STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

***In re* H.B., L.M., K.C., and L.C.**

No. 20-0194 (Ohio County 19-CJA-74, 19-CJA-75, 19-CJA-76, and 19-CJA-77)

MEMORANDUM DECISION

Petitioner Mother A.B., by counsel Sharon N. Bogarad, appeals the Circuit Court of Ohio County's January 22, 2020, order terminating her parental and custodial rights to H.B., L.M., K.C., and L.C.[1] The West Virginia Department of Health and Human Resources ("DHHR"), by counsel Brandolyn N. Felton-Ernest, filed a response in support of the circuit court's order. The guardian ad litem, Mark D. Panepinto, filed a response on behalf of the children in support of the circuit court's order. Petitioner filed a reply. On appeal, petitioner argues that the circuit court erred in denying her an improvement period and terminating her parental and custodial rights.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

In May of 2019, the DHHR filed an abuse and neglect petition alleging that petitioner abused and neglected the children. At the time, petitioner resided in a home with the children's grandmother and the grandmother's boyfriend, D.H. According to a referral to the DHHR, D.H. would make his grandson, L.H., who is not at issue in this appeal, smoke marijuana with petitioner, the grandmother, and other children. According to the petition, petitioner not only abused drugs but also "knowingly allow[ed], encourage[d] and enable[d] the children to engage in drug use." The referral also alleged that D.H. would force his grandson and L.M. to disrobe and engage in sexual intercourse with one another. During a Child Protective Services ("CPS") investigation into D.H.'s abuse of his grandson, the grandson confirmed these allegations, in addition to disclosing

[1]Consistent with our long-standing practice in cases with sensitive facts, we use initials where necessary to protect the identities of those involved in this case. *See In re K.H.*, 235 W. Va. 254, 773 S.E.2d 20 (2015); *Melinda H. v. William R. II*, 230 W. Va. 731, 742 S.E.2d 419 (2013); *State v. Brandon B.*, 218 W. Va. 324, 624 S.E.2d 761 (2005); *State v. Edward Charles L.*, 183 W. Va. 641, 398 S.E.2d 123 (1990).

that D.H. would handcuff and restrain him in a cage at times. When CPS and law enforcement came to the home to investigate the allegations pertaining to petitioner's children, petitioner refused to permit anyone to speak with the children alone or enter the residence. According to the petition, petitioner was "very guarded and chose her words carefully."

CPS continued to investigate the matter and discovered that petitioner had previously admitted knowledge of D.H.'s sexual abuse of L.M. and H.B. Specifically, two witnesses indicated that petitioner previously asked to move herself and the children into the witnesses' home because of the sexual abuse. While petitioner was in these individuals' home, L.M. contacted petitioner to ask for help because D.H. was attempting to have her perform fellatio on him. These facts were confirmed by the father of L.M., who reported to the DHHR that petitioner knew of D.H.'s sexual abuse. L.M.'s father specifically discussed having gone to the home to find L.M. locked in her room, terrified. The child disclosed that D.H. attempted to have her perform fellatio on him, at which point she locked herself in her room. According to L.M.'s father, the child's room contained bowls of feces and urine that the child used to relieve herself due to her fear of leaving the room. L.M.'s father confirmed that two of the children confided in him and petitioner about the abuse but that neither parent reported the abuse or confronted D.H. L.M.'s father further corroborated L.H.'s reports of being confined, describing having seen the child restrained in handcuffs and a dog cage. After obtaining this information, CPS interviewed petitioner. She denied any knowledge of abuse in the home.

The petition further alleged that B.C., the father of K.C. and L.C., should not have been allowed around the children because B.C. had an extensive criminal history, including a conviction of a sex crime involving a victim under the age of thirteen. The children also indicated that B.C. engaged in domestic violence with petitioner in their presence. Finally, the petition alleged that the conditions in the home were deplorable, at times the home lacked appropriate utilities, and the parents provided the children with insufficient food. At the time the children were removed, the two youngest children were infected with lice, one child had ringworm, and another was behind on immunizations. Based on these conditions, the DHHR alleged that petitioner abused and neglected the children. Following the petition's filing, petitioner waived her preliminary hearing.

