

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

*In re* E.O. and M.O.

No. 22-912 (Wood County CC-54-2020-JA-221 and CC-54-2020-JA-222)

**MEMORANDUM DECISION**

Petitioner Mother M.C.<sup>1</sup> appeals the Circuit Court of Wood County’s November 15, 2022, order terminating her parental rights to E.O. and M.O.<sup>2</sup> Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court’s order is appropriate. *See* W. Va. R. App. P. 21.

In November 2020, the DHS filed an abuse and neglect petition alleging that petitioner suffered from a mental illness or impairment that impacted proper parenting skills resulting in the neglect of the children. Specifically, petitioner and the children’s father, D.O., believed that aliens had sexually assaulted them and the children. Petitioner reported being abducted by the aliens multiple times since she was an infant and that she had recently seen the alien mothership. Petitioner and the father claimed that the aliens were coming out of the television, and the father explained that the children had been awake and crying for four days because of the aliens. The children’s doctor expressed concerns for the children’s well-being, citing a conversation with petitioner where petitioner explained that her home is filthy, has bed bugs, and that she forgets to feed the children.

At the adjudicatory hearing in March 2021, petitioner entered a stipulated adjudication admitting that she suffers from a mental illness or impairment to the extent that it impacted proper

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<sup>1</sup>Petitioner appears by counsel Heather L. Starcher. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Keith White appears as the child’s guardian ad litem.

Additionally, pursuant to West Virginia Code § 5F-1-2, the agency formerly known as the West Virginia Department of Health and Human Resources was terminated, effective January 1, 2024, and is now three separate agencies—the Department of Health Facilities, the Department of Health, and the Department of Human Services. For purposes of abuse and neglect appeals, the agency is now the Department of Human Services (“DHS”).

<sup>2</sup>We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

parenting skills, resulting in the neglect of the children, and the circuit court adjudicated her as a neglecting parent. Petitioner was granted a six-month post-adjudicatory improvement period. In May 2021, petitioner filed a petition for a domestic violence protective order in family court against the father for domestic abuse after a verbal altercation. The next day, petitioner, accompanied by the father, sought to withdraw the petition for a protective order. After the matter was transferred from family court to the circuit court, an evidentiary hearing on the protective order was held and evidence was presented that the father made physical threats of violence against petitioner. The circuit court issued the protective order and ordered petitioner and the father to participate in a domestic violence prevention program as a condition of their improvement period.

At a review hearing in September 2021, the circuit court extended petitioner's post-adjudicatory improvement period for ninety days and terminated the protective order because the father was compliant with the domestic violence prevention program and the couple was beginning counseling. In December 2021, petitioner was granted a six-month post-dispositional improvement period. At a review hearing in April 2022, the DHS expressed concerns over the father's noncompliance with the domestic violence prevention program and reports from service providers that the father was belittling to petitioner during services. Despite these concerns, all parties agreed to continue with the post-dispositional improvement period. At the next review hearing in June 2022, petitioner testified about the father's continued anger and violent outbursts. Petitioner testified that the father would call her vulgar names. The court heard evidence about an incident in which the father strangled their cat after he became angry with petitioner for not cleaning the dishes. Although petitioner reported to her therapist that the father strangled the cat, at the hearing she recanted because the father told her that is not what happened. Petitioner also confirmed that she told her therapist it was in the children's best interests to remain in their current placement and not be reunited with her or the father because "[the children] look happy. They look healthy. They look, they look well fed." Nonetheless, all parties agreed to continue the improvement period and set the matter for final disposition.

The final dispositional hearing began in June 2022 and concluded in November 2022. The DHS presented evidence of petitioner's failure to respond to the treatment plan despite participating with services for nearly two years. Petitioner testified that she did not utilize any of the resources or services provided by the domestic violence program following the father's violent episodes. Furthermore, petitioner was absent from the initial dispositional hearing. At a subsequent hearing, petitioner admitted that she intentionally did not attend the hearing because she could not handle it emotionally. At the conclusion of the evidence, petitioner requested that the circuit court grant her motion for a ninety-day extension of her post-dispositional improvement period.

The circuit court found that petitioner failed to successfully complete her improvement periods because, though she participated in the services, she failed to internalize what those services were intended to achieve. The circuit further found that petitioner's inability to succeed in the improvement periods was likely due to her mental health deficiencies. Moreover, the circuit court found that an additional extension of the improvement period would result in the children being in foster care for longer than permitted by West Virginia Code § 49-4-610(9), and there was no evidence of compelling circumstances to justify exceeding the time limit. Accordingly, the circuit court denied petitioner's request for an extension of the post-dispositional improvement period. Furthermore, the circuit court terminated petitioner's parental rights because there was no

reasonable likelihood that the conditions of neglect could be substantially corrected in the near future and, considering the need for continuity of care and caretakers, termination was necessary for the children. It is from the dispositional order that petitioner appeals.<sup>3</sup>

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court's findings of fact for clear error and its conclusions of law de novo. Syl. Pt. 1, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011). Upon our review, we must first address petitioner's failure to comply with requirements of Rule 10(c)(7) of our Rules of Appellate Procedure, 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.

(emphasis added). Here, petitioner's brief in regard to two of her assignments<sup>4</sup> is inadequate as it fails to include citation to or application of any controlling authority, in violation of Rule 10(c)(7). Accordingly, the Court will not address these assignments of error on appeal.

Turning to petitioner's remaining assignment of error, she argues that the circuit court erred in denying her motion for an extension of her post-dispositional improvement period. However, West Virginia Code § 49-4-610(9) prohibits a circuit court from granting or extending an improvement period if it would cause a child to be in foster care for more than fifteen of the prior twenty-two months, unless compelling circumstances are proven by clear and convincing evidence that it is in the child's best interests to exceed the time limits. After reviewing the record, we agree with the circuit court's finding that no compelling circumstances existed to justify an extension beyond the statutory time limit, given that petitioner was offered extensive services yet failed to internalize the information in order to correct the conditions of neglect at issue. As we have explained, circuit courts are granted discretion in ruling on motions for improvement periods and may deny such motions when no improvement is likely. *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Accordingly, we affirm the circuit court's denial of petitioner's motion for an extension of the post-dispositional improvement period.

We further conclude that the circuit court correctly found there was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect in the near future and that termination of petitioner's parental rights was necessary for the children's welfare. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental and custodial rights upon finding no reasonable likelihood the conditions of neglect can be substantially

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<sup>3</sup>The father's parental rights were also terminated. The permanency plan for the children is adoption in their current foster placement.

<sup>4</sup>The assignments of error alleged were (1) whether the circuit court erred in finding that petitioner failed to successfully complete her improvement period, and (2) whether the circuit court erred in denying post-termination visitation.

corrected in the near future and when necessary for the child’s welfare); *see also* Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (permitting termination of parental and custodial rights “without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood . . . that conditions of neglect . . . can be substantially corrected”). Finally, we note that termination of petitioner’s parental rights was in compliance with syllabus point 4, *In re Billy Joe M.*, 206 W. Va. 1, 521 S.E.2d 173 (1999), requiring that termination of parental rights where allegations of neglect are made against the parent based on their intellectual incapacity should only occur after a thorough effort to determine whether the parent can adequately care for the child with intensive long-term assistance. Here, the court ensured that petitioner was given such intensive services, yet she failed to benefit from the same.

For the foregoing reasons, we find no error in the decision of the circuit court, and its November 15, 2022, order is hereby affirmed.

Affirmed.

**ISSUED:** February 7, 2024

**CONCURRED IN BY:**

Chief Justice Tim Armstead  
Justice Elizabeth D. Walker  
Justice John A. Hutchison  
Justice William R. Wooton  
Justice C. Haley Bunn