

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

***In re I.D., J.D., and L.G.***

**No. 23-212** (Boone County CC-03-2021-JA-86, CC-03-2021-JA-87, and CC-03-2021-JA-88)

**MEMORANDUM DECISION**

Petitioner Mother A.T.<sup>1</sup> appeals the Circuit Court of Boone County’s March 15, 2023, order terminating her parental, custodial, and guardianship rights to I.D., J.D., and L.G., arguing that the circuit court erred in terminating her rights and denying post-termination visitation.<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 September 2021, the DHS filed a petition alleging that petitioner and the father of L.G. (“the father”) exposed the children to substance abuse and permitted firearms to be within the children’s reach. The petition followed the father’s arrest for multiple crimes, including third-offense driving under the influence, prohibited person in possession of a firearm, and child neglect creating risk of injury. Petitioner was in the car with the father and the children when these offenses occurred. According to the petition, the children had access to firearms in the car and in the home. Initially, the DHS provided services, including drug screens, in an attempt to prevent the filing of a petition. However, it was reported that both parents “ha[d] been failing screens.” Specifically,

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<sup>1</sup>Petitioner appears by counsel Lauren Thompson. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Andrew Waight. Counsel Allison K. Huson 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).

petitioner tested positive nine times, including for methamphetamine and opiates, and missed seven screens.<sup>3</sup>

At an adjudicatory hearing in November 2021, the DHS presented evidence consistent with the petition's allegations. Based on the evidence, the court adjudicated petitioner of abusing and neglecting the children. Thereafter, the court granted petitioner a post-adjudicatory improvement period that required her to participate in therapy, comply with services in the home, and pass drug screens. It appears that petitioner was initially compliant with some services and was permitted overnight visits with the children as long as the father was not in the home. However, according to a DHS report from August 2022, petitioner admitted to illegally taking the father's prescribed Suboxone which resulted in her failing urine screens. Further, the children were instructed to lie about the father being present for a visit. The DHS implemented an updated case plan that required petitioner to, among other things, maintain participation in a medication-assisted treatment program and refrain from taking any medication not prescribed to her. Petitioner executed this case plan in July 2022.

At a hearing in August 2022, the guardian updated the court on petitioner's progress in her improvement period, noting that "recently it was discovered that [petitioner] had been testing positive for [S]uboxone while the prior child protective services worker had been representing that she was clean for all substances." The guardian further indicated that petitioner had recently tested positive for methamphetamine. The guardian expressed concern with petitioner's "lack of responsibility taken when these issues were addressed" in multidisciplinary team ("MDT") meetings. The court ordered that all drug screen results would be promptly provided to all counsel of record upon receipt by the DHS and scheduled the matter for further hearing.

In October 2022, the court held a hearing on the issue of the drug screen reporting. According to the record, the failure to timely notify the parties about petitioner's screens that were positive for Suboxone resulted from confusion as to whether petitioner possessed a valid prescription and communication between the testing entity and the DHS. It appears that the failure to report the positive Suboxone screens took place over a period of several months. Based on evidence concerning the drug screens, the court made the following finding: "During the period that [petitioner] was testing positive for illegal and/or prescribed substances and the [DHS] allowed unsupervised visitation between the minor children and [petitioner] and further, did not provide notice of said positive screens, the [DHS] did not make reasonable efforts to achieve permanency."

The court then held a series of dispositional hearings, culminating in a final hearing in December 2022. During one hearing, petitioner questioned the validity of her failed drug screens and refused to admit that she had abused certain substances. For example, when asked if she had been abusing drugs, petitioner questioned whether a drug screen from the relevant time period would indicate that she had. When told that the relevant screen was positive, petitioner responded, "Well, then I guess I have to—I have to claim it even though it's the first time I'm hearing about it." Petitioner also admitted that she instructed the children to lie about the father being in the home

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<sup>3</sup>The DHS later filed an amended petition to include allegations against the father of I.D. and J.D.

during unsupervised visits and that she had lied to the MDT about this issue. Further, a parenting service provider testified that although petitioner complied with services, she had not observed petitioner make any progress in addressing her issues. Finally, the court heard extensive evidence about the father's inappropriate conduct during visits and an incident in which petitioner defended his actions by screaming at I.D. after the father made the child cry. According to a witness, petitioner said to I.D., "this is going to look bad on me" as she defended the father.

