provide warning that the underlying abuse and neglect proceedings are not yet final, we must level an even stronger rebuke to DHHR for consenting to the adoption of the infant in this proceeding before petitioners' deadline for appeal had passed. As the entity with both knowledge of the appeal period, the pending adoption, and the petitioners' intention to appeal before the adoption was finalized, DHHR is the lone entity chargeable with the knowledge and ability to have prevented the premature adoption.

Adoptions of abused or neglected children which occur while the underlying terminations of parental rights are still pending before this Court have become disturbingly more frequent in recent years. These entirely unnecessary and improper occurrences create tension between West Virginia Code § 49-4-604(c)(6)(C)'s prohibition on adoption before abuse and neglect proceedings are final and the finality afforded adoptions under West Virginia Code § 48-22-704(b) (2001) ("An order or decree of adoption may not be vacated, on any ground, if a petition to vacate the judgment is filed more than six months after the date the order is final.").

We have not yet found it necessary to resolve this inescapable tension—or the unconscionable possibilities it evokes—for purposes of resolving the appeals before us in these cases because the terminations of parental rights have been found to be proper. Indeed, the instant case is no different. *See infra* discussion and n.11. Until such time as the Court first finds meritorious grounds for reversal of a termination of parental rights, the issue does not demand resolution. However, we caution DHHR that it must employ any and all measures within its authority to ensure that this issue does not continue to recur.

[8] In her notice of appeal, petitioner mother identifies the termination of her parental rights among her assignments of error. In her brief, however, she addresses only the denial (continued . . .)

petitioner mother's arguments demonstrate that she challenges only the "no contact" portion of the dispositional order. That provision not only orders that petitioners "shall have no contact, direct or indirect, with [N. W.]" but further states that "no party, foster placement, foster parent, custodian, adoptive parent or adoptive placement shall *permit* any such contact." (Emphasis added). Petitioner mother argues that the circuit court erred in imposing this prohibition on permitting contact because her expert offered unrebutted testimony that continued contact with biological parents is generally in a child's best interests and the circuit court lacked any evidence that "there would be any acrimonious contact" with petitioner mother such as to *prohibit* others to allow visitation in the future. The guardian ad litem agrees with this position and stated as much during the hearing below. She argues in her summary response that the court erred in prohibiting parties to permit future contact in light of this Court's decision in *In re Adoption of J. S.*, 245 W. Va. 164, 858 S.E.2d 214 (2021).[9]

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of post-termination visitation and, implicitly, the "no contact" provision of the dispositional order.

[9] In *J. S.*, we found this prohibition to be an "impermissible judicial restriction on [the adoptive parent's] parental rights, and therefore void[.]" 245 W. Va. at 166, 858 S.E.2d at 216. Finding it necessary to "'protect the fundamental right of parents to make decisions concerning the care, custody, and control of their children[]'" we reversed and remanded for removal of that prohibition from the adoption order. *Id*. at 169, 858 S.E.2d at 219 (quoting Syl. Pt. 3, *Lindsie D. L. v. Richard W. S.*, 214 W. Va. 750, 591 S.E.2d 308 (2003)). The Court further held:

> *Unless otherwise permitted by law*, where a circuit court grants a petition for adoption of a child pursuant to the

(continued . . .)

> procedures set forth in West Virginia Code §§ 48-22-701 to -704 (2015), the court may not include any provision in the final order of adoption that would limit, restrict, or otherwise interfere with the adoptive parent's right to make decisions concerning the care, custody, and control of the child.

Id. at 165, 858 S.E.2d at 216, syl. pt. 5 (emphasis added).

Critically, the contact prohibition in *J. S*. did not involve a parent whose rights had been involuntarily terminated. Here, the circuit court alluded that the basis for its "no contact" provision in this abuse and neglect matter is Rule 15 of the Rules of Procedure for Child Abuse and Neglect Proceedings which provides, in part:

> The effect of entry of an order of termination of parental rights shall be, *inter alia*, *to prohibit all contact and visitation between the child* who is the subject of the petition *and the parent who is the subject of the order* and the respective grandparents, unless the Court finds the child consents and it is in the best interest of the child to retain a right of visitation.

(second emphasis added) (footnote omitted).

