In the Missouri Court of Appeals
Eastern District

DIVISION FOUR

IN THE INTEREST OF: E.S.W.	)	ED113858
	)	Filed: September 1, 2026

Appeal from the Circuit Court of Jefferson County
The Honorable Edward L. Page

This is a protective custody case litigated pursuant to section 211.031.[1] The matter arose when twelve-year-old E.S.W. (Child) ran away from his home in August of 2024 after an argument with his Father that ended with Father telling Child to leave. Child ended up at a neighbor's house and the neighbor called the police. When officers arrived, Child was not forthcoming with information so they contacted the Children's Division. A Children's Division representative arrived at the neighbor's house and interviewed Child. Child reported that some years ago he had been repeatedly sexually assaulted by older boys in his neighborhood and that his parents, C.W. and T.W., were aware of the assaults but did not report it or otherwise take any action.

[1] All statutory references are to the Revised Statutes of Missouri (2016).

Once the officers discovered Parents' address, they took Child back to his home. Parents admitted they knew about the assaults but did not report them or seek medical or psychological help for Child. The officer testified that it was on that basis that he took Child into protective custody.

On October 30, 2024, the circuit court held a hearing to determine *adjudication* and *disposition* as required by section 211.032. As for adjudication, the court found the petition's allegations that Child was without proper care, custody, and support to be supported by clear and convincing evidence. The court then turned to the disposition question and found based on the evidence adduced at the hearing that the Division should retain custody of Child and should set the conditions for reunification. Rule 124.07.[2] Specifically, the court ordered Child to remain in foster care and ordered Parents to complete various services offered by the Division. On November 7, 2024, Parents appealed the court's adjudication and disposition decisions, but in June 2025 they dismissed that appeal without prejudice citing an upcoming permanency hearing scheduled for July 21, 2025.[3]

In August 2025, the court denied Parents' petition to modify the court's adjudication and disposition decisions. Parents now appeal that denial. Parents' first point presents a due process argument that the court's failure to enforce the discovery disclosure requirements before the disposition hearing deprived Parents of a meaningful

[2] All rule references are to the Missouri Supreme Court Rules (2024).
[3] The court continued the permanency hearing to August 2025 and there have been a few more permanency review hearings since. Child has remained in foster care during the entirety of this case.

opportunity to prepare and present their case. Similarly, in point two, Parents claim that during the disposition hearing, the court deprived them of the opportunity to testify, present evidence, cross-examine witnesses, or present arguments.

We affirm because the record refutes both claims on appeal.

Background

On August 15, 2024, the Juvenile Officer (JO) filed a petition for protective custody under section 211.031.1(1) claiming that while in Parents' custody, Child was without proper care, custody, and support and that Parents were unable to provide him a safe and stable living environment.

The petition alleged that after an argument in early August 2024, Father told Child, who was twelve years old at the time, to leave the home and Child did so. Child wandered to a random house in the neighborhood asking for food and a place to stay temporarily. He told the case manager that he planned to run away to Indiana to the home of a friend he had met online through video games. The petition alleged Child had never attended school but wanted to do so in order to learn to read, write, and socialize. Further, the JO averred that Child did not have access to food.

As for Child's sexual assault allegations, the petition alleged that older boys from the neighborhood had raped Child when he was between six and nine years old and that Parents knew about the assaults but did not report them. The petition requested temporary legal custody with the Children's Division and that Child be placed in foster care.

Four days later, on August 19, 2024, the court held a protective custody hearing. Parents appeared without counsel and knowingly waived that right. The court found

probable cause that Child was without proper care, custody, or support and ordered that Child remain in the temporary custody of the Children's Division and that he be placed in foster care. The court then scheduled the case for hearing on October 3, 2024 to take up the matters mandated by section 211.032.4; specifically, adjudication, to determine the veracity of the petition's allegations, and disposition, in which the court considers the custody of Child and the efforts that the parents must make to reunify the family. After the Division's investigator Kandace Reed, who had interviewed Child on the night he ran away, became unavailable to testify, the court continued the matter to October 30 on JO's request. Parents did not object to the continuance.

Before the hearing, Parents requested under Rule 123.08 that the JO and the Children's Division produce "all information about evidence and witness statements that the petitioner will present during the adjudication hearing ...." Parents' request included medical records, findings of medical professionals, educational and placement testing findings, all photographs, video, audio, or media recordings made of or with Child, all witness statements, police reports, and all pertinent information not listed. In response, the JO produced several documents (a referral from the Division, an order of protective custody, the petition, the certification of notice, the Jefferson County Sheriff's Office investigative report, and two probable cause statements) but informed Parents that "[a]s to other documents related to this case, please see the e-file documents located on case.net" and also invited Parents to make an appointment to review the file during business hours.