Based on the evidence, the court found that petitioner engaged in drug use and dishonesty and gave inconsistent and uncredible testimony. The court also found that petitioner knew she was taking the father's prescription illegally and that she engaged in "deceitful behavior and covered it up with lying." Although the court noted that the DHS failed to provide some of the drug screen results in a timely manner, the court determined that petitioner "knew the results." Accordingly, the court found that there was no reasonable likelihood that petitioner could correct the conditions of abuse and neglect in the near future and that termination of her rights was in the children's best interests. As such, the court terminated petitioner's parental, custodial, and guardianship rights. In reaching this disposition and based, in part, upon the DHS's correction of the earlier drug screen reporting issue, the court additionally found that the DHS made reasonable efforts to eliminate the conditions that necessitated the petition's filing and to achieve a permanent reunification of the children with petitioner. The court further denied petitioner's request for post-termination visitation with the children, finding that it would not be in their best interests.<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). Before this Court, petitioner raises three assignments of error, all predicated on the DHS's failure to report accurate drug screens during a portion of the proceedings. First, petitioner argues that termination of her rights was in error "where the lower court found that the DH[S]'s inaction was so substantial that it made a reasonable efforts determination impossible." It is critical to note, however, that the finding upon which petitioner relies was not made at disposition but was, instead, made at an earlier hearing on the drug screen reporting issue. Essentially, petitioner's argument ignores critical portions of the record, including the fact that the circuit court ultimately concluded that the DHS *had* made the required reasonable efforts after correcting the drug screen error. *See* W. Va. Code § 49-4-604(c)(6)(C)(iv) (requiring the circuit court, in terminating parental, custodial, and guardianship rights, to state in its order "[w]hether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof"). On appeal, petitioner does not challenge the circuit court's *dispositional* finding concerning the DHS's reasonable efforts and, instead, chooses to focus on the finding from the earlier hearing. Because petitioner raises no argument challenging the finding made in accordance with West Virginia Code § 49-4-604(c)(6)(C)(iv), she is entitled to no relief.

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<sup>4</sup>The fathers' parental, custodial, and guardianship rights were also terminated below. The permanency plan for the children is adoption in their respective current placement.

Petitioner next argues that because of the DHS's failure to timely report her failed drug screens, termination of her rights was not the least restrictive dispositional outcome. However, petitioner's argument again fails to reconcile with the record. Specifically, petitioner argues that she "had been testing clean for months by the time the problem was discovered." On the contrary, the record shows that when the guardian brought the issue to the court's attention at a hearing in August 2022, petitioner had recently tested positive for methamphetamine. This also undercuts petitioner's arguments that she did not know that illegally abusing the father's Suboxone was not permitted, as she was clearly abusing substances beyond that drug. Further, contrary to petitioner's argument that timely updates about failed screens would have given the parties time to address these deficiencies, the record is clear that petitioner executed a revised case plan approximately five months prior to disposition that included requirements specifically tailored to petitioner's illegal abuse of Suboxone. While it is true that the DHS should have ensured timely disclosure of the failed drug screens, the circuit court specifically found that petitioner's deceit and dishonesty as to her continued substance abuse resulted in there being no reasonable likelihood that she could substantially correct the conditions of abuse and neglect. Finally, the record shows that petitioner failed to improve despite participation in parenting classes and she lied about exposing the children to the father against a prohibition on such contact. Accordingly, it is clear that petitioner "demonstrated an inadequate capacity to solve the problems of abuse or neglect on [her] own or with help," thereby establishing that there was no reasonable likelihood she could correct the conditions. *See id.* § 49-4-604(d). Further, the court found that the children's best interests required termination of petitioner's rights. Because the court had ample evidence upon which to make the findings necessary under West Virginia Code § 49-4-604(c)(6) for termination of petitioner's parental, custodial, and guardianship rights, we find no error. *See also* Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011) (permitting termination of parental, custodial, and guardianship 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(d)] . . . that conditions of neglect or abuse can be substantially corrected." (quoting Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980))).

Finally, petitioner argues that the court erred in denying post-termination visitation. Again, petitioner predicates this argument entirely on the drug screen issue, arguing that the court could not appropriately evaluate the issue "where the DH[S] impedes and frustrates an improvement period." Simply put, the drug screen issue cannot entitle petitioner to relief, as the record is devoid of evidence that would entitle petitioner to continued visitation. As we have explained, post-termination visitation is appropriate only where "[t]he evidence . . . indicate[s] that such visitation or continued contact would not be detrimental to the child's well being and would be in the child's best interest." Syl. Pt. 11, in part, *In re Daniel D.*, 211 W. Va. 79, 562 S.E.2d 147 (2002) (quoting Syl. Pt. 5, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995)). Petitioner cites to no evidence that continued contact would be in the children's best interests, and her argument that "this issue could not be properly decided because the DH[S] did not notify the parties of the tests [she] failed" has no bearing on this lack of evidence. On the contrary, the record shows that petitioner exposed the children to the father against a prohibition on contact, lied about the contact, and blamed one child for the father's inappropriate conduct during a visit. As such, she is entitled to no relief.

For the foregoing reasons, we find no error in the decision of the circuit court, and its March 15, 2023, order is hereby affirmed.

Affirmed.

**ISSUED:** April 15, 2024

**CONCURRED IN BY:**

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