

**FILED**  
**April 15, 2024**

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

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

*In re A.M. and S.M.*

No. 23-232 (Marion County CC-24-2021-JA-23 and CC-24-2021-JA-24)

**MEMORANDUM DECISION**

Petitioner Father W.M.<sup>1</sup> appeals the Circuit Court of Marion County’s April 13, 2023, order terminating his parental rights to A.M. and S.M.,<sup>2</sup> arguing that the circuit court erred in terminating his parental rights instead of ordering a less restrictive alternative disposition. 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 2021, the DHS received a referral alleging domestic violence and drug use in the family’s home. During the DHS investigation, both children reported witnessing domestic violence, including one child witnessing petitioner pointing a gun at the mother. One child also reported that petitioner threw knives in the home. A Child Protective Services (“CPS”) worker observed knife marks in several walls and a knife stuck in one wall. Another CPS worker interviewed petitioner, who admitted to having guns in the home despite knowing that he was not allowed to possess guns as a convicted felon. Petitioner further admitted to using methamphetamine and marijuana and admitted to having marijuana in the home. Additionally, a law enforcement officer accompanying the CPS worker found methamphetamine and drug paraphernalia in the home. The DHS filed an abuse and neglect petition alleging the foregoing.

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<sup>1</sup>Petitioner appears by counsel John R. Funkhouser. The West Virginia Department of Human Services appears by counsel Attorney General Patrick Morrissey and Assistant Attorney General Katica Ribel. Counsel Clarissa M. Banks appears as the children’s guardian ad litem.

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).

In May 2021, the circuit court held an adjudicatory hearing where petitioner stipulated that he used illegal drugs while the children were in his care and exposed the children to domestic violence between himself and their mother. The circuit court accepted petitioner's stipulation and adjudicated him as an abusing parent. Petitioner was granted a six-month post-adjudicatory improvement period. The terms of petitioner's improvement period included drug screening, a psychological evaluation, and remedial services, among other requirements.

The DHS moved to set petitioner's case for disposition in November 2021 due to petitioner's failure to participate in services. However, when the parties met for a dispositional hearing in February 2022, petitioner moved for a post-dispositional improvement period, explaining that he recently entered a twenty-eight-day rehabilitation program. The circuit court granted petitioner a post-dispositional improvement period to allow for his participation in the program. Following the twenty-eight-day period, petitioner still failed to participate in services or drug testing and failed to contact the DHS or any providers. Further, petitioner did not present any evidence that he actually completed the program. In June 2022, petitioner was arrested for a home confinement violation, third-offense driving under the influence, and prohibited person in possession of a firearm.

After several continuances, the circuit court held a final dispositional hearing in March 2023.<sup>3</sup> A CPS worker testified that over the prior two years, petitioner was supposed to drug screen approximately five times a month and only completed fifteen screens, six of which were positive for illegal substances, including marijuana, methamphetamine, and amphetamine. Petitioner's most recent drug screen had occurred on January 6, 2022, and was positive for methamphetamine and amphetamine. Petitioner was initially given supervised video calls with the children, but those calls were suspended after petitioner missed several calls and failed to attend drug screenings. As such, petitioner had not seen the children in two years. Petitioner also failed to participate in a psychological evaluation, nor did he engage in any domestic violence therapy or services. Additionally, the worker testified that there were continued incidents of domestic violence throughout the improvement periods, including an incident in November 2021 where the mother was hospitalized and covered in bruises.

By order entered on April 13, 2023, the circuit court found that petitioner did not respond to or follow through with a reasonable family case plan and other rehabilitative efforts, that there was no reasonable likelihood the conditions of abuse and neglect could be corrected in the near future, and that termination of his parental rights was in the best interest of the children. Accordingly, the court terminated petitioner's parental rights to the children.<sup>4</sup> It is from this 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 he should have been granted

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<sup>3</sup>Petitioner was incarcerated beginning in November 2022 but did appear in person for the hearing and was represented by counsel.

<sup>4</sup>The permanency plan for the children is to remain in their mother's custody.

an alternative disposition because there was a likelihood he would be able to correct his parental deficiencies in the future. However, this argument directly contradicts the circuit court’s finding at disposition that there was no reasonable likelihood that the conditions of abuse and neglect could be corrected in the near future, and this finding was well-supported by the record. We have previously explained that

“[t]ermination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, [West Virginia Code § 49-4-604], may be employed 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.” Syllabus point 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980).

Syl. Pt. 5, *In re Kristin Y.*, 227 W. Va. 558, 712 S.E.2d 55 (2011). West Virginia Code § 49-4-604(d)(3) provides that there is no reasonable likelihood that conditions of neglect or abuse can be substantially corrected where the abusing parent has not “responded to or followed through with a reasonable family case plan or other rehabilitative efforts.” The record is replete with petitioner’s noncompliance in both his post-adjudicatory improvement period and his post-dispositional improvement period, his continued use of illegal substances, and continued incidents of domestic violence. Petitioner also fails to address how any dispositional decision other than termination of his parental rights would be in the best interest of the children, and thus, we find no error. *See* Syl. Pt. 4, in part, *In re B.H.*, 233 W. Va. 57, 754 S.E.2d 743 (2014) (“The controlling standard that governs any dispositional decision remains the best interests of the child.”).

For the foregoing reasons, we find no error in the decision of the circuit court, and its April 13, 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