

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

*In re J.T. and B.S.*

No. 23-101 (Mason County CC-26-2021-JA-49 and CC-26-2022-JA-10)

**MEMORANDUM DECISION**

Petitioner Mother E.T.<sup>1</sup> appeals the Circuit Court of Mason County’s January 26, 2023, order terminating her parental rights to the children, J.T. and B.S.<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 October 2021, the DHS filed an abuse and neglect petition regarding the child B.S.<sup>3</sup> and alleging that petitioner failed to provide necessary care and appropriate housing. Specifically, petitioner and the child were living in a “shack” with no running water or sewage service. Although there was electricity, the stove did not work, and there was trash and glass scattered on the floor, among several other unsafe conditions. The child appeared dirty, and his sleeping area was so cluttered that he had to sleep in petitioner’s bed. The petition also alleged that petitioner was sixteen weeks pregnant at the time.

At a hearing held later in October 2021, petitioner waived her right to a preliminary hearing and further stipulated to the allegations in the DHS’s petition concerning the deplorable conditions

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<sup>1</sup>Petitioner appears by counsel R. Michael Shaw Jr. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Heather L. Olcott. Counsel Tanya H. Handley appears as the children’s guardian ad litem (“guardian”).

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).

<sup>3</sup>J.T. had not been born at the time the original petition was filed.

of the home. The court adjudicated petitioner as an abusing and neglecting parent and B.S. an abused and/or neglected child. Thereafter, petitioner was granted a post-adjudicatory improvement period for six months with the child permitted to remain in her care.

In December 2021, the court was advised that petitioner had recently given birth to the child J.T., and the DHS filed an amended petition to include the child in January 2022. In the meantime, petitioner was to continue her improvement period with the children in her care. However, the guardian filed an emergency motion to remove the children from petitioner's custody in February 2022. The motion was based on petitioner's continued failure to provide appropriate housing for the children, as the cousin with whom petitioner lived would not allow her to turn on the heat even though it was as cold as eight degrees Fahrenheit outside. The DHS further alleged that the cousin pulled a gun on petitioner in the presence of the children during an argument. A Child Protective Services ("CPS") worker advised petitioner to find alternative housing, but she demonstrated a lack of effort in that regard. Petitioner filed a response to the motion indicating that she remedied the issue by moving into a rental home with a "longtime friend" and that the home was stable, safe, secure, and appropriate. Despite petitioner's response, the court granted the guardian's motion, and the children were placed in foster care.

At some point in time, which is unclear from the record, the children were returned to petitioner based on her relocation. However, the guardian filed a second motion for removal of the children in April 2022. The guardian alleged that petitioner was engaging in a romantic relationship with a minor, cutting herself, and abusing illegal substances. The court granted the motion, and the children were returned to foster care.

A hearing was held in May 2022 to review petitioner's improvement period, at which time the court granted a three-month extension. Approximately two months later, the DHS filed a motion to revoke petitioner's improvement period. The basis for the motion was that petitioner had not been participating in services, still did not have suitable housing or employment, and continued the relationship with the underage male.

The court held an adjudicatory hearing regarding the child J.T. in September 2022, during which the court heard testimony of a DHS worker. The DHS worker testified that petitioner had recently tested positive for marijuana. The DHS worker further testified to a recent domestic violence incident between petitioner and an individual with whom she lived that resulted in police intervention. Petitioner testified that she was the one to call the police, that she thereafter sought a domestic violence protective order, and that she was now living with her grandmother. Petitioner further testified that the individual with whom she lived had excessively punished B.S. At the conclusion of the testimony, the court adjudicated petitioner an abusing and neglecting parent and the child J.T. to be an abused and/or neglected child.