The court called the matter on October 30. Parents again proceeded without counsel. The first portion of the hearing concerned adjudication. The JO called to the stand two law enforcement officers, a caseworker, and Child. Parents cross-examined each witness. For their part, Parents called a third law enforcement officer. Then, when Parents called investigator Reed to testify, the JO objected because Reed was not present and Parents had not subpoenaed her for *that* court date. Mother subpoenaed Reed for the October 3 hearing that the court continued on the JO's motion. The court denied Mother's motion to dismiss based on Reed's absence.

The court found clear, cogent, and convincing evidence that Child was without proper care, custody, and support because Parents knew Child had been sexually abused but failed to report it, and because Child had not attended traditional school and wished to do so. The court found to be unsubstantiated, however, the claim that Child did not have access to food.

As for the disposition hearing, the JO called the caseworker whom the Parents and the Division cross-examined. The caseworker suggested that Parents should complete psychological evaluations and follow the resulting recommendations to rule out mental illness and that they attend individual therapy, complete drug screening and alcohol assessments, attend parenting classes, and attend all scheduled visitation with Child. She also testified that Mother refused to sign a contract that would allow visitation with Child. For its part, the Division asked the case worker if family therapy would be beneficial and the caseworker testified that it would be.

The court then asked the Division and each Parent if they had any evidence to present as to disposition. The Division declined. Father claimed he had a phone video "proving the house" but surmised "at this point it doesn't make any difference. No." Mother also stated that she had pictures of their home, but the court informed her they were "past that point."

The court ordered that Child was to stay in temporary foster care and ordered Parents to complete psychological and psychiatric evaluations, participate in individual therapy and self-help groups, complete parenting assessments, participate and complete a parenting class, and successfully complete family therapy. Further, the court ordered Parents to fully participate in all scheduled visitation and maintain regular contact with the Children's Division to encourage the family's reunification.

On August 4, 2025, Parents moved to modify the court's adjudication and disposition orders under section 211.251 claiming in relevant part that the JO had failed to comply with Rule 123.08's mandatory disclosure requirements before the October 30 hearing and that the court denied their right to call investigator Reed because she remained under subpoena after the court continued the October 3 hearing at the JO's request. The court denied the motion and Parents now appeal.

Standard of Review

The standard of review for juvenile cases is the same as in any court-tried case[4] – that is, this Court will affirm the trial court's judgment unless there is no substantial

[4] Parents assert our standard of review is for abuse of discretion, relying on *In re M---S---M---*, 666 S.W.2d 800, 806 (Mo. App. 1984) which states "[t]he real question in this case

evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *In re W.B.*, 162 S.W.3d 517, 522 (Mo. App. 2005); *In re L.E.C.*, 94 S.W.3d 420, 423 (Mo. App. 2003). We consider the evidence in the light most favorable to the trial court's ruling and ignore evidence to the contrary. *B.O. v. Juvenile Officer*, 595 S.W.3d 506, 509 (Mo. App. 2020). We review *de novo* questions of law, such as whether a person's constitutional rights were violated. *L.I.B. v. Juvenile Officer*, 640 S.W.3d 813, 816 (Mo. App. 2022).

Discussion

Parents first claim the court erred in denying their petition to modify because before the hearing on disposition, the JO and the Division failed to produce to Parents the mandatory discovery disclosures which deprived them of a meaningful opportunity to prepare and present their case.

Rule 123.08 governs discovery in protective custody cases. The rule requires the JO and the Division to "make available to all other parties or their counsel … the following documents and records, to the extent relevant to the allegations of the petition or motion to modify" including medical records, law enforcement records, and reports and affidavits. The rule specifies that "[t]he obligation of the juvenile officer and

---

is whether the juvenile court abused its discretion given to it by [section] 211.251(2)." Section 211.251(2) states that "[t]he court may deny the petition without hearing or may, *in its discretion*, conduct a hearing …." (Emphasis added). One of the issues in M.S.M. was whether the court abused its discretion in refusing to afford the appellant a hearing on her motion to modify. This is not at issue here and therefore we apply *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976). *See B.O.*, 595 S.W.3d 506 ("We review juvenile adjudication proceedings under the standard applied in other court-tried civil cases….").

children's division … is limited to documents and records in their actual possession, and neither the [JO] nor the children's division has any obligation under this Rule 123.08 to request or obtain the identified documents and records for any other party ….”