Thereafter, petitioner filed motions for a preadjudicatory improvement period and a post-adjudicatory improvement period. In opposition to these motions, the DHHR argued that petitioner had exposed the children to D.H. for years, despite the fact that she had recently testified that D.H. had sexually abused her as a child after giving her alcohol and pills. Moreover, the DHHR cited to testimony from a witness who testified earlier in the proceedings that petitioner and her children "were hiding in [an] alley in 2016 and reported that [D.H.] had [his grandson] duct-taped and tied to a chair with a sock stuffed in his mouth." According to the DHHR, petitioner had still not acknowledged that this incident took place. Additionally, the DHHR relied on testimony from another witness who stated that petitioner admitted to knowing that D.H. sexually abused the children. However "when questioned . . . , [petitioner] changed her statement and minimized her knowledge, saying she was just afraid things were happening, but denying actual knowledge." Further, during a supervised phone call with H.B., the child indicated that she was going to disclose what "pap" did, at which point petitioner "reminded her of their pact [and] stated that 'I . . . didn't know.'" Based upon this evidence, the DHHR asserted that petitioner was protecting her own interests and minimizing her responsibility for the children's abuse. The DHHR also opposed an

improvement period because of petitioner's history of staying in a relationship with B.C. and exposing the children to him, despite the domestic violence he perpetrated and her claims that he repeatedly raped her. Finally, the DHHR alleged that at the time it filed its objections to petitioner's motions, petitioner was still living with her mother and claimed that "there is no need in her running" to get away from D.H. because "he'd just work hard to find the kids." According to the DHHR, petitioner indicated that she "couldn't stop him . . . from doing what he wanted."

In August of 2019, the circuit court held an adjudicatory hearing. Following the presentation of the evidence, the circuit court denied petitioner's motion for a preadjudicatory improvement period and adjudicated her as an abusing and neglecting parent. The following month, the circuit court held a hearing on petitioner's motion for a post-adjudicatory improvement period. Based on the evidence, the circuit court found that petitioner failed to cooperate with law enforcement and CPS by refusing to disclose abuse that was known to her. Despite admitting to others that she knew D.H sexually abused children in the home, petitioner denied such knowledge to CPS. Petitioner's knowledge of this abuse was further corroborated by one of the children's fathers, who told CPS that he and petitioner both knew of the abuse and argued about it in front of other witnesses. The circuit court also made findings about petitioner's failure to protect the children, including the fact that she exposed the children to D.H. despite her assertion that D.H. had sexually abused her as a child and her having remained in a relationship with B.C. despite his violent acts in front of the children. The circuit court also found that petitioner had not complied with required drug screening until approximately two weeks before the hearing. Based on this evidence, the circuit court found that an improvement period would be futile and denied the same.[2]

Following dispositional hearings in November and December of 2019, the circuit court set forth detailed findings in the order on appeal regarding petitioner's inability to correct the conditions of abuse and neglect at issue. The court found that petitioner historically depended on others for support and housing, which resulted in her allowing the children to live with several inappropriate individuals, including D.H. and the father of K.C. and L.C. Based on petitioner's testimony, the circuit court found that she expected her own mother to protect the children from D.H. even though petitioner's mother did not believe petitioner's allegations about D.H. The circuit court further found that petitioner "made no attempt to gain employment, find a residence of her own, or remedy her financial dependence on others."

The evidence also showed that one of petitioner's service providers testified to her efforts to educate petitioner about not exposing the children to inappropriate people, which were unsuccessful, in part, due to petitioner's lack of candor about the extent of her involvement with such individuals. Specifically, in her interactions with this provider, petitioner denied knowing about sexual abuse, did not inform the provider that D.H. sexually abused her as a child, claimed that K.C. and L.C.'s father was not violent, and failed to disclose her continued association with K.C. and L.C.'s father despite her past allegations of rape. Similarly, petitioner neglected to provide pertinent information to her providers at the Wheeling Treatment Center ("WTC"). During petitioner's intake at WTC, she stated that she had suffered from drug addiction for fifteen years, although she contradicted this information by testifying that she meant to say it had been only five

