

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

C. CASEY FORBES, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

*In re G.R.*

No. 23-11 (Kanawha County 22-JA-306)

**MEMORANDUM DECISION**

Petitioner Mother C.R.<sup>1</sup> appeals the Circuit Court of Kanawha County’s December 9, 2022, order terminating her parental rights to the child, G.R.,<sup>2</sup> claiming that she was erroneously denied a post-adjudicatory improvement period. 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 July 2022, the DHS filed an abuse and neglect petition against petitioner and the father alleging that petitioner tested positive for amphetamine and methamphetamine when she was admitted to the hospital for the child’s birth that same month. Petitioner denied abusing drugs, telling hospital staff that she was exposed to second-hand smoke from friends who abused drugs. At the time of the filing of the petition, the DHS had not yet received umbilical cord test results. The petition included information about the parents’ previous abuse and neglect proceeding in which their parental rights to four other children were terminated. That case involved issues of substance abuse, domestic violence, deplorable home conditions, and educational and medical neglect. The DHS asserted that the prior termination constituted aggravated circumstances in this case and that the issues in the prior case had not been remedied.

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<sup>1</sup>Petitioner appears by counsel Sandra K. Bullman. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Deputy Attorney General Steven R. Compton. Counsel Brain B. Escue appears as the child’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).*

A preliminary hearing was held in August 2022, during which the court heard testimony from a Child Protective Services (“CPS”) worker. The CPS worker testified to petitioner’s statement at the hospital that she did not actively abuse drugs and was, instead, “around friends who were Cheech and Chonging,” which he assumed meant she was participating in a “hotbox” situation. According to the worker, the umbilical cord test results came back positive for amphetamine and methamphetamine. The court found probable cause to remove the child and granted visitation on the condition that petitioner produce two negative drug screens.

In September 2022, the court held an adjudicatory hearing. The court took judicial notice of the prior abuse and neglect proceeding as well as the testimony of the CPS worker taken during the preliminary hearing. The court heard additional testimony of two CPS workers. One CPS worker testified regarding the prior abuse and neglect case, stating that petitioner continued to suffer from the same drug abuse issues as before. The other worker testified that services had not yet been established but that petitioner had not been in contact with their office. Based on the uncontroverted evidence, the court found the child to be abused and neglected and adjudicated petitioner an abusing and neglecting parent. The court again ordered visitation subject to two consecutive clean drug screens and further ordered the DHS to reach out to petitioner regarding services. Petitioner thereafter filed a written motion for a post-adjudicatory improvement period, which was later denied by the court at disposition.

The court proceeded to disposition in October 2022, at which time the DHS and guardian supported termination of petitioner’s parental rights. A CPS worker testified that she set up services for petitioner at a family services facility but that neither she nor facility providers received responses from petitioner when they attempted to contact her. Contrarily, petitioner testified that she called the DHS every day but could not get in contact with workers and that she never received any calls from the DHS or the family services facility providers. At the conclusion of the evidence, the court denied petitioner’s motion for an improvement period. The court found that petitioner failed to take advantage of services offered in order to remedy the problems involved in this and the prior abuse and neglect proceeding. Therefore, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and the child’s best interests required termination of parental rights. 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). On appeal, petitioner’s sole assignment of error is that the circuit court erred by terminating her parental rights without the opportunity for a post-adjudicatory improvement period. Upon our review, we find no error as the circuit court has discretion to deny an improvement period when no improvement is likely. *See In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). The circuit court justified denial of an improvement period upon ample evidence, including the outcome of petitioner’s prior abuse and neglect proceedings, her substance abuse following termination of her parental rights to her four other children and during pregnancy with the child here, and the fact that petitioner had not

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<sup>3</sup>The father’s parental rights were terminated by the same order. The permanency plan for the child is adoption by relative placement.

participated in the services offered by the DHS. Accordingly, the circuit court's finding that improvement would not be likely was not in error. Petitioner's self-serving testimony, including assertions that she could not contact the DHS despite attempts to do so that were contradicted by testimony from other witnesses, is insufficient to establish error. The court clearly made a credibility determination that we decline to disturb on appeal. *See 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."). Accordingly, this Court cannot find that the circuit court abused its discretion in denying a post-adjudicatory improvement period.<sup>4</sup>

We further find no error in the circuit court's termination of petitioner's parental rights, particularly considering petitioner's prior involuntary terminations and her conduct thereafter. Indeed, pursuant to West Virginia Code 49-4-604(c)(7), for purposes of the court's consideration of the disposition custody of a child, the DHS is not required to make reasonable efforts to preserve the family if the court determines that the parental rights of the parent to another child have been terminated involuntarily. Despite this statute, the court nevertheless required the DHS to set up services and granted visitation for petitioner in the event she produced clean drug screens. Upon our review of the record, there is no evidence that petitioner drug tested in order to visit her child or participated in the services offered. To that end we have stated 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). Therefore, we find no error in the court's decision to terminate petitioner's parental rights to the child. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental rights upon finding no reasonable likelihood conditions of abuse can be substantially corrected in the near future and when necessary for the child's welfare).

For the foregoing reasons, we find no error in the decision of the circuit court, and its December 9, 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

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<sup>4</sup>To the extent petitioner challenges the fast pace of the proceedings, we find no error as Rule 32 of the West Virginia Rules of Child Abuse and Neglect Proceedings places specific time constraints on abuse and neglect matters and the court proceeded accordingly.