Parents have not specified which documents the JO and the Division failed to produce that were relevant to disposition hearing; in fact, neither the JO nor the Division presented any exhibits at the disposition hearing and instead the JO relied solely on the testimony of the caseworker. The Division did not present any evidence. So, this is not a sandbagging situation in which the JO surprised Parents at the hearing with withheld materials. And without any demonstration on the part of the Parents as to what information was not produced, we are reluctant to find a due process violation.

Moreover, the particular context of this discovery violation is important to our decision. Under section 211.032.4, the court has conducted at least two dispositional review hearings since the October 30 hearing which has given Parents opportunities to demonstrate their compliance with the conditions set for reunification.

And while we deny this point, we are deeply troubled by the Division's failure to deign this court with its presence by way of a responsive brief and oral argument. For this writer, this is not the first time in recent memory that the Division has chosen to ignore an appeal in this court. These are important issues in the lives of the children whom the Division is duty-bound to protect. This court had questions for the Division which will now go un-answered. Going forward, we strongly encourage the Division to participate in appeals in which it is a party.

Next, Parents claim that during the disposition hearing, the court denied them the opportunity to testify, present evidence, cross-examine witnesses, or present arguments. We disagree.

The purposes of the disposition hearing is to determine the legal and physical custody of the juvenile and whether and to what extent the Division is required to engage in reasonable efforts to reunify the family. *Comment*, Rule 124.07. The rules of evidence do not apply. Rule 124.07(c).

Parents' claim in this regard is based on a short exchange with the court: After the JO's lone witness stepped down, the court asked each party, including Parents, if they had any other evidence they would like to present as to disposition. Father answered, "I mean, I have a phone video proving the house but I guess at this point it doesn't make any difference. No." Mother responded that she had pictures of their home but the court informed her that they were past that point. Mother then stated she did not have any further evidence.

First, we are dubious that such an exchange constitutes the *denial* of the opportunity to testify, present evidence, cross-examine witnesses, or present arguments. The court merely expressed its disinterest in evidence of the condition of the house. This makes sense given the basis for the court's decision on disposition – that Parents failed to report Child's abuse and that Child was not in school. The condition of the home was not relevant to either of those bases.

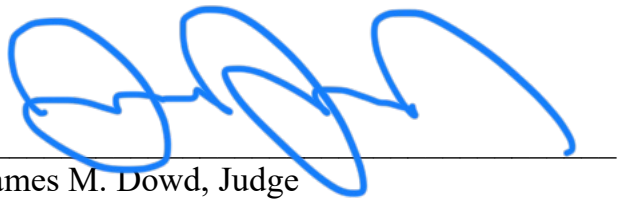
Although Parents sought to introduce evidence as to the condition of their home during the disposition portion of the hearing, the court found the petition's allegation that

Child did not have adequate access to food to be unsubstantiated. So the state of Parents' home was not at issue, especially during the disposition hearing where the court was merely deciding if the Division should retain custody of Child and what efforts to reunify the family should be taken in the future.

Nevertheless, we acknowledge that the condition of the home was cited by the JO in the petition and the condition of the home is necessarily relevant to this family's, the JO's, and the Division's goal of reunification. Consequently, while trial courts in bench trials have a wide berth in connection with the admission of evidence, we encourage courts to give parties their say especially in cases involving pro se litigants as here in which the litigants' child has been removed from their custody.

Conclusion

Based on the foregoing, we affirm.[5]



James M. Dowd, Judge

Michael E. Gardner, Presiding Judge and
John P. Torbitzky, Judge, concur.

[5] The juvenile officer also moved to dismiss this appeal for lack of jurisdiction claiming that Parents' notice of appeal was untimely since they filed it past the thirty-day deadline set forth in section 211.261.1. We deny that motion because the August 7, 2025, judgment did not become final until September 6, 2025, making the deadline to file the notice of appeal September 16. *See* Rules 81.04(a) and 81.05(a). Thus, Parents' September 11 notice of appeal was timely. *Interest of R.R.S.*, 573 S.W.3d 717, 724 (Mo. App. 2019) (citing *In Interest of D.J.B.*, 704 S.W.2d 217, 218 (Mo. banc 1986)).