[2]Petitioner later filed a motion to reconsider the denial of an improvement period, which the circuit court treated as a motion for a post-dispositional improvement period.

years. Petitioner testified that she had a valid prescription for Suboxone prior to attending WTC, but the court found that she never provided evidence of a prescription and admitted to WTC that she purchased Suboxone illegally. According to her records from WTC, petitioner reported daily use of multiple drugs, including opiates four or more times per day, benzodiazepines two to three times per day, and marijuana two to three times per day. Although petitioner testified that these records were not accurate, the court noted that "this was information she wrote herself." The circuit court also made findings about petitioner's drug screens, noting that she initially did not participate in the screens and later tested positive on multiple screens. In fact, the circuit court found that petitioner never provided a negative sample and told a CPS worker "that she had no desire to quit" using marijuana. WTC informed petitioner that her continued use of marijuana would prevent her from proceeding through the program, yet she still refused to quit using marijuana. Finally, the circuit court addressed petitioner's participation in parenting classes, adult life skills education, and supervised visitation during the proceedings, noting that a provider found petitioner lacked motivation during services. Another provider testified that petitioner had not fully acknowledged her abuse and neglect of the children, having repeatedly denied any knowledge of the abuse D.H. perpetrated despite evidence to the contrary.

Based on this evidence, the circuit court found that petitioner failed to demonstrate that she was likely to fully participate in an improvement period and that petitioner's "protective capacities are so severely compromised and/or non-existent . . . as to render any . . . improvement period . . . to be futile." Further, the circuit court found that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect given that she repeatedly or seriously injured the children physically or emotionally and exposed them to sexual abuse. Because petitioner demonstrated an inadequate capacity to solve the problems of abuse and neglect on her own or with help, the court found that the children's welfare and best interests required termination of her parental and custodial rights. As such, the court denied petitioner's request for a post-dispositional improvement period and terminated her parental and custodial rights to the children.[3] It is from the dispositional order that petitioner appeals.

The Court has previously established the following standard of review:

> "Although conclusions of law reached by a circuit court are subject to *de novo* review, when an action, such as an abuse and neglect case, is tried upon the facts without a jury, the circuit court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected. These findings shall not be set aside by a reviewing court unless clearly erroneous. A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, 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

[3]All the children's fathers' parental and custodial rights were either terminated or voluntarily relinquished below. H.B. has reached the age of majority. The permanency plan for the remaining children is to be adopted in a single foster home.

> evidence is plausible in light of the record viewed in its entirety." Syl. Pt. 1, *In Interest of Tiffany Marie S.*, 196 W.Va. 223, 470 S.E.2d 177 (1996).

Syl. Pt. 1, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011).

On appeal, petitioner first alleges that the circuit court erred in denying her repeated requests for an improvement period based upon an erroneous finding that the case constituted one of aggravated circumstances.[4] We find, however, that petitioner is not entitled to relief in regard to this assignment of error because her argument is predicated on an incorrect representation of the record and an erroneous interpretation of the standard for obtaining an improvement period. Simply put, a finding of aggravated circumstances is unrelated to the circuit court's decision to deny petitioner an improvement period in this case. Aggravated circumstances relate to certain situations in which the DHHR is absolved of its statutory duty to make reasonable efforts to either preserve the family upon a petition's filing or preserve the family prior to termination of parental and custodial rights. W. Va. Code §§ 49-4-602(d)(1), -604(c)(7)(A). These reasonable efforts are unrelated to petitioner's argument on appeal regarding the denial of her requests for improvement periods.

Petitioner argues on appeal that the circuit court "was obligated to find by clear, cogent and convincing evidence that [her] failure to protect her children rose to the level of aggravated circumstances . . . to support the . . . denial" of her requests for improvement periods. This is simply an inaccurate statement of the law. Instead of requiring a finding regarding aggravated circumstances, this Court has held that a parent's "entitlement to an improvement period is conditioned upon the ability of the [parent] to demonstrate 'by clear and convincing evidence that the respondent is likely to fully participate in the improvement period.'" *In re Charity H.*, 215 W.

