

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

*In re* **A.M., C.M.-1, D.C., and C.C.**

**No. 23-253** (Berkeley County CC-02-2022-JA-86, CC-02-2022-JA-87, CC-02-2022-JA-88, and CC-02-2022-JA-89)

**MEMORANDUM DECISION**

Petitioner Mother C.M.-2<sup>1</sup> appeals the Circuit Court of Berkeley County’s March 28, 2023, order terminating her parental rights to C.M.-1, D.C., and C.C and her custodial rights to A.M.,<sup>2</sup> arguing that the court erred in denying her the opportunity to complete an 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 March 2020, the DHS filed an abuse and neglect petition following a domestic violence incident between petitioner and the father of the three youngest children, C.M.-1, D.C., and C.C. (hereinafter referred to as “the father”). Petitioner stabbed the father in the chest while the children were present in the home. Following the incident, petitioner briefly went to jail and later pled guilty to unlawful assault in a parallel criminal case. The children were returned to petitioner’s and the father’s care following completion of an improvement period, and the 2020 abuse and neglect petition was dismissed. The instant abuse and neglect proceeding was initiated in May 2022, after

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<sup>1</sup>Petitioner appears by counsel Jason M. Stedman. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Lee Niezgoda. Counsel Jared M. Adams appears as the children’s guardian ad litem (“guardian”).

Additionally, pursuant to West Virginia Code § 5F-2-1a, the agency formerly known as the West Virginia Department of Health and Human Resources was terminated. It is now three separate agencies—the Department of Health Facilities, the Department of Health, and the Department of Human Services. *See* W. Va. Code § 5F-1-2. 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). Additionally, because one of the children and petitioner share the same initials, we will refer to them as C.M.-1 and C.M.-2, respectively.

a similar domestic violence event between petitioner and the father, again involving a knife.<sup>3</sup> Text messages between the oldest child, A.M., and her stepfather were provided to the court and revealed the following recount of events by A.M.:

They were arguing because of cigarettes . . . [petitioner] started getting mad . . . she started screaming, punching, and grabbed a knife. She started stabbing the door and tried to stab [the father] and she almost did. I screamed at her and told her too [sic] stop because I was scared and then she came in here waving a knife at me and telling me too [sic] shut up . . . she started with the knife again. It scared me really badly my hands were shaking because I almost saw [the father] get stabbed . . . she scared me I don't think you understand how bad it was.

At a hearing in May 2022, petitioner waived her right to a preliminary hearing, and the court ordered that she participate in drug testing.

In September 2022, petitioner admitted that she and the father physically abused each other in the presence of the children. She further admitted that in May 2022, she became angry with the father, began yelling, screaming, and punching inanimate objects, and that she had a knife in her hand at certain times during the incident. According to the parties, petitioner was adjudicated based on these admissions. Thereafter, petitioner filed a written motion for a post-adjudicatory improvement period.

In January 2023, the court held a hearing on petitioner's motion for a post-adjudicatory improvement period. The court heard petitioner's testimony and found that although she had been making some effort to improve, such as getting a job and recently moving out of the home with the father, petitioner would be unlikely to comply with the terms of an improvement period. This finding was based upon petitioner's testimony denying that she had anger management issues outside of her relationship with the father. Specifically, when asked if she felt like she had culpability in the problems that led to this proceeding or if it was just the relationship, she responded that it was the relationship. Petitioner further admitted that she blamed A.M. for the initiation of the case due to the text messages that were provided to the DHS. The court denied petitioner's motion for an improvement period, and the matter proceeded to disposition.

Prior to disposition, petitioner filed a written motion for a post-dispositional improvement period. The court held an initial dispositional hearing on March 14, 2023, at which time the DHS and guardian supported termination of petitioner's parental rights to the three youngest children and recommended termination of petitioner's custodial rights to the oldest child, A.M., as she was thirteen years old at that time and did not want petitioner's parental rights to be terminated. The court heard testimony of a psychologist who performed an evaluation of petitioner. It was the psychologist's opinion that petitioner had anger problems and did not have the proper capacity to care, protect, or change adequately for the children. A DHS worker testified that although petitioner had participated in services in the improvement period during the prior proceedings, she continued to deny her anger problems, did not take accountability, and failed to apply what she learned; therefore, continued services would not be beneficial. The father testified regarding his

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<sup>3</sup>Petitioner failed to include the petition in the appendix record.

ongoing relationship with petitioner. Although petitioner moved out of their home in July 2022, he admitted that the two continued to communicate and have sexual relations. The father testified that they have a pattern of getting into arguments and saying they will never talk again, only to later resume the relationship. Due to time constraints, the court continued the remainder of the testimony to another date and ordered that petitioner drug screen in the interim. In response to the court's order to drug screen, petitioner exclaimed, "I'm leaving" and "they're being taken away for nothing."