This Rule is neutrally worded and does not expressly state *upon whom* the prohibition is or may be placed, but clearly seeks to, at a minimum, prohibit a terminated parent from *initiating* contact with a child. And while the Court obviously did not address Rule 15 in *J. S.* because it did not involve contact with a biological parent whose rights had been terminated, we did offer this limited admonition: "Our holding today does not affect a circuit court's right to enjoin any *parent whose rights have been terminated* from *contacting* the child." 245 W. Va. at 171 n.15, 858 S.E.2d at 221 n.15. This carve-out does not speak to a court enjoining an adoptive parent from *permitting* contact between the terminated parent and child.

The question then becomes whether Rule 15 is "otherwise provided by law" as stated in *J. S*.'s syllabus point, and whether that Rule may be construed as requiring or permitting a prohibition on adoptive parents allowing contact between a child and biological parents whose parental rights have been terminated. Further, there are threshold issues of whether a biological parent whose parental rights have been terminated has standing to challenge such an application of Rule 15. However, as we explain herein, the instant appeal does not present a justiciable controversy in which we may resolve these issues.

DHHR's response is largely dedicated to its position that petitioner mother's appeal has been rendered moot by N. W.'s adoption. More specifically, DHHR claims that because N. W. has been adopted, petitioner mother has no "standing" to seek post-termination visitation and that any grant of visitation would "constitute an improper infringement on the adoptive parents' parental rights." Petitioner mother plainly agrees, as evidenced by her repeated insistence that she seeks no "affirmative" right of visitation.[10] However, DHHR provides no response to petitioner mother's challenge to the broad

[10] Because petitioner mother repeatedly argues that she sought no affirmative right of post-termination visitation below, we find it unnecessary to determine whether the circuit court erred in failing to order such visitation pursuant to syllabus point five of *In re Christina L.*:

> When parental rights are terminated due to neglect or abuse, the circuit court may nevertheless in appropriate cases consider whether continued visitation or other contact with the abusing parent is in the best interest of the child. Among other things, the circuit court should consider whether a close emotional bond has been established between parent and child and the child's wishes, if he or she is of appropriate maturity to make such request. The evidence must indicate that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest.

194 W. Va. 446, 460 S.E.2d 692 (1995). Instead, we limit our consideration to the issue as framed by petitioner mother: whether the circuit court's "no contact" provision was erroneous.

We are further careful to note that by accepting the issue as presented by petitioner mother, i.e., a challenge to a contact prohibition placed on the adoptive parents, the Court takes no position on the validity of the adoption in view of its tension with West Virginia Code § 49-4-604(c)(6). *See supra*, n.7. Neither petitioner presents a challenge to the adoption in these proceedings. To our knowledge, neither petitioner lodged objection to the adoption either during those proceedings or sought to vacate the adoption pursuant to West Virginia Code § 48-22-704.

prohibition contained in the dispositional order on "permit[ting]" contact between petitioners and N. W.

While we disagree with DHHR's position that the precise issue presented in petitioner mother's appeal has been rendered moot, we find the issue raised affected by an equally fatal flaw. Because the record reveals no evidence that any of the individuals subject to the "no contact" provision desire to permit contact between petitioners and N. W., we conclude that the issue advanced by petitioner mother is not yet ripe. "As compared to mootness, which asks whether there is anything left for the court to do, ripeness asks whether there yet is any need for the court to act." *State Farm Mut. Auto. Ins. Co. v. Schatken*, 230 W. Va. 201, 210 n.6, 737 S.E.2d 229, 238 n.6 (2012) (quoting 13B Fed. Prac. & Proc. Juris. § 3532.1 (3d ed.)).

In this regard, the Court has explained:

> The ripeness doctrine seeks to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements. *Questions that may never arise* or are purely advisory or *hypothetical* do not establish a justiciable controversy. Because an unripe claim is not justiciable, the circuit court has no subject matter jurisdiction over it.

State ex rel. Universal Underwriters Ins. Co. v. Wilson, 239 W. Va. 338, 345, 801 S.E.2d 216, 223 (2017) (citations, internal quotations, and footnotes omitted) (emphasis added). Neither petitioner mother nor the guardian ad litem provides any evidence that any of the individuals subject to the prohibition, i.e., any "party, foster placement, foster parent,

custodian, adoptive parent or adoptive placement," desire to permit such contact but is constrained from doing so by this provision. Petitioner mother concedes that her objection is merely to the circuit court's action in prohibiting those individuals from permitting contact with her in the future; during the hearing, her counsel emphasized that petitioner mother sought only to "allow contact in the future if . . . appropriate, and that—that is the only thing that we're asking the Court to do."

"'A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Id*. at 346, 801 S.E.2d at 224 (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)). Certainly, none of the individuals with authority to permit contact between petitioner mother and N. W. in the future, as described in the "no contact" provision, may ever wish to allow such contact. As described in our caselaw, petitioner mother's appeal of the "no contact" provision presents a purely hypothetical issue that "'may never arise'" and therefore lacks ripeness. *Id.* at 345, 801 S.E.2d at 223 (quoting *Doe v. Golden & Walters, PLLC*, 173 S.W.3d 260, 270 (Ky. Ct. App. 2005)). Because we have held that "[s]ubject matter jurisdiction does not exist over claims that are not ripe for adjudication[,]" we must dismiss petitioner mother's appeal. *Id*. at 339, 801 S.E.2d at 218, syl. pt. 3.

B. Petitioner Father's Appeal (No. 22-734)

As previously indicated, petitioner father appeals only the termination of his parental rights, arguing that he was willing to participate in an improvement period but that

he was not "even giv[en] [] a chance to demonstrate an ability and willingness to comply." He contrasts his parenting prognosis from that of petitioner mother by noting that he does not suffer the same intellectual deficits and claims to have ceased using drugs and alcohol. DHHR and the guardian ad litem argue in support of the circuit court's finding that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future, pursuant to West Virginia Code § 49-4-604(c)(6).[11]

The circuit court's order denying petitioner father's motion for improvement period noted that he did not testify or offer any evidence at the hearing on his motion. There is further no indication that he testified at the dispositional hearing, based upon the dispositional order. As noted, petitioner father failed to provide the transcripts for either hearing in the appendix record. In fact, the only evidence offered in this appeal in support of his contention that the circuit court erred in terminating his parental rights is the testimony of Dr. Bartholomew—who testified *after* disposition at the hearing on post-termination visitation and, in fact, after this appeal was filed. Therefore, Dr. Bartholomew's testimony was not before the circuit court at disposition and petitioner

[11] As we previously observed, N. W. has now been adopted. Nevertheless, we find it unnecessary to address the effect of that adoption, if any, on our ability to grant relief to petitioner father as we find his appeal wholly without merit. Further, we note the potential collateral consequences to petitioner father beyond the adoption. *See, e.g.*, W. Va. Code § 49-4-605(a)(3) (2018).

father cites to no evidence available to the circuit court at disposition which suggests that its termination of his parental rights was in error.[12]

We find the circuit court's dispositional order very detailed and well-supported. In support of termination, the court incorporated and considered the testimony adduced to date, finding that petitioner father was "unable to recognize a child's basic need for nutrition[]" and noting the most recent testimony of the CPS worker that he was provided parenting and adult life skills training but "did not grasp the material." There is no indication in the appendix record that he obtained treatment for his "severe" substance abuse issues and Dr. Green testified that he had a "very poor prognosis" to achieve even minimally adequate parenting.

Petitioner father has offered nothing to rebut or demonstrate error in those findings, arguing only that he should be given a "chance." However, as our Court long ago held:

> [C]ourts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened, and this is particularly applicable to children under the age of three years who are more susceptible to illness, need consistent close interaction with

[12] However, even if this Court were to consider Dr. Bartholomew's testimony, she provides nothing to suggest that termination of petitioner father's parental rights was erroneous. Dr. Bartholomew's testimony relative to petitioner father was limited solely to her terse opinion that if visitation were permitted, petitioner father had "more capacity" than petitioner mother for "coping" and "interacting with the child intellectually[.]"

> fully committed adults, and are likely to have their emotional and physical development retarded by numerous placements.

Syl. Pt. 1, in part, *In re R. J. M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980). *See also* W. Va. Code § 49-4-604(d) ("'No 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*." (emphasis added)). Therefore, we affirm the circuit court's termination of petitioner father's parental rights.

IV. CONCLUSION

Because we lack jurisdiction over the issue raised by petitioner mother, we dismiss the appeal in No. 22-733. For the reasons stated above, in No. 22-734, we affirm the Circuit Court of Nicholas County's August 29, 2022, order terminating petitioner father's parental rights.

No. 22-733 Dismissed.

No. 22-734 Affirmed.