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[4]At the outset, it should be noted that petitioner's brief fails to comply with our Rules of Appellate Procedure. Specifically, petitioner's brief contains numerous citations to transcripts that were not made part of the appendix record on appeal and also extensively quotes from these transcripts, in contravention of Rule 10(c)(7), which requires that

> [t]he brief must contain an argument exhibiting clearly the points of fact and law presented, the standard of review applicable, and citing the authorities relied on . . . [and] must contain appropriate and specific citations to the record on appeal . . . . The Court may disregard errors that are not adequately supported by specific references to the record on appeal.

Additionally, in an Administrative Order entered December 10, 2012, Re: Filings That Do Not Comply With the Rules of Appellate Procedure, the Court specifically noted that "[b]riefs with arguments that . . . do not 'contain appropriate and specific citations to the record on appeal . . .' as required by rule 10(c)(7)" are not in compliance with this Court's rules. Because petitioner failed to include in the appendix record copies of the transcripts to which she cites and quotes in her brief, her assertions predicated on these transcripts cannot be considered. Further, at several points in her brief, petitioner makes factual assertions with citations to the record that do not support those assertions. These failures will be addressed specifically, where necessary, below.

Va. 208, 215, 599 S.E.2d 631, 638 (2004). Moreover, the decision to grant or deny an improvement period rests in the sound discretion of the circuit court. *See In re M.M.*, 236 W. Va. 108, 115, 778 S.E.2d 338, 345 (2015) ("West Virginia law allows the circuit court discretion in deciding whether to grant a parent an improvement period."); Syl. Pt. 6, in part, *In re Katie S.*, 198 W. Va. 79, 479 S.E.2d 589 (1996) ("It is within the court's discretion to grant an improvement period within the applicable statutory requirements . . . ."). While petitioner devotes an extensive portion of her brief to her argument that aggravated circumstances were not applicable to her conduct below, this argument is of no moment considering that petitioner was unable to satisfy the necessary burden for obtaining an improvement period.

Instead, the evidence below showed that petitioner failed to acknowledge the conditions of abuse and neglect. As this Court has held

> [i]n order to remedy the abuse and/or neglect problem, the problem must first be acknowledged. Failure to acknowledge the existence of the problem, i.e., the truth of the basic allegation pertaining to the alleged abuse and neglect or the perpetrator of said abuse and neglect, results in making the problem untreatable and in making an improvement period an exercise in futility at the child's expense.

In re Timber M., 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (citation omitted). Here, in denying petitioner's motion for a post-adjudicatory improvement period the circuit court made findings that demonstrate petitioner's refusal to acknowledge her abuse and neglect of the children. As the circuit court found, petitioner continued to expose the children to sexual abuse by D.H. despite her assertion that D.H. sexually abused her as a child and her own knowledge of the ongoing abuse, as attested to by several individuals. Not only did petitioner continue to expose the children to continued abuse by D.H., but she also failed to cooperate with law enforcement and CPS by refusing to disclose abuse that was known to her and actively denied such knowledge to CPS.[5] Additionally, the circuit court found that petitioner had not complied with required drug screening for approximately three months. Based on this evidence, the circuit court found that an improvement period would be futile, which is an acceptable basis upon which to deny an improvement period. Indeed, this Court has held that "[t]he circuit court has the discretion to refuse to grant an improvement period when no improvement is likely." *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Given the foregoing, it is clear that the circuit court did not abuse its discretion in denying petitioner's motion for an improvement period.

To the extent petitioner argues that it was error to find aggravated circumstances as a basis to absolve the DHHR of reasonable efforts to prevent removal or preserve the family, we find no error. Importantly, the record does not support petitioner's assertion that the DHHR did not make

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[5]At various points in her brief, petitioner asserts that she "advised law enforcement that there was abuse going on in the home relative to [D.H.] and his grandson." However, at each instance where petitioner asserts that she previously confirmed abuse in the home to law enforcement or CPS, she cites to the same page of the appendix. The corresponding portion of the appendix not only does not corroborate petitioner's assertion but, in fact, reveals that the opposite is true. According to the appendix, when law enforcement encountered petitioner attendant to this referral, petitioner "denied all allegations to . . . [the] CPS worker."