When the parties reconvened for a final dispositional hearing on March 23, 2023, petitioner admitted that she did not drug screen as ordered by the court at the previous hearing. When asked why, she responded, "I was frustrated . . . I just felt that I wasn't going to have a chance to get my kids. I just felt I didn't need to drug screen. I didn't see it was going to make a difference." Petitioner then testified regarding services and stated that she believed anger management classes would help. At the conclusion of the testimony, the court denied petitioner's motion for a post-dispositional improvement period. The court found that petitioner had not met the burden that she would be likely to comply with the terms of an improvement period. The court noted that the DHS provided services in the previous case with anger management specifically ordered, yet that did not prevent a repeat of the behavior. Additionally, the court recognized petitioner's "outburst" at the close of the last hearing, which was the type of response "she cannot control," and the fact that she refused to follow the court's order to drug screen. Ultimately, the court found that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected and that termination of petitioner's parental rights of the three youngest children and the custodial rights of the oldest child to be in the children's best interests. It is from the final dispositional order that petitioner appeals.<sup>4</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). Petitioner argues that the court erred in denying her the opportunity to complete an improvement period and terminating her rights. Upon our review, we find no error as the circuit court has discretion to deny an improvement period when no improvement is likely. *In re Tonjia M.*, 212 W. Va. 443, 448, 573 S.E.2d 354, 359 (2002). Furthermore, we have 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.

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<sup>4</sup>The father of C.M.-1, D.C., and C.C. voluntarily relinquished his parental rights below. The permanency plan for those children is adoption by a relative placement. The father of A.M. had his parental rights terminated in a prior proceeding. The permanency plan for this child is a legal guardianship with the current foster placement.

*In re Timber M.*, 231 W. Va. 44, 55, 743 S.E.2d 352, 363 (2013) (citation omitted). Here, the court did not abuse its discretion in denying petitioner’s request for an improvement period because petitioner continued to deny that she had anger issues. Instead, she blamed her relationship with the father (and even A.M.’s disclosures) for the outcome of this case. As the circuit court pointed out, petitioner was granted services in the prior abuse and neglect proceeding but resumed the same pattern of behavior. Furthermore, the court specifically noted petitioner’s “outburst” and refusal to submit to drug testing despite court orders. Petitioner’s own testimony and behavior throughout the case clearly indicated that no improvement would be likely. Accordingly, the circuit court did not err in denying petitioner an improvement period.

Petitioner further argues that the circuit court was biased because the same judge presided over the previous case and relied on it in ruling in the present case. We disagree. Canon 2.11(A)(1) of the West Virginia Code of Judicial Conduct requires a judge disqualify himself or herself if “[t]he judge has a personal bias or prejudice concerning a party or a party’s lawyer.” Petitioner points to no evidence that the judge had any personal bias or prejudice, and our review of the record reveals none. Moreover, petitioner did not file a motion for disqualification below as required by West Virginia Trial Court Rule 17.01. We, therefore, find that petitioner is entitled to no relief.

Ultimately, the circuit court correctly found termination of petitioner’s parental rights to the youngest three children and termination of her custodial rights to the oldest child to be proper, and, upon our review of the record, there is no reason to disturb that finding on appeal. *See* W. Va. Code § 49-4-604(c)(6) (permitting circuit court to terminate parental and custodial rights upon finding no reasonable likelihood conditions of abuse and neglect can be substantially corrected in the near future and when necessary for child’s welfare); *see also* Syl. Pt. 5, in part, *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 and abuse can be substantially corrected”) (citation omitted).

For the foregoing reasons, we find no error in the decision of the circuit court, and its March 28, 2023, order is hereby affirmed.

Affirmed.

**ISSUED:** March 6, 2024

**CONCURRED IN BY:**

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