The court proceeded to disposition in December 2022, at which time the DHS and guardian supported termination of petitioner's parental rights. Petitioner was not present for the hearing but was represented by counsel. The Court heard testimony of a family services worker, a CPS worker, and the children's maternal aunt. The family services worker testified that petitioner had not completed her parenting classes and had stopped participating in therapy and other services. The DHS worker testified that petitioner still had made no effort to find housing and, although she

recently obtained employment, she had been fired from several jobs throughout the proceedings. The DHS worker further testified that the maternal aunt had been considered for placement of the children when they were removed from petitioner's care, but that placing the children in her home would have been in violation of a DHS policy that there cannot be three children under the age of two and no more than five children under the age of eighteen in a single-parent apartment. The maternal aunt admitted to living in an apartment alone with three children, one of which was under the age of two. Because J.T. and B.S. were also under the age of two at that time, the maternal aunt could not have been approved for placement according to the DHS worker's testimony. Based on the evidence, the circuit court found that petitioner continued to show a lack of parenting skills and an inability to maintain proper housing despite services. Therefore, the court found no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future and that it would be contrary to the welfare of the children to delay permanency any longer. In consideration of dispositional alternatives, the court found that the children were thriving in their foster home and that their need for continuity of caregivers favored termination. Thus, the court found it to be in the best interests of the children to terminate petitioner's parental rights.<sup>4</sup> It is from the dispositional order that petitioner appeals.

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). Petitioner argues that the court erred in terminating her parental rights when there were less restrictive dispositional alternatives available. However, upon our review of the record, we find no merit in petitioner's argument.

Petitioner cites West Virginia Code § 49-4-604(c) for the proposition that the court could have permitted her to voluntarily relinquish her custodial rights and place the children with the children's maternal aunt in order to preserve the family unit. However, petitioner's argument ignores our prior holding that courts may terminate parental rights "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(c)(6)] . . . that conditions of neglect or abuse can be substantially corrected." Syl. Pt. 5, in part, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (citation omitted). Further, "[a]s a general rule the least restrictive alternative regarding parental rights to custody of a child under [W. Va. Code § 49-4-604] 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." Syl. Pt. 1, in part, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980). Here, the court correctly found that there was no reasonable likelihood that the conditions of abuse or neglect could be substantially corrected in the near future as petitioner consistently failed to provide suitable housing or improve her parenting skills despite being afforded over thirteen months of DHS services. Petitioner's own testimony revealed that the homes she had chosen were unsafe, and there was no evidence that she ever secured an appropriate living situation during the entirety of her improvement period, the extension thereof, or by the time of disposition. Accordingly, we find no clear error.

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<sup>4</sup>The father of B.S. also had his parental rights terminated below. The permanency plan for B.S. is adoption by foster placement. The father of J.T. successfully completed an improvement period, and the permanency plan for J.T. is reunification with his father.

To the extent petitioner argues that the court should have permitted the children to be placed with the maternal aunt as an alternative to disposition, we likewise find no merit in that assertion. Although West Virginia Code § 49-4-601a provides for a relative placement preference at the time of removal, the evidence revealed that the DHS determined that the aunt’s home would be unsuitable based on DHS’s policy regarding the number of children in the home. Although petitioner argues that the number of children in the home is a temporary issue, the court properly found that it would be contrary to the welfare of the children to delay permanency any longer. *See State ex rel. Amy M. v. Kaufman*, 196 W. Va. 251, 260, 470 S.E.2d 205, 214 (1996) (“Although it is sometimes a difficult task . . . there comes a time for decision, because a child deserves resolution and permanency in his or her life . . .”). Moreover, the record shows that the children were constantly relocating, either to different homes while in petitioner’s custody or back and forth from petitioner’s care to foster care. To that end we have stated that “[e]nsuring finality for these children is vital to safeguarding their best interests so that they may have permanency and not be continually shuttled from placement to placement.” *In re Cesar L.*, 221 W. Va. 249, 258, 654 S.E.2d 373, 382 (2007). Ultimately, the court found that the children were thriving in their current placements and that the best interests of the children required termination of petitioner’s parental rights. Upon our review, we find no error.

For the foregoing reasons, we find no error in the decision of the circuit court, and its January 26, 2023, 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