these reasonable efforts.[6] Indeed, petitioner admits that she received parenting and adult life skills education, although she asserts that she requested these services. The record further shows that the DHHR provided petitioner drug screens and supervised visitation. All of these services were in furtherance of the DHHR's attempts to remedy the conditions of abuse and neglect in the home so that the children could be returned to petitioner's care. In short, the issue of aggravated circumstances is immaterial because the DHHR did, in fact, make the reasonable efforts required by the applicable statutes. Further, we again reiterate that petitioner's argument in this regard is legally flawed, as she asserts that the DHHR "did not meet their burden of proof of clear, cogent, and convincing evidence that [she] subjected her children to such aggravated circumstances to absolve DHHR from making reasonable efforts to preserve the family *through post-adjudicatory and post-dispositional improvement plans*." (Emphasis added). Again, petitioner bore the burden of demonstrating that she was entitled to an improvement period—not the DHHR. As such, petitioner is entitled to no relief.

Next, petitioner argues that the circuit court's finding that there was no reasonable likelihood that she could substantially correct the conditions of abuse and neglect was unsupported by the evidence, constituted an abuse of discretion, and violated her due process rights. In support of this argument, petitioner relies on a protracted history of CPS referrals regarding the children and asserts that she was always found to be a fit and proper caretaker for the children. Without belaboring the specifics of petitioner's lengthy argument in this regard, it is sufficient to say that the evidence adduced during these proceedings in regard to petitioner's specific abusive and neglectful conduct is most relevant to the court's dispositional decision below. That petitioner's children were the subject of approximately seven prior CPS referrals dating back to 2006, regardless of whether CPS found she lacked culpability before, does not absolve her of her conduct in this matter or negate the extensive evidence that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect in the current matter.

Instead of focusing on petitioner's past conduct in regard to these referrals, the circuit court properly addressed the evidence related to petitioner's conduct as set forth in the petition, which established that she exposed her children to sexual abuse by D.H., an individual that she accused of sexually abusing her as a child. Throughout her brief, petitioner places the blame for her children's abuse and neglect squarely at the feet of D.H. and her own mother, when petitioner was the person responsible for protecting the children from D.H. and had knowledge that he not only posed a danger to the children but had, in fact, sexually abused at least one of them already. This is especially problematic because the record shows that petitioner's mother did not believe the allegations against D.H., which shows that she was in no position to protect the children. Despite petitioner's awareness of these dangers, she continued to permit D.H. to be around her children.

Petitioner also makes much of the fact that D.H. has not been charged criminally for his sexual abuse of any of the children at issue, while ignoring the fact that the circuit court found that D.H. did, in fact, sexually abuse at least two of petitioner's children. Further, whether D.H. has

[6]While it is true that the circuit court's dispositional order contained a finding that petitioner subjected the children to aggravated circumstances, petitioner fails to include any citation to the appendix record that establishes that the DHHR failed to undertake the necessary reasonable efforts associated with such findings.

been charged criminally has no bearing on petitioner's extreme disregard for her children's safety. Petitioner repeatedly asserts that this case concerns only her failure to protect the children in an attempt to minimize the conduct she permitted the children to endure. It is important, however, to recognize the severity of D.H.'s conduct from which petitioner failed to protect the children. This included D.H. repeatedly sexually abusing L.M., sexually abusing H.B. when she was eleven, forcing D.H.'s grandson to engage in sex acts with L.M., giving the children drugs and exposing them to pornography, and pointing a firearm at H.B. Despite petitioner's attempts to wave her conduct off as a simple failure to protect or otherwise blame D.H. entirely for the children's abuse, the record is clear that petitioner knew of the danger he posed yet permitted the children to be exposed to him. It is also important to note that petitioner repeatedly asserts that she has, over the years, removed the children from homes where D.H. lives. According to petitioner, this constitutes evidence that she could correct the conditions at issue in the current matter. We find, however, that this only underscores petitioner's inability to correct these conditions, as she has repeatedly allowed D.H. to return to homes in which the children live, despite recognizing the danger he poses. Further, the circuit court highlighted petitioner's testimony that she "couldn't stop [D.H.] . . . from doing what he wanted" and that he would simply find her and the children again if she moved. Based on this testimony, it is clear that petitioner had no intention of learning how to properly protect the children from D.H. or other dangerous individuals.

Petitioner also minimized her continued use of marijuana below, asserting, without support, that the circuit court would not have terminated her parental and custodial rights based upon marijuana use. What petitioner fails to recognize, however, is that this is yet another aspect of the case that she refused to acknowledge or work toward resolving. Petitioner was told that her visits with the children were predicated on clean drug screens, yet she continued to abuse marijuana and went so far as to inform the DHHR that she would not cease this abuse. Petitioner also admitted to previously buying Suboxone illegally. It is inconsequential whether the circuit court would have terminated her rights based upon marijuana use alone because those were not the facts presented below. Instead, the circuit court was presented with evidence that petitioner failed to acknowledge the scope of the abuse she forced the children to endure, which she continues to do on appeal by asserting that "[t]he failure to protect in this case was predicated upon one act." It strains credulity for petitioner to make this assertion when the record is replete with horrendous abuses perpetrated without her intervention. Coupled with petitioner's outright refusal to cease her illegal abuse of marijuana, the record overwhelmingly established that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect.

Indeed, "[w]e have previously pointed out that the level of interest demonstrated by a parent in visiting his or her children while they are out of the parent's custody is a significant factor in determining the parent's potential to improve sufficiently and achieve minimum standards to parent the child." *In re Katie S.*, 198 W. Va. 79, 90 n.14, 479 S.E.2d 589, 600 n.14 (1996) (citations omitted). Petitioner's attempts to legitimize her continued illegal abuse of marijuana aside, the fact remains that it prevented her from visiting the children for many months. As the circuit court found, petitioner's inability to fully participate in remedial services precluded her from remedying the conditions of abuse and neglect at issue. As one provider indicated, petitioner was not candid about the extent of her involvement with individuals who presented a danger to the children, which prevented her improvement. As the circuit court found, petitioner denied knowing about sexual abuse in her interactions with this provider, failed to inform the provider of D.H.'s past abuse of

her, claimed that K.C. and L.C.'s father was not violent, and failed to disclose her continued association with K.C. and L.C.'s father despite her past allegations of rape. Essentially, the providers who worked with petitioner testified to her lack of motivation and her failure to acknowledge the conditions of abuse and neglect, which rendered her improvement impossible. On appeal, petitioner asserts that she did, in fact, acknowledge the conditions of abuse and neglect by testifying that her actions constituted abuse to the children and by stipulating to adjudication.[7] What petitioner fails to recognize, however, is that these perfunctory actions do not equate to meaningful acceptance of both her role in the children's abuse and the extent of that abuse. The circuit court heard petitioner's testimony in this regard and weighed it against the testimony of the providers who attempted to assist petitioner in remedying the conditions at issue and found petitioner's acknowledgment lacking. We decline to disturb these credibility determinations on appeal. *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 and this Court is not in a position to, and will not, second guess such determinations.").

It should further be noted that no violation of petitioner's due process rights occurred below. In support of this argument, petitioner asserts that the DHHR never had any intention of reuniting her with the children and, therefore, her rights as a natural parent to the continued custody of her children were violated. However, petitioner cannot establish that the DHHR lacked the intention to reunite the family when the record shows the opposite.[8] Again, the DHHR implemented services designed to remedy the conditions of abuse and neglect so that the children could be safely returned to petitioner, yet she failed to remedy those issues. Petitioner also asserts that the circuit court inappropriately considered her lack of financial means in terminating her parental and custodial rights, which constitutes a further violation of her due process rights. This argument, however, misinterprets the circuit court's findings below. Given that the issues in this case arose, in large part, because of petitioner's continued association with individuals who presented a threat to the children, the circuit court made findings regarding petitioner's efforts to extricate herself from this cycle of repeatedly living with such individuals and relying on them for financial support. In furtherance of her attempts to gain independence and, therefore, limit the children's exposure to dangerous individuals, the circuit court found that petitioner "made no attempt to gain employment, find a residence of her own, or remedy her financial dependence on others." Rather than punish petitioner for a lack of financial means, as petitioner argues, the circuit court simply addressed petitioner's efforts to break a cycle that repeatedly endangered the children. Accordingly, we find that petitioner was afforded all of the protections set forth in the applicable

[7]Petitioner fails to cite to the record to show that she stipulated to adjudication and the circuit court's adjudicatory order does not specify that a stipulation was entered. However, petitioner's assertion regarding possible stipulation is assumed, for sake of the argument, above.

[8]In furtherance of her argument that the DHHR never intended to reunite her with the children, petitioner quotes extensively from transcripts that were not included in the appendix record. Because petitioner's recitation of these discussions cannot be corroborated against transcripts due to her failure to include them in the appendix record for this Court's review, we reiterate that these assertions cannot be considered.

rules and statutes governing child abuse and neglect proceedings and that her due process rights were not violated.

Based on this evidence, the circuit court found that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect. We agree. According to West Virginia Code § 49-4-604(d)(5), a situation in which there is no reasonable likelihood the conditions of abuse and neglect can be substantially corrected in the near future includes one in which

> [t]he abusing parent . . . [has] repeatedly or seriously injured the child physically or emotionally, or [has] sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling their responsibilities to the child.

The circuit court here made this finding based on the substantial evidence addressed above. As the circuit court concluded, petitioner's ability to protect was so severely compromised that it was non-existent. As such, it is clear that there was overwhelming evidence that there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect and, further, that her complete inability to protect the children from extreme harm, such as sexual abuse, made termination of her parental and custodial rights necessary for the children's welfare. Pursuant to West Virginia Code § 49-4-604(c)(6), circuit courts may terminate parental and custodial rights upon these findings.

On appeal, petitioner argues that the two oldest children expressed their desire to return to her custody and argues that the circuit court erred in failing to address these wishes and petitioner's bond with the children.[9] This argument is flawed for several reasons. First, petitioner fails to cite to any portion of the record to support her assertion that the oldest child, H.B., expressed a desire to be reunited with petitioner. On the contrary, the guardian's report states that H.B. "reported a desire not to be returned to" petitioner. Further, L.M.'s preference for being returned to petitioner was presented to the circuit court, and there is nothing in the record to indicate that the court did not properly consider this information. According to West Virginia Code § 49-4-604(c)(6)(C), "the court shall give consideration to the wishes of a child [fourteen] years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights." This statute does not, however, bind a circuit court to follow such wishes, especially in circumstances such as those presented below where a parent has demonstrated a total inability to protect the children. Based on the circuit court's extensive findings regarding petitioner's inability

[9]Petitioner also alleges that the guardian did not speak to the two youngest children, which is not entirely accurate. Rather than reflecting a lack of fulfilling his responsibilities in regard to the two youngest children, the guardian's report reflects the reality that the youngest children, then ages seven and five, were not asked to express their wishes "in light of their tender ages." As more fully set forth above, these children were not of the age at which the circuit court was required to consider their wishes, and we find no error in this regard.

to correct the conditions of abuse and neglect and that termination of her parental and custodial rights was necessary for the children's welfare, we find no error in this regard.[10]

Further, as this Court has held,

> "[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604] . . . may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under [West Virginia Code § 49-4-604(d)] . . . that conditions of neglect or abuse can be substantially corrected." Syllabus point 2, *In re R.J.M.*, 164 W.Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). Accordingly, we find no error in the circuit court's termination of petitioner's parental and custodial rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its January 22, 2020, order is hereby affirmed.

Affirmed.

ISSUED: November 4, 2020

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Margaret L. Workman
Justice Elizabeth D. Walker
Justice Evan H. Jenkins
Justice John A. Hutchison

[10]In making this argument, petitioner also briefly asserts, without any citation to the record or applicable authority, that the circuit court erred in failing to grant her post-termination visitation with the children. Given petitioner's failure to formulate an appropriate argument in accordance with Rule 10(c)(7) of the Rules of Appellate Procedure, we decline to address this assertion